



# TERMS OF SERVICE (KEEPIT USA INC.)

Last updated July 2021

## 1. BACKGROUND AND PURPOSE

- 1.1. Keepit is a software company specializing in cloud-to-cloud back-up solutions.
- 1.2. This Agreement is entered into between Keepit and the Customer and sets forth the legally binding terms and conditions and governs the Customer's right to use the Keepit cloud backup services.

## 2. DEFINITIONS

- 2.1. In this Agreement all capitalized terms used shall have the meanings given to them below:
- 2.2. **Agreement** means the Order Form, these Terms of Service, the Privacy Terms (as defined in Section 18.2) referenced herein and all annexes and schedules thereto.
- 2.3. **Account** means a unique user identification name and password assigned to the Customer to enable an admin account in connection with the provision of the Services.
- 2.4. **Active Users** means the number of Cloud Solutions user accounts as set out in the Order Form, which the Customer has purchased the Services for. The definition of an Active User follows the definition set out by the Cloud Solutions.
- 2.5. **Affiliate** means, with respect to a Party, any corporation or other business entity controlled by, controlling or under common control with that Party whereby control means (i) the direct or indirect ownership of more than 50 % (fifty percent) of the equity interest in such cooperation or business entity, or (ii) the ability in fact to control the management decisions of such corporation or business entity.
- 2.6. **Cloud Solutions** means the third-party cloud solutions mentioned in the Order Form.
- 2.7. **Confidential Information** means any information of a confidential or non-public nature disclosed by one Party as a disclosing Party to the other Party as a receiving Party that is either designated as confidential or proprietary at the time of disclosure or should be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure.
- 2.8. **Customer** means the Customer identified in the Order Form.
- 2.9. **Customer Content** means all data, including text, sound, video or image files, and software that customer stores, generates, accesses, imports, exports, receives or sends through the Customer's use of the Cloud Solutions. For example, Customer Content will include emails and attachments, SharePoint Online site content, or instant messaging conversations.
- 2.10. **Data Retention** means the amount of time a data object remains in the backup after being deleted from Customer's cloud solutions backed up by the Services.
- 2.11. **Fees** means the fees set forth in the Order Form.
- 2.12. **Keepit** means Keepit USA Inc., 299 California Avenue, Suite 200, Palo Alto, CA 94306.
- 2.13. **Order Form** means (i) the signed order form between the Parties, or (ii) the applicable online registration form, referencing this Agreement and setting forth the specific Services provided hereunder.
- 2.14. **Party** means either the Customer or Keepit individually; **Parties** means the Customer and Keepit jointly.
- 2.15. **Representatives** means employees, agents, suppliers and other third parties collectively.
- 2.16. **Service Credits** means additional days of service which are added to the term of the relevant Order Form.
- 2.17. **Services** means the Keepit cloud backup services identified in the Order Form.
- 2.18. **Terms** mean these Terms of Service.
- 2.19. **Use Limitations** means any use limitations or restrictions with respect to the Customers use of the Services set forth in the applicable Order Form or these Terms
- 2.20. **User(s)** means user accounts with different privileges of access and usage to the Services under the Account.
- 2.21. **UserID** means a unique user identification name and password which each User will receive in order to access the Services.

## 3. SERVICES

- 3.1. The Services provide cloud-to-cloud backup solutions for the Cloud Solutions stated in the Order Form. In accordance with these Terms and any additional terms set forth in the applicable Order Form, the Customer will have access to the specified Services.
- 3.2. The Services, generally stated, enable the Customer through the Services to extract Customer Content from the Active Users in the Cloud Solutions and create backups on the Keepit platform, recover Customer Content from such backups, restore Customer Content back to where the Customer Content originally resided and download



Customer Content using the export/restore tools offered, all for the duration of the Order Form term and any renewals thereof.

- 3.3. Keepit will use reasonable efforts to make the Services available to the Customer, subject to the Agreement. In order to provide the Services to the Customer, the Customer will be responsible to maintain valid and active access to Cloud Solutions and pay all costs for such Cloud Solutions. In the event that the Order Form contains terms that conflict with these Terms, the Order Form will take precedence over these Terms.

