

Komo Technologies Pty LtdT/As

Komo

Terms of Service

This Terms of Service Agreement (this “**Agreement**”) contains the terms under which Komo agrees to grant the Customer access to and use of Komo online platform and, if applicable, certain professional services. By indicating the Customer’s acceptance of this Agreement, by executing a Sales Order that references this Agreement, or by using Komo services or software, the Customer agrees to be bound by this Agreement. If you are entering into this Agreement on behalf of an entity, such as the company you work for, then you represent to Komo that you have the legal authority to bind the Customer to this Agreement. If you do not have that authority or if the Customer does not agree with the terms of this Agreement, then you may not indicate acceptance of this Agreement, and neither you nor the Customer may use or access any of Komo service offerings or other services. The “**Effective Date**” of this Agreement is the date on which you first indicate your assent to the terms of this Agreement or use or access any of Komo service offerings or other services.

Background

Komo provides consumer engagement and first party data collection software, by providing its customers with access to Komo online software platform and tools and, if applicable, provides related professional services. The Customer wishes to acquire a subscription-based license to access and use the software platform and tools and, if applicable, to purchase professional services, all as specified in one or more “Sales Orders” under and subject to this Agreement. Therefore, for good and valuable consideration, the receipt and sufficiency of which they each acknowledge, Komo and the Customer agree to be bound by this Agreement.

Terms and Conditions

1. Definitions and Construction

- 1.1. Definitions. For the purposes of this Agreement, the following initially capitalized words have the following meanings:

"Acceptable Use Policy" means the Komo policy described in Section 12.

"Administrative User" means any individual who is an employee or independent contractor of the Customer, its Affiliates, or its or their Customer Service Providers, and who is authorized by the Customer to use the administrative features and functions of the Komo Platform.

"Affiliate" means any person, partnership, joint venture, corporation or other form of venture or enterprise, domestic or foreign, including subsidiaries, which directly or indirectly Control, are Controlled by, or are under common Control with a party.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and operating policies of the entity in respect of which the determination is being made, through the ownership of more than fifty percent (50%) of its voting or equity securities, contract, voting trust or otherwise.

"Confidential Information" has the meaning ascribed to it in Section 6.1.

"Customer" means the entity identified as such in the applicable Sales Order or any Affiliate who uses or enjoys benefit of the services.

"Customer Content" means content or web-based services used by the Customer or its Affiliates (including its APIs), and which utilizes the Komo Platform to engage users. Customer Content is provided by the Customer or its Affiliates, and not by Komo.

"Customer Data" means any data that the Customer or its Users input into the Komo platform for Processing as part of the Services, including any Personal Information forming part of such data.

"Customer Service Provider" means a third party, to the extent the third party is providing services to the Customer.

"Documentation" means the software user and administrator manuals published by Komo at <https://knowledge.komo.tech>, regarding use of the Komo Platform, including additional, updated or revised documentation.

"End User" means any individual who has been invited by or authorized by the Customer to use the end user features and functionality of the Komo Platform as part of its obtaining access to and use of the Customer's

Content. For the avoidance of doubt End Users include: (a) individuals invited by any End Users, (b) individuals under a Customer's Account, and (c) individuals interacting with the Komo Platform as any act of the Customer.

"Entitlements" means the license metrics and other scope limitations applicable to the Customer's license rights to access and use the Subscription Services, as specified in the applicable Sales Order.

"Free Trial" means use of the Subscription Services for trial purposes pursuant to a Sales Order that specifies that the Customer's use is for a Free Trial.

"Intellectual Property Rights" means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

"Komo" means Gravy Gaming Pty Ltd, trading as Komo.

"Komo Platform" means the computer software applications, tools, application programming interfaces (APIs), and modules provided by Komo as its consumer engagement platform offering, together with the programs, networks and equipment that Komo uses to make such platform available to its customers. The Komo Platform modules include: Live Trivia, Entertainment Hub, Engagement Hub, and Digital Coupons.

"Personal Information" means is information or an opinion that identifies an individual personally, either alone or in combination with other information available to us (including without limitation your name, address, email address, telephone number, or other personal information) and any other information about or relating to an identified or identifiable individual including End Users. Personal Information.

"Process" or "Processing" means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"Professional Services" means the professional services (typically consulting and advice concerning Customer engagement campaigns) to be performed by Komo that are specified in the applicable Sales Order. Professional Services are not required for use of the Subscription Services.

“Renewal Term” has the meaning ascribed to it in Section 8.

“Sales Order” means any mutually agreed, written sales order, executed on behalf of Komo and the Customer including its exhibits and addenda, describing the Subscription Services, Support Program, Professional Services (if applicable), fees, and any special terms for using the Services that the Customer has ordered. Each Sales Order becomes effective when executed by both Komo and the Customer, and is made part of this Agreement as described in Section 1.2.

“Services” means the Subscription Services and the Professional Services.

“Subscription Services” means the Komo Platform service offerings to which the Customer subscribes, together with the applicable Support Program, each as specified in the applicable Sales Order, and the Documentation.

“Subscription Start Date” means, with respect to each Sales Order, the later to occur of the “Subscription Start Date” specified in the Sales Order, or the date on which the last of Komo and the Customer executes the Sales Order, or if the Sales Order is not executed, the date on which the Customer enjoys the benefits of the Services. For Renewal Terms, the Subscription Start Date will be the day immediately following the date on which the preceding term expired, unless otherwise specified in the Sales Order.

“Subscription Term” means the period commencing on the Subscription Start Date and refers to the Initial Term and each Renewal Term.

