

Terms of Service

These Terms of Service along with any other terms and policies referenced and incorporated herein, (the "**Terms**"), apply to the entire content of www.gocious.com, and govern your access to, and the use of www.gocious.com and any related website owned and/or operated by Gocious LLC, a Delaware limited liability company ("**Gocious**"), or its affiliates (the "**Sites**"), and the use of, and registration with, the Gocious Service (defined below) through the Sites, a mobile application or through any other means. The Terms constitute a legally binding contract between Gocious ("**us**", "**we**" or "**our**") and you, either individually, or on behalf of your employer or any other entity which you represent ("**you**" or "**your**"). By using the Sites, you represent and warrant that you are over the age of 18 and are lawfully able to accept the Terms. If you are using the Sites on behalf of any entity, you represent and warrant that you are authorized to accept the Terms on such entity's behalf, and that such entity agrees to indemnify the Company for violations of the Terms. PLEASE NOTE THAT YOU ARE DEEMED AS AN AUTHORIZED REPRESENTATIVE OF YOUR EMPLOYER OR AN ENTITY (AS APPLICABLE): (I) IF YOU ARE USING YOUR EMPLOYER OR AN ENTITY'S EMAIL ADDRESS IN REGISTERING INTO THE SERVICE; AND (II) IF YOU ARE AN ADMIN (AS DEFINED BELOW).

EXCEPT WHERE INDICATED OTHERWISE "YOU" SHALL REFER TO CUSTOMERS AND ALL TYPES OF USERS. YOU ACKNOWLEDGE THAT THE TERMS ARE BINDING, AND YOU AFFIRM AND SIGNIFY YOUR CONSENT TO THE TERMS, BY EITHER: (I) CLICKING ON A BUTTON OR CHECKING A CHECKBOX FOR THE ACCEPTANCE OF THESE TERMS; OR (II) REGISTERING TO, USING OR ACCESSING THE SERVICE, SITES OR MOBILE APPLICATION.

IF YOU DO NOT AGREE TO COMPLY WITH, AND BE BOUND BY, THE TERMS OR DO NOT HAVE AUTHORITY TO BIND YOUR EMPLOYER OR ANY OTHER ENTITY (AS APPLICABLE), PLEASE DO NOT ACCEPT THE TERMS OR ACCESS OR USE THE SERVICE OR THE SITES OR OUR MOBILE APPLICATION.

Gocious reserves the right, in its sole discretion, to modify the Terms without providing notification. You are responsible for regularly reviewing the Terms. Your use of the Sites following any posted change(s) to the Terms will be deemed an acceptance of such change(s).

In addition, when using particular Services, you shall be subject to any guidelines or rules applicable to such services or features, which may be posted from time to time. All such guidelines or rules are hereby incorporated by reference into the Terms.

1. Our Service.

1.1. Our Service. The Gocious platform is a cloud-based productivity tool that provides a new way for teams to define and analyze alternative configurations of products in their product lines. The aim is to increase the accuracy and quality of decision making on the features of products and the products that best meet the needs of the market place and to enable collaboration from any location, but in a

secure way. These services are provided online through web applications that are mobile friendly (collectively, the "**Service**").

1.2. Modification or Discontinuation of the Service. We may add, modify or discontinue any feature, functionality or any other tool, within the Service and/or Sites, at our own discretion and without further notice, however, if we make any material adverse change in the core functionality of the Service, then we will notify you by posting an announcement on the Sites and/or via the Service or by sending you an email.

1.3. No Contingency on Future Releases and Improvements. You hereby acknowledge that your purchase of the Service hereunder is not contingent on the delivery by us of any future release of any functionality or feature, including without limitation, the continuance of: (i) a certain Service beyond its current Subscription Term; or (ii) any public comments we make, orally or in writing, regarding any future functionality or feature.

2. Account Registration and Administration.

2.1. Account Registration. To register to the Service for the first time, you shall create an account with the Service. By creating an account ("**Account**") and registering to the Service you become a Gocious customer (the "**Customer**"). The first user of the Account is automatically assigned as the Account administrator (the "**Admin**").

2.2. Your Registration Information. When creating an Account or when you are added into an Account and creating your user profile (the "**User Profile**"), you: (i) agree to provide us with accurate, complete, and current registration information about yourself; (ii) acknowledge that it is your responsibility to ensure that your password remains confidential and secure; (iii) agree that you are fully responsible for all activities that occur under your User Profile and password, including any integration or any other use of third party products or services (and associated disclosure of data) in connection with the Services; and (iv) undertake to promptly notify us in writing if you become aware of any unauthorized access or use of your Account or User Profile and/or any breach of the Terms. We may assume that any communications we receive under your User Profile have been made by you. Customer will be solely responsible and liable for any losses, damages, liability and expenses incurred by us or a third party, due to any unauthorized usage of the Account by either you or any other User or third party on your behalf.

2.3. User Verification. You understand and agree that we may require you to provide information that may be used to confirm your identity and help ensure the security of your Account and/or User Profile. In the event that you or the Admin lose access to an Account or otherwise request information about an Account, we reserve the right to request from you or such Admin (as the case may be) any verification we deem necessary before restoring access to or providing information about such Account.

2.4. Account Admins. The Admin(s) of an Account are, severally and jointly, deemed as the authorized representatives of the Customer, and any decision or

action made by any Admin, is deemed as a decision or action of Customer. An Admin may assign or add other members of the Account as Admins, which possess important privileges and controls over the use of the Service and the Account, including, without limitation: (i) control your (and other Users) use of the Account; (ii) purchase, upgrade or downgrade the Service; (ii) create, monitor or modify Users' actions and permissions; and (iii) manage the access to, control, remove, share posts or otherwise change, all or part of the Customer Data (as defined below). You also acknowledge that your Account can become managed by a representative of the entity that owns or controls the email address domain with which your Account was created or registered.

2.5. Other Users. There are several types of Account users, such as guests, viewers and team members, all of whom are defined within the Service and referred to herein as “**Authorized Users**”, and collectively with the Admin, the “**Users**”. The features and functionalities available to the Users are determined by the respective subscription plan governing such Account, and the privileges of each such Authorized User are assigned and determined by the Account Admin(s).

