

## GLOWINGBUD SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (“**SaaS Agreement**” or “**Agreement**”) is entered into between Glowing Bud Pvt. Ltd. and its Affiliates (“**Glowingbud**” which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its affiliates, successors and permitted assigns), a company registered under Companies Act, 2013 with its registered address as S No. 6, H No.2/1(P 2/22a), Shop No. 707, Stellar, Opp. Zensar Tech, Pune, 411014 & office address as 311, Finswell, Building A, Viman Nagar, Pune – 411014, India. and you or the entity that you represent and your Affiliates (“**Customer**”/“you”). Glowingbud and Customer agree that the following terms and conditions will apply to the products and services provided under this Agreement and orders placed thereunder. By using the products and services described hereunder, the Customer is agreeing to the terms of this Agreement. In this Agreement, both Glowingbud and the Customer shall be individually referred to as “Party” and collectively as “Parties”.

### 1. DEFINITIONS

- 1.1. “**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.2. “**Application**” shall mean any software used by the Customer.
- 1.3. “**Connectivity Provider**” shall mean the provider who provides data connectivity to the Customer.
- 1.4. “**Customer Application**” shall mean any customized application of the Customer that incorporates/ utilizes Glowingbud Software and is distributed by the Customer to End User(s).
- 1.5. “**Customer Content**” means all data and materials created or provided by Platform User to Glowingbud for use in connection with the SaaS Services, including, without limitation, flows, text snippets, images, and videos.
- 1.6. “**Documentation**” means the user guides, installation documents, software specifications, online help, release notes, training materials and other documentation provided or made available by Glowingbud to Customer regarding the use or operation of the SaaS Services.
- 1.7. “**End User(s)**” means an individual that uses the Customer Application & interacts with Glowingbud widgets overlays & content on top of the Application and includes Platform users.
- 1.8. “**End User Data**” means any data or information of any End User that is provided to or obtained by any Party in the performance of its obligations under this Agreement, including but not limited to, all lists of End Users, former End Users, and all information relating to and identified with such End Users.
- 1.9. “**GDPR**” means the EU General Data Protection Regulation (EU) 2016/279.
- 1.10. “**Intellectual Property Rights**” means all (i) copyrights (including, without limitation, the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative

works), copyright registrations and applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author's rights, privacy rights, publicity rights, algorithms, rights in packaging, goodwill and other proprietary rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or any other state, country or jurisdiction; (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; and (iii) all derivatives of any of the foregoing.

- 1.11. **"Order Form"** shall mean the Order Form executed by Glowingbud and Customer, defining the fees and scope of Customer's subscription plan for use and access of the Software and Professional Services, if applicable.
- 1.12. **"Personal Data"** means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller.
- 1.13. **"Platform User"** means each Customer employee designated by Customer to serve as user of the Glowingbud SaaS platform on Customer's behalf. Each Platform User must complete training and qualification requirements reasonably requested by Glowingbud.
- 1.14. **"Product(s)"** means any of the product offerings of Glowingbud. Such products shall be governed by any additional terms that apply to the Customer's use of each of Glowingbud's product offerings, consulting and other services, and third-party services. The Product Specific Terms can be accessed [here](#). In the event of a conflict between this SaaS Agreement and the Product Specific Terms, the Product Specific Terms shall take precedence.
- 1.15. **"Professional Services"** means consulting, implementation or other services that may be provided by Glowingbud to Customer hereunder and that may involve analysis, development, technical support, integration, and training and any other services as mutually agreed between the Parties, as set forth in more detail in the Statement of Work ("SOW") or Order Form, as the case may be.
- 1.16. **"SaaS Services"** means the cloud-based Software as made available during the Subscription Term by Glowingbud to Customer hereunder in a hosted, software-as-a-service format, and including all upgrades, updates and patches to the SaaS.
- 1.17. **"Software"** means the object code version of the Digital Adoption Platform (DAP) software to which Customer is provided access as part of the Service, including any updates or new versions under the brand name "Glowingbud".
- 1.18. **"Support Services"** means the technical support services for the SaaS Services available at <https://support.glowingbud.com> ("Support Terms").
- 1.19. **"Subscription Term"** shall mean that period specified in the applicable Order Form during which Customer will have on-line access and use of the Software through Glowingbud's SaaS Services. The Subscription Term shall auto renew for a successive Subscription Term, unless terminated in accordance with Section 7 of this Agreement.

