

## HARVER SERVICE TERMS

### 1. Definitions

In these service terms, the following terms, indicated with a capital, whether single or plural, will have the following meaning:

**Additional Services:** any additional services separately rendered by Harver in connection to the Service, and which need to be agreed upon through the Order Form.

**Agreement:** the agreement referred to in article 2.1.

**Confidential Information:** all information relating to a Party's business affairs, including and without limitation any technical, financial, operational, administrative, marketing, economic and other information. Confidential Information includes all information that can reasonably be presumed to be confidential or secretive.

**Content:** Results, Customer Content, End User Content and Harver Content.

**Customer:** a natural or legal person who has submitted the Order Form and has therewith entered into an Agreement with Harver.

**Customer Content:** all information, data or material in the form of images, videos, text and audio-visual material or any other content submitted by Customer.

**Effective Date:** the Contract Start date as stipulated in the Order Form.

**End User:** the natural person that is authorized by the Customer to use the Harver Platform.

**End User Content:** all information, data or material or any other content, including but not limited to Personal Data, submitted by an End User through the Harver Platform.

**Feedback:** has the meaning as referred to in article 7.3.

**License Fee:** fees charged on a recurring basis in accordance with the agreement term, for use of the Harver platform.

**Harver:** the private company with limited liability established and existing under the laws of the Netherlands, having its registered office in (1019 GW) Amsterdam, the Netherlands, at Jollemanhof 20, registered with the Chamber of Commerce in the Netherlands, under 66145880.

**Harver Content:** all information, data, material, modules and tests in the form of images, videos, text and audio-visual material or any other content made available by Harver and/or its licensor(s) through the Service whether or not on a customized basis.

**Harver Flow:** a Harver flow is composed from a wide variety of modules, that are easy to setup and customized to the hiring needs of each Customer.

**Harver Platform:** the my.harver.com (software-as-a-service) platform, consisting of a Harver Flow, developed by Harver and/or its licensor(s) for the online application and recruitment process and with which Customer can access the Results visible through the admin dashboard.

**Initial Term:** the agreed upon initial term of the Agreement, starting on the Effective Date and ending on the End Date, as specified in the Order Form.

**Intellectual Property Rights:** all rights in any jurisdiction throughout the world in and to any (a) patents, patent applications, statutory invention registrations, including any divisions, continuations, continuations-in-part and substitute applications of the foregoing, and any extensions, reissues, restorations and re-examinations of the foregoing; (b) unpatented inventions, discoveries and methodologies, algorithms, know-how, and trade secrets; (c) works of authorship, whether copyrightable or not, mask work rights, software, databases and compilations, registered and unregistered copyrights and derivatives thereof; (d) trademarks, service marks, trade names, logos and other indicia of origin, domain names, and URLs, and all goodwill associated therewith and (e) any rights of personality or publicity, moral rights, and other proprietary rights.

**One-Time Fees:** one-time fees include agreed upon set-up costs, depending on the set-up package.

**Order Form:** the order form, or multiple order forms, where Parties stipulate the commercial terms of the Service and/or under 'special terms' any legal deviations to the Agreement, as signed by Parties.

**Parties:** Harver and Customer together, or separately referred to as "Party".

**Personal Data:** any information relating to an identified or identifiable natural person.

**Results:** the results of the application process as completed by End User on the Harver Platform.

**Service:** the access and use of the Harver Platform, facilitated by Harver to Customer and End User, in accordance with the Agreement.

**SLA:** the service level addendum concluded between Parties regarding the provision of Support.

**Support:** the maintenance and support services provided by Harver to Customer with respect to the Service, as described in the SLA.

**Terms:** these service terms pertaining to the use of the Service and/or Additional Services.

**Usage Data:** anonymized and/or aggregated data that Harver may collect about Customers, End Users, the Services and/or Results, for certain analytical and benchmarking purposes, which do not contain Personal Data.

## 2. Scope of the Agreement

- 2.1 These Terms together with the Order Form and the SLA constitute the Agreement between Harver and Customer and are legally binding for Harver and Customer. The Agreement governs all Services, Support and Additional Services rendered by Harver to Customer. No other terms and conditions shall be binding upon Harver unless accepted by it in writing. Harver expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind Harver.
- 2.2 The documents constituting the Agreement have the following order of priority: i) the section 'special terms', in the Order Form, if any ii) the Order Form (excluding the section 'special terms'), iii) the Terms, iv) the SLA. In case of conflict between those documents, the document with the highest priority will prevail.
- 2.3 Subject to the terms and conditions of the Agreement, Harver shall deliver the Service to Customer and, if applicable, any Additional Services.
- 2.4 All (delivery) periods and (delivery) dates agreed between Parties, if any, are merely estimates, unless accepted in writing by Harver. If Parties have agreed on a change to the content or scope of the Agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the Agreement, Parties shall agree upon a new delivery dates regarding the provision of services.