#### **4. USE OF SERVICES**

- 4.1. Keepit grants to the Customer and their Active Users, in accordance with the Agreement and subject to the Use Limitations, a limited, non-exclusive, revocable, non-transferable, non-sublicensable, non-transferable right to use and access the Services solely for the Customer's internal business purposes. Customer will not be provided with and shall have no right to any software code. In addition, Customer may, subject to these Terms, permit its third-party contractors, agents and outsourcers to use and access the Services solely on behalf of and for the benefit of Customer and subject to the Active Users set out in the Order Form.
- 4.2. The Customer will be assigned an Account in connection with the provision of the Services. Within the Account, the Customer may create and authorize additional Users, each with a UserID.
- 4.3. The Customer is responsible for all activities that occur under the Account and any use of any UserID. Keepit reserves the right to terminate or suspend the Account or any UserID that Keepit reasonably determines may have been used by an unauthorized third party or otherwise used improperly. Customer agrees to immediately notify Keepit of any unauthorized use of any UserID or the Account or any other breach of security.
- 4.4. The Customer is responsible for maintaining security around credentials for accessing the Services and, when applicable, security around the Customer identity provider which may be used to authenticate against the Services.
- 4.5. The Customer agrees to: (i) provide and maintain true, accurate, current, and complete information when the Customer registers for the Services; (ii) update such information to keep it true, accurate, current and complete; and (iii) only open up an Account for the Customer and not for any other party. If the Customer provides any information that is untrue, inaccurate, not current or incomplete, or Keepit has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Keepit has the right to suspend or terminate the Account and to refuse to provide the Customer any current or future use of the Services (or any portion thereof).
- 4.6. The Customer is (i) responsible for any necessary hardware, software and connectivity required to access the World Wide Web and to use the Services, including without limitation, any fees associated with establishing and maintaining such access; (ii) responsible for Users' compliance with the Agreement, (iii) solely responsible for the accuracy, quality, integrity and legality in all applicable jurisdictions of any Customer Content, the means by which the Customer acquired the Customer Content, and for securing our right to retrieve and store the Customer Content in connection with the Services, (iv) prevent unauthorized access to or use of the Services, and (v) use the Services only in accordance with the online materials furnished by Keepit that describe the features, functionality or operation of the Services and in a manner consistent with all applicable laws and regulations.
- 4.7. The Customer will not (i) make the Services available to any third party (except for Users), or (ii) sell, resell, rent or lease the Services.

#### **5. ACCEPTABLE USE POLICY**

- 5.1. Customer agrees not to use the Services to collect, upload, transmit, display, or distribute any Customer Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another's privacy, vulgar, defamatory, false, intentionally misleading, trade libellous, pornographic, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual or is otherwise objectionable; (iii) that is harmful to minors in any way; or (iv) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.
- 5.2. In addition, the Customer agrees not to: (i) upload, transmit, or distribute to or through the Services any computer viruses, worms, time bombs, Trojan horses or any software intended to damage or alter a computer system or data; (ii) interfere with, disrupt, or create an undue burden on servers or networks connected to the Services, or violate the regulations, policies or procedures of such networks; (iii) attempt to gain unauthorized access to the Services (or to other computer systems or networks connected to or used together with the Services), whether through password mining or any other means; (iv) harass or interfere with any other User's use and enjoyment of the Services; or (v) use software or automated agents or scripts to produce multiple Accounts on the Services (except for Users allowed hereunder or otherwise agreed by the Parties). Keepit may, at its discretion, apply automatic monitoring, filtering, and deny performance of activities that do not comply with this Agreement.
- 5.3. Subject to the following, Keepit reserves the right to modify or discontinue any features, functionality, and other attributes of the Services at any time in its sole discretion. Keepit will provide written notice to the Customer prior to any discontinuation or any material changes to the Services. Keepit will not be obliged to provide such notice,

if the discontinuation is necessary to address an emergency or threat to the security or integrity of the Services, respond to claims or litigation, or comply with the law or requests of a government entity. Keepit will not be liable in connection with its modification or discontinuation of the Services. This right will not limit the Customer's use under a current Order Form.