- 1.20. “**Subscription Fees**” or “**Fees**” shall mean the amounts as mentioned in the applicable Order Form or SOW as the case may be applicable to Products and Services.

## **2. SAAS SERVICES**

- 2.1. During the Subscription Term, Glowingbud grants the Customer a non-exclusive, non-assignable, non-sublicensable, royalty free, limited, worldwide right to use the Software.
- 2.2. During the Subscription Term, Glowingbud will provide Customer with Support Services with respect to the SaaS Services so long as Customer has paid all outstanding Subscription Fees and applicable Support Fees at the time such Support Services are required.
- 2.3. Customer acknowledges that this Agreement is a services agreement and Glowingbud will not be delivering copies of the Software to Customer as part of the SaaS Services. In case of a self-hosted deployment, Glowingbud will provide the Customer the capability to host the Customer Content and the SaaS service on the Customer’s servers.
- 2.4. Glowingbud shall work with the Customer and provide the onboarding and training assistance for the creation of Customer Content for the SaaS services to be availed by the Customer.
- 2.5. Glowingbud shall use commercially reasonable efforts to make the SaaS Services and Products available 24 hours a day, 7 days a week, except for (i) any planned downtimes, or (ii) any unavailability caused by circumstances beyond Glowingbud’s reasonable control, including, for example, an act of God, act of government or law, civil or government calamity, weather, flood, fire, earthquake, natural disaster, epidemic, pandemic, state, national or international health crisis, civil unrest, war, invasion, hostility (whether war is declared or not), act of terror, strike or other labor problem (other than one involving Glowingbud employees), supply chain disruption, embargo or blockade, telecommunication breakdown, power outage or shortage, inadequate transportation service or inability or delay in obtaining adequate supplies, failure or delay of providers of Internet service or third party applications, or denial of service attack.
- 2.6. SaaS Services/Products are subject to usage limits, including, for example, the quantities specified in Order Forms and technical and functional requirements set forth within the Documentation. Unless otherwise specified, (a) a quantity in an Order Form refers to Users, and the SaaS Service/Product may not be accessed by more than that number of Users, (b) a User’s password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Subscription Services. If Customer exceeds a contractual usage limit, it will execute an Order Form for additional quantities of the applicable SaaS Services/Product promptly upon Glowingbud’s request, and/or pay any invoice for excess usage in accordance with Section 6 (Orders and Payments). Glowingbud, at its sole discretion, may also restrict the SaaS Service/Product if the Customer reaches the usage limit corresponding to such activity.

## **3. PROFESSIONAL SERVICES**

The Professional Services shall be provided in accordance to the SOW or the Order Form executed by the Customer, as applicable and shall be provided remotely (and not at Customer’s premises), unless otherwise agreed in writing between the Parties in the SOW or Order Form.

## 4. INTELLECTUAL PROPERTY

### 4.1. OWNERSHIP

Glowingbud shall own all right, title and interest in and to the Software, Services, Products, Documentation, and other deliverables provided under this SaaS Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and Intellectual Property Rights therein (“Glowingbud’s IP”). Nothing in this Agreement shall be construed as granting the Customer any ownership rights in the Software. In consideration for the services provided by Glowingbud and as part of the performance of this Agreement, the Customer hereby irrevocably assigns, transfers, and conveys to Glowingbud all right, title, and interest it may have in any intellectual property developed, created, or arising during the provision of the services by Glowingbud. Further, the Customer agrees to take any necessary actions, including signing additional documents, to perfect and confirm Glowingbud’s ownership of the intellectual property assigned under this section. The Customer agrees not to challenge the validity or ownership of Glowingbud's IP and to notify Glowingbud promptly if the Customer becomes aware of any infringement or potential infringement of Glowingbud’s IP.