## 3. Services

- 3.1 Harver shall grant Customer access to the Service and shall use reasonable commercial endeavours to keep the Service operational in accordance with the Agreement and to provide Support in accordance with the SLA.
- 3.2 Customer receives a link to the Harver Platform during the on boarding phase where the Customer can login with an email address and by creating a password. On the Harver Platform, Customer is able to set up, edit and release the Harver Flow(s).
- 3.3 Prior to the operational use of the Service, Harver shall offer basic support in setting-up, installing and configuring the Service. For a full and integral implementation of the Service (Enterprise set-up), additional arrangements must be made in the Order Form by Parties.
- 3.4 Customer will provide Harver with the necessary information, Customer Content and support, in order for Harver to provide the Service to Customer.
- 3.5 Customer is responsible for ensuring that Customer Content provided by Customer to Harver and End User Content saved and/or exchanged by End Users through the Service is lawful and does not breach the (Intellectual Property) rights of Parties and third parties. Harver does not accept any liability whatsoever for Customer Content and End User Content saved and/or exchanged using the Service.
- 3.6 The use of the Service is at Customer's own risk and responsibility. Harver has no knowledge of and/or interference with the End User Content that is made available by End User through use of the Service.
- 3.7 Customer is solely responsible and liable for the Results and End User Content. Harver accepts no responsibility whatsoever for any decisions and selections made by Customer based on the End User Content and Results as used in the Service. Customer acknowledges and agrees that Harver does not have

any influence over the End User Content uploaded by means of the Service.

- 3.8 Customer agrees not to, i) modify, delete or make additions to the Service, including the trademarks and other Intellectual Property Rights incorporated therein, ii) infringe the Intellectual Property Rights of Harver, including, but not limited to, the registration of domain names, trademarks or Google Adwords that are identical or similar to any object to which Harver holds Intellectual Property Rights, iii) reproduce, modify, reverse engineer or publish the Service, iv) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, share or otherwise commercially exploit or make the Service available to any third-party, other than End Users, v) use the Service to knowingly post, transmit, upload, link to, send or store any content that is unlawful, abusive, libellous, racist, hateful, obscene, or discriminatory.
- 3.9 Harver may collect Usage Data, which is utilized, i) to understand trends in the usage of the Service and, ii) to establish relevant benchmarks to further improve the Services and, iii) for research reasons. In addition to the collecting and utilizing of Usage Data by Harver, Harver may share the Usage Data with third parties, including other customers, partners and service providers to better understand our customer's needs for improvement. For the avoidance of doubt, Usage Data will be anonymised and/or aggregated and will never contain Personal Data and/or Confidential Information.
- 3.10 Harver may contact End Users on behalf and for the benefit of the Customer, via e-mail or phone, for the proper performance of the Services (e.g. proactive assist candidates in completing the Harver Flow).

## 4 Data Protection & Security

- 4.1 In rendering the Services, Harver may from time to time be provided with, or have access to, information of Customer or End Users which may qualify as Personal Data.
- 4.2 Customer will ensure that the use of the Service is compliant with the data protection law and relevant security standards within Customer's region and that is consistent with generally accepted and commercial reasonable industry standards.
- 4.3 In order to establish and implement technical and organizational measures and a certain methodology to ensure a security level which is appropriate to the risk related to the processing of Personal Data, Harver will consider at least the rules listed below.
- Harver has measures in place to safely process Personal Data so that Personal Data cannot be read, rebuilt, destroyed, lost, altered or accessed by unauthorized individuals.
  - Encryption technology is used by Harver to ensure that Personal Data is secured while it is stored (at rest) or being transmitted (in transit). Harver supports minimum TLS version 1.2 connections with 128-bit encryption algorithms and strives to maintain a Grade A+ rating on SSL Labs tests.
  - Harver has procedures in place to prevent Personal Data loss in the event of data corruption or a security incident. Harver has determined that daily, incremental backups will allow for sufficient data recovery in the event of an incident.
  - The retention period for incremental backups is at least 2 weeks, as determined by Harver. The retention period for full backups is at least 3 months, as determined by Harver.