“Supplemental Materials” means sample content and sample programs made available by Komo or by third parties for use with the Komo Platform. Supplemental Materials are not required for use of the Subscription Services, and may be accessed and used by the Customer in its sole discretion.

“Support Program” means the Komo support and maintenance services program specified in the applicable Sales Order. Terms governing the Support Program are specified in the ‘Additional Terms of Service - Support Program’ referenced in Section 12.

“Tenant” means a logical isolation unit, or dedicated share of a particular Komo Platform instance; the dedicated share may be configured to reflect the needs of the specific Customer business unit using the share.

“User” means any Administrative User or End User.

The following words will be interpreted as designated:

- (i) **“or”** connotes any combination of all or any of the items listed;
- (ii) where **“including”** is used to refer to an example or begins a list of items, such example or items will not be exclusive;

- (iii) "**specified**" requires that an express statement is contained in the relevant document;
 - (iv) "**will**" is, unless the context requires otherwise, an expression of command, not merely an expression of future intent or expectation; and
 - (v) "**may**" is, unless the context requires otherwise, an expression of permission, but not an obligation.
- 1.2. Construction. This Agreement applies to the provision of all Services. The parties will enter into one or more Sales Orders that contain additional terms and conditions applicable to the provision of certain Services. Upon execution by the parties, each Sales Order will be incorporated into this Agreement.

2. Provision and Use of Services; Operational Issues

- 2.1. Provision of Subscription Services. During the Subscription Term, the Customer may access and use the Komo Platform in accordance with this Agreement. Komo will make the Komo Platform available to the Customer, and provide the Support Program.
- 2.2. The Customer's Account. The Customer will designate one or more of its employees to be the point of contact with Komo for the management and support of the Subscription Services, and who will be responsible for establishing and managing the Customer's use of the Subscription Services ("**Account**"), including the creation of authentication credentials to access the Customer's Account. The Customer will safeguard all Administrative User authentication credentials in its possession or under its control. The Customer is responsible for all activities that occur under the Account (except to the extent resulting from any breach or non-conformance by Komo of its obligations under this Agreement).
- 2.3. The Customer's General Responsibilities. The Customer and its Users are solely responsible for obtaining and maintaining their Internet access to the Subscription Services. The Customer is solely responsible for the accuracy, quality and integrity of the Customer Data that the Customer or its Users input into the Komo Platform. The Customer must comply, and will ensure that its Administrative Users comply, with the Acceptable Use Policy referenced in Section 12 below. The Customer is responsible for acts and omissions of its Administrative Users relating to this Agreement as though they were the Customer's own.
- 2.4. Customer Content. The Customer is solely responsible for the development, implementation, operation, support, maintenance and security of all Customer Content.

2.5. Backup and Restore. Komo will perform backups of Customer Data stored on the Komo Platform every twenty four hours. Komo will assist the Customer in recovering and restoring Customer Data to the Komo Platform. If the Customer requires restoration services more than twice in any three month period, and other than as a result of a Komo

Platform non- conformance, then Komo may charge for recovery and restoration services at Komo's applicable rates, or such other rates as may be agreed in writing with the Customer. Recovery and restoration services are not available for Free Trial Customers.

2.6. Technology Improvement. The parties acknowledge that the Komo Platform is a platform and may extend to multiple third party technologies and standards, all of which will evolve over time. Komo may modify the Subscription Services and Supplemental Materials as it determines necessary to reflect changes in technology and information security practices. Komo will notify the Customer in advance of any material modifications. If Komo proposes to introduce any "Breaking Change" (defined below) into the Komo Platform, then Komo will provide the Customer at least two (2) months' notice prior to Komo's implementation of the Breaking Change, except in cases of emergency, such as critical vulnerability remediation, in which case Komo will provide as much prior notice as is reasonable in the circumstances. If a modification (including a Breaking Change) made by Komo materially reduces the features or functionality of the Subscription Services then, unless Komo has provided a substantially equivalent replacement, the Customer may, at any time within the 30 day period following Komo's implementation of the modification, terminate any affected Sales Order by delivery of written notice to Komo to that effect. Within 30 days of such termination, Komo will refund to the Customer a pro-rata amount of any affected Subscription Services fees prepaid to Komo and applicable to the unutilized portion of the Subscription Term for terminated Subscription Services, and any affected unutilised Professional Services fees prepaid to Komo. Notwithstanding the foregoing, Komo will not be obligated to provide the Customer with any refund for modifications made by Komo to address:

- (i) changes in applicable law,
- (ii) changes in its third party certification standards (such as ISO 27001, ISO 27018 or PCI- DSS), or
- (iii) a security vulnerability, unless, in the case of items (ii) and (iii), the modification is a Breaking Change, and the Breaking Change makes it impossible for the Customer to continue to use the Komo Platform.

Upon any modification to the Subscription Services or Supplemental Materials, Komo may require the Customer to utilise updates to Komo software, or updates to third party software utilised by the Customer in order

to continue using some or all of the Subscription Services (but at no additional charge with respect to any Komo updates or third party updates that are provided by Komo). A “**Breaking Change**” means a change to the Komo Platform that, to Komo’s knowledge, will cause failures in the interoperation of the Komo Platform and the Customer’s Contents.