### 4.2. RESTRICTIONS

Customer shall not, and shall not permit anyone to: (i) copy or republish the SaaS Services/Product or Software, (ii) make the SaaS Services/Product available to any person other than the Platform Users or through the Customer Application, to authorized End User, (iii) use or access the SaaS Services/Product to provide service bureau, time-sharing or other computer hosting services to third parties or provide any service based on the SaaS Services/Product without prior written permission, (iv) modify, adapt or create derivative works based upon the SaaS Services/Product or Documentation or copy, modify, transmit, distribute, frame or mirror any of the Software in any form or media or by any means, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the Software used to provide the SaaS Services/Product or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software used to provide the SaaS Services/Product, except and only to the extent such activity is expressly permitted by applicable law or work around any of the technical limitations of the Services/Product or enable functionality that is disabled or prohibited (vii) license, sell, resell, transfer, rent, lease, distribute, exploit or otherwise make the SaaS Services/Product or Software available to anyone other than the Platform Users or through the Customer Application, to the End Users, (viii) access the SaaS Services/Product or use the Documentation in order to build a similar product or competitive product, (ix) use the SaaS Services/Product in any manner that interferes with or disrupts the integrity, security or performance of the SaaS Services/Product, its components and the data contained therein or use the SaaS Services/Product to engage in any activity that is illegal, fraudulent, deceptive or harmful, (x) perform or attempt to perform any action that interferes with the normal operation of the SaaS Services/Product, or (xi) exceed any usage limitations stated in the Order Form or SOW;

## 5. CUSTOMER RESPONSIBILITIES

- 5.1 **Assistance:** Customer shall provide commercially reasonable information and assistance to Glowingbud to enable Glowingbud to deliver the SaaS Services/Product. Upon request from Glowingbud, Customer shall promptly deliver Customer Content (as detailed and defined below) to Glowingbud in an electronic file format specified and accessible by Glowingbud and provide access to training/development environment of the Application. Customer grants Glowingbud, a worldwide, limited-term right to host, copy, transmit, and display or otherwise use Customer Content as necessary for Glowingbud to provide the services, or otherwise exercise Glowingbud’s rights or obligations pursuant to this Agreement. Customer shall make

necessary connections and communicate with business/technical teams and shall explain business objectives and processes to Glowingbud. Customer acknowledges that Glowingbud's ability to deliver the SaaS Services/Product in the manner provided in this SaaS Agreement may depend upon the accuracy and timeliness of such information and assistance.

- 5.2 Compliance with Laws:** Customer shall comply with all applicable local, state, national and foreign laws, rules and regulations in connection with its use of the SaaS Services/Product, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Customer acknowledges that Glowingbud exercises no control over the content of the information transmitted by Customer or the End User through the SaaS Services/Product. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 5.3 Platform Access:** Customer shall be solely responsible for the acts and omissions of its Platform Users and End Users. Glowingbud shall not be liable for any loss of data or functionality caused directly or indirectly by the Platform Users and End Users. The Services/Product(s) may only be used for lawful purposes. Customer/End User shall not use any Service/Product(s) to engage in, foster, or promote illegal, abusive, fraudulent, or irresponsible behaviour. Glowingbud shall not be held liable for any illegal, abusive, fraudulent, or irresponsible behaviour of the Customer/End User.
- 5.4 Customer Content:** Customer is solely responsible for collecting, entering and updating all Customer Content stored on the Software/Product(s), and for ensuring that the Customer Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. Customer shall: (i) notify Glowingbud immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to Glowingbud immediately and use reasonable efforts to stop any unauthorized use of the Service/Product(s) that is known or suspected by Customer or any End User and (iii) not provide false identity information to gain access to or use the Service/Product(s). Customer shall be responsible for the accuracy, quality, and legality of Customer Content and the means by which Customer acquires Customer Content and provides it to Glowingbud. Customer owns and shall retain all right title and interest in and to the Customer Content which is (i) provided by Customer to Glowingbud for the purpose of the provision of the Service/Product(s) and/or the Professional Services; (ii) created by Customer using the Service/Product(s); and/or (iii) to the extent applicable, created by Glowingbud specifically for Customer under the provision of Professional Services, and which incorporates or is based on Customer's copyrighted work and/or Customer's Confidential Information. Customer Content specifically excludes Content provided by Glowingbud which does not use Customer Content, the Software's "look and feel", and Glowingbud's Confidential Information and Intellectual Property.
- 5.5** Customer is responsible for identifying and authenticating all Platform Users and End Users, for approving access by such Platform Users and End Users to the SaaS Services/Product(s), for controlling against unauthorized access by the users, and for maintaining the confidentiality of usernames, passwords and account information. Customer accepts responsibility for the confidentiality and timely and proper termination of user records in Customer local (intranet) identity infrastructure or on Customer local computers. Glowingbud is not responsible for any harm caused by Platform Users or End Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Customer local identity management infrastructure or Customer local computers. Customer is responsible for all activities that occur

under Customer's or its Platform Users' or End Users' usernames, passwords or accounts or as a result of Customer's or its Platform Users' or End Users' access to or use of the Services.