- e. Harver ensures the separation of the Customer's data from other data pertaining to that of other Harver customers on the business-level. Harver uses an N-tier architecture which ensures that Customer data is separated through data access logic due to filtering and access rights.
- f. Harver ensures access to data is also restricted on the level of the user role.
- g. Harver enforces SSL VPN and Multi Factor Authentication (MFA) for any administrative access to Harver's hosting environment.
- h. Harver's web servers are protected against network-based attacks, using commercially available firewalls.
- i. Harver assesses staff according to internal procedures to determine which employees will be authorized to view and process Personal Data. Authorization is made following email approval processes; this process is auditable due to approval emails and digital messages.
- j. Harver has procedures implemented for staff with two factor authentication, logging capabilities and time-out sessions after a period of inactivity.
- k. Harver uses applications that enforce the company's password policy on staff passwords. Harver requires staff passwords to consist of at least 8 characters with lowercase and uppercase letters. All staff passwords are stored securely in a hashed form with unique salt.
- l. In addition, the applications used by Harver automatically locks accounts for 10 minutes after three failed attempts to correctly input passwords.
- m. Harver's staff is subject to written confidentiality obligations in accordance with the instructions of Harver, as stipulated in staff contracts.
- n. With regards to physical security, Harver ensures that each area, where Personal Data is being processed, benefits of appropriate access restrictions.
- o. Harver's application is hosted with Amazon Web Services (AWS). The data center facility security is therefore managed by Amazon, thus complying to security certification standards (i.e. ISO 27001, 27017, 27018 and SOC3) and operating using documented standards.
- p. In addition, Harver's offices maintain standard security controls (i.e. locks on exterior doors and/or an alarm system) and access is restricted to company personnel and approved/escorted guests.
- q. All workstations used by Harver's staff have antivirus/anti-malware software installed. In addition, workstation software maintains a 'subscription' to receive patches and virus signature/definition file updates, which have to be installed in a timely manner; either automatically or manually.
- r. All employee devices are governed by a Mobile Device Management system (MDM). This allows Harver to set security standards over all devices and allows for remote wiping of said devices when a situation would call for such measures.
- s. Harver has connected most of its tools and applications with their Single Sign-On (SSO) service, where possible using SAML. This allows for strict governance and provisioning, while fully auditable.
- t. Harver has a registry with IT items which is updated and reviewed annually

## 5. Fees and Payment

- 5.1 Customer agrees to pay Harver the fees as specified in the Order Form. All fees quoted and payable are stated in the Order Form. All listed and quoted prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on Harver or on Customer by any taxing authority (other than taxes imposed on Harver's income), related to Customer's order.
- 5.2 Customer agrees to pay, without the right to set-off any amounts, all invoiced amounts within thirty (30) days of the invoice date. However, all amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any Federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- 5.3 The Customer may not suspend any payments and/or set off any amounts owed to Harver, including a suspension of payment based on complaints regarding the Service, Support and/or the invoice.
- 5.4 If any sums payable under the Agreement are not received by Harver within the period as set forth in article 5.2 of the Agreement, Harver reserves the right, without prejudice to any other rights and remedies and, upon giving notice to Customer and a remedy period of thirty (30) business days, to suspend the Services, including without limitation the supply of pending and future orders. In addition, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- 5.5 After the Initial Term, Harver retains the right to increase the License Fee with five (5) % annually.

## 6. Confidentiality

- 6.1 Parties shall observe strict confidentiality with regard to all Confidential Information they receive from the other Party and will not disclose such Confidential Information to a third-party other than in instances where they are legally required to do so in which case that Party will inform the other Party without undue delay and if practically possible before the disclosing of the Confidential Information. Parties further undertake to use the Confidential Information only for the purpose for which the other Party has disclosed this Confidential Information. Parties shall also impose these or similar confidentiality obligations on its employees, directors, (sub) contractors and professional advisors that require to receive such Confidential Information in connection with the execution of the Agreement.
- 6.2 Upon termination of the Agreement or upon first request of a Party, the other Party will cease any and all use of the Confidential Information of the other Party and shall immediately return the Confidential Information and any and all copies thereof, or, upon request of a Party, destroy the Confidential Information and copies thereof.