2.6. Responsibility for Authorized Users. Customer is solely liable and responsible for understanding the settings, privileges and controls for the Service and for controlling whom Customer permits to become a User and what are the settings and privileges for such User, including without limitation, the right for a User to invite other Users (either paid or unpaid), the right to incur charges on the Account, the right to access, modify or share boards, etc. Customer is responsible for the activities of all of its Users, including Order Forms they may place and how Users use the Customer Data, even if those Users are not from Customer's organization or domain. Further, Customer acknowledges that any action taken by a User of Customer's Account, is deemed by us as an authorized action by Customer, hence Customer shall have no claim in this regard.

3. **Customer Data.**

3.1. Customer Data. Customer Data is any data, file attachments, text, images, reports, personal information, or any other content, that is uploaded or submitted, transmitted or otherwise made available, to or through the Service by you or any User and is processed by us on Customer's behalf (the “**Customer Data**”). For the avoidance of doubt, Anonymous Information (as defined below) is not regarded as Customer Data. Customer retains all right, title, interest and control, in and to the Customer Data, in the form submitted to the Service. Subject to the Terms, Customer grants us a worldwide, royalty-free, limited license to access, use, process, copy, distribute, perform, export, and display the Customer Data, and solely to the extent that reformatting Customer Data for display in the Service constitutes a modification or derivative work, the foregoing license also includes the right to make modifications and derivative works. The aforementioned license is hereby granted solely: (i) to maintain and provide you the Service; (ii) to prevent or address technical or security issues and resolve support requests; (iii) to investigate when we have a good faith belief, or have received a complaint alleging, that such Customer Data is in violation of the Terms; (iv) to comply with a valid legal subpoena, request, or other lawful process; and (v) as expressly permitted in writing by you.

3.2. Responsibility for Customer Data Compliance. You represent and warrant that: (i) you have or have obtained all rights, licenses, consents, permissions, power and/or authority, necessary to grant the rights granted herein, for any Customer Data that you submit, post or display on or through the Service; (ii) the Customer Data is in compliance with, and subject to, our Acceptable Use Policy; and (iii) the Customer Data you submit, your use of such Customer Data, and our use of such Customer Data, as set forth in these Terms, do not and shall not (a) infringe or violate any patents, copyrights, trademarks or other intellectual property, proprietary or privacy, data protection or publicity rights of any third party; (b) violate any applicable local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer and exportation (the "**Laws**"); (c) violate any of your or third party's policies and terms governing the Customer Data. Other than our security and data protection obligations expressly set forth in Section 6, we assume no responsibility or liability for Customer Data, and you shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it. Gocious shall not monitor and/or moderate the Customer Data and you agree that Gocious has no obligation to do so.

3.3. No Sensitive Data. You shall not submit to the Service any data that is protected under a special legislation and requires a unique treatment, including, without limitations, (i) categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any similar legislation or regulation in other jurisdiction; (ii) any protected health information subject to the Health Insurance Portability and Accountability Act ("**HIPAA**"), as amended and supplemented, or any similar legislation in other jurisdiction, unless Customer and Gocious separately enter into an agreement; and (iii) credit, debit or other payment card data subject to PCI DSS or any other credit card schemes.

4. Public User Submissions.

4.1. Public User Submissions. The Sites may have certain features that allow you to submit comments, information, and other materials publicly (collectively, "**Public User Submissions**") and share such Public User Submissions with other Users, or the public. By submitting Public User Submissions through the Sites, you grant us a license to access, use, copy, reproduce, process, adapt, publish, transmit, host, and display that Public User Submissions for any purpose, business, including without limitation, for publicizing and promoting Gocious, the Service and/or the Sites and for any other lawful purpose, in any media format (e.g. in-print, websites, electronically, broadcast), and you hereby waive, or to the extent legally prohibited, assign to Gocious, any moral rights in your Public User Submissions.

4.2. Responsibility for Public User Submissions. You acknowledge and agree that: (i) you have or have obtained all rights, licenses, consents, permissions, power and/or authority, necessary to grant the rights granted herein, for any Public User Submissions that you submit, post or display on or through the Service; (ii) we do not control, and are not responsible for, other content and/or submissions, posted on our Sites and/or Service by others; (iii) by using the Service and/or Sites, you may be exposed to content and/or submissions by other users or site visitors that is offensive, indecent, inaccurate, misleading, or otherwise unlawful; (iv) any Public User

Submissions are submitted in accordance with, and subject to our Acceptable Use Policy.

5. Intellectual Property Rights; License.

5.1. Our Intellectual Property. The Service and Sites, inclusive of materials, such as software, application programming interface, design, text, editorial materials, informational text, photographs, illustrations, audio clips, video clips, artwork and other graphic materials, and names, logos, trademarks and services marks (excluding Customer Data), any and all related or underlying technology and any modifications, enhancements or derivative works of the foregoing (collectively, "**Gocious Materials**"), are the property of Gocious and its licensors, and may be protected by applicable copyright or other intellectual property laws and treaties. As between you and Gocious, Gocious retains all right, title and interest, including all intellectual property rights, in and to the Gocious Materials.

5.2. Customer Reference. Customer acknowledges and accepts that Gocious has the right to use Customer's name and logo to identify Customer as a customer of Gocious or User of the Service, on Gocious's website, marketing materials or otherwise by public announcements. Customer may revoke such right, at any time, by contacting support@gocious.com.

5.3. Your Access and Use Rights. Subject to the terms and conditions of these Terms, and your compliance thereof, and specifically in strict compliance with our Acceptable Use Policy, we grant you a limited, worldwide, non-exclusive, non-transferable right to access and use the Service and Sites, during the applicable Subscription Term, solely for Customer's internal purposes.

5.4. Use Restrictions. Except as expressly permitted in these Terms, you may not, and shall not allow an Authorized User or any third party to: (i) give, sell, rent, lease, timeshare, sublicense, disclose, publish, assign, market, resell, display, transmit, broadcast, transfer or distribute any portion of the Service or the Sites to any third party, including, but not limited to your affiliates, or use the Service in any service bureau arrangement; (ii) circumvent, disable or otherwise interfere with security-related features of the Sites or Service or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Service or Sites; (iii) reverse engineer, decompile or disassemble, decrypt or, attempt to derive the source code of, the Service or Sites, or any components thereof; (iv) copy, modify, translate, patch, improve, alter, change or create any derivative works of the Service or Sites, or any part thereof; (v) take any action that imposes or may impose (at Gocious's sole discretion) an unreasonable or disproportionately large load on the Gocious infrastructure or infrastructure which supports the Sites or Service; (vi) interfere or attempt to interfere with the integrity or proper working of the Service or Sites, or any related activities; (vii) remove, deface, obscure, or alter Gocious's or any third party's identification, attribution or copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Service or Sites, or use or display logos of the Service or Sites without Gocious's prior written approval; (viii) use the Service or Sites for competitive purposes, including to

develop or enhance a competing service or product; or (ix) encourage or assist any third party (including other Authorized Users) to do any of the foregoing.

