

# BITES LEARNING LTD. END USER LICENSE AGREEMENT

This End User License Agreement, along with any other terms and policies referenced herein, which form an integral part hereof, as amended from time to time (these “**Terms**”) constitute a legally binding agreement as of the Effective Date (as defined below), governing Customer’s and End User’s (as defined below) access to, and the use of Bites Learning Ltd. (“**Bites**”, “**us**”, “**we**” or “**our**”) Software as a Service and any related platform and/or website that is owned or operated by Bites (the “**Platform**”), and the use of, and registration with, Bites Service (defined below) through a mobile or a computer or through any other means. These Terms are between Bites and Customer, an employer, whether individual or as a company or organization, or an authorized representative of such an employer (“**Customer**”). As elaborated in section 2 below, there are various types of users for the service, thus, “**End User**” shall refer to all types of users including the Admin (as defined below) and “**You**” shall refer to Customer and End Users together.

With respect to a Customer who is a corporate entity - each authorized person subscribing to the Platform and/or the Service and agreeing to these Terms on behalf of a Customer hereby represents that (i) it is an authorized representative of the Customer and have full legal authority to bind the Customer to these Terms and after reading and understanding these Terms, the authorized representative agrees to these Terms on behalf of the Customer.

YOU ACKNOWLEDGE THAT THE TERMS HEREIN ARE BINDING, AND YOU AFFIRM AND SIGNIFY YOUR CONSENT BY EITHER: (I) CLICKING ON A BUTTON OR CHECKING A CHECKBOX FOR THE ACCEPTANCE OF THESE TERMS; OR (II) REGISTERING TO, USING OR ACCESSING BITES’S SERVICES, WEBSITE OR PLTFORM, WHICHEVER IS EARLIER ( “**EFFECTIVE DATE**”).

**IF YOU DO NOT AGREE TO COMPLY WITH, AND BE BOUND BY, THESE TERMS OR DO NOT HAVE AUTHORITY TO DO SO, PLEASE DO NOT ACCEPT THESE TERMS OR ACCESS OR USE THE SERVICE AND/OR THE PLTFORM.**

## 1. Our Service.

1.1. **Our Service.** Our Platform is a mobile platform that allows its users to easily and quickly create and manage digital bitesize learning units with the aim to assist in communicating knowledge inside organizations (the “**Service**”). Specific Terms may apply to You or to some parts of the Service, such specific terms are incorporated herein by reference and form an integral part hereof.

1.2. **Acceptance of Terms.** If You access and use the Service, You represent and warrant that You are at legal age in your current place of residence. The Platform and/or Service are only intended for individuals of legal age, according to applicable law. Bites reserves the right to request proof of age at any stage in order to verify compliance with this paragraph.

1.3. **Future Updates and Improvements.** Customer hereby acknowledges that its purchase and/or use of the Service and/or Third Party Services (as defined below) hereunder are not contingent on the delivery by Bites 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) Third Party Services.

1.4. **Modification or Discontinuation.** Bites may add, modify or discontinue any feature, functionality or any other tool, within the Service and/or Platform, at its own discretion and without further notice.

## 2. Account Registration and Administration.

2.1. **Account Registration.** In order to register to the Service for the first time, End User is required to create an account (“**Account**”). The first End User of the Account is automatically assigned as the Account administrator (the “**Admin**”).

2.2. **User Verification.** We may require End User to provide information that may be used to confirm its identity and help ensure the security of its Account. We reserve the right to request from End User or such Admin (as the case may be) any verification Bites deems necessary before restoring access to or providing information about its Account.

2.3. **End User’s Registration Information.** When creating an Account or when End User is added into an Account and/or creates his/her user profile (the “**User Profile**”), End User: (i) agrees to provide Bites with accurate and complete information about himself/herself; (ii) acknowledges that it is End User’s responsibility to ensure that his/her password remains secure; (iii) agrees that End User is fully responsible for all activities that occur under End User’s User Profile; and (iv) undertakes to promptly notify Bites in writing if End User becomes aware of any unauthorized access or use of End User’s Account or User Profile and/or any breach of these Terms. Bites may assume that any communications it receives under End User’s User Profile have been made by End User. Bites will not be responsible and liable for any losses, damages, liability and expenses incurred by Bites or a third party, due to any unauthorized usage of the Account by either the End User or any other person or entity, whether or not a third party on his/her behalf.