- 5.6 **License from Customer:** Subject to the terms and conditions of this SaaS Agreement, Customer shall grant to Glowingbud a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Customer Content solely as necessary to provide the SaaS Services to Customer or to authorized End User through the Customer Application, pursuant to this Agreement and the applicable Order Form.
- 5.7 **Ownership and Restrictions:** Customer retains ownership and intellectual property rights in and to its Customer Content. Glowingbud or its licensors retain all ownership and intellectual property rights to the services/Product(s), Software programs, and anything developed and delivered under the Agreement. Third party technology, if any, that may be appropriate or necessary for use with some Glowingbud Services/Product(s), programs as specified in the program Documentation or Order Form as applicable. Customer's right to use such third-party technology is governed by the terms of the third party technology license agreement and not under the Agreement. Further, access and use of third party applications may require acceptance of terms of service and privacy policy applicable to such third party applications. The Customer is responsible for reading and understanding the third party terms and conditions before accessing or using any third party applications. Glowingbud assumes no responsibility for, and specifically disclaims any liability, warranty, and obligation with respect to third party applications and third party technology, whether or not they are recommended or approved by Glowingbud. If the provider of any third party application/technology ceases to make the third party application/technology available for interoperation with the corresponding service features on reasonable terms, Glowingbud may cease providing those service features without entitling Customer to any refund, credit, or other compensation.
- 5.8 **Suggestions:** Glowingbud shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the SaaS Services/Product(s) any suggestions, enhancement requests, recommendation or other feedback provided by Customer, including End Users, relating to the operation of the SaaS Services/Product(s).

## 6. ORDERS AND PAYMENT

- 6.1 **Orders:** Customer shall subscribe to SaaS Services/Product(s) and purchase Professional Services, as applicable pursuant to the Order Form and/or SOW. All services acquired by Customer shall be governed exclusively by this SaaS Agreement and the applicable Order Form/SOW. In the event of a conflict between the terms of an Order Form and this Agreement, the terms of the Order Form/SOW shall take precedence.
- 6.2 **Invoicing and Payment:**
- 6.2.1 Customer will pay all fees specified in each Order Form and/or SOW, as applicable ("Fees"). Except as otherwise specified herein or in an Order Form and/or SOW, all Fees are payable in advance, non-cancelable and non-refundable and based on the services purchased. Invoices for subscription fees will be issued monthly in advance, with the initial invoice due upon execution of this Agreement. Payment is due within thirty (30) days from the date of the invoice.
- 6.2.2 Glowingbud may request additional information from the Customer at any time during the term of this Agreement when such information is necessary to perform the services or deliver the products specified in the Order Form and/or SOW. This may include, but is not limited to, technical specifications, access credentials, compliance documents, or any other information deemed essential by Glowingbud to fulfill



its contractual obligations. If the Customer fails to provide the desired information within the prescribed time limit set forth in the request, the amount deposited or paid in advance for the relevant Services will be forfeited.

- 6.2.3 If any Fees are 30 or more days overdue, Glowingbud may, without limiting Glowingbud's other rights and remedies, charge the Customer interest at the rate of the lesser of 1.5% per month, or the maximum rate permitted by law ("Interest"). Payments not received within 60 days of the due date ("Late payments") may result in the suspension or termination of the services as provided in Section 7. The Customer acknowledges and agrees that all subscription fees are non-refundable. Unless otherwise specifically agreed between the Parties, there will be no refunds or credits for partial months of service, downgrade refunds, or refunds for unused services/Product(s) if the Customer decides to cancel the subscription before the end of the subscription term. Customer is responsible for providing complete and accurate billing information to Glowingbud and notifying it of any changes to such information. Glowingbud will not exercise its rights under this Section (Interest and Late Payments) above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If there is any conflict regarding payment of fees between this clause and the Order Form, the Order Form shall prevail.
- 6.2.4 In the event that Glowingbud introduces wallet payment services, all transactions made through the wallet will be subject to the terms and conditions set forth by Glowingbud. Glowingbud reserves the right to determine the applicability, fees, limits, and any other relevant conditions related to the use of wallet payments for Services. Glowingbud may modify, suspend, or terminate wallet services at its sole discretion and without prior notice. Customers are responsible for ensuring sufficient funds in their wallets for any transactions, and Glowingbud shall not be liable for any failed transactions due to insufficient funds or other issues related to the wallet services.
- 6.3 **Expenses:** Customer will reimburse Glowingbud for its reasonable, out-of-pocket travel and related expenses incurred in performing Professional Services which are approved by Customer prior to incurring such expenses. Glowingbud shall notify Customer prior to incurring any such expense. Glowingbud shall comply with Customer's travel and expense policy if made available to Glowingbud prior to the required travel.
- 6.4 **Taxes:** All payments under this Agreement are exclusive of taxes, including but not limited to withholding taxes. However, it is agreed between the Parties, that the Fees Payable by the Customer shall be subject to deduction of taxes, as per applicable laws. Customer is responsible for paying all taxes associated with Customer purchases under this Agreement. If Glowingbud has the legal obligation to pay or collect taxes for which Customer is responsible under this Section 6.4, Glowingbud will invoice Customer and Customer will pay that amount unless Customer provides Glowingbud with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Glowingbud is solely responsible for taxes assessable against Glowingbud based on Glowingbud's income, property, and employees, and Customer is responsible for all other taxes.