5.5. Feedback. As a User of the Service and/or Sites, you may provide suggestions, comments, feature requests or other feedback to any of Gocious Materials, the Service, the API (in case you are the Admin) and/or the Sites ("**Feedback**"). Such Feedback is deemed an integral part of Gocious Materials, and as such, it is the sole property of Gocious without restrictions or limitations on use of any kind may either implement or reject such Feedback, without any restriction or obligation of any kind. You (i) represent and warrant that such Feedback is accurate, complete, and does not infringe on any third party rights; (ii) irrevocably assign to Gocious any right, title and interest you may have in such Feedback; and (iii) explicitly and irrevocably waive any and all claims relating to any past, present or future moral rights, artists' rights, or any other similar rights, worldwide, in or to such Feedback.

5.6. API Use. We may offer an application programming interface that provides additional ways to access and use the Service ("**API**"). Such API is considered a part of the Service, and its use is subject to all these Terms. Without derogating from Sections 5.1 through 5.4 hereof, you may only access and use our API for Customer's internal business purposes, in order to create interoperability and integration between the Service and other products, services or systems you and/or Customer use internally. When using the API you should follow our relevant developer guidelines. We reserve the right at any time to modify or discontinue, temporarily or permanently, your and/or Customer's access to the API (or any part of it) with or without notice. The API is subject to changes and modifications, and you are solely responsible to ensure that your use of the API is compatible with the current version.

6. Privacy and Security.

6.1 Gocious Security. Gocious implements reasonable security measures and procedures to assist in protecting **Customer Data**. You can learn more on our security measures and procedures on our Security at Gocious Page as updated from time to time.

6.2. Privacy Policy. As a part of accessing or using the Service and the Sites, we may collect, access, use and share certain Personal Data (as defined in our Privacy Policy) from, and/or about, you. Please read our Privacy Policy, which is incorporated herein by reference, for a description of such data collection and use practices.

6.3. Anonymous Information. Notwithstanding any other provision of these Terms, we may collect, use and publish Anonymous Information (defined below) relating to your use of the Service and/or Sites, and disclose it for the purpose of providing, improving and publicizing our products and services, including the Sites and Service, and for other business purposes. "**Anonymous Information**" means information which does not enable identification of an individual, such as aggregated and analytics information. Gocious owns all Anonymous Information collected or obtained by Gocious.

7. Subscription Term, Renewal and Fees Payment.

7.1. Order Form. Our order form may be completed and placed in various ways, among which, an online form or in-product screens or any other mutually agreed upon offline form delivered by Customer or any of the other Users to Gocious, including via mail, email or any other electronic or physical delivery mechanism (the “**Order Form**”). Such Order Form will list, at the least, the Service ordered, subscription plan, term and the associated fees.

7.2. Subscription Term. The Service is provided on a subscription basis for the term specified in your Order Form, in accordance with the respective subscription plan purchased under such Order Form (the “**Subscription Term**” and the “**Subscription Plan**”, respectively, and collectively the “**Subscription**”).

7.3. Subscription Fees. In consideration for the provision of the Service (except for Trial Service), Customer shall pay us the applicable fees per the purchased Subscription, as set forth in the applicable Order Form (the “**Subscription Fees**”). Unless indicated otherwise, Subscription Fees are stated in US dollars. Customer hereby authorizes us, either directly or through our payment processing service, to charge such Subscription Fees via Customer’s selected payment method, upon due date. Unless expressly set forth herein, the Subscription Fees are non-cancelable and non-refundable. We reserve the right to change the Subscription Fees at any time, upon notice to Customer if such change may affect Customer’s existing subscriptions upon renewal. In the event of failure to collect the Fees owed by Customer, we may, at our sole discretion (but shall not be obligated to) retry to collect at a later time, and/or suspend or cancel the Account, without notice.

7.4. Taxes. The Subscription Fees are exclusive of any and all taxes (including without limitation, value added tax, sales tax, use tax, excise, goods and services tax, etc.), levies, or duties, which may be imposed in respect of these Terms and the purchase or sale, of the Service hereunder (the “**Taxes**”), except for Taxes imposed on our income. If Customer is located in a jurisdiction which requires Customer to deduct or withhold Taxes or other amounts from any amounts due to us, please notify us, in writing, promptly and we shall join efforts to avoid any such Tax withholding, provided, however, that in any case, Customer shall bear the sole responsibility and liability to pay such Tax and such Tax should be deemed as being added on top of the Subscription Fees, payable by Customer.

7.5. Subscription Upgrade. During the Subscription Term, Customer may upgrade its Subscription Plan by either: (i) adding Authorized Users; (ii) upgrading to a higher type of Subscription Plan; (iii) adding add-on features and functionalities; and/or (iv) upgrading to a longer Subscription Term (collectively, “**Subscription Upgrades**”). Some Subscription Upgrades or other changes may be considered as a new purchase, hence will restart the Subscription Term and some won’t, as indicated within the Service and/or the Order Form. Upon a Subscription Upgrade, Customer will be billed for the applicable increased amount of Subscription Fees, at our then-current rates (unless indicated otherwise in an Order Form), either: (1) prorated for the remainder of the then-current Subscription Term, or (2) whenever the Subscription Term is being restarted due to the Subscription Upgrade, then the Subscription Fees already paid by Customer will be reduced from the new

upgraded Subscription Fees, and the difference shall be due and payable by Customer upon the date on which the Subscription Upgrade was made.

7.6. Adding Users. Customer acknowledges that Users within Customer's Account may invite other persons to be added to the Account as Users (collectively, "**Users Increase**"). Unless agreed otherwise in an Order Form, any changes to the number of Users within a certain Account, shall be billed on a prorated basis for the remainder of the then-current Subscription Term. We will bill Customer, either upon the Users Increase or at the end of the applicable month, as communicated to Customer.