6.3 Confidential Information that constitutes trade secrets of the disclosing party shall be subject to confidentiality for as long as such information remains a trade secret under applicable law.

## 7. Intellectual Property Rights

7.1 If Customer complies in full with all obligations pursuant to the Agreement, Harver will grant Customer a limited, personal, revocable, non-exclusive, non-sub licensable and non-transferable right to use the Service and Harver Content, if any, in accordance with the Agreement.

7.2 Harver reserves all rights not expressly granted in the Agreement. Customer acknowledges and agrees that Harver and/or its licensors retain all Intellectual Property Rights related to the Service, the Harver Content, Usage Data and any other work products delivered to Customer, whether or not as Additional Services. The provision of the Service or any related product or service does not imply any transfer of Intellectual Property Rights to Customer. Customer acquires limited rights of use only in as far as explicitly granted under the Agreement.

7.3 Harver is free to use any ideas, suggestions or recommendations provided by Customer to Harver regarding the use of the Service and/or as a result of further activities relating to the configuration (“**Feedback**”). Harver is free to incorporate Feedback in Harver’s products or services, without payment of royalties or other consideration to Customer. Customer agrees that any Intellectual Property Rights in the Feedback will exclusively vest in Harver, and Customer agrees, at the first request of Harver, to unconditionally co-operate in executing any documents necessary for a transfer of these Intellectual Property Rights in the Feedback, if necessary under the applicable law.

7.4 Customer retains the Intellectual Property Rights relating to the Customer Content and End User Content. Customer acknowledges and accepts that by making the Customer Content available through the Service, Customer automatically and free of charge grants Harver an unlimited, worldwide, irrevocable, cost free, sub licensable and transferable right to reproduce, distribute, redistribute, modify, translate, adapt, prepare derivative works, display and otherwise use all or part of the Customer Content, by any and all means, to the extent that this is required in the context of providing the Services in accordance with the Agreement.

7.5 During the term of the Agreement, Harver may reference Customer as a Harver customer via Customers’ logo and company name on the Harver website and pre-sales documentation. Customer is entitled to revoke the permission with respect to the use of its name and logo at any time by sending an e-mail to legal@harver.com.

## 8. Term and termination

8.1 The Agreement shall enter into force upon the Effective Date as specified in the Order Form and shall remain in force for the term agreed upon by Parties in the Order Form.

8.2 The Customer may not terminate the Agreement that has been entered into for a definite period of time, unless i) explicitly so agreed upon by Parties in the Agreement or, ii) the right to terminate follows directly from the Agreement.

8.3 In case the Agreement remains in force for a definite period of time, the Agreement shall be automatically renewed for consecutive one (1) year periods (under the same terms and conditions as agreed

upon by Parties in the Order Form) unless terminated by either Party by providing the other Party with a two (2) months written notice of termination of the Agreement.

8.4 In case the Agreement remains in force for an indefinite period of time, either Party may terminate the Agreement by providing the other Party written notice of termination of the Agreement, considering a notice period of no less than three (3) months.

8.5 A Party may immediately terminate the Agreement, without becoming liable, upon written notification to the other Party:

- I. if the other Party applies for a moratorium of payments, is declared bankrupt or otherwise ceases to meet its (financial) obligations;
- II. if the other Party suspends or discontinues its business activities.

8.6 Harver may immediately (temporarily or permanently) suspend the Service and/or terminate the Agreement at any time, and without notice to Customer in the event that Customer materially breaches the Agreement and/or otherwise engages in (unlawful) activities that are likely to cause damages to Harver. Harver will not be liable for any costs, expenses, or damages as a result of its suspension of the Services and/or termination of the Agreement in this respect.

8.7 If either Party commits a material breach or default in the performance of any of its obligations under the Agreement, then the other Party may terminate the Agreement, provided that the terminating Party gives the breaching or defaulting Party written notice of termination specifying the underlying breach or default within 60 days of discovery of such breach or default, and such breach or default remains uncured 30 days after the breaching or defaulting Party receives the notice.

8.8 Upon termination of the Agreement, for whatever reason, any and all rights granted to Customer under the Agreement will automatically terminate, and Customer will immediately cease any and all use of the Service, Harver Content, Harver Intellectual Property Rights and Harver Confidential Information.