## 7. TERM AND TERMINATION

- 7.1 **Term of SaaS Agreement:** The term of this SaaS Agreement shall begin on the Effective Date and shall continue until terminated by either Party in accordance with this Section of the Agreement.
- 7.2 **Termination:** Either Party may terminate this Agreement by providing written notice to the other Party at least thirty (30) days prior to the intended termination date.

- 7.3 **Subscription Term:** The Subscription Term shall auto renew for successive Subscription Term unless either party delivers written notice of non-renewal to the other party at least 30 days prior to the expiration of the then-current Subscription Term.
- 7.4 **Suspension:** Glowingbud may immediately suspend providing any or all SaaS Services/Product(s) to you, if: (a) Glowingbud believes it will violate any applicable law or any provision of this Agreement; (b) a Governmental authority requires or directs Glowingbud to do so; (c) if the Customer does not update in a timely manner its implementation of the Customer Application to the latest production version Glowingbud recommends or requires; (d) Customer does not respond in a timely manner to Glowingbud's request for any End User Data or do not provide Glowingbud adequate time to verify and process updated End User Data; (e) Customer breaches this Agreement or any other agreement between the Parties; (f) Customer enters an Insolvency Proceeding; (g) Glowingbud believes that Customer is engaged in a business, trading practice or other activity that presents an unacceptable risk to Glowingbud; or (h) Glowingbud or believes that Customer's use of the SaaS Services/Product(s) (i) is or may be harmful to Glowingbud or any third party, (ii) presents an unacceptable level of credit risk; (iii) increases, or may increase, the rate of fraud that Glowingbud observes; (iv) degrades, or may degrade, the security, stability or reliability of the Glowingbud SaaS Services/Product(s), or any third party's system (e.g., your involvement in a distributed denial of service attack); (v) enables or facilitates, or may enable or facilitate, illegal or prohibited transactions; or (vi) is or may be unlawful.
- 7.5 **Suspension for Non-Payment:** Glowingbud reserves the right to suspend delivery of the SaaS Services/Product(s) by providing written notice to Customer if Customer fails to pay any amounts due to Glowingbud under this SaaS Agreement within sixty (60) days of the date of invoice (Late Payments), and such failure continues for five (5) days after receipt of such suspension notice by the Customer.
- 7.6 Suspension of the SaaS Services/Product(s) shall not release Customer of its payment obligations under this SaaS Agreement. Customer agrees that Glowingbud shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the SaaS Services/Product(s) resulting from Customer's non-payment.
- 7.7 **Suspension for Ongoing Harm:** Glowingbud reserves the right to suspend delivery of the SaaS Services with immediate effect if Glowingbud reasonably concludes that Customer or an End User's use of the SaaS Services/Product(s) is causing immediate and ongoing harm to Glowingbud or others or in the event of any security threat or Customer's breach or threatened breach of any of the restrictions in Section 4.2. In the event that Glowingbud must suspend delivery of the SaaS Services/Product(s), Glowingbud shall immediately notify Customer of the suspension and the parties shall diligently attempt to resolve the issue. Glowingbud will terminate any such suspension as soon as Glowingbud determines that the risk underlying the suspension has been mitigated to Glowingbud's satisfaction. Glowingbud shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the SaaS Services/Product(s) in accordance with this Section. Nothing in this Section will limit Glowingbud's rights under Section 7.6 below. This SaaS Agreement may be terminated with immediate effect by Glowingbud if Customer breaches a term of this SaaS Agreement that remains uncured for 30 days (or, in the case of non-payment, five days) after delivery of notice of such breach, or (ii) if Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors not dismissed within 30 days.
- 7.8 A Party may terminate this Agreement immediately upon notice to the other Parties if any of the other Parties materially breaches this Agreement, and if capable of cure, does not cure the breach within 10 days after receiving notice specifying the breach. If the material breach affects only certain SaaS



Services/Product(s), the non-breaching party that served the notice may choose to terminate only the affected SaaS Services/Product(s).