7.7. Excessive Usage. We shall have the right, including without limitation where we, at our sole discretion, believe that Customer and/or any of its Users, have misused the Service or otherwise use the Service in an excessive manner compared to the anticipated standard use (at our sole discretion), to offer the Subscription in different pricing and/or impose additional restrictions as for the upload, storage, download and use of the Service, including, without limitation, restrictions on network traffic and bandwidth, size and/or length of content, quality and/or format of content, sources of content, volume of download time, etc.

7.8. Billing. As part of registering, or submitting billing information, to the Service, Customer agrees to provide us with updated, accurate and complete billing information, and Customer authorizes us (either directly or through our affiliates, subsidiaries or other third parties) to charge, request and collect payment (or otherwise charge, refund or take any other billing actions) from Customer's payment method or designated banking account, and to make any inquiries that we may consider necessary to validate Customer's designated payment account or financial information, in order to ensure prompt payment, including for the purpose of receiving updated payment details from Customer's credit card company or banking account (e.g., updated expiry date or card number as may be provided to us by Customer's credit card company).

7.9. Subscription Auto-Renewal. In order to ensure that Customer will not experience any interruption or loss of services, Customer's Subscription includes an automatic renewal option by default, according to which, unless Customer disables the auto-renewal option or cancels its Subscription prior to its expiration, the Subscription will automatically renew upon the end of the then applicable Subscription Term, for a renewal period equal in time to the original Subscription Term (excluding extended periods) and, unless otherwise notified to Customer, at the same price (subject to applicable Tax changes and excluding any discount or other promotional offer provided for the first Subscription Term). Accordingly, unless either Customer or us cancel the Subscription prior to its expiration, we will attempt to automatically charge Customer the applicable Subscription Fees upon or immediately prior to the expiration of the then applicable Subscription Term. If Customer wishes to avoid such auto-renewal, Customer shall cancel its Subscription (or disable the auto-renewal option), prior to its expiration, at any time through the Account settings or by contacting us at support@gocious.com. Except as expressly set forth in these Terms, in case a Customer cancels its Subscription, during a Subscription Term, the

Subscription will not renew for an additional period, but Customer will not be refunded or credited for any unused period within the Subscription Term.\

7.10. Discounts and Promotions. Unless expressly stated otherwise in a separate legally binding agreement, if Customer received a special discount or other promotional offer, Customer acknowledges that upon renewal of its Subscription, Gocious will renew such Subscription, at the full applicable Subscription Fee at the time of renewal.

7.11. Credits. Any credits that may accrue to Customer's Account, for any reason (the "**Credits**"), will expire and be of no further force and effect, upon the earlier of: (i) the expiration or termination of the applicable Subscription under the Account for which such Credits were given; or (ii) in case such Credits accrued for an Account with a Trial Subscription (as defined below) that was not upgraded to a Subscription Plan, then upon the lapse of 90 days of such Credits' accrual. Unless specifically indicated otherwise, Credits may be used to pay for the Services only and not for any other payment of whatsoever kind. Whenever fees are due for any Services, accrued Credits will be first reduced against the Subscription Fees and the remainder will be charged from Customer's respective payment method. Credits shall have no monetary value (except for the purchase of Services under the limited terms specified herein) nor exchange value, and will not be transferable or refundable.

7.12. Payment through Reseller. If Customer purchased a Service from a reseller or distributor authorized by us ("**Reseller**"), then to the extent there is any conflict between the Terms and the agreement entered between Customer and the respective Reseller, including any purchase order ("**Reseller Agreement**"), then, as between Customer and Gocious, the Terms shall prevail. Any rights granted to Customer and/or any of the other Users in such Reseller Agreement which are not contained in the Terms, apply only in connection with the Reseller. In that case, Customer must seek redress or realization or enforcement of such rights solely with the Reseller and not Gocious. For clarity, Customer's and its Users' access to the Service is subject to our receipt from Reseller of the payment of the applicable Fees paid by Customer to Reseller. Customer hereby acknowledges that at any time, at our discretion, the billing of the Subscription Fees may be assigned to us, such that Customer shall pay us directly the respective Subscription Fees.

8. Refund Policy; Chargeback.

8.1. Refund Policy. If Customer is not satisfied with its initial purchase of a Service, Customer may terminate such Service by providing us a written notice, within 30 days of having first ordered such Services (the "**Refund Period**"). In the event that Customer terminates such initial purchase of a Service, within the Refund Period, we will refund Customer the Subscription Fees paid in respect of such terminated Subscription, in the same currency we were originally paid (the "**Refund**"). The Refund is applicable only to the initial purchase of the Service by Customer and does not apply to any additional purchases, upgrades, modification or renewals of such Service. Please note that the Refund amount may be different than the

amount Customer was charged due to currency changes and third party fees, such as wire transfer fees, and we shall not be responsible for any differences caused by change of currency exchange rates or fees that Customer was charged by third parties. After the Refund Period, the Subscription Fees are non-refundable and non-cancellable. To the extent permitted by law, if we find that a notice of cancellation has been given in bad faith or in an illegitimate attempt to avoid payment for Services actually received and enjoyed, we reserve our right to reject Customer's Refund request.

8.2. Non-Refundable Services. Certain Services may be non-refundable. In such event we will identify such Services as non-refundable, and Customer shall not be entitled, and we shall not be under any obligation, to terminate the Service and give a Refund.

8.3. Chargeback. If, at any time, we record a decline, chargeback or other rejection of a charge of any due and payable Subscription Fees on Customer's Account ("**Chargeback**"), this will be considered as a breach of Customer's payment obligations hereunder, and Customer's use of the Service may be disabled or terminated and such use of the Service will not resume until Customer re-subscribes for any such Service, and pay any applicable Subscription Fees in full, including any fees and expenses incurred by us for each Chargeback received (including handling and processing charges and fees incurred by the payment processor), without derogating from any other remedy that may be applicable to us under these Terms or applicable law.

9. Trial Service; Pre-Released Services.

9.1. Trial Service. We may offer, from time to time, part or all of our Services on a free, no-obligation trial version ("**Trial Service**"). The term of the Trial Service shall be as communicated to you, within the Service, in an Order Form, unless terminated earlier by either Customer or us, for any reason or for no reason. We reserve the right to modify, cancel and/or limit this Trial Service at any time and without liability or explanation to you. In respect of a Trial Service that is a trial version of the Subscription Plan (the "**Trial Subscription**"), upon termination of the Trial Subscription, we may change the Account web address at any time without any prior written notice.