## 6. FEES, PAYMENT AND VERIFICATION

- 6.1. As consideration for Keepit's provision of the Services under this Agreement, the Customer will pay Keepit the Fees. All Fees are due and payable within thirty (30) days from the invoice date unless otherwise specified in the Order Form. All payment obligations are non-cancellable, and all amounts paid are non-refundable (unless expressly stated in the Order Form). To do so, the Customer will provide (i) the Customer's bank information (to pay via wire transfer), or (ii) payment card and related billing and payment information requested by Keepit. The Customer agrees that any such payment information provided to Keepit may be shared by Keepit with payment processors and/or credit agencies, solely for the purposes of checking credit and effecting payment to Keepit for the Services. Keepit shall not be liable for any use or disclosure of such information by such third parties.
- 6.2. All Fees are expressed in and all payments will be made in the currency as set forth in the Order Form. All Fees owed by the Customer in connection with this Agreement are exclusive of, and the Customer shall pay, all sales, use, excise and other taxes that may be levied upon the Customer in connection with the Services, except for taxes based on Keepit's net income. Keepit reserves the right (in addition to any other rights or remedies Keepit may have) to discontinue the Services and suspend all UserID's and the Customer's access to the Services upon prior written notice if any Fees owed are more than five (5) business days overdue until such amounts are paid in full.
  - 6.2.1. Keepit is allowed to adjust any prices set out in the Order Form annually on January 1, based on the percentage rate of increase for the immediately preceding 12-month period in the Consumer Price Index, All Urban Consumers, United States, All Items (1982 - 1984 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor or, if such index is not available, such other index as the parties may agree most closely resembles such index.
  - 6.2.2. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, from the date due, plus all expenses of collection.
- 6.3. Customer will provide, upon Keepit's request, evidence reasonably sufficient to verify actual usage and compliance with the rights granted hereunder and any Use Limitations. In the event that Keepit identifies any excess use beyond the permitted use hereunder, Keepit shall have the right to invoice the Customer additional fees related to such excess use, which shall be payable upon receipt of such invoice, unless otherwise agreed by the Parties.

## 7. DATA RETENTION

- 7.1. The Customer can configure Data Retention rules for the Customer Content within the Services. The Order Form will describe the Data Retention included in the Agreement.

## 8. DATA LOCATION

- 8.1. The Services are provided in several locations, currently in the EU, UK, USA, and Australia. Keepit may add new locations to the offering at any time but will not remove an existing location without negotiating an exit from that location with the Customer, provided that the Customer is serviced from the location in question.
- 8.2. Keepit's data centers are located as follows:

Continent	City, Country
Asia-Pacific	<b>Sydney</b> , Australia
Europe	<b>Copenhagen</b> , Denmark (EU)
	<b>Frankfurt</b> , Germany (EU)
	<b>London</b> , United Kingdom (UK)
Americas	<b>Ashburn</b> , Virginia (USA)

- 8.3. The Customer determines in the Order Form from which location the Services shall be provided by Keepit.
- 8.4. The Customer appoints Keepit to transfer Customer Content to the Services which will be stored exclusively in the location chosen by the Customer.
- 8.5. It is the responsibility of the Customer to choose a location suitable for the storage of Customer Content. For example, if Customer Content may not be exported out of the USA then the Customer must choose the USA location for the Services.
- 8.6. Keepit does not control or limit the locations from which the Services can be accessed by the Customer, and to or from which location transfers can be made by the Customer.

## 9. ONBOARDING MEETING(S) AND EDUCATION OF SUPER-USERS

- 9.1. As part of the Agreement, Keepit offers to help set up the Services and educate the Customer's Representatives in the use of the Services. For this purpose, Keepit includes two (2) consulting hours free of charge.