2.4. **Admins.** The Admin(s) of an Account are deemed as the authorized representatives of the Customer, and any action made in the Account, including by any Admin, is deemed as an 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 its Authorized Users (as defined below) use of the Account; (ii) purchase or change subscription plan of the Service; (ii) create, monitor or modify Authorized Users’ (as defined below) actions and permissions; (iii) manage the access to, remove, share posts, control or otherwise change, all or part of the End User Data (as defined below); and (iv) create content.

2.5. **Other Users.** content creators and team members constitute several types of Account users and are defined herein as “**Authorized Users**”. The features and functionalities available to the Authorized Users are determined by the respective subscription plan governing such Account, and the privileges and type of each such Authorized User are assigned and determined by the Account Admin(s).

**2.6. Responsibility for Authorized Users.** Customer shall solely be liable and responsible for understanding the settings, privileges and controls for the Service and for controlling whom Customer permits to become an End User and what are the settings and privileges for such End User. Customer shall be responsible for the activities of all of its End Users. Customer is responsible for all contents created under Customer's Account and for all links sent to these contents by Customer and its End Users and Bites shall have no responsibility and no liability in these respects. Customer acknowledges that any action taken by a User of Customer's Account, is deemed by Bites as an authorized action by Customer, hence Customer shall have no claim against Bites or any of its affiliates in this regard.

### **3. Your End User Data.**

**3.1. End User data.** End User Data is any data, videos, images, file attachments, questions and answers, texts, reports, personal information, or any other content, that is uploaded or submitted, or transmitted or otherwise made available, to or through the Service by You and is processed by Bites on Your behalf (the "**End User Data**"). Subject to these Terms, You grant Bites a worldwide, royalty-free, license to access, use, process, copy, distribute, perform, export, and display the End User Data, including the right to make modifications and derivative works and interoperate such data. The aforementioned license is hereby granted solely: (a) to comply with a valid legal subpoena, request, or other lawful process; (b) as expressly permitted in writing by You; (c) to maintain and provide You the Service; (d) to investigate when Bites has a good faith belief, or has received a complaint alleging, that such End User Data is in violation of these Terms; (e) to prevent or address technical or security issues and resolve support requests.

**3.2. End User Data Compliance.** You represent and warrant that: (a) You have or had obtained all rights, licenses, consents, permissions, power and/or authority, necessary to grant the rights granted herein, for any End User Data that You submit, post or display in relation to the Service; and (b) the End User Data that You submit, your use of the End User Data, and Bites' use of the End User Data, as set forth in these Terms, shall not and do not (1) infringe or violate any intellectual property rights, including patents, copyrights, trademarks or other intellectual property, proprietary or privacy, data protection or publicity rights of any third party; (2) violate any of Customer's and/or End User's or third party's policies and terms governing the End User Data; and (3) violate any federal, state, local and international laws, regulations and conventions, including those related to data privacy and data transfer and exportation (the "**Laws, Regulations and Conventions**").

**3.3. No Sensitive Data.** You and anyone on your behalf will not and shall not submit to the Service any data that is protected under a special legislation and requires a unique treatment, including, but not limited to, 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 You and Bites separately enter into a HIPAA Business Associate Agreement; categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any similar legislation or regulation in other jurisdiction; and credit, debit or other payment card data subject to PCI DSS or any other credit card schemes.

## 4. Public Submissions by User.

4.1. **Responsibility.** You acknowledge and agree that You have or had obtained all rights, licenses, consents, permissions, power and/or authority, necessary to grant and receive the rights granted and received under this End User License Agreement, for any Public Submission (defined hereunder) that You submit, post or display on or through the Service; Bites does not control, and is not and will not be responsible for, other content and/or submissions, posted on the Platform and/or Service by You or others; and by using the Service and/or Platform, You may be exposed to content and/or submissions by other users or site visitors that is offensive, indecent, inaccurate, misleading, or otherwise unlawful.