3. License Grants and Proprietary Rights

- 3.1. License by Komo. Subject to the terms and conditions of this Agreement, Komo hereby grants to the Customer a non-exclusive, non-transferable (except in accordance with Section 13.11 - Assignment), royalty-free, worldwide license, without right to sub-license, for the Subscription Term, to
- (a) access and use, and to permit its Users to access and use, the Komo Platform, in accordance with the Documentation, subject to the Entitlements, and
 - (b) reproduce, modify, and distribute and display the Documentation, in each case solely for the Customer’s operations in its ordinary course of business. Komo reserves all other rights not expressly granted in this Agreement.
- 3.2. License by the Customer. The Customer hereby grants to Komo a non-exclusive, non-transferable (except in accordance with Section 13.11 - Assignment), royalty-free license, without right to sub-license (except to its sub-processors, as required for the provision of the Subscription Services), to use the Customer Data, solely as necessary to perform the Services and as otherwise may be agreed in writing by the Customer. The Customer reserves all other rights not expressly granted in this Agreement.
- 3.3. Ownership of Intellectual Property Rights.
- 3.3.1. **Ownership and Use of Customer Data.** The Customer retains all of its rights, title and interest and Intellectual Property Rights in and to the Customer Data and The Customer’s Confidential Information. No ownership interest in the Customer Data or the Customer’s Confidential Information is transferred or conveyed to Komo by virtue of this Agreement. Komo will use the Customer Data and the Customer’s Confidential Information only for purposes of providing the Services, unless otherwise authorised in writing by the Customer.
 - 3.3.2. **Komo’s Intellectual Property and Ownership Rights.** As between the Customer and Komo, Komo and Komo’s licensors retain and own all right, title and interest and all Intellectual Property Rights in and to the Subscription Services, Komo’s Confidential Information, and Komo’s Supplemental Materials, and all enhancements or improvements to, or derivative works of any of the foregoing created or developed by or on behalf of Komo (collectively, “Komo Intellectual Property”). Nothing

in this Agreement transfers or conveys to the Customer any ownership interest in or to the Komo Intellectual Property.

- 3.4. Restrictions. The Customer, including its users and affiliates, will not:
- (i) except to the extent, if any, permitted by applicable law or required by Komo's licensors, reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from any of the Komo Platform;
 - (ii) reproduce, modify, or prepare derivative works of the Komo Platform; or
 - (iii) share, rent or lease the Subscription Services, or use the Subscription Services to operate any timesharing, service bureau or similar business or to provide the Komo Platform as a standalone offering.

4. Compensation

- 4.1. Subscription Plans. The Customer's subscription plan for the Subscription Services is specified in the applicable Sales Order. The Customer may not reduce the Customer's commitment under the subscription plan specified in the Sales Order during the Subscription Term. The Customer is not entitled to any refund of fees paid or relief from fees due if the volume of Subscription Services the Customer actually uses is less than the volume the Customer ordered, and the Customer may not carry over any of the unused volume to the Customer's next Subscription Term.
- 4.2. Payment of Services Fees. The Customer will pay Komo the fees for the Services as specified in the applicable Sales Order. Komo invoices in advance for use of the Services. Unless specified otherwise in the applicable Sales Order, the Customer will make all payments within thirty (30) days of receipt of Komo's invoice. Unless otherwise specified in the applicable Sales Order, all Fees are stated and payable in AUD dollars.
- 4.3. Sales Taxes. Etc. The Customer will be responsible for any applicable goods and services, sales, value-added, use and similar taxes, together with all customs and import duties, and similar levies and impositions ("**Taxes**") payable with respect to its acquisition of Services, or otherwise arising out of or in connection with this Agreement, other than taxes based upon Komo's personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes. If the Customer has tax-exempt status, the Customer will provide written evidence of such status with its purchase orders or upon request by Komo.
- 4.4. Withholding. If the Customer is located outside of Australia, and is required to withhold taxes imposed upon Komo for any payment under this Agreement by virtue of the statutes, laws, codes or governmental regulations of a

country in which any Subscription Services are delivered or obtained, then such payments will be made by the Customer on behalf of Komo by deducting them from the payment then due to Komo and remitting such taxes to the proper authorities on a timely basis, and the payments provided for under this Agreement will be adjusted upwards appropriately so that Komo actually receives the full amount of the fees set forth in the applicable Sales Order. The Customer will provide Komo with official documentation or tax receipts on such withholdings supporting such taxes and such payments as may be required by Komo for its tax records as soon as reasonably possible following payment to the applicable tax authority, and in any event no later than when required by applicable law.

5. Warranties

5.1. Warranties. Komo warrants to the Customer that:

5.1.1. Performance Warranty. During the Subscription Term, the Komo Platform, in the form provided by Komo, will conform in all material respects to its applicable specifications set forth in the Documentation.

Warranty disclaimer. Except as expressly provided in this Section 5.1.1, the Komo Platform is provided "as is," and we and our suppliers expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality or merchantability, whether express, implied or statutory. Without limiting our express obligations in these terms, we do not warrant that the Customer's use of the Komo Platform will be uninterrupted or error-free, that we will review your data for accuracy or that we will preserve or maintain your data without loss. The Customer understands that use of the Komo Platform necessarily involves transmission of your data over networks that we do not own, operate or control, and we are not responsible for any of your data lost, altered, intercepted or stored across such networks. Komo cannot guarantee that its security procedures will be error-free, that transmissions of the Customer's data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers. Komo will not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications or other systems outside our reasonable control. The Customer may have other statutory rights, but the duration of statutorily required warranties, if any, will be limited to the shortest period permitted by law.

5.1.2. Viruses. Komo will use commercially reasonable efforts, using applicable current industry practices, to ensure that the Komo

Platform, in the form provided by Komo to the Customer under this Agreement, contains no computer virus, Trojan horse, worm or other similar malicious code.