9.2. Pre-Released Services. Note that we may offer, from time to time, certain Services in an Alpha or Beta versions (the "**Pre-Released Services**") and we use best endeavors to identify such Pre-Released Services as such. Pre-Released Services are Services that are still under development, and as such they may be inoperable or incomplete, and may contain bugs, suffer disruptions and/or not operate as intended and designated, more than usual.

9.3. Governing Terms of Trial Service and Pre-Released Services. The Trial Service and Pre-Released Services are governed by these Terms, provided that notwithstanding anything in these Terms or elsewhere to the contrary, in respect of Trial Service and Pre-Released Services (i) such services are licensed hereunder on as "As-Is", "With All Faults" "As Available" basis, with no warranties, express or implied, of any kind; (ii) the indemnity undertaking by us set forth in Section 15.2 herein shall not apply; and (iii) IN

NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF GOCIOUS ITS AFFILIATES, UNDER, OR OTHERWISE IN CONNECTION WITH, THESE TERMS (INCLUDING THE SITES, AND THE SERVICE), EXCEED US\$100. We make no promises that any Trial Service and/or Pre-Released Services will be made available to you and/or generally available.

10. Term and Termination; Suspension.

10.1. Term. These Terms are in full force and effect, commencing upon the Effective Date, until the end of the Service underlying the Account, either paid or unpaid, unless terminated otherwise in accordance with these Terms.

10.2. Termination for Cause. Either Customer or us may terminate the Service and these Terms, upon written notice, in case that (a) the other party is in material breach of these Terms and to the extent, curable, fails to cure such breach, within a reasonable cure period, which shall not be less than 10 days following a written notice from by the non-breaching party; or (b) ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 45 days.

10.3. Termination by Customer. Customer may terminate its Subscription to the Service by cancelling the Service and/or deleting the Account, whereby such termination shall not derogate from Customer's obligation to pay applicable Subscription Fees except where such termination is made within the Refund Period. In accordance with Section 8 above, unless mutually agreed otherwise by Customer and us in a written instrument, the effective date of such termination will take effect at the end of the then-current Subscription Term, and Customer's obligation to pay the Subscription Fees throughout the end of such Subscription Term shall remain in full force and effect, and Customer shall not be entitled to a refund for any pre-paid Subscription Fees.

10.4. Effect of Termination of Service. Upon termination or expiration of these Terms, Customer's Subscription and all rights granted to you hereunder shall terminate, and we may change the Account's web address. It is Customer's sole liability to export the Customer Data prior to such termination or expiration. In the event that Customer did not delete the Customer Data from the Account, we may continue to store and host it until either Customer or we, at our sole discretion, delete such Customer Data, and during such period, Customer shall still be able to make a limited use of the Service in order to export the Customer Data (the "**Read-Only Mode**"), but note that we are not under any obligation to maintain the Read-Only Mode period, hence such period may be terminated by us, at any time, with or without notice to Customer, and subsequently, the Customer Data will be deleted. Customer acknowledges the foregoing and its sole responsibility to export and/or delete the Customer Data prior to the termination or expiration of these Terms, and therefore we shall not have any liability either to Customer, nor to any User or third party, in connection thereto. Unless expressly indicated herein otherwise, the termination or expiration of these Terms shall not relieve Customer from its obligation to pay due Subscription Fees.

10.5. Survival. Sections 2.6 (Responsibility for Authorized Users), 3 (Customer Data), 6 (Privacy and Security), 7 (Subscription Term, Renewal and Fees Payment) in respect of unpaid Subscription Fees, 8 (Refund Policy; Chargeback); 9.3 (Governing Terms of Trial Services and Pre-Released Services), 10 (Term and Termination; Suspension), 11 (Confidentiality), 12 (Warranty Disclaimer), 13 (Limitations of Liability), 14 (Specific Laws; Reasonable Allocation of Risk); 15 (Indemnification), 20 (Dispute Resolutions; Class Action Waiver and Mandatory Arbitration), 21 (Governing Law; Jurisdiction and Venue); 22 (Recovery of Fees) and 23 (General Provisions), shall survive the termination or expiration of these Terms, and continue to be in force and effect in accordance with their applicable terms.

10.6. Suspension. Without derogating from our termination rights above, we may decide to temporarily suspend the Account and/or a User Profile (including any access thereto) and/or our Service, in the following events: (i) we believe, at our sole discretion, that you or any third party, are using the Service in a manner that may impose a security risk, may cause harm to us or any third party, and/or may raise any liability for us or any third party; (ii) we believe, at our sole discretion, that you or any third party, are using the Service in breach of these Terms or applicable Law; (iii) Customer's payment obligations, in accordance with these Terms, are or are likely to become, overdue; or (iv) Customer's or any of its Users' breach of the Gocious. The aforementioned suspension rights are in addition to any remedies that may be available to us in accordance with these Terms and/or applicable Law.

11. Confidentiality.

11.1. Confidential Information. In connection with these Terms and the Service (including the evaluation thereof), each party ("**Disclosing Party**") may disclose non-public business, product, technology and marketing information, including without limitation, customers lists and information, know-how, software and any other non-public information that is either identified as such or should reasonably be understood to be confidential given the nature of the information and the circumstances of disclosure, whether disclosed prior or after the Effective Date (the "**Confidential Information**") to the other party ("**Receiving Party**"). For the avoidance of doubt, (i) Customer Data is regarded as Customer's Confidential Information, and (ii) our Site, Service, Trial Service and/or Pre-Released Services, inclusive of their underlying technology, and their respective performance information, as well as any data, reports and materials we provided to you in connection with your evaluation or use of the Service, are regarded as our Confidential Information. Confidential Information does not include information that (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without any use or reference to the Confidential Information.

11.2. Confidentiality Undertakings by the Receiving Party. The Receiving Party will (i) take at least reasonable measures to prevent the unauthorized disclosure or use of Confidential Information, and limit access to those employees, affiliates, service providers and agents, on a need to know basis and who are bound by confidentiality obligations at least as restrictive as those contained herein; and (ii)

not use or disclose any Confidential Information to any third party, except as part of its performance under these Terms and as required to be disclosed to legal or financial advisors to the Receiving Party or in connection with a due diligence process that the Receiving Party is undergoing, provided that any such disclosure shall be governed by confidentiality obligations at least as restrictive as those contained herein.

11.3. Compelled Disclosure. Notwithstanding the above, Confidential Information may be disclosed pursuant to the order or requirement of a court, administrative agency or other governmental body; provided, however, that to the extent legally permissible, the Receiving Party shall make best efforts to provide prompt written notice of such court order or requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure.