4.2. **Public Submissions.** The Platform has certain features that allow You to submit information and data, including, but not limited to, photographs, multiple choice questions and guidance videos (collectively, “**Publications**”) and share such Publications with others. Unless the Publication was marked by the publishing End User or Customer as confidential, You grant Bites with an international, non-royalty license to access, use, copy, reproduce, process, adapt, publish, transmit, host, and display that Publications for any purpose, including, but not limited to, for publicizing and promoting Bites, business purposes, the Service and/or the Platform and for any other lawful purpose, in any media format, and You hereby waive, or to the extent legally prohibited, assign to Bites, any moral rights in Your Publications.

## 5. Intellectual Property Rights; License.

5.1. **Bites’ Intellectual Property.** The Service and Platform, including all of Bites’ software, Platform 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 End User Data), any and all related or underlying technology and any modifications, enhancements or derivative works of the foregoing (collectively, “**Bites IP**”), are the sole and exclusive property of Bites and its licensors, and shall be protected by applicable copyright or other intellectual property laws and treaties. As between You and Bites, Bites retains all right, title and interest, including all intellectual property rights, in and to the Bites IP.

5.2. **Use Restrictions.** Except as expressly permitted in these Terms, You shall not, and shall not assist or encourage any other Customer, End User or third party to: (1) sell, rent, lease, transfer, sublicense, disclose, publish, assign, market, resell, transmit or distribute any portion of the Service or the Platform to any third party, including, but not limited to Customer’s affiliates, or use the Service in any service bureau arrangement; (2) use the Service or Platform for competitive purposes, including to develop or enhance a competing service or product; (3) reverse engineer, decompile or disassemble, decrypt or, attempt to derive the source code of, the Service or Platform, or any components thereof; (4) interfere or attempt to interfere with the integrity or proper working of the Service or Platform, or any related activities; (5) remove, deface, obscure, or alter Bites' 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 Platform, or use or display logos of the Service or Platform without Bites’ prior

written approval; (6) copy, modify, patch, improve, alter, change or create any derivative works of the Service or Platform, or any part thereof; (7) take any action that imposes or may impose (as determined at Bites' sole discretion) an unreasonable or disproportionately large load on the Bites infrastructure or infrastructure which supports the Platform or Service; (8) circumvent, disable or otherwise interfere with security-related features of the Platform or Service or features.

**5.3. Feedback.** As an End User or a Customer of the Service and/or Platform, You may send Bites suggestions and comments or request feature or other feedback to any of Bites IP, the Bites Service, the API (for Admins) and/or the Platform ("**Feedback**"). Such Feedback is the sole property of Bites without restrictions or limitations on use of any kind. Bites may either implement or reject such Feedback, without any restriction or obligation of any kind. You (1) 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; (2) represent and warrant that such Feedback is accurate, complete, and does not infringe on any third party rights; and (3) irrevocably assign to Bites any right, title and interest that You may have in such Feedback.

**5.6. API Use.** Bites may choose to offer an application programming interface that provides additional ways to access and use the Service ("**API**"). Without derogating from Sections 5.1 through 5.2 hereof, API shall only be used for End Users' internal business purposes, in order to create interoperability and integration between the service and other products, systems or services used by End User, as approved by Bites in advance. Such API is considered a part of the Service, and its use is subject to all these Terms. End User should follow our relevant developer guidelines when using the API. The API is subject to modifications, changes and End User is solely responsible to ensure that his/her use of the API is compatible with the current version. Bites reserves the right, at any time and for any purpose, to modify or discontinue, temporarily or permanently, End User's access to the API (or any part of it) with or without notice.

## 6. Privacy and Security.

**6.1. Security.** Bites implements reasonable security measures and procedures to assist in protecting End User Data.

**6.2. Privacy Policy.** As a part of accessing or using the Service and the Platform, Bites may collect, access, use and share certain Personal Data (as defined in the 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.

## 7. Third Party Services; Links.

**7.1. Third Party Services.** Bites may enable the End User, through the Services, to procure certain third-party services, products, apps and tools ("**Third Party Services**").