- 5.1.3. Support Program. Komo will provide the Support Program in a good, professional and workmanlike manner, consistent with applicable industry standards.
- 5.1.4. Compliance with Law. The Services, in the form provided or made available by Komo, will comply with all laws applicable to Komo and its provision of Services.
- 5.2. Warranties. The Customer warrants to Komo that it has the power and authority to enter into this Agreement.
- 5.3. Performance Remedy. If the Komo Platform fails to conform to the warranty set forth in Section 5.1.1 and the Customer provides written notice of the non-conformance to Komo within the applicable Subscription Term then, as the Customer's exclusive remedy and Komo's sole obligation: Komo will either repair or, at its option, replace the non-conforming Komo Platform or, if Komo is unable to correct the non-conformance within 30 days of receipt of such written notice from the Customer, the Customer may terminate the applicable Subscription Services, and Komo will refund to the Customer a pro-rata amount of any Subscription Services fees prepaid to Komo and applicable to the unutilised portion of the Subscription Term for the terminated Subscription Services.
- 5.4. Bugs and Abatement: Scope. Without limiting the express warranties in this Section 5, Komo does not warrant that the Komo Platform or Services are completely free from all bugs, errors, or omissions, or will ensure complete security. The warranties in Sections 5.1.1 and 5.1.3 do not apply to any Free Trial, or to any Komo Supplemental Materials. Supplemental Materials developed, created or provided by third parties are made available AS IS, without warranty of any kind. The warranties in this Agreement are for the sole benefit of the Customer, and may not be extended to any other person or entity.
- 5.5. Disclaimer Of Implied Warranties. Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in this Agreement. To the maximum extent permitted by applicable law, except as specifically warranted in this section 5, each party disclaims all implied warranties, including any implied warranty of merchantability or fitness for a particular purpose, any implied warranty of non- infringement or implied obligation to indemnify for infringement, any implied warranty arising from course of performance, course of dealing, or usage of trade, and any statutory remedy.

6. Confidential Information

- 6.1. Restrictions on use and Disclosure. Neither Komo nor the Customer will disclose to any third party any information provided by the other party pursuant to or in connection with this Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "**Confidential Information**"), and will make no use of such Confidential Information, except under and in accordance with this Agreement. The receiving party will take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party's Confidential Information from unauthorized access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of this Agreement. Each party will be liable for any breach of its obligations under this Section 6 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Komo's Confidential Information includes information regarding the Komo Platform, Komo's processes, methods, techniques and know-how relating to identity management, user authentication or user authorisation, Documentation, road-maps, pricing, marketing and business plans, financial information, information security information, certifications, and Personal Information of Komo personnel. The Customer's Confidential Information includes its proprietary workflows and processes, systems architecture, marketing and business plans, financial information, information security information, information pertaining to the Customer's other suppliers, and Personal Information of the Customer's personnel. This Section 6 does not apply to Komo's obligations regarding use and protection of Customer Data; those obligations are specified in Section 7 (Data Protection).
- 6.2. Exclusions. Except with respect to Personal Information, Confidential Information does not include information that the receiving party can establish:
- (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party;
 - (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions;
 - (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or

- (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.
- 6.3. Disclosure Required By Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "**Disclosure Order**") then, unless otherwise required by the Disclosure Order, the receiving party will promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party will cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information. The receiving party will disclose only that portion of the Confidential Information that is legally required.
- 6.4. Independent Development. The terms, of confidentiality under this Agreement will not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

7. Data Protection

- 7.1. Regulatory Issues.
 - 7.1.1.
 - (a) The Customer and its use of Komo Platform (including use by your End Users) must comply at all times with these Terms, the Acceptable Use Policy and all laws. You represent and warrant that: (i) you have obtained all necessary rights, releases and permissions to submit all data including Personal Information to the Komo Platform and to grant the rights granted to us in these Terms and (ii) data including Personal Information and its submission and use as the Customer authorizes in these Terms will not violate (1) any laws, (2) any third-party intellectual property, privacy, publicity or other rights, or (3) any of your or third-party policies or terms governing any data submitted by the Customer including Personal Information. Komo assumes no responsibility or liability for the data submitted by the Customer including Personal Information, and the Customer is solely responsible for the data submitted to the Komo Platform and the consequences of submitting and using it with the Komo Platform.
 - (b) The Customer will not (and will not allow any third party to) use the Komo Platform to track, collect or upload any data that personally identifies an individual (such as a name, email address or billing information), or other data which can be reasonably linked to such information by Komo. The Customer will have and abide by an appropriate Privacy Policy and will comply with all applicable laws

and regulations relating to the collection of information from visitors to the Customer's website or webpages. The Customer must post a Privacy Policy and that Privacy Policy must provide notice of the Customer's use of cookies that are used to collect traffic data, and the Customer must not circumvent any privacy features (e.g., an opt-out) that are part of the Subscription Services.

(c) *Komo's collection of Personal Information* Komo will collect certain data and information including Personal Information about a Customer and/or its End Users in connection with the Customer and its End Users' use of the Subscription Services and otherwise in connection with these Terms. Komo will collect and use all such data and information in accordance with its Privacy Policy [insert the website link for Komo's Privacy Policy], which you acknowledge.

7.2. Information Security. Komo will implement and maintain commercially reasonable technical and organisational security measures designed to meet the following objectives:

- (i) ensure the security and confidentiality of Customer Data in the custody and under the control of Komo;
- (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data;
- (iii) protect against unauthorised access to or use of such Customer Data; and
- (iv) ensure that Komo's return or disposal of such Customer Data is performed in a manner consistent with Komo's obligations under items (i)-(iii) above. The Customer is solely responsible for consequences of the Customer's decision not to adopt updates or best practices that Komo makes available to the Customer.