## 10. SERVICE LEVEL AGREEMENT (SLA)

- 10.1. Access to the Services relies on the Keepit web application and the API front-end servers providing data thereto, in the location where the Customer has chosen to have the Services delivered.
- 10.2. Keepit will monitor the availability of the API front-end servers. In the event that all front-end servers for the location chosen by the Customer are unavailable for HTTPS services for more than one full minute, this will count as "downtime". Scheduled maintenance windows are excluded from this downtime. Keepit will notify any significant outage in availability known to Keepit, including scheduled maintenance, on its website, at <https://status.keepit.com/>. The Customer must subscribe there to receive direct notifications regarding availability. In case product functionality is unavailable and this is not covered by the aforementioned monitoring, this must be raised as a support issue instead and will not count as "downtime". See Section 21 for details on support.
- 10.3. The Services availability goal for Keepit is to deliver 99.9% uptime (0.1% or less downtime as defined above) over any calendar quarter.
- 10.4. If Keepit does not meet such an availability goal during a calendar quarter falling within the term of an Order Form, the Customer will be eligible for receiving Service Credits as per Table 1 below. In order for the Customer to receive such Service Credits, the Customer must claim the Service Credits by sending an email, during the term of such Order Form, to Keepit at [business.support@keepit.com](mailto:business.support@keepit.com). Keepit will then provide the Customer with Service Credits according to Table 1 below. The Service Credits may only be applied to the Order Form with respects to which the Services availability goal was not met, have no cash value, and shall be the sole and exclusive remedy for a failure by Keepit to meet the stated availability goal.

Table 1: Service Credits

Availability	Service Credits
100 % - 99,90 %	N/A
99,89 % - 99,8 %	1 day added to the Customer's current Order Form term (1 free day)
99,79 % - 99,0 %	5 days added to the Customer's current Order Form term (5 free days)
98,99 % - 95,0%	10 days added to the Customer's current Order Form term (10 free days)
Lower than 95,0%	20 days added to the Customer's current Order Form term (20 free days)

- 10.5. Unless the Customer chooses different parameters for back-ups in the Services (including scope and timing), Keepit's policy is to provide at least one (1) back-up per day. In the event a backup is already in progress, a new backup will not start until the already running backup is completed. Initial upload, large dataset changes, significant backup reconfigurations and other events may cause a backup to run for longer than usual.
- 10.6. The operational status of the data centers and incident reports are available at <https://status.keepit.com/>.

## 11. SLA EXCLUSIONS

- 11.1. The SLA does not apply to any performance or availability issues due to:
- a) factors outside Keepit's reasonable control (for example outage by an infrastructure provider or a Cloud Solution, or a force majeure event);
  - b) the Customer's, end-user's, or any third-party's equipment, services, actions or lack thereof; and/or
  - c) Keepit's scheduled maintenance or version upgrades.

## 12. DISCLAIMER

- 12.1. KEEPIT MAKES NO WARRANTY CONCERNING THE SERVICES, AND THE SERVICES AND ALL DATA, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE". KEEPIT DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. KEEPIT DOES NOT WARRANT THAT THE SERVICES WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE. KEEPIT IS NOT RESPONSIBLE FOR ANY LOSS OF DATA OR HARM DONE TO CUSTOMER COMPUTER, SYSTEMS OR OTHER EQUIPMENT ARISING OUT OF OR RELATING TO CUSTOMER'S USE OF THE SERVICES. CUSTOMER UNDERSTAND AND AGREE THAT USE OF THE SERVICES IS AT CUSTOMER'S OWN RISK AND DISCRETION.