**7.2. Independent Relationship.** End User acknowledges and agrees that Bites may offer to End User certain Third-

Party Services. In such cases, Bites shall merely act as an intermediary platform between End User and such Third-Party Services, and shall not, in any way, endorse any such Third-Party Services, or shall be responsible or liable in any way with respect to any such Third-Party Services. The terms and conditions governing End User's relationship with such third parties providing the Third Party Services and any payment for, and use of, such Third Party Services, including but not limited to, the collection, processing and use of End User's data by such Third Party Services, are subject to a separate agreements between End User and such third party who provides the Third Party Service (the "**Third Party Agreement**"). Bites is not and will not be a party to, or responsible, in any manner, for the compliance by End User or by the provider of the Third-Party Service with the Third-Party Agreement.

**7.4. Conditions and Limitations of Use.** Bites and/or a Third Party Service, each at its sole discretion, may impose, by indicating such limitations within the Service of the Third Party Service or by otherwise notifying End User or any other relevant User of the Account, conditions or limitations on the access and use of certain Third Party Services, including, but not limited to, limitations on the number of actions, amount of users, or other uses.

**7.5. Change of Fees for and Discontinuation of Third Party Service.** Bites and any Third Party Service may, at any given time, discontinue the use or suspend the availability of any Third Party Service, for any reason and with no obligation to provide any explanation or notice and may change the fees for the Third Party Service, including start imposing fee on a Third Party Service that was free until that time.

**7.6. No Liability.** BITES BEARS NO RESPONSIBILITY AND/OR LIABILITY FOR ANY THIRD PARTY SERVICES, INCLUDING WITHOUT LIMITATION, OPERABILITY OR INTEROPERABILITY, SECURITY, ACCURACY, RELIABILITY, DATA PROTECTION AND PROCESSING PRACTICES AND THE QUALITY, AS WELL AS ANY ACTS OR OMISSIONS BY SUCH THIRD PARTIES. BY ACCESSING AND/OR USING THE THIRD PARTY SERVICES, END USER AGREES THAT END USER'S ACCESS AND USE OF THE THIRD PARTY SERVICES ARE AT ITS SOLE DISCRETION AND RISK, THAT END USER IS SOLELY RESPONSIBLE FOR ENSURING SUCH THIRD PARTY SERVICE'S OPERATION AND PRACTICES AND THAT ITS RESPECTIVE THIRD PARTY AGREEMENT, MEET END USER'S NEEDS.

## **8. Subscription Term, Renewal and Fees Payment.**

**8.1. Subscription Term.** The Service is provided on a subscription basis for the term specified in the Platform page describing the specific subscription plan (the "**Subscription Term**" and the "**Subscription Plan**", respectively, and collectively the "**Subscription**").

**8.2. Subscription Fees.** In consideration for the provision of the Service (except for Trial Service), Customer shall pay Bites the applicable fees per the purchased Subscription, as set forth in in the Platform page describing the specific subscription plan (the "**Subscription Fees**"). The Subscription types differentiate from one another by the number of subscribed End Users ("**End Users List**"). It is solely Customer's responsibility to update the End Users List from time to time, add new End Users and delete any End User who is no longer active. Unless indicated otherwise, Subscription Fees are stated in US dollars. Bites is hereby authorized by Customer, 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-cancellable and non-refundable. Bites reserves the right to change the Subscription Fees at any time, upon notice to Customer in case such change may affect Customer's Subscription(s). In the event of failure to collect the Fees owed by Customer, Bites may, at its sole discretion (but not obligated to) retry to collect and/or suspend or cancel the Account, without any notice.

**8.3. Taxes.** The Subscription Fees are exclusive of any taxes (including without limitation, value added tax, sales tax, use tax, excise, goods and services tax, etc.), levies, or duties, all of which may be imposed in respect of these Terms and the purchase or sale, of the Service hereunder (the "**Taxes**").

**8.4. Subscription Upgrade.** Customer may choose to upgrade its Subscription Plan, including by adding End Users ("**Subscription Upgrades**"). Upon a Subscription Upgrade, Customer will be billed for the applicable increased amount of Subscription Fees.