7.9 Early Termination: In the event of early termination of this Agreement by the Customer, the Customer shall remain obligated to fulfill all payment obligations that would have accrued during the entire term of the Agreement, as if the Agreement had not been terminated. This includes, but is not limited to, the payment of all fees and charges specified in the Order Form(s) and/or Statement of Work(s) for the full duration of the term. The Customer acknowledges and agrees that early termination does not relieve it of its duty to make such payments, and any outstanding amounts shall become immediately due and payable upon termination.

#### **7.10 Effect of Termination:**

- 7.9.1 Upon termination of this SaaS Agreement or expiration of the Subscription Term, Glowingbud shall immediately cease providing the SaaS Services/Product(s) and all usage rights granted under this SaaS Agreement shall terminate.
- 7.9.2 If Glowingbud terminates this SaaS Agreement due to a breach by Customer, then Customer shall immediately pay to Glowingbud all amounts then due under this SaaS Agreement and to become due during the remaining Subscription term, but for such termination.
- 7.9.3 Upon termination of this SaaS Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction.
- 7.9.4 Glowingbud shall terminate access of the Customer.
- 7.9.5 Upon termination of access by Glowingbud, the Customer shall not make any requests for the provision of reports or any other documentation, nor shall the Customer request API documentation. Glowingbud shall have no obligation to respond to or fulfill any such requests from the Customer following the termination of access.

## **8. SERVICE LEVEL AGREEMENT**

The Service Level Agreement (“SLA”) for the SaaS Services is set forth under the [Support Terms](#). The SLA sets forth Customer’s sole remedies for availability or quality of the SaaS Services/Product(s) including any failure to meet any guarantee set forth in the SLA.

## **9. WARRANTIES**

- 9.1 Glowingbud represents and warrants that it will provide the SaaS Services/Product(s) in a professional manner consistent with general industry standards and that the SaaS Services/Product(s) will perform substantially in accordance with the Documentation. For any breach of a warranty, Customer's exclusive remedy shall be termination of the Agreement as provided in Section 7 (Term and Termination).
- 9.2 GLOWINGBUD WARRANTS THAT THE SAAS SERVICES/PRODUCTS WILL BE PERFORMED IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. GLOWINGBUD DOES NOT GUARANTEE THAT THE SAAS SERVICES/PRODUCTS WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT GLOWINGBUD WILL CORRECT ALL SAAS SERVICES/PRODUCTS ERRORS. CUSTOMER ACKNOWLEDGES THAT GLOWINGBUD DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS SERVICE/PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SUBSCRIPTION SERVICES/PRODUCTS INCLUDING ALL FUNCTIONS THEREOF, ARE PROVIDED ON AN 'AS IS' BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY GLOWINGBUD (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER GLOWINGBUD NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE/PRODUCTS WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL GLOWINGBUD OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S OR ANY USER'S DATA, FILES, OR PROGRAMS. WE AND OUR AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE. OUR LICENSORS WILL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

## **10. LIMITATIONS OF LIABILITY**

Neither Party (nor any licensor or other supplier of Glowingbud) shall be liable for indirect, incidental, special or consequential damages, including, without limitation, damages for lost business, profits, data or use of any service, incurred by either Party or any third party in connection with this SaaS Agreement, regardless of the nature of the claim (including negligence), even if foreseeable or the other party has been advised of the possibility of such damages. Neither party's aggregate liability for damages under this SaaS Agreement, regardless of the nature of the claim (including negligence), shall exceed the fees paid or payable by customer under this Agreement during the three (3) months preceding the date the claim arose. The foregoing limitations shall not apply to the Parties' obligations (or any breach thereof) under Sections entitled "Intellectual Property", or "Confidentiality", and Customer payment obligations under this Agreement.