### **13. LIABILITY AND INDEMNIFICATION**

- 13.1. THE AGGREGATED LIABILITY, INCLUDING ANY INFRINGEMENT CLAIMS AND THE PERFORMANCE OF KEEPIT'S INDEMNIFICATION OBLIGATIONS HEREIN, OF EACH PARTY UNDER THIS AGREEMENT FOR ANY NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED (I) AN AMOUNT EQUAL TO THE FEES PAID DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY, OR (II) IN CONNECTION WITH A CLAIM FOR BREACH OF SECTION 14 (CONFIDENTIAL INFORMATION) OR A BREACH OF THE PRIVACY TERMS AN AMOUNT OF USD 200,000.
- 13.2. UNDER NO CIRCUMSTANCES, INCLUDING ANY INFRINGEMENT CLAIMS, SHALL THE PARTIES BE LIABLE FOR ANY LOSS OF PROFIT OR INDIRECT OR CONSEQUENTIAL LOSSES, INCLUDING BUT NOT LIMITED TO: RE-PROCUREMENT COSTS, INTERRUPTED COMMUNICATIONS, LOST DATA, LOSS OF GOODWILL, LOSS OF REVENUE OR PROFITS, OR FOR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13.3. For the avoidance of doubt, administrative fines are imposed on the Party in breach of its obligations and, in consequence, neither party will bear the other Party's administrative fines.
- 13.4. Keepit warrants and represents towards the Customer that the Services do not infringe any copyrights, trademarks, patents or other intellectual property rights held by third parties. However, in respect of patents, only (i) patents granted and published on the date of the purchase and (ii) only if the Services are infringing as a stand-alone service in its unaltered state and not used in combination with any other service(s), product(s) or technology.
- 13.5. In the event that the Customer is the subject of a claim for infringement by a third party, based on the use of the Services, the Customer shall promptly notify Keepit hereof. Upon such notification, Keepit shall take over the matter and any costs related thereto. Keepit shall, in any event, have an irrevocable right to take over the matter at its own expense and thus institute proceedings or enter into settlements concerning the alleged infringements. THIS SECTION 13.5 SETS FORTH KEEPIT'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR KEEPIT'S BREACH OF THE WARRANTIES SET FORTH IN SECTION 13.4.
- 13.6. If a third party objects to the use or distribution of the Services (cf. above), Keepit shall be entitled, at its discretion, either:
- a) to obtain the right for the Customer to use the Services
  - b) to bring the infringement to an end by modifying or replacing the Services with another service which possesses substantially the same functions as the Services
  - c) to terminate the Agreement with immediate effect against repayment of any charges prepaid by the Customer.
- 13.7. In any of the above-mentioned events cf. Section 13.6, occur, the Customer shall have no further claims against Keepit.
- 13.8. The Customer will indemnify, defend and/or settle, and pay damages of any kind (including without limitation attorneys' fees) arising from or related to any third-party claim brought against Keepit arising out of or related to the Customer's use of the Services, Keepit's permitted use of the Customer Content in accordance with this Agreement, Customer's violation of any law, or infringement upon or misappropriation of any intellectual property right, publicity or privacy rights, or any other third-party's rights, or Customer's breach of this Agreement.

### **14. FORCE MAJEURE**

- 14.1. Neither Party shall be considered liable towards the other Party where the liability arises out of circumstances beyond the control of the relevant Party which could not have been taken into account at signing and could not reasonably have been avoided nor surmounted by the relevant Party.
- 14.2. The following circumstances are considered force majeure: war, civil war, natural disasters, or other extraordinary event outside of the Party's reasonable control.
- 14.3. If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a force majeure, such Party shall notify the other Party in writing as soon as practicable after the onset of such force majeure. The Party's obligations will be suspended until the time when the Party is again able to meet its obligations. If the obstacle lasts more than 60 days, the other Party will be able to terminate the Agreement with one (1) months' notice in writing if the force majeure circumstances exist at the time of the notice.

### **15. CONFIDENTIAL INFORMATION**

- 15.1. Each Party shall each comply with legal requirements pertaining to Confidential Information and treat Customer Content as such.
- 15.2. Each Party undertakes to not disclose Confidential Information to any third party without the other Party's prior written consent, except as otherwise permitted hereunder.
- 15.3. Each Party undertakes to implement the necessary measures in order to prevent unauthorized third-party access to such Confidential Information and to only use Confidential Information for the performance of these Terms.