**8.5. Adding Users.** Customer acknowledges that unless it disabled these options: (i) End Users within the same email domain will be able to automatically join the Account; and (ii) End Users within Customer's Account may invite other persons to be added to the Account as End Users (collectively, "**Users Increase**"). Unless agreed otherwise in writing by Bites and Customer, any changes to the number of End Users within a certain Account, shall be billed on a prorated basis. Bites will bill the Customer, either upon the Users Increase or at the end of the applicable month, as communicated to Customer.

**8.6. Excessive Usage.** Bites shall have the right to limit and/or impose any restrictions on the Services or Third Party Services in case it believes, at its sole discretion, that Customer and/or any of its End Users, have misused the Service or Third Party Services, accordingly.

**8.7. Billing.** Customer agrees to provide Bites with updated, accurate and complete billing information, and Customer authorizes Bites (either directly or through Bites' 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 Bites 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 Bites by Customer's credit card company).

**8.8. Subscription Auto-Renewal.** Customer's Subscription includes an automatic renewal option by default, for a renewal period equal in time to the original Subscription Term, at the same price. Accordingly, unless either one of the parties cancels the Subscription prior to its expiration, Bites will attempt to automatically charge Customer the applicable Subscription Fees upon or immediately prior to the expiration of the then applicable Subscription Term. Customer has the right to cancel its Subscription, subject to the terms hereof, prior to the Subscription expiration or renewal, at any time through the Account settings or by contacting our Bites customer service team.

**8.9. Discounts and Promotions.** Unless expressly stated otherwise in a separate legally binding agreement, discounts and other promotional offers shall not renew upon renewal of Subscription, and Bites will renew such Subscription, at the full applicable Subscription Fee at the time of renewal.

## 9. Refund Policy; Chargeback.

**9.1. Refund Policy.** Bites has a strict no-refund policy. We understand that there are special circumstances, and for those we are happy to open refund requests. We cannot guarantee that these requests will be approved. Refund requests are only recognized on cancelled subscriptions - If you have not unsubscribed from the platform, you will continue to be charged until you do so. If you believe that your situation falls into this category, please let us know by sending an e-mail to [info@mybites.io](mailto:info@mybites.io) and we'll be happy to open a ticket for you. All the above is pursuant and subject to applicable law.

It is hereby clarified that the Refund amount may be different than the amount Customer was charged due to currency changes, and Bites shall not be responsible for any differences caused by change of currency exchange rates.

If Bites finds 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, Bites reserves its right to reject Customer's Refund request.

**9.2. Non-Refundable Services.** Bites will identify certain Services as non-refundable, and Customer shall not be entitled, and Bites shall not be under any obligation, to terminate the Service and give a Refund.

**9.3. Chargeback.** If Bites records a decline, chargeback or other rejection of a charge of any due and payable Subscription Fees on Customer's Account ("**Chargeback**"), it will be considered as a breach of Customer's payment obligations hereunder, and Customer's use of the Service may be disabled or terminated. Such use of the Service will resume when Customer re-subscribes for any such Service, and pay any applicable Subscription Fees in full, including any fees and expenses incurred by Bites and/or any Third Party Service for each Chargeback received, without derogating from any other remedy that may be applicable to Bites under these Terms or applicable law.

## 10. Trial Service; Pre-Released Services.

**10.1. Trial Service.** Bites may offer part or all of the Services on a free, no-obligation trial version ("**Trial Service**"). The term of the Trial Service shall be as communicated to Customer, within the Service, in an Order, unless terminated earlier by either one of the parties. Bites reserves the right to modify, cancel and/or limit this Trial Service at any time and without liability or explanation. Bites makes no promises that any Trial will be made available to Customer and/or generally available.



10.2. **Pre-Released Services.** Note that Bites may offer certain Services that are still under development, and as such they may be incomplete, may contain bugs, be inoperable, suffer disruptions and/or not operate as intended (the “**Pre-Released Services**”). Bites makes no promises that any Pre-Released Services will be made available to You and/or generally available.

10.3. **Governing Terms.** Sections 10.1 and 10.2 above 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 (a) such services are licensed hereunder on an “As-Is”, “With All Faults” “As Available” basis, with no warranties, express or implied, of any kind; (b) the indemnity undertaking by Bites set forth in Section 16.2 herein shall not apply.