12. Warranty Disclaimer.

NOTWITHSTANDING ANYTHING IN THESE TERMS OR ELSEWHERE TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:

12.1. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SITES AND THE SERVICE ARE PROVIDED ON AN "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS, AND WITHOUT WARRANTIES OF ANY KIND. WE AND OUR AFFILIATES, SUBCONTRACTORS, AGENTS AND VENDORS HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION, WARRANTIES AND/OR REPRESENTATIONS OF MERCHANTABILITY, FUNCTIONALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY.

12.2. WE AND OUR VENDORS DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION THAT THE SERVICE AND SITES, INCLUDING THE ACCESS THERETO AND USE THEREOF, WILL BE UNINTERRUPTED, TIMELY, SECURED, ERROR FREE, THAT DATA WON'T BE LOST, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITES AND/OR SERVICE ARE FREE FROM VIRUSES OR OTHER HARMFUL CODE. WE AND OUR VENDORS FURTHER DISCLAIM ANY AND ALL LIABILITY OR RESPONSIBILITY FOR ANY DELAYS, FAILURES, INTERCEPTION, ALTERATION, LOSS, OR OTHER DAMAGES THAT YOU AND/OR YOUR DATA (INCLUDING CUSTOMER DATA) MAY SUFFER, THAT ARE BEYOND OUR CONTROL.

12.3. EXCEPT AS EXPRESSLY SET FORTH HEREIN, WE DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION (I) THAT OUR SERVICE (OR ANY PORTION THEREOF) IS COMPLETE, ACCURATE, OF ANY CERTAIN QUALITY, RELIABLE, SUITABLE FOR, OR COMPATIBLE WITH, ANY OF YOUR CONTEMPLATED ACTIVITIES, DEVICES, OPERATING SYSTEMS, BROWSERS, SOFTWARE OR TOOLS (OR THAT IT WILL REMAIN AS SUCH AT ANY TIME), OR COMPLY WITH ANY LAWS APPLICABLE TO YOU; AND/OR (II) REGARDING ANY CONTENT, INFORMATION, REPORTS OR RESULTS THAT YOU OBTAIN THROUGH THE SERVICE AND/OR THE SITES.

13. Limitation of Liability.

NOTWITHSTANDING ANYTHING IN THESE TERMS OR ELSEWHERE TO THE CONTRARY AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW:

13.1. IN NO EVENT SHALL EITHER PARTY HERETO AND ITS AFFILIATES, SUBCONTRACTORS, AGENTS AND VENDORS, BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH THESE TERMS FOR (I) ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES; (II) ANY LOSS OF PROFITS, COSTS, ANTICIPATED SAVINGS; (III) ANY LOSS OF, OR DAMAGE TO DATA, USE, BUSINESS, REPUTATION, REVENUE OR GOODWILL; AND/OR (IV) THE FAILURE OF SECURITY MEASURES AND PROTECTIONS, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.2. EXCEPT FOR THE INDEMNITY OBLIGATIONS OF EITHER PARTY UNDER SECTION 15 (INDEMNIFICATION) HEREIN, YOUR PAYMENT OBLIGATIONS HEREUNDER FOR BREACH OF OUR ACCEPTABLE USE POLICY BY EITHER YOU OR IN CASE OF A CUSTOMER, ANY OF THE USERS UNDERLYING ITS ACCOUNT, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY, ITS AFFILIATES, SUBCONTRACTORS, AGENTS AND VENDORS (INCLUDING, THE ITS THIRD-PARTY SERVICE PROVIDERS), UNDER, OR OTHERWISE IN CONNECTION WITH, THESE TERMS (INCLUDING THE SITES AND THE SERVICE), EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY YOU (IF ANY) DURING THE 12 CONSECUTIVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

14. Specific Laws; Reasonable Allocation of Risks.

14.1. Specific Laws. Except as expressly stated in these Terms, we make no representations or warranties that your use of the Service is appropriate in your jurisdiction. Other than as indicated herein, you are responsible for your compliance with any local and/or specific applicable Laws, as applicable to your use of the Service.

14.2. Reasonable Allocation of Risks. You hereby acknowledge and confirm that the limitations of liability and warranty disclaimers contained in these Terms are agreed upon by you and us and we both find such limitations and allocation of risks to be commercially reasonable and suitable for our engagement hereunder, and both you and us have relied on these limitations and risk allocation in determining whether to enter these Terms.

15. Indemnification.

15.1. By Customer. Customer hereby agrees to indemnify, defend and hold harmless Gocious and its affiliates, officers, directors, employees and agents from and against any and all claims, damages, obligations, liabilities, losses, reasonable expenses or costs (collectively, "**Losses**") incurred as a result of any third party claim arising from (i) Customer's and/or any of its Users', violation of these Terms or applicable Law; and/or (ii) Customer Data, including the use of Customer Data by Gocious and/or any of its subcontractors, infringes or violates, any third party's rights, including, without limitation, intellectual property, privacy and/or publicity rights.

15.2. By Gocious. Gocious hereby agrees to defend Customer, its affiliates, officers, directors, and employees, in and against any third party claim or demand against Customer, alleging that Customer's authorized use of the Service infringes or constitutes misappropriation of any third party's copyright, trademark or registered US patent (the "**IP Claim**"), and we will indemnify Customer and hold Customer harmless against any damages and costs finally awarded on such IP Claim by a court of competent jurisdiction or agreed to via settlement we agreed upon, including reasonable attorneys' Gocious's indemnity obligations under this Section 15 shall not apply if: (i) the Service (or any portion thereof) was modified by Customer or any of its Users or any third party, but solely to the extent the IP Claim would have been avoided by not doing such modification; (ii) if the Service is used in combination with any other service, device, software or products, but solely to the extent that such IP Claim would have been avoided without such combination; and/or (iii) any IP Claim arising or related to, the Customer Data or to any events giving rise to Customer's indemnity obligations under Section 15.1 above. Without derogating from the foregoing defense and indemnification obligation, if Gocious believes that the Service, or any part thereof, may so infringe, then Gocious may in its sole discretion: (i) obtain (at no additional cost to you) the right to continue to use the Service; (ii) replace or modify the allegedly infringing part of the Service so that it becomes non-infringing while giving substantially equivalent performance; or (iii) if Gocious determines that the foregoing remedies are not reasonably available, then Gocious may require that use of the (allegedly) infringing Service (or part thereof) shall cease and in such an event, Customer shall receive a prorated refund of any Subscription Fees paid for the unused portion of the Subscription Term. THIS SECTION 15.2 GOCIOUS'S SOLE AND ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY, FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY GOCIOUS AND/OR ITS SERVICE AND UNDERLYING TECHNOLOGY.