8.9 In the event of a termination of the Agreement, any (parts of the) Services that already have been performed and/or delivered by Harver, and any payment obligations related to it, will not be the subject of reversal, unless Harver is in default in relation to such performance. Amounts invoiced by Harver before the termination of the Agreement, in connection with (parts of) the implementation by Harver of the Services, will continue to be owed and will become immediately due and payable at the time of the termination.

## 9 Liability

9.1 CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL ACTIVITIES CONDUCTED THROUGH THE SERVICE BY END USERS, EVEN IF SUCH ACTIVITIES WERE TO OCCUR WITHOUT CUSTOMER’S PERMISSION. HARVER DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE ACTS AND OMISSIONS OF END USERS THROUGH THE SERVICE. NEITHER HARVER NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL SUCH ACTS AND OMISSIONS.

9.2 IN NO EVENT SHALL HARVER, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.

9.3 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, HARVER'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER FOR THE SERVICES IN THE IN THE 12 MONTHS IMMEDIATELY PRECEDING THE YEAR IN WHICH THE CLAIM WAS FIRST MADE.

9.4 THE LIMITATIONS ON HARVER'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT HARVER, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.

9.5 NO RIGHT TO COMPENSATION OF DAMAGES SHALL EXIST UNLESS CUSTOMER NOTIFIES HARVER IN WRITING, PROMPTLY AFTER THE DAMAGES FIRST OCCURED, BUT NO LATER THAN SIX (6) MONTHS THEREAFTER. OTHERWISE, THE DAMAGES CLAIM WILL BE PERMANENTLY BARRED.

## 10 Warranties and indemnities

10.1 HARVER WARRANTS THAT IT HAS (I) ALL REQUISITE LEGAL AND CORPORATE POWER TO EXECUTE AND DELIVER THE AGREEMENT, INCLUDING EACH SCHEDULE, ADDENDUM, AMENDMENT AND EXHIBIT; (II) TAKEN ALL CORPORATE ACTION NECESSARY FOR THE AUTHORIZATION, EXECUTION AND DELIVERY OF THE AGREEMENT; (III) OBTAINED AND SHALL MAINTAIN ALL RIGHTS, APPROVALS AND CONSENTS NECESSARY TO PERFORM ITS OBLIGATIONS AND GRANT ALL RIGHTS AND LICENSES GRANTED TO CUSTOMER UNDER THIS AGREEMENT; AND (IV) TAKEN ALL ACTION REQUIRED TO MAKE THE AGREEMENT A LEGAL, VALID AND BINDING OBLIGATION OF THE HARVER, ENFORCEABLE AGAINST HARVER IN ACCORDANCE WITH THE AGREEMENT.

10.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY SET FORTH IN THE SLA, HARVER, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE SERVICES WHETHER EXPRESS, IMPLIED OR STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. HARVER FURTHER DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL ALWAYS BE SECURE, UNINTERRUPTED, TIMELY, ACCURATE, COMPLETE, ERROR-FREE OR FREE FROM VIRUSES NOR DOES HARVER WARRANT ANY QUALITY OF THE SERVICE. NO

ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM HARVER OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS.

10.3 FAILURES OF THE SERVICE MAY BE CAUSED IN PART, BUT NOT EXCLUSIVELY, BY FAILURES IN THE INTERNET OR TELEPHONE CONNECTION OR BY VIRUSES OR ERRORS/DEFECTS. HARVER WILL NOT BE LIABLE TO CUSTOMER IN ANY WAY FOR DAMAGE ENSUING FROM OR CAUSED BY THE UNAVAILABILITY OF THE SERVICE.

10.4 HARVER DOES NOT GUARANTEE THAT THE SERVICE SHALL BE EFFECTIVE, THE USE OF THE SERVICE SHALL LEAD TO CERTAIN RESULTS OR THAT THE CONTENT PROVIDED THROUGH THE SERVICE SHALL BE ACCURATE, UP TO DATE AND COMPLETE.

10.5 HARVER SHALL NEVER BE RESPONSIBLE AND LIABLE FOR ANY OF THE FOLLOWING ACTS OR CIRCUMSTANCES:

- A) THE PURCHASE AND/OR THE PROPER OPERATION OF CUSTOMER'S INFRASTRUCTURE;
- B) LOSS, DAMAGE, INACCURACY AND/OR INCOMPLETENESS OF ANY CONTENT PROVIDED THROUGH THE SERVICE;
- C) TRANSMISSION ERRORS, MALFUNCTIONS OR NON-AVAILABILITY OF COMPUTER, CONTENT, DATA OR TELECOM FACILITIES, INCLUDING THE INTERNET;
- D) ANY UNAUTHORIZED USE OR ATTEMPTED USE OF THE SERVICE;
- E) MAKING BACKUP COPIES OF ANY CONTENT; OR
- F) THE MANAGEMENT, INCLUDING CHECKING THE SETTINGS, THE USE OF THE SERVICE AND THE MANNER IN WHICH THE CONTENT IS USED.