7.3. Data Export. Retention. Deletion and Return. The Customer may export Customer Data from the Komo Platform at any time during the Subscription Term and up to fourteen (14) days following expiration or termination of the Subscription Term, using the Komo Platform's then existing features and functionality, at no additional charge.

The Customer is solely responsible for its data retention obligations with respect to Customer Data. The Customer may request that Komo deletes Customer Data on its Tenants at any time. Komo is not obligated to delete copies of Customer Data retained in automated backup copies generated by Komo, which Komo will retain for up to 24 months from their creation. Such backup copies will remain subject to this Agreement until the copy, or the Customer Data in the copy, is destroyed.

Komo's obligations to return Customer Data upon termination of a Subscription Term may be fulfilled by permitting the Customer to export Customer Data as specified above.

Komo has no obligation to maintain or provide any Customer Content or Customer Data beyond the period specified in this Section.

7.4. Sub-Processors. The Customer consents to Komo's use of sub-processors to provide aspects of the Subscription Services, and to Komo's disclosure and provision of Customer Data to those sub-processors. The subprocessors which are being used by Komo include the following (without limitation) ("**Sub-Processor List**"):

- (i) Google Cloud Platform;
- (ii) Google Marketing Platform;
- (iii) Google Workspace;
- (iv)
- (v) DataDog;
- (vi) Xero;
- (vii) AnnouceKit;
- (viii) Stripe; and
- (ix) Hubspot.

7.5. Access by Komo Personnel. Komo will ensure that its personnel access Personal Information only when authorised by Komo, and in accordance with Komo's applicable controls. Access is typically required only in connection with Komo's provision of the Support Program, and then only when necessary to resolve an issue. Komo will ensure that its personnel are subject to obligations of confidentiality with respect to Customer Data.

7.6. End User Requests. If any End User requests Komo to provide them with information relating to Processing of their Personal Information, or to make changes to their Personal Information, then Komo will promptly notify the Customer of the request, unless otherwise required by applicable law. The Customer may make changes to User data using the features and functionality of the Komo Platform. Komo will not make changes to User data except as agreed in writing with the Customer.

7.7. Sending Personal Information Overseas. Komo may need to disclose your information, including information we receive to organisations located overseas. The most common reason for Komo disclosing information overseas is because we use service providers to perform some functions on our behalf, and some of these service providers are located overseas. We

only disclose your information to these organisations when it is necessary for the services they provide Komo. When we disclose your information to an organisation located overseas, will take reasonable steps to ensure your information is treated in accordance with the standards that apply in Australia, except in rare cases (for example, where we are required by law to disclose your information overseas) or where we obtain your consent not to take these measures.General Data Protection Regulation

Under the UK and EU General Data Protection Regulation ("GDPR"), we may have some additional obligations with respect to the "personal data" collected from residents of the UK or EU as a data importer.

We will comply with all obligations imposed on data importers under the GDPR with respect to the personal data of EU and UK residents, including the GDPR Standard Contractual Clauses in respect of EU transfers or the international data transfer agreement (IDTA) or the international data transfer addendum to the European Commission's standard contractual clauses for international data transfers (Addendum) in respect of the UK transfers to the extent that they may apply to us and our relationships with third parties.

7.8. Breach Notification. Komo will notify the Customer of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Customer Data in Komo's possession or under its control (a "Security Breach") within 48 hours of Komo's confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach including, in the case of Komo, prompt provision of the following, to the extent then known to Komo:

- (i) the possible cause and consequences of the Security Breach;
- (ii) the categories of Personal Information involved;
- (iii) a summary of the possible consequences for the relevant Users;
- (iv) a summary of the unauthorized recipients of the Customer Data; and
- (v) the measures taken by Komo to mitigate any damage.

Upon confirmation of any vulnerability or breach of Komo's security affecting Customer Data in Komo's custody and control, Komo will modify its processes and security program as necessary to mitigate the effects of the vulnerability or breach upon such Customer Data. Insofar as the Security Breach relates to the Customer, and except to the extent required otherwise by applicable law, the Customer will have approval rights on notifying its Users and any third-party regulatory authority of the Security Breach. All security breach or security compromise notifications will be via email to the

persons designated by the Customer to receive notices in the Komo Platform.

8. Term; Termination of Sales Orders

- 8.1. General. This Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with Section 8.2 or 8.3 below.
- 8.2. Termination On Breach. In the event of a material breach of the Agreement by either party, the non-breaching party may terminate the Agreement or any Sales Order affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending 30 days after the receipt of such notice by the breaching party, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then this Agreement or any such Sales Order will terminate within the time period specified in the Termination Notice. Notwithstanding the foregoing, the Customer's failure to pay any overdue fees and expenses within 30 days of Komo notifying the Customer of the overdue payment will constitute a material breach of this Agreement. If the Customer has not cured a material breach within the applicable cure period, then Komo may, on not less than 5 business days' prior written notice to the Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Komo's obligations to provide Services under this Agreement. If the Customer terminates this Agreement or any Sales Order for breach in accordance with this Section 8.2, then Komo will refund to the Customer a pro-rata amount of any affected Subscription Services fees prepaid to Komo and applicable to the unutilised portion of the Subscription Term for terminated Subscription Services, and any affected unutilised Professional Services fees prepaid to Komo.
- 8.3. Termination for Convenience. The parties acknowledge and agree that each Subscription Term is priced as a minimum term, and may not be terminated for convenience by the Customer. The Customer may terminate any Professional Services for convenience at any time, upon not less than 30 days' prior notice to Komo. Either party may terminate a Free Trial at any time, for any reason, effective upon delivery of notice to that effect. Subject to the foregoing, Komo may not terminate any Services for convenience.
- 8.4. Komo reserves the right, at its sole discretion, to suspend or terminate any account. In the event that Komo suspends or terminates an account, Komo's total liability is limited to the pro-rata amount of any affected Subscription Services fees prepaid to Komo and applicable to the unutilised portion of the Subscription Term for terminated Subscription Services. Subscription Term and Renewal. Each subscription term for Subscription Services will