15.3. Indemnity Conditions. The defense and indemnification obligations of the indemnifying party under this Section 15 are subject to: (i) the indemnified party shall promptly provide a written notice of the claim for which an indemnification is being sought, provided that such indemnitee's failure to do so will not relieve the indemnifying party of its obligations under this Section 15, except to the extent the indemnifying party's defense is materially prejudiced thereby; (ii) the indemnifying party being given immediate and exclusive control over the defense and/or settlement of the claim, provided, however that the indemnifying party shall not enter into any compromise or settlement of any such claim that that requires any monetary obligation or admission of liability or any unreasonable responsibility or liability by an indemnitee without the prior written consent of the affected indemnitee, which shall not be unreasonably withheld or delayed; and (iii) the indemnified party providing reasonable cooperation and assistance, at the indemnifying party's expense, in the defense and/or settlement of such claim and not taking any action that prejudices the indemnifying party's defense of, or response to, such claim.

16. Third Party Components within Our Service

Our Service includes third party codes and libraries that are subject to third party open source license terms (the "**Open Source Code**" and the "**Open Source Terms**", respectively). Some of such Open Source Terms determine that to the extent applicable to the respective Open Source Code licensed thereunder, such

terms prevail over any conflicting license terms, including these Terms. We use our best endeavors to identify such Open Source Code, within our Service, hence we encourage Customer to familiarize itself with such Open Source Terms. Note that we use best efforts to use only Open Source Codes that does not impose any obligation or affect the Customer Data or related intellectual property (beyond what is stated in the Open Source Terms and herein), on an ordinary use of our Service that does not involve any modification, distribution or independent use of such Open Source Code. Notwithstanding anything to the contrary, we make no warranty or indemnity hereunder with respect to any Open Source Codes.

17. Export Controls.

The Service may be subject to Israeli, U.S. or foreign export controls, Laws and regulations (the "**Export Controls**"), and you acknowledge and confirm that: (i) you are not located or use, export, re-export or import the Service (or any portion thereof) in or to, any person, entity, organization, jurisdiction or otherwise, in violation of the Export Controls; (ii) Customer is solely responsible for complying with applicable Export Controls which may impose additional restrictions, prohibitions or requirements on the use, export, re-export or import of the Services and/or the Customer Data; and (iii) Customer Data is not controlled under the U.S. International Traffic in Arms Regulations or similar Laws in other jurisdictions, or otherwise requires any special permission or license, in respect of its use, import, export or re-export hereunder.

18. Modifications.

Occasionally we may make changes to these Terms for valid reasons, such as adding new functions or features to the Service, technical adjustments, typos or error fixing, for legal or regulatory reasons or for any other reasons as we deem necessary, at our sole discretion. When we make material changes to these Terms, we'll provide Customer with notice as appropriate under the circumstances, e.g., by displaying a prominent notice within the Service or by sending Customer an email. Your continued use of the Service after the changes have been implemented will constitute your acceptance of the changes.

19. Government Use.

If Customer is part of a U.S. Government agency, department or otherwise, either federal, state or local (a "**Government Customer**"), then the terms of this Section 20 shall apply to Customer. Government Customer's technical data and software rights related to the Service include only those rights customarily provided to the public as specified in these Terms. Government Customer hereby agrees that the Service qualifies as a "Commercial Computer Software" and "Commercial Computer Software Documentation", within the meaning of 48 C.F.R. §12.212 or 48 C.F.R. §227.7202 to §227.7204. If a Government Customer has a need for rights not granted under the Terms, it must negotiate with us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable

agreement. Any unpublished-rights are reserved under applicable copyright laws. Any provisions contained in these Terms that contradict any Law applicable to a Government Customer, shall be limited solely to the extent permitted under such applicable Law.

20. Dispute Resolutions; Class Action Waiver and Mandatory Arbitration.

20.1. Dispute Resolution.

Please read this section carefully. It affects rights that you may otherwise have. It provides for resolution of most disputes through arbitration instead of court trials and class actions. Arbitration is final and binding and subject to only very limited review by a court. This arbitration clause shall survive termination of this agreement.

If a dispute arises between you and Gocious, our goal is to provide you a neutral and cost effective means of resolving the dispute quickly.

20.2. Negotiations.

Before initiating any arbitration or court proceeding, you and Gocious agree to first attempt to negotiate any dispute, controversy or claim related to the Sites, the Terms or the Service, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory (each, a "**Claim**") (except those Claims expressly provided in Section 20.6 below) informally for at least thirty (30) days. Negotiations will begin upon written notice. Gocious will send its notice via Certified Mail to your billing or other physical address (if on file with Gocious) and email you a copy to the email address you have provided. You agree to send your notice via Certified Mail to Gocious 's office at 555 Anton Blvd, Suite 150, Cost Mesa, CA 92626 and email a copy support@gocious.com.

20.3 Binding Arbitration.

This Section 20 is referred to in the Terms as the "Arbitration Agreement". You agree that any and all disputes or claims that have arisen or may arise between you and Gocious or a Gocious affiliate, whether relating to the Terms (including any alleged breach thereof), or otherwise, shall be resolved exclusively through final and binding arbitration, rather than a court in accordance with the terms of this Arbitration Agreement, except you may assert individual claims in small claims court, if your claims qualify. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

20.4 Arbitration Procedures.

The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") as modified by this agreement. The AAA Rules and information about arbitration and fees are available upon request from the AAA (call 1-800-778-7879) or online at <http://adr.org>. You and Gocious agree that the Terms evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the U.S. Federal Arbitration Act and federal arbitration law.