10.6 IN THE EVENT AN INFRINGEMENT OCCURS, HARVER, ACTING IN CONSULTATION WITH CUSTOMER, SHALL BE REQUIRED TO DO THE FOLLOWING AT HARVERS' EXPENSE:

- I. TO ACQUIRE A RIGHT FOR CUSTOMER TO CONTINUE ITS USE; OR
- II. TO REPLACE THE INFRINGING SERVICES WITH OTHER SERVICES WHICH DO NOT CONSTITUTE AN INFRINGEMENT; OR
- III. TO MODIFY THE INFRINGING SERVICES IN SUCH A WAY THAT IT REMAINS SUITABLE FOR ITS AGREED PURPOSE, BUT AN INFRINGEMENT NO LONGER OCCURS.

10.7 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARVER, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT (I) ANY MISREPRESENTATION, BREACH OF WARRANTY, OR NONFULFILLMENT OR FAILURE TO PERFORM ANY COVENANT OR AGREEMENT ON THE PART OF THE CUSTOMER UNDER THIS AGREEMENT (II) THE ACTS OR OMISSIONS OF THE CUSTOMER, ITS EMPLOYEES, AGENTS, OR CONTRACTORS, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE OR WILLFUL MISCONDUCT OR (III) THE FAILURE OF THE CUSTOMER

TO COMPLY WITH ANY APPLICABLE LAW OR REGULATION OR (IV) THE SELECTION OF END USERS BY CUSTOMER (AS PER CLAUSE 3.7 OF THE TERMS).

## 11. Force majeure

- 11.1 In the event of force majeure, there will be no attributable failure in the performance of the Agreement by the Parties.
- 11.2 Force majeure includes, among other things, interruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of Harver's suppliers, failure on the part of third parties engaged by Harver, interruptions in the connection to the internet (whether or not due to a DDoS attack), hardware malfunctions, malfunctions in networks, including telecommunication networks, and other unforeseen circumstances.
- 11.3 If the force majeure continues for at least thirty (30) days, the other Party is entitled to terminate the Agreement without being obliged to pay any compensation for this termination. For the avoidance of doubt, article 8.8 and 8.9 of the Terms will however remain in full effect.

## 12. Miscellaneous

- 12.1 Neither Party may assign the Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law or otherwise, without the prior written consent of the other Party; provided, however, that Harver may assign the Agreement to a parent, affiliate, subsidiary, or successor to its business, if any. Subject to the foregoing, the Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 12.2 If any provision(s) of the Agreement would be held to be illegal, unenforceable or void, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable. Parties will then mutually agree upon a new provision that will approximate the contents and scope of the original provision, without becoming illegal, unenforceable or void itself.
- 12.3 The Agreement constitutes the entire agreement of the Parties relating to the subject matter the Agreement and supersedes all prior communications, contracts, or agreements between the Parties with respect to the subject matter addressed in the Agreement, whether oral or written.
- 12.4 Each of the Parties hereto acknowledges that in the event of a breach by any of them of any material provision of the Agreement, the aggrieved party may be without an adequate remedy at law. Each of the Parties therefore agrees that in the event of such a breach hereof the aggrieved party may elect to institute and prosecute proceedings in any court of competent jurisdiction to enforce specific performance or to enjoin the continuing breach hereof. By seeking or obtaining any such relief, the aggrieved Party shall not be precluded from seeking or obtaining any other relief to which it may be entitled.
- 12.5 Provisions from the Agreement that are intended by their nature to survive the Agreement will remain in full effect after the termination of the Agreement, including but not limited to clauses 6, 7 and 10 of the Terms.
- 12.6 The Agreement shall be exclusively governed by the laws of the state of New York, U.S.A.