commence on the Subscription Start Date, and will continue for the period specified in the Sales Order or, if not so specified, one year (an “**Initial Term**”). Upon expiration of the Initial Term the Agreement will automatically renew for successive periods equal to the Initial Term (“**Renewal Term**”), unless either party provides written notice of non-renewal to the other party at least thirty (30) days prior to the expiration of the then-current term. The terms and conditions of this Agreement shall remain in full force and effect during any renewal term unless otherwise mutually agreed upon in writing by the parties.

- 8.5. Fulfillment of Obligations on Termination. Except as otherwise specified in this Agreement, termination of the Agreement or of any Services will not entitle the Customer to any refund of or relief from payment of any Services fees paid or payable under this Agreement.
- 8.6. Post Termination Obligations. Following any termination of the Agreement or any Sales Order, each party will, within 30 days of such termination,
- (i) immediately cease use of any Confidential Information of the other communicated for the purposes of this Agreement or such Sales Order, and
 - (ii) return or destroy (and certify destruction of) all copies of any Confidential Information of the other party disclosed under the Agreement or such Sales Order within 30 days of such termination, subject to each party’s customary backup and archival processes.
- 8.7. Suspension – Critical Threats. If Komo, acting reasonably in the circumstances then known to Komo, determines that the Customer’s or any of its Users’ use of the Subscription Services poses an imminent threat to:
- (i) the security or integrity of any Customer Data or the data of any other Komo customer, or
 - (ii) the availability of the Komo Platform to the Customer or any other Komo customer (collectively, a “**Critical Threat**”), then Komo will immediately attempt to contact the Customer to resolve the Critical Threat. If Komo is unable to immediately contact the Customer, or if Komo contacts the Customer but the Customer is unable to immediately remediate the Critical Threat, then Komo may suspend the Customer’s and its Users’ use of the Komo Platform until the Critical Threat is resolved and Komo is able to restore the Subscription Services for the Customer.
- 8.8. Survival. The provisions of Sections 1, 3.3-3.4, 4.3-4.4, 6, 7, 8.5-8.8, 9-11 and 14 of this Agreement will survive any termination or expiration of this Agreement.

9. Indemnification

9.1. Komo's Infringement Indemnification.

Customer to Indemnify Komo

9.1.1 To the extent permitted by applicable law, the Customer will indemnify, hold harmless and defend Komo and its Affiliates, at the Customer's expense, from any and all third-party claims, actions, proceedings, and suits brought against Komo or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, reasonable attorneys' fees and other litigation expenses) incurred by Komo or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (i) the Customer's breach of any term or condition of this Agreement, (ii) the Customer's use of the Subscription Services, (iii) the Customer's violations of applicable laws, rules or regulations in connection with the Subscription Services, (iv) any representations and warranties made by the Customer concerning any aspect of the Subscription Services, the software or Reports to any third Party; (v) any claims made by or on behalf of any Third Party pertaining directly or indirectly to the Customer's use of the Service, the software or reports; (vi) violations of the Customer's obligations of privacy to any third Party; and (vii) any claims with respect to acts or omissions of any Third Party in connection with the Subscription Services, the Komo Platform or Documentation. Komo will provide the Customer with written notice of any claim, suit or action from which the Customer must indemnify Komo. The Customer will cooperate as fully as reasonably required in the defense of any claim. Komo reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by the Customer.

10. Limitations and Exclusions of Liability

10.1. Exclusion of Certain Claims. Subject to Section 10.3, in no event will either party be liable to the other party or to any third party for any consequential, indirect, special, incidental, punitive or exemplary damages, whether foreseeable or unforeseeable, even if such party has been advised of the possibility of such damages, arising out of:

- (i) the performance or non-performance of this agreement or any related agreement, or any software, products or services provided hereunder, or
- (ii) any claim, cause of action, breach of contract or any express or implied warranty, under this agreement, any related agreement or otherwise, misrepresentation, negligence, strict liability, or other tort.

10.2. Limitation of Liability.

- (i) Subject to Section 10.3, neither party's maximum aggregate liability arising out of this Agreement or any related agreement will in any event exceed the fees paid to Komo under the Sales Order giving rise to the claim during the 12 month period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise,
- (ii) Sites created using the Platform may contain links to external sites. Komo bears no responsibility for the accuracy, legality or content of the external site or for that of subsequent links. Contact the external site for answers to questions regarding its content.

10.3. Exceptions.

10.3.1. Section 10.2 do not apply to the Customer's

- (a) willful misconduct or gross negligence,
- (b) infringement or misappropriation of any of Komo's Intellectual Property Rights,
- (c) liability or loss which may not be limited by applicable law or
- (d) breach of Section 7.1 and/or failure to comply with any privacy and data protection laws.

10.3.2. Notwithstanding Section 10.1, the following will be deemed direct damages for purposes of this Agreement:

- (a) any amounts payable by an indemnified party to a third party pursuant to a judgment or to a settlement agreement approved in writing by an indemnifying party, liability for which falls within the indemnifying party's indemnification obligations under this Agreement, and
- (b) all fees payable by the Customer under this Agreement.