- 15.4. Each Party shall ensure that access to Confidential Information is limited to authorized -Representatives on a need-to-know basis and that such Representatives are subject to confidentiality obligations at least as restrictive as the terms of this Agreement (provided that the Party disclosing the Confidential Information to its Representatives shall be responsible for any actions of its Representatives)
- 15.5. Either Party may disclose certain Confidential Information of the disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid and effective subpoena, order or other document issued by a court, governmental body or competent jurisdiction or stock exchange, provided that the receiving Party provides the disclosing Party with a prompt and practicable written notice of the existence, terms and circumstances of such a disclosure and makes a reasonable effort to obtain, or to assist the disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or waive the receiving Party's compliance with the provisions of this Agreement. In the event that such protective order or other protection is denied and that receiving Party or any of its Representatives are nonetheless legally compelled or requested to disclose such information, it or its Representatives, as the case may be, will furnish only that portion of the Confidential Information that its legal counsel advises it is being required and will exercise all commercially reasonable efforts to preserve the confidentiality of the remainder of the Confidential Information.
- 15.6. The confidentiality obligations in this Section do not apply with respect to information that:
- a) is already lawfully known to the receiving Party as of the date of disclosure hereunder; or
  - b) is documented to have been disclosed to the other Party by a third party that has not been subject to a confidentiality obligation; or
  - c) is already in the public domain or public knowledge at the time of receipt by the receiving Party or comes into the public domain other than through a breach of the terms of this Agreement by the receiving Party or by any recipient to whom disclosure of Confidential Information by the receiving Party is permitted; or
  - d) is independently developed by the receiving Party without the use of the Confidential Information received from the disclosing Party.
- 15.7. The confidentiality obligations in this Section shall survive the termination of this Agreement.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1. The Customer acknowledges that Keepit and its Affiliates retains all rights, title and interest in and to the Services, as well as to all proprietary software, materials, formats, interfaces, information, data and content used by Keepit or provided to the Customer in connection with the Services, and that these are protected by intellectual property rights owned by or licensed to Keepit. Other than as expressly set forth in this Agreement, no license or other rights in the Services are granted to the Customer, and all such rights are hereby expressly reserved by Keepit and Keepit's Affiliates.
- 16.2. The Customer retains all rights, title, and interest in and to the Customer Content. Keepit will only use the Customer Content to provide the Services under this Agreement. The Customer is solely responsible for providing, and obtaining the rights to provide, all Customer Content required for the proper operation of the Services. The Customer grants to Keepit a non-exclusive, fully-paid and royalty-free license to use the Customer Content as necessary for Keepit to provide the Services and perform its obligations hereunder.
- 16.3. The Customer agrees that Keepit will have the unrestricted right to use any feedback and related information the Customer provides regarding the Services, including without limitation, any flaws, errors, bugs, anomalies, comments on the community forum, and problems with and/or suggestions for the Services.
- 16.4. Notwithstanding anything else to the contrary in this Agreement, Keepit may use and exploit on a worldwide, irrevocable, perpetual, royalty-free basis, any aggregated non-personally identifiable information related to any usage of the Services to operate and improve Keepit's products and services.

## **17. CUSTOMER REFERENCE AGREEMENT**

- 17.1. If agreed in the applicable Order Form, Keepit may use the Customer's name and logo in presentation materials, on Keepit's website and on Keepit's official social media accounts. With the Customer's prior written consent, Keepit may also refer to the Customer as a reference case in marketing material, including in the form of a video interview.

## **18. PROCESSING OF PERSONAL DATA**

- 18.1. The Parties agree that Keepit shall not retain, use, or disclose any Customer Data for any purpose other than for the specific purpose of providing the Services specified in this Agreement.
- 18.2. Customer specifically agrees not to use the Service to collect, store, process or transmit any Sensitive Personal Information unless the Parties have entered into a separate agreement or addendum governing the Parties respective obligations with respect to such Sensitive Personal Information ("Privacy Terms"). In the event that the Parties decide to enter into such Privacy Terms, the Parties agree to negotiate in good faith an agreement acceptable to both Parties.
- 18.3. "Sensitive Personal Information" means any of the following: (i) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards ("PCI DSS"), or other financial account numbers or credentials; (ii) patient, medical or other protected health information regulated by the Health Insurance

Portability and Accountability Act ("HIPAA"); (iii) social security numbers, driver's license numbers or other government ID numbers; (iv) any information deemed to be "special categories of data" of an EU resident (as defined in European Union Regulation 2016/679); or (v) other personal or sensitive information subject to regulation or protection under the Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act or similar foreign or domestic Laws.

- 18.4. In case of discrepancies between the Privacy Terms and the Terms, the Privacy Terms will take precedence over the Terms.

## **19. COMPLIANCE WITH LAWS AND REGULATIONS**

- 19.1. Keepit will comply with all relevant laws and regulations applicable to the Services. However, Keepit is not responsible for compliance with laws or regulations that apply to the Customer or to the Customer's use of the Services that are not generally applicable to online services or service providers. Keepit cannot and shall not attempt to determine if the Customer Content may be subject to any additional laws or regulations.
- 19.2. The Customer must comply with all applicable laws and regulations surrounding its use of the Services. The Customer is responsible for determining if the use of the Services is appropriate for storage and processing of the Customer Content.

## **20. CUSTOMER RESPONSIBILITIES**

- 20.1. The Customer is solely responsible for determining if the technical and organizational measures around the Services meet the requirements for the Customer and the Customer Content. This includes, but is not limited to, the GDPR (where applicable). Please refer to the Keepit 'Technical and Organizational Measures'.
- 20.2. The Customer agrees and acknowledges that the security practices and policies implemented and maintained by Keepit provide a level of security that is reasonable and adequate, taking into account the nature of the Customer Content, including the categories of data subjects and personal data.