## 11. Term and Termination; Suspension.

11.1. **Term.** These Terms are effective commencing upon the Effective Date, until terminated by Bites or You. Bites, in its sole discretion, has the right to terminate these Terms and/or your access to the Platform, or any part thereof, immediately at any time and with or without cause (including, without any limitation, for a breach of these Terms). Bites shall not be liable to You or any third party for termination of the Platform, or any part thereof. If you object to any term or condition of these Terms, or any subsequent modifications thereto, or become dissatisfied with the Platform in any way, your only recourse is to immediately discontinue use of the Platform and the Service. Upon termination of these Terms, you shall cease all use of the Platform. All subject to the limited access as a Read Only Mode, as defined below.

11.2. **Termination by Customer.** Customer may terminate its Subscription to the Service by providing Bites a thirty (30) days’ prior written notice to [info@mybites.io](mailto:info@mybites.io), whereby such termination shall not derogate from Customer’s obligation to pay applicable Subscription Fees.

In accordance with Section 9 above, Customer’s obligation to pay the Subscription Fees throughout the end of such Subscription Term shall remain effective, and Customer shall not be entitled to a refund for any pre-paid Subscription Fees.

11.3. **Effect of Termination of Service.** Upon termination or expiration of these Terms, Customer’s Subscription and all of Your rights granted hereunder shall terminate. It is the Customer’s sole liability to export the End User Data prior to such termination or expiration. If Customer did not delete the End User Data from the Account, Bites may continue to store and host it as long as it is necessary to obtain our services, meet with contractual obligations, laws and regulations. During a six (6) months period after termination, Customer shall still be able to make a limited use of the Service in order to export the End User Data (the “**Read-Only Mode**”).

It is hereby clarified that Bites is not under any obligation to maintain the Read-Only Mode period, hence such period may be terminated by Bites, at any time, with or without notice to Customer, and subsequently, the End User Data will be deleted. Customer acknowledges the foregoing and its sole responsibility for End User Data and all activity in its account in the Service, such as to export and/or delete the End User Data prior to the

termination or expiration of these Terms. Unless expressly indicated herein otherwise, the termination or expiration of these Terms shall not relieve Customer from its obligation to pay due Subscription Fees.

11.4. **Survival.** Section 2.6 (Responsibility for Users), 3 (End User Data), 6 (Privacy and Security), 7 (Third Party Services), 8 (Subscription Term, Renewal and Fees Payment) in respect of unpaid Subscription Fees, 10.3 (Governing Terms of Trial Services and Pre-Released Services), 11 (Term and Termination; Suspension), 12 (Confidentiality), 13 (Warranty Disclaimer), 14 (Limitations of Liability), 16 (Indemnification), 20 (Governing Law and Jurisdiction; Class Action Waiver ) and 21 (General Provisions), shall survive the termination or expiration of these Terms, and continue to be effective in accordance with their applicable terms.

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

## 12. Confidentiality.

12.1. **Confidential Information.** Each party ("**Discloser**") 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 ("**Recipient**").

It is hereby clarified (i) Bites' Platform, 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 provided to Customer in connection with use of the Service, are regarded as Bites' Confidential Information, and (ii) End User Data is regarded as Customer's Confidential Information.

Confidential Information excludes information that (i) Recipient can demonstrate in its records that such information was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (ii) is received from a third party without breach of any obligation owed to the Discloser; (iii) is or becomes generally available to the public without breach of any obligation owed to the Discloser; or (iv) was independently developed by the Recipient without any use or reference to the Confidential Information.

12.2. **Confidentiality Undertakings by the Recipient.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not

to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement. Recipient shall not use or disclose any Confidential Information to any third party, except as part of its performance under these Terms.

**12.3. 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 Recipient shall make best efforts to provide prompt written notice of such court order or requirement to the Discloser to enable the Discloser to seek a protective order or otherwise prevent or restrict such disclosure.

### 13. Warranty Disclaimer.

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

13.1. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PLATFORM AND THE SERVICE ARE PROVIDED "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS. BITES AND ITS AFFILIATES, SUBCONTRACTORS, AGENTS AND VENDORS, HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AND/OR REPRESENTATIONS OF MERCHANTABILITY, FUNCTIONALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE PLATFORM AND THE SERVICE REMAINS WITH THE END USER.