10.3.3. Section 10.2 does not apply to

- (i) each party's defense and indemnification obligations,
- (ii) the Customer's obligations to pay fees and expenses when due and payable under this Agreement, nor
- (iii) either party's obligations under Section 6 (Confidential Information) or Section 7 (Data Protection), provided, however, that except to the extent of willful misconduct or gross

negligence of Komo, Komo's maximum aggregate liability under Section 7 will not exceed two times (2X) the fees paid by the Customer to Komo under the affected Sales Order in the 12 month period immediately preceding the Customer's first assertion of its claim.

- 10.4. Free Trial. With respect to any Free Trial, Komo's aggregate liability will in no event exceed one hundred AUD dollars (AU\$100), regardless of any theory of liability, and notwithstanding any provision of this Agreement to the contrary, including Sections 10.1-10.3.
- 10.5. General. Each party agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such party, or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Neither party may commence any action or proceeding under this Agreement more than two years after the occurrence of the applicable cause of action.

11. Dispute Resolution

- 11.1. If a dispute arises under this Agreement ("**Dispute**"), a party may give written notice to the other party, specifying the dispute and requiring its resolution under this Section ("**Notice of Dispute**").
- 11.2. The party who receives the Notice of Dispute will, within five (5) days, schedule a meeting between senior executives from each party to discuss and resolve the Dispute ("**Dispute Meeting**").
- 11.2. If the Dispute is not resolved within fourteen (14) days of the Dispute Meeting, either party may:
- (i) jointly refer the Dispute to mediation.
 - (ii) If the parties are unable to agree on a mediator within thirty (30) days of the Dispute Meeting, the mediator will be appointed by the Australian Disputes Centre (or other similar body).
 - (iii) The party who provides the Notice of Dispute must pay the mediator's fees. Each party must pay its own costs for attending the mediation.
- 11.3. If the dispute is not resolved within thirty (30) days after the appointment of the mediator, the parties will be free to commence court proceedings.
- 11.4. This clause does not prevent any party from obtaining any urgent injunctive relief from a court.

12. Acceptable Use

This section outlines what constitutes acceptable and unacceptable use of the Platform. You are solely responsible for your conduct and your data related to the Platform. You agree to indemnify, defend, and hold harmless Komo from any and all loss, cost, liability, and expense arising from your use of the Platform in any way that violates acceptable use.

- 12.1. Changes to these terms. Komo may decide, at any time, to modify any or all of this Policy if we make changes to the site or services, in response to changes in the law, or for other reasons. We will post any changes to this Policy on this page, without advance notification to our users. Any changes to this Policy will become effective as soon as they are posted on this page, so your continued use of our site or services after the modifications are posted, will constitute your acceptance of the modifications.
- 12.2. Acceptable use.
 - (i) You may only use the Platform to the extent permitted by your plan, sales order, or any other contract between you and Komo.
 - (ii) Only upload and publish content that you have created or to which you own the copyright or intellectual property rights.
- 12.2 Unacceptable use. Prohibited uses and activities include, without limitation, any use of the Platform in a manner that, in Komo's sole discretion, involves or attempts any of the following:
 - (i) Violating any law of, or committing conduct that is tortuous or unlawful in, any applicable jurisdiction;
 - (ii) Publishing any material that is unlawfully pornographic or indecent, or that contain extreme acts of violence.
 - (iii) Violating any copyright, patent, trademark, service mark, or other intellectual property rights.
 - (iv) Transmission of highly sensitive personal information of an individual in a manner that can be associated with the individual.
 - (v) Violating the privacy or infringing the rights of others.
 - (vi) Send unsolicited communications, promotions, or advertisements using the Platform.
 - (vii) Reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from the Platform.
 - (viii) Probe, scan, or test the vulnerability of the Platform.
 - (ix) Breach or otherwise circumvent any security or authentication measures.

- (x) Introducing or activating any viruses, worms, harmful code and/or Trojan horses.
- (xi) Reselling the Platform, in whole or in part, to any entity or individual, without Komo's prior written consent, or misrepresenting your relationship with Komo.

- 1.2. Consequences for breaching this policy. Komo reserves the right, at its sole discretion, to suspend or terminate any account that breaches this Policy.

In the event that Komo suspends or terminates any account, Komo's total liability is limited to the pro-rata amount of any affected Subscription Services fees prepaid to Komo and applicable to the unutilised portion of the Subscription Term for terminated Subscription Services.

2. Miscellaneous Provisions

- 2.1. Affiliates. This Agreement set forth the general terms and conditions under which Komo will provide Services to the Customer and its Affiliates. Sales Orders may be entered into under this Agreement by either the entity designated above as "Customer" or any of the Customer's Affiliates. The entity that executes a Sales Order in the position of services recipient will be considered the "Customer" for all purposes of the Sales Order; and the Sales Order will be considered a two party agreement between Komo and such "Customer" under this Agreement.
- 2.2. Publicity: References. Unless otherwise specified in the applicable Sales Order, Komo may refer to the Customer as one of Komo's customers and use the Customer's logo as part of such reference, provided that Komo complies with any trademark usage requirements notified to it by the Customer. With the Customer's prior written approval, including if so specified in the applicable Sales Order,
- (i) Komo may either
 - (a) issue a press release announcing the relationship between Komo and the Customer, or
 - (b) submit a joint press release to the Customer for the Customer's approval, such approval not to be unreasonably withheld or delayed; and
 - (ii) the Customer will be a reference account for Komo, provided, however, that Komo will provide the Customer with reasonable notice and obtain the Customer's consent before scheduling any reference calls or site visits.
- 2.3. Equitable Relief. Each of the Customer and Komo acknowledges that damages will be an inadequate remedy if the other violates the terms of this

Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Information. Accordingly, each of them will have the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in this Agreement.