- 12.7 All controversies, disputes or claims arising out of or relating to this Agreement or the breach thereof shall be exclusively and finally settled by the competent federal court in New York, New York, U.S.A.
- 12.8 ANY CAUSE OF ACTION AGAINST HARVER, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

### The following terms are applicable for the use of the Harver API by Customer.

## 13. Definitions

In these API Terms (as defined in 14.1), the following additional terms, indicated with a capital, whether single or plural, will have the following meaning:

**API Content:** Third-Party Content or Content, as used by Customer via the Harver API.

**API Terms:** has the meaning as referred to in article 14.1.

**Application:** has the meaning as referred to in article 15.1.

**Harver Public API usage requirements document:** this document will be provided, upon the provision of the API Key by Harver.

**Third-Party Content:** has the meaning as referred to in article 18.1.

**The Harver API:** the publicly exposed functionality as provided by Harver to whatever interaction between Harver and the Application.

## 14. Account and registration

- 14.1 *Accepting the API Terms.* By accessing or using the Harver API, Customer will have accepted and will comply with i) clause 13 through 20 of the Terms and ii) the *Harver Public API usage requirements* document (the "**API Terms**") and these will become applicable to the Parties. If there is a conflict between the Terms and the API terms regarding matters relevant to Harver API, the API Terms will control for that conflict.
- 14.2 *Registration.* In order to access the Harver API Customer may be required to provide certain information (such as identification or contact details) as part of the registration process for the Harver API, or as part of Customer continued use of the Harver API. Any registration information Customer provide to Harver will always be required to accurate and up to date and Customer agrees to promptly inform Harver of any updates.

## 15. Using the Harver API

- 15.1 *Clients and Monitoring.* The Harver API is designed to interface Customers application or the application as used by Customer to the Harver API ("**Application**"). Customer agrees that Harver may monitor use of the HarVer API to ensure quality and verify customer compliance with the API Terms and Agreement.
- 15.2 *Permitted Access.* Customer will only access (or attempt to access) the Harver API by the means described in the

documentation of the Harver API. If Harver assigns Customer developer credentials (e.g. client IDs), Customer must use them with the Harver API. Customer will not misrepresent or mask either Customer identity when using the Harver API or developer accounts.

- 15.3 *API Limitation.* Harver sets and enforces limits on Customer use of the Harver API (e.g. the limiting of the number of API requests that Customer is allowed to make or the number of users/End Users Customer may serve), in Harvers' sole discretion. Customer agrees to, and will not attempt to circumvent, such limitations are documented with the Harver API. If Customer would like to use the Harver API beyond these limits, Customer must obtain Harver's explicit consent from Harver (and Harver may decline such request or condition acceptance on Customer agreement to additional terms and/or charges for that use). To seek such approval, contact the relevant Harver API team for information.
- 15.4 *Clients and Monitoring.* The Harver API is designed to help Customer enhance Customers' processes and applications. Customer agrees that Harver may monitor use of the API to ensure quality, improve Harver products and services, and verify customer compliance with the API Terms and Agreement.
- 15.5 *Suspension.* Harver may suspend the access of Customer and/or its Applications access to the Harver API without notice if Harver reasonably believes that Customer are in violation of the API Terms.
- 15.6 *Security.* Customer will use commercially reasonable efforts to protect user information collected in the Application and shared via the Harver API, including Personal Data, from unauthorized access or use and will promptly report to Customer users any unauthorized access or use of such information to the extent required by applicable law.
- 15.7 *Ownership.* Customer does not acquire ownership of any rights in the Harver API or the API Content that is accessed through the Harver API, unless these rights were granted previous to the use of the Harver API. Harver does not acquire ownership of the API Content that is transfer by using the Harver API and the Application.

## 16. Prohibitions

- 16.1 *API Prohibitions.* When using the Harver API, Customer may not (or allow those acting on Customer behalf to):
- Sublicense the Harver API for use by a third party, without permission of Harver.
  - Perform an action with the intent of introducing to the Harver API any viruses, worms, defects, trojan horses, malware, or any items of a destructive nature.
  - Defame, stalk, harass, abuse, or threaten others.
  - Interfere with or disrupt the Harver API or the servers or networks providing the Harver API.
  - Promote and/or facilitate unlawful online gambling or illegal commercial messages or advertisements.
  - Reverse engineer or attempt to extract the source code from the Harver API or any related software.
  - Use the Harver API for any activities where the use or failure of the Harver API could lead to death, personal injury, or environmental damage (such as the operation of nuclear facilities, air traffic control, or life support systems).