13.2. BITES AND ITS AFFILIATES DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION THAT THE SERVICE AND PLATFORM, 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 PLATFORM AND/OR SERVICE ARE FREE FROM VIRUSES OR OTHER HARMFUL CODE. BITES AND ITS AFFILIATES FURTHER DISCLAIM ANY AND ALL LIABILITY OR RESPONSIBILITY FOR ANY DELAYS, FAILURES, INTERCEPTION, ALTERATION, LOSS, OR OTHER DAMAGES THAT END USER AND/OR END USER DATA MAY SUFFER, THAT ARE BEYOND OUR CONTROL.

13.3. EXCEPT AS EXPRESSLY SET FORTH HEREIN, BITES DOES NOT WARRANT, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION (I) REGARDING ANY CONTENT, INFORMATION, REPORTS OR RESULTS THAT YOU OBTAIN THROUGH THE SERVICE AND/OR THE PLATFORM; AND/OR (II) THAT BITES' SERVICE (OR ANY PORTION THEREOF) IS COMPLETE, ACCURATE, OF ANY CERTAIN QUALITY, RELIABLE, SUITABLE FOR, OR COMPATIBLE WITH, ANY OF END USER'S AND CUSTOMER'S 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 END USER AND CUSTOMER.

## 14. Limitation of Liability.

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

14.1. IN NO EVENT SHALL BITES AND ITS AFFILIATES, SUBCONTRACTORS, AGENTS AND VENDORS, BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH THESE TERMS FOR (I) ANY LOSS OF, OR DAMAGE TO DATA, USE, BUSINESS, REPUTATION, REVENUE OR GOODWILL; (II) ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES; (III) ANY LOSS OF PROFITS, COSTS, ANTICIPATED SAVINGS; 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.

14.2. EXCEPT FOR THE INDEMNITY OBLIGATIONS OF EITHER PARTY UNDER SECTION 16 (INDEMNIFICATION) HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BITES AND ITS AFFILIATES BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY YOU (IF ANY) DURING THE 12 CONSECUTIVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE ALLEGED LIABILITY OR US\$1,000, THE LOWER OF THE TWO. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

## 15. Specific Laws, Regulations and Conventions; Reasonable Allocation of Risks.

15.1. **Specific Laws, Regulations and Conventions.** Except as expressly stated in these Terms, Bites makes 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, Regulations and Conventions, as applicable to Your use of the Service.

15.2. **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 Bites and both parties find such limitations and allocation of risks to be commercially reasonable and suitable for the engagement hereunder, and both You and Bites have relied on these limitations and risk allocation in determining whether to enter these Terms.

## 16. Indemnification.

16.1. **By End User.** You hereby agree to indemnify, defend and hold harmless Bites 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) Your violation of these Terms or applicable Law; and/or (ii) End User Data, including the use of End User Data by

Bites and/or any of its subcontractors, infringes or violates, any third party's rights, including, without limitation, intellectual property, privacy and/or publicity rights.

**16.2. By Bites.** Bites hereby agrees to defend Customer in and against any third party claim or demand against Customer, alleging that Customer authorized use of the Service infringes or constitutes misappropriation of any third party's copyright, trademark or registered US patent (the "**IP Claim**"), and Bites 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' fees. Our indemnity obligations under this Section 16 shall not apply if: (1) the Service (or any portion thereof) was modified by Customer or any third party, but solely to the extent the IP Claim would have been avoided by not doing such modification; (2) if the Service is used in combination with any other service, device, software or products, including, without limitation, Third Party Services, but solely to the extent that such IP Claim would have been avoided without such combination; and/or (3) any IP Claim arising or related to, the End User Data or to any events giving rise to Customer's indemnity obligations under Section 16.1 above. Without derogating from the foregoing defense and indemnification obligation, if Bites believes that the Service, or any part thereof, may so infringe, then Bites may in its sole discretion: (a) obtain (at no additional cost to Customer) the right to continue to use the Service; (b) replace or modify the allegedly infringing part of the Service so that it becomes non-infringing while giving substantially equivalent performance; or (c) if Bites determines that the foregoing remedies are not reasonably available, then Bites 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 16.2 STATES BITES'S SOLE AND ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY, FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY BITES AND/OR ITS SERVICE AND UNDERLYING TECHNOLOGY.