An arbitrator may not award relief in excess of or contrary to what the Terms provides, including Section 13 Limitation of Liability order consolidation or arbitration on a class wide or representative basis, or award punitive damages or any other damages aside from the prevailing party's actual economic damages, except that the arbitrator may award on an individual basis damages expressly required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. In any arbitration applying the AAA Rules applicable to large/complex cases, the arbitrator(s) must also apply the Federal Rules of Evidence, and the losing party may have the award reviewed in accordance with the review procedures set forth in the AAA Rules. Any arbitration shall be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

As part of the arbitration, both you and we will have the opportunity for discovery of non-privileged information that is relevant to the Claim. The arbitrator will provide a written statement of the arbitrator's decision regarding the Claim, the award given and the arbitrator's findings and conclusions on which the arbitrator's decision is based. The determination of whether a Claim is subject to arbitration shall be governed by the Federal Arbitration Act and determined by a court rather than an arbitrator. Except as otherwise provided in these Terms of Use, (i) you and Gocious may litigate in court to compel arbitration, stay proceedings pending arbitration, or confirm, modify, vacate or enter judgment on the award entered by the arbitrator; and (ii) the arbitrator's decision will be final, binding on all parties and enforceable in any court that has jurisdiction, provided that any award may be challenged if the arbitrator fails to follow applicable law. BY AGREEING TO THIS ARBITRATION PROVISION, YOU UNDERSTAND THAT YOU AND GOCIOUS ARE WAIVING THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL.

20.5 Fees.

All administrative fees and expenses of arbitration will be divided equally between you and us, except that for claims of less than \$500, you will be obligated to pay \$25 and we will pay all other administrative costs and fees. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

20.6. Location.

The arbitration will be conducted in New York, New York, unless the parties agree to video, phone or Internet connection appearances.

20.7. Prohibition of Class and Representative Actions and Non-Individualized Relief.

YOU AND GOCIOUS AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE CLAIM BETWEEN GOCIOUS AND YOU INDIVIDUALLY. YOU AND GOCIOUS AGREE THAT (A) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; (B) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY OR AS A PRIVATE ATTORNEY GENERAL; AND (C) NO ARBITRATION WILL BE JOINED WITH ANY OTHER.

20.8. Exceptions to Negotiations and Arbitration.

You and Gocious agree that the following Claims are not subject to the above provisions concerning negotiations and binding arbitration: (i) any Claims seeking to enforce or protect, or concerning the validity of, any of your or Gocious's intellectual property rights; (ii) any Claim related to, or arising from, allegations of theft, piracy, invasion of privacy or unauthorized use; and (iii) any claim for equitable relief. In addition to the foregoing, either party may assert an individual action in small claims court for Claims that are within the scope of such courts' jurisdiction in lieu of arbitration, provided that any such action or proceeding must be commenced no later than one year after the accrual of the Claim giving rise thereto.

20.9. Severability.

You and Gocious agree that if any portion this "Dispute Resolution" section is found illegal or unenforceable, that portion will be severed and the remainder of this section will be given full force and effect. If for any reason the Arbitration Agreement is deemed inapplicable or invalid, you and Gocious both agree (i) that all Claims will be exclusively decided either the courts of the State of New York situated in the County of New York or in the United States District Court for the Southern District of New York, and you and Gocious agree to submit to the personal jurisdiction of those courts, and (ii) that you and Gocious both waive, to the fullest extent allowed by law, any claims to recover punitive or exemplary damages and any right to pursue any claims on a class or consolidated basis or in a representative capacity. By using the Websites, you accept generally and unconditionally the jurisdiction of the aforesaid courts and irrevocably waives any objection to such jurisdiction.

21. Governing Law, Jurisdiction and Venue.

All matters related to the Websites and these Terms of Use (in each case, including non-contractual disputes or claims) shall be governed by and construed in accordance with New York law; provided, that the Federal Arbitration Act shall govern the interpretation and enforcement of Section 17. Unless Gocious and you agree otherwise, in the event that the Arbitration Agreement is deemed inapplicable or invalid, you and Gocious both agree that all Claims will be exclusively decided by either the courts of the State of New York situated in the County of New York or in the United States District Court for the Southern District of New York, and you and Gocious agree to submit to the personal jurisdiction of those courts. By using the Websites, you accept generally and unconditionally the jurisdiction of the aforesaid courts and irrevocably waives any objection to such jurisdiction.

22. Recovery of Fees.

You agree that if Gocious takes action (by itself or through its representatives) to enforce any of the provisions of these Terms of Use against you, including collection of any amounts due to Gocious, Gocious shall be entitled to recover from you (and you agree to pay), Gocious's reasonable and necessary attorney's fees and any costs of any litigation, in addition to all sums to which Gocious is entitled or any other relief, at law or in equity, except as otherwise limited herein.

23. General Provisions.

23.1. Force Majeure. Neither us nor you will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, interruption or failure of the Internet or any utility service, failures in third-party hosting services, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

23.2. Relationship of the Parties; No Third Party Beneficiaries. The parties are independent contractors. The Terms and the Service provided hereunder, do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third party beneficiaries to the Terms.

23.3. Notice. We shall use your contact details that we have in our records, in connection with providing you notices, subject to this Section 21.4. Our contact details for any notices are detailed below. You acknowledge notices that we provide you, in connection with these Terms and/or as otherwise related to the Service, shall be provided as follows: via the Service, including by posting on our Sites or posting in your account, text, in-app notification, e-mail, phone or first class, airmail, or overnight courier. You further acknowledge that an electronic notification satisfies any applicable legal notification requirements, including that such notification will be in writing. Any notice to you will be deemed given upon the earlier of: (i) receipt; or (ii) 24 hours of delivery. Notices to us shall be provided to Gocious, Attn: Maziar Adls at support@gocious.com.

23.4. Assignment. The Terms, and any and all rights and obligations hereunder, may not be transferred or assigned by you without our written approval, provided that

you may assign these Terms to your successor entity or person, resulting from a merger, acquisition, or sale of all or substantially all of your assets or voting rights, except for an assignment to a competitor of Gocious, and provided that you provide us with prompt written notice of such assignment and the respective assignee agrees, in writing, to assume all of your obligations under the Terms. We may assign our rights and/or obligations hereunder and/or transfer ownership rights and title in the Service to a third party without your consent or prior notice to you. Subject to the foregoing conditions, the Terms shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns. Any assignment not authorized under this Section 23.4 shall be null and void.

23.5. Severability. The Terms shall be enforced to the fullest extent permitted under applicable Law. If any provision of the Terms is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms will remain in effect.

23.6. No Waiver. No failure or delay by either party in exercising any right under these Terms will constitute a waiver of that right. No waiver under the Terms will be effective unless made in writing and signed by an authorized representative of the party being deemed to have granted the waiver.

Last update: July 22, 2020