## **11. INDEMNIFICATION**

- 11.1 Indemnification by Glowingbud: If a third party makes a claim against Customer that the SaaS Services/Product(s) infringes any patent, copyright or trademark, or misappropriates any trade secret, Glowingbud shall defend Customer and its directors, officers and employees against the claim at Glowingbud's expense and Glowingbud shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed

by Glowingbud, to the extent arising from the claim. Glowingbud shall have no liability for any claim based on (a) the Customer Content, (b) modification of the SaaS Services/Product(s) not authorized by Glowingbud, or (c) use of the SaaS Services/Product(s) other than in accordance with the Documentation and this SaaS Agreement. Glowingbud may, at its sole option and expense, procure for Customer the right to continue use of the SaaS Services/Product(s), modify the SaaS Services/Product(s) in a manner that does not materially impair the functionality, or terminate the Subscription Term and repay to Customer any unutilized amount paid by Customer with respect to the Subscription Term following the termination date.

11.2 Indemnification by Customer: Customer will further indemnify, defend and hold harmless Glowingbud, and their respective directors, managers, partners, officers and employees (collectively, the “Indemnified Parties”) from and against all losses, damages and expenses (including reasonable attorneys’ fees) to the extent arising from the claim based on, relating to, concerning or arising out of: (i) any breach of this Agreement by Customer (ii) any Customer violation of applicable law, (iii) the negligence or willful misconduct of Customer, or (iv) If a third party makes a claim against Glowingbud that the Customer Content infringes any patent, copyright or trademark, or misappropriates any trade secret, Customer shall defend Glowingbud and its directors, officers and employees against the claim at Customer’s expense and Customer shall pay all losses, damages and expenses (including reasonable attorneys’ fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Customer, to the extent arising from the claim.

11.3 Conditions for Indemnification: A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party’s expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

## 12. CONFIDENTIALITY

12.1 **Confidential Information**” means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be “confidential” or “proprietary” within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this SaaS Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of Customer Content as contemplated by this SaaS Agreement, Customer Content is deemed Confidential Information of Customer. Glowingbud software and Documentation are deemed Confidential Information of Glowingbud. Further, Confidential information may include, but may not be limited to, software’s source and object code, proprietary algorithms, technical and user documentation, system architecture, UI/UX designs, trade secrets such as unique business processes and marketing strategies, business methods, processes, operating techniques, “know how”, financial details including cost structures and revenue projections, customer information like client lists and user data, supplier information, short-term and long-range sales and product plans, intellectual property such as trademarks, logos, and patents, patent applications or the like of any kind relating in any way to the business of either party, business plans outlining strategic and marketing approaches, security information like protocols and vulnerability reports, and communication records such as emails, meeting notes, any written or electronic correspondence, and all drawings, disclosures, designs, data, reports, calculations, models, component parts, patent applications or the like of any kind relating in any way to the business of either party, and which is conspicuously identified by the disclosing party as “Confidential”.

**12.2 Confidentiality Restrictions:** During the term of this SaaS Agreement and for 5 years thereafter (perpetually in the case of Software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this SaaS Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each Party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each Party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services under this Agreement on behalf of the receiving party.

**12.3 Exceptions:** Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each Party may disclose the existence of this SaaS Agreement and the relationship of the parties, but agrees that the specific terms of this SaaS Agreement will be treated as Confidential Information; provided, however, that each Party may disclose the terms of this SaaS Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors.

### **13. PRIVACY, DATA PROTECTION AND SECURITY**

**13.1** Customer understands and acknowledges that, in connection with the use of the SaaS Services/Product(s) by Customer, Glowingbud processes any Personal Data only on Customer's behalf and Glowingbud and Customer hereby agree that Customer shall be deemed to be the data controller and Glowingbud shall be deemed to be the data processor as those terms are understood under the GDPR and any Personal Data shall be processed in accordance with the Data Protection Agreement.

**13.2 Customer's Undertakings:** Customer shall be solely responsible for obtaining all consents and authorizations as may be required by any applicable law, for the collection, storage and processing of information and/or sensitive information by Glowingbud according to Customer's instructions, including that such processing according to Customer's instructions will not place Glowingbud in breach of applicable data protection laws. Prior to processing, Customer will inform Glowingbud about any special categories of data contained within Customer personal data and any restrictions or special requirements in the processing of such special categories of data, including any cross-border transfer restrictions.

**13.3 Security:** Customer's information is stored with logical separation from information of other customers. In addition, Glowingbud shall have in place and shall comply with documented written policies and procedures, periodically reviewed, covering the administrative, physical and technical safeguards in place

and relevant to the access, use, loss, alteration, disclosure, storage, destruction and control of information. Such policies and procedures will include encryption of data, virus detection and firewall utilization.