**16.3. Indemnity Conditions.** The defense and indemnification obligations of the indemnifying party under this Section 16 are subject to: (a) 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 16, except to the extent the indemnifying party's defense is materially prejudiced thereby; (b) 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 (c) 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.

## 17. Third Party Components within Our Service

Our Service may include 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 endeavours to identify such Open Source Code, within our Service, hence Bites encourages End User to familiarize itself with such Open Source Terms. Note that Bites uses best efforts to use only Open Source Codes that does not impose any obligation or affect the End User 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, Bites makes no warranty or indemnity hereunder with respect to any Open Source Codes.

## 18. Export Controls.

The Service may be subject to Israeli, U.S. or foreign export controls, Laws, Regulations and Conventions (the “**Export Controls**”), and Customer acknowledges and confirms that: (a) You are 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 End User Data;(b) 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;; and (c) End User Data is not controlled under the U.S. International Traffic in Arms Regulations or similar Laws, Regulations and Conventions in other jurisdictions, or otherwise requires any special permission or license, in respect of its use, import, export or re-export hereunder.

## 19. Modifications.

Bites may occasionally 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 Bites deems necessary, at Bites’ sole discretion. When Bites makes material changes to these Terms, Bites will provide You with notice as appropriate under the circumstances, e.g., by displaying a prominent notice within the Service or by sending You an email. Your continued use of the Service after the changes have been implemented will constitute Your acceptance of the changes.

## 20. Governing Law and Jurisdiction; Class Action Waiver.

**20.1. Governing Law; Jurisdiction.** These Terms are governed and interpreted by and under the laws of the State of Israel, without giving effect to any conflicts of law principles that require the application of the law of a different jurisdiction. Courts of competent jurisdiction located in Tel Aviv-Jaffa, Israel, shall have the sole and exclusive jurisdiction and venue over all controversies and claims arising out of, or relating to, these Terms. Both parties mutually agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Notwithstanding the foregoing, Bites reserves the right to seek injunctive relief in any court in any jurisdiction.

**20.2. Class Action Waiver.** WHERE PERMITTED UNDER APPLICABLE LAW, YOU AND WE AGREE THAT EACH PARTY

MAY BRING CLAIMS AGAINST THE OTHER PARTY ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION. Unless both You and Us mutually agree in writing, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding.

## 21. General Provisions.

21.1. **Translated Versions.** Bites reserves the right to translate this Agreement or any part thereof ("**Translated Versions**"). The provisions of the English version shall prevail any conflicts with the Translated Versions.

21.2. **Force Majeure.** Neither party is 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, including denial-of-service attacks, interruption or failure of the Internet or any utility service, failures in third-party hosting services, strikes, shortages, epidemics, riots, fires, acts of God, war, terrorism, and governmental action.

21.3. **Relationship of the Parties; No Third Party Beneficiaries.** The parties are independent contractors. These 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 these Terms.

21.4. **Notice.** We shall use Your contact details that Bites has in its records, in connection to notices, subject to this Section 21.4. You acknowledges notices that Bites provides 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 Application 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 Bites shall be provided to Bites Ltd., at [info@mybites.io](mailto:info@mybites.io) , or sent to 46 Herbert Samuel St., Tel Aviv, Israel.

21.5. **Assignment.** These Terms, and any and all rights and obligations hereunder, are personal to You and may not be transferred or assigned by You without Bites' prior written approval. Bites may assign its 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, these Terms shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns. Any assignment not authorized under this Section 21.5 shall be null and void.

21.6. **Severability.** These Terms shall be enforced to the fullest extent permitted under applicable Law. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable and/or contrary to law, the other terms shall remain in effect and the term 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.

21.7. **No Waiver.** No failure or delay by either party to exercise any right, power or remedy will operate as a

waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy. No waiver under these 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: June 30, 2020