## 17. Confidential Matters

Developer credentials (such as passwords, keys, and client IDs) that are intended to be used by Customer and identify the Application on the Harver API and are considered to be Confidential Information. Customer will keep Customer credentials confidential and make reasonable efforts to prevent and discourage other applications from using Customer credentials. Developer credentials may not be embedded in open source projects. Furthermore Harvers' communications to Customer and the Application may contain Harver Confidential Information.

## 18. API Content

- 18.1 *Accessible content via the Harver API.* The Harver API may contain Content and third-party content (such as text, images, videos, audio or personal data) ("**Third-Party Content**"). The Content is governed by the applicable provisions as stipulated in the Terms.
- 18.2 *Reasonability & review.* The Third-Party Content is the sole responsibility of the Customer, if made available by Customer or End User. Harver may sometimes review the API Content to determine whether it is illegal or violates Harvers' policies or the API Terms and Harver may remove or refuse to display the API Content if this is in violation of said policies.
- 18.3 *Intellectual Property.* The API Content accessible through the Harver API may be subject to Intellectual Property Rights, and, if so, Customer may not use it unless Customer is licensed to do so by the owner of the API Content or are otherwise permitted by law. Customer access to the API Content provided by the Harver API may be restricted, limited, or filtered in accordance with applicable law, regulation, and/or the API Terms.
- 18.4 *Prohibitions.* Unless expressly permitted by the API Content owner or by applicable law, Customer will not, and will not permit Customer, End Users or others acting on Customer behalf to, do the following with API Content returned from the Harver API:
- Scrape, build databases, or otherwise create permanent copies of such API Content, or keep cached copies longer than permitted by the cache header;
  - Copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third party;
  - Misrepresent the source or ownership; or
  - Remove, obscure, or alter any copyright, trademark, or other proprietary rights notices; or falsify or delete any author attributions, legal notices, or other labels of the origin or source of material.

## 19. Termination

- 19.1 *Termination.* Customer may stop using the Harver API at any time with or without notice. Harver reserves the right to discontinue the Harver API or any portion or feature or Customer access thereto when Customer is violating the Terms, including the API Terms and/or the Agreement.
- 19.2 *Customer Obligations Post-Termination.* Upon any discontinuation of Customer access to the Harver API, Customer will immediately stop using the Harver API, cease and delete any cached or stored API Content, unless otherwise agreed upon. Harver may independently communicate with any account owner whose account(s) are associated with the

Application and developer credentials to provide notice of the termination of Customer right to use the Harver API.

- 19.3. *Surviving Provisions.* When the API Terms come to an end, those terms that by their nature are intended to continue indefinitely will continue to apply, including but not limited to clauses 17, 18, 19 and 20.

## **20. Warranties & Indemnification**

- 20.1 *WARRANTIES.* EXCEPT AS EXPRESSLY SET OUT IN THE ORDER FORM, TERMS AND API TERMS, NEITHER HARVER NOR ITS SUPPLIERS OR DISTRIBUTORS MAKE ANY SPECIFIC PROMISES ABOUT THE HARVER API. FOR EXAMPLE, HARVER DOES NOT MAKE ANY COMMITMENTS ABOUT THE CONTENT ACCESSED THROUGH THE HARVER API, THE SPECIFIC FUNCTIONS OF THE HARVER API, OR THEIR RELIABILITY, AVAILABILITY, OR ABILITY TO MEET CUSTOMER NEEDS. HARVER PROVIDES THE HARVER API "AS IS".
- 20.2 *INDEMNIFICATION.* IN ADDITION TO INDEMNIFICATIONS AS STIPULATED IN THE TERMS, CUSTOMER WILL DEFEND AND INDEMNIFY HARVER, AND ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AND USERS, AGAINST ALL LIABILITIES, DAMAGES, LOSSES, COSTS, FEES (INCLUDING LEGAL FEES), AND EXPENSES RELATING TO ANY ALLEGATION OR THIRD-PARTY LEGAL PROCEEDING TO THE EXTENT ARISING FROM:
- a. CUSTOMER MISUSE OR END USER'S MISUSE OF THE HARVER API;
  - b. CUSTOMER VIOLATION OR END USER'S VIOLATION OF THE API TERMS; OR
  - c. ANY API CONTENT OR DATA ROUTED INTO OR USED WITH THE HARVER API VIA THE APPLICATION, BY CUSTOMER, THOSE ACTING ON CUSTOMERS BEHALF, OR END USERS.