#### 14. GENERAL PROVISIONS

- 14.1 **Non-Exclusive Service:** Customer acknowledges that SaaS Services is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict Glowingbud's ability to provide the SaaS Services/Product(s) or other technology, including any features or functionality first developed for Customer, to other parties.
- 14.2 **Injunctive Relief.** Each party understands and agrees that monetary damages will not provide sufficient relief to the other for any breach of this Agreement and that the non-breaching party is entitled to injunctive relief and/or other equitable relief against the breaching party as remedies for any such breach or threatened breach of this Agreement by the other party. Each party agrees to waive any requirement for the other party to post a bond in order to obtain injunctive or equitable relief. Such remedies are not the exclusive remedies for a breach of this Agreement but are in addition to any and all other remedies available at law or equity.
- 14.3 **Assignment:** Neither party may assign this SaaS Agreement or any right under this SaaS Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that either party may assign this SaaS Agreement to an acquirer of all or substantially all of the business of such Party to which this SaaS Agreement relates, whether by merger, asset sale or otherwise. This SaaS Agreement shall be binding upon and inure to the benefit of the Parties' successors and permitted assigns. Either Party may employ subcontractors in performing its duties under this SaaS Agreement, provided, however, that such Party shall not be relieved of any obligation under this SaaS Agreement.
- 14.4 **Notices:** Except as otherwise permitted in this SaaS Agreement, notices under this SaaS Agreement shall be in writing and shall be deemed to have been given (a) five (5) business days after mailing if sent by registered mail, (b) when delivered if delivered personally or sent by express courier service; or (d) all such communication shall be electronically sent to the other party at the email address. All notices shall be sent to the other party at the address set forth in this SaaS Agreement.
- 14.5 **Force Majeure:** Each party will be excused from performance for any period during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or Service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures.
- 14.6 **Waiver:** No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this SaaS Agreement shall not constitute a waiver of any other or subsequent breach.
- 14.7 **Severability:** If any term of this SaaS Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this SaaS Agreement shall remain in full force.
- 14.8 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

- 14.9 Entire SaaS Agreement:** This SaaS Agreement (including all exhibits) contains the entire agreement of the Parties and supersedes all previous oral and written communications by the Parties, concerning the subject matter of this SaaS Agreement. This SaaS Agreement may be amended solely in a writing signed by both Parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the Party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.
- 14.10 Survival:** Sections 4, 7, 9, 12 and 13 of this SaaS Agreement shall survive the expiration or termination of this SaaS Agreement for any reason.
- 14.11 Publicity:** Glowingbud can may use the Customer's name in any client list, advertisement, press release, or other form of publicity without the prior written consent of the Customer. The forms of publicity shall be restricted to listing the Customer as a client to of Glowingbud. Anything else other than that stated in this section shall need require the prior written consent of the Customer.
- 14.12 Audit Rights:** Glowingbud may audit Customer's use of the Software/Product(s) on seven (7) days' advance notice. Customer shall cooperate with the audit, including by providing access to any books, computers, records, or other information that relate to use of the Software and Services/Products. Such audit will not unreasonably interfere with Customer's business activities.
- 14.13 No Third Party Beneficiaries:** This SaaS Agreement is an agreement between the parties, and confers no rights upon either party's employees, agents, contractors, partners or customers or upon any other person or entity.
- 14.14 Independent Contractor:** The parties have the status of independent contractors, and nothing in this SaaS Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this SaaS Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel.
- 14.15 Statistical Information:** Glowingbud may anonymously compile statistical information related to the performance of the Services for purposes of improving the SaaS service, provided that such information does not identify Customer's data or include Customer's name or End User's Identifiable Data.
- 14.16 Governing Law and Jurisdiction:** This Agreement will be governed by the laws of the Republic of India and the Parties submit to the exclusive jurisdiction of the courts of Pune to resolve any dispute between them in respect of this Agreement.
- 14.17 Compliance with Laws.** Either Party shall comply with all applicable local, state, national and foreign laws in connection with its delivery or usage of the SaaS Services/Product(s), including those laws related to data privacy, international communications, and the transmission of technical or personal data.
- 14.18 No Presumption Against Drafting Party.** Each Party agrees and acknowledges that this Agreement has been freely negotiated by both Parties and that in any controversy, dispute or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any provision thereof.



14.19 **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.