- 13.5. Force Majeure. If the performance of this Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then, except with respect to obligations to pay any fees or expenses and to obligations under Section 13.4 above (Disaster Recovery), the party affected, upon giving prompt written notice to the other party, will be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected will use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties will proceed whenever such causes are removed or cease. "Force Majeure Event" means any failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than 30 days, then the other party may terminate the affected Services without liability.
- 13.6. Fraudulent Activity: Aggregated Information-Derived From Usage. Komo may use Personal Information obtained from Users' use of the Komo Platform to detect security incidents and to protect against fraudulent or illegal activity. Komo may create aggregated and de-identified data that is derived from Users' use of the Subscription Services ("**Aggregated Usage Data**"). Komo owns all Aggregated Usage Data obtained from the Komo Platform. Komo may use Aggregated Usage Data for Komo's internal and business operations, including to conduct aggregate analysis of the Subscription Services' performance and use. Komo may disclose the results of its analysis of Aggregated Usage Data to third parties as Komo reasonably considers necessary, provided that such results do not contain any Personal Information of the Customer's Users, identify either the Customer or any of its Users, or enable a third party to determine that either the Customer or any of its Users were the source of such information. For the sake of clarity, neither

Aggregated Usage Data nor the results of its analysis are Confidential Information of the Customer.

- 13.7. Captions and Headings. The captions and headings are inserted in this Agreement for convenience only, and will not be deemed to limit or describe the scope or intent of any provision of this Agreement.
- 13.8. Severability: Invalidity. If any provision of this Agreement is held to be invalid, such invalidity will not render invalid the remainder of this Agreement or the remainder of which such invalid provision is a part. If any provision of this Agreement is so broad as to be held unenforceable, such provision will be interpreted to be only so broad as is enforceable.
- 13.9. Waiver. No waiver of or with respect to any provision of this Agreement, nor consent by a party to the breach of or departure from any provision of this Agreement, will in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver will be effective only in the specific instance and for the purpose for which given.
- 13.10. Assignment. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other, which will not be unreasonably withheld, provided, however that, subject to any restrictions specified in any applicable Sales Order, either party may assign all, but not some of its rights and obligations under this Agreement to any of its Affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets, upon notice to the other party, but without requiring consent. Subject to the foregoing restriction on assignment, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.
- 13.11. Notices. Komo will provide the Customer with notices that affect Komo's customers generally (e.g., notices that relate to modifications or updates to, or the availability or interoperability of the Komo Platform) via e-mail. Komo will provide the Customer with any legal notices by pre-paid first class mail, or e-mail to the mailing or e-mail address the Customer provided Komo on the applicable Sales Order, or during the Customer's registration for the Services, or to a substitute, updated mailing or e-mail address that the Customer has provided to Komo for these purposes. The Customer is responsible for keeping its mailing and e-mail address current with Komo. Except as otherwise specified in this Agreement, all notices to be given to Komo under this Agreement must be in writing and sent by email to legal@komo.tech, or by prepaid first class mail or air courier at the address specified below, or to a substitute, updated address notified by Komo, marked "Attention: Legal Department". Notices sent electronically will be deemed received within 1 business day of dispatch. Notices sent by prepaid first class mail will be deemed received within 5 business days of dispatch

(however, notices sent by mail to addressees in a different country from that of the sender will be deemed received upon delivery). Notices sent by air courier, or personally delivered, will be deemed received upon delivery.

The address for service of notices is:

Komo
level 4/15 Ogilvie Rd
Mount Pleasant WA 6153
Australia

- 13.12. Governing Language. The governing language for this Agreement and its related transactions, for any notices or other documents transmitted or delivered under this Agreement, and for the negotiation and resolution of any dispute or other matter between the parties, will be the English language. If there is any conflict between the provisions of any notice or document and an English version of the notice or document (including this Agreement), the provisions of the English version will prevail. The Customer waives any rights it may have under any law in any state or country to have the Agreement written in any language other than English. In transactions between the parties, a decimal point will be indicated by a period, and not by a comma.
- 13.13. Governing Law and Venue. This Agreement will be exclusively governed by and interpreted in accordance with the laws of Western Australia. In the event of any controversy or claim arising out of or relating to this Agreement, or its breach or interpretation, the parties will submit to the exclusive jurisdiction of and venue in the applicable courts or arbitration bodies in Perth, Western Australia. Each party waives all defenses of lack of personal jurisdiction and inconvenient forum.
- 13.14. Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of this Agreement, the substantially prevailing party in such proceeding will be entitled to recover, in addition to all other relief arising out of this Agreement, its reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.
- 13.15. Entire Agreement: Amendments. This Agreement constitutes and embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. This Agreement may not be modified or amended except by a written instrument executed by both parties. Any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained on or within any invoice, purchase order, or standard terms of purchase, or any click through license agreement or terms of use, are specifically and expressly rejected by each party. In the event of any conflict

between the provisions of this Agreement and any Sales Order, the provisions of this Agreement will prevail.

- 13.16. Counterparts. Sales Orders, this Agreement, and any amendments to this Agreement may be executed in one or more counterparts, which taken together will constitute a single agreement between the parties.

Questions about this Policy (e.g., whether any contemplated use is permitted) should be directed to support@komo.tech.