## **21. SUPPORT AND HELP DESK**

- 21.1. Keepit provides 24/7 online helpdesk support during the term of the Agreement.
- 21.2. Support requests can be submitted by the following link <https://help.keepit.com/support/tickets/new>.
- 21.3. Support ticket on the online helpdesk is subject to Keepit's privacy policy, found on Keepit's website at <https://www.keepit.com/privacy-policy/>.
- 21.4. Keepit can also be contacted via e-mail at [business.support@keepit.com](mailto:business.support@keepit.com) for support.

## **22. ASSIGNMENT**

- 22.1. Neither Party may assign any of its rights or responsibilities under the Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either Party and its permitted successors and assignees may assign this Agreement in whole or in part without the other Party's consent:
- a) to a successor in interest in connection with a merger, acquisition, or sale of all or substantially all assets to which this agreement relates;
  - b) to an Affiliate; and
  - c) in connection with a corporate reorganization or divestiture to separate any business unit, product(s) or assets to which this Agreement relates.

## **23. TERM AND TERMINATION FOR CONVENIENCE**

- 23.1. Unless otherwise set forth in the applicable Order Form, the term will automatically renew for successive terms of equal length to the initial term set forth in the Order Form.
- 23.2. Either Party may terminate the Agreement by providing notice of termination, cancellation, or nonrenewal 90 days prior to the end of the then-current term.
- 23.3. For the Customer's termination to be valid, the Customer must send a notice in writing to: [us.billing@keepit.com](mailto:us.billing@keepit.com). The email must contain company name, registration number, contact information, and a statement that the Customer wishes to terminate the Agreement.
- 23.4. The rights and duties of the Parties under Sections 5.3, 6, 12, 13, 15, 16, 17, 22, 23.3, 25, 26, 28 and 30 will survive the termination or expiration of this Agreement. Keepit shall have no liability to the Customer as a result of its termination of the Services.

## **24. TERMINATION FOR CAUSE**

- 24.1. Unless otherwise agreed and/or specifically stated in this Agreement, where either Party materially breaches any of its obligations under this Agreement and the breach cannot reasonably be remedied within thirty (30) days, the Parties shall, in good faith, discuss the possibilities and the time frame for when such remedy can be completed. However, if the Parties cannot agree, the Party not in breach shall be entitled to terminate the Agreement upon written notice, if the Party in breach has not rectified the breach within forty five (45) days after

being notified of the breach in writing. The notice shall state the nature of the breach and any claim for compensation.

24.2. Notwithstanding this Section and Section 23.2 above, Keepit is always entitled to terminate this Agreement with immediate notice (without limiting any other rights or remedies) if:

- a) the Customer fails to make payments in a timely and accurate manner
- b) the Customer breaches these Terms, including the Acceptable Use Policy, cf. Section 5.

24.3. Sections 23 and 24 of these Terms shall not affect the right to use other remedies applicable in case of breach.

## **25. WAIVER**

25.1. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

25.2. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

## **26. ENTIRE AGREEMENT**

26.1. This Agreement constitute the entire understanding and agreement of the Parties, and supersede any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the Parties, as to the subject matter hereof.

26.2. In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. The Parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

## **27. CHANGES TO THE AGREEMENT**

27.1. If the Parties agree on changes to the Agreement, the amendments are only valid if in writing signed by both Parties.

27.2. Keepit will inform the Customer of changes to these Terms or Privacy Terms with reasonable notice (in no event less than thirty (30) calendar days). The Customer will have thirty (30) calendar days to object to the change in writing to Keepit. The objection of the Customer must be well-founded. Absence of any objections from the Customer shall be deemed a consent to the change.

## **28. MESSAGES**

28.1. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other Party at the address set forth in the Order Form. Each Party may change its address from time to time upon written notice to the other Party of the new address.

28.2. Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (i) delivered personally, (ii) sent via certified mail (return receipt requested), (iii) posted online by Keepit, or (iv) sent via email.

## **29. CODE OF CONDUCT**

29.1. Each Party is committed to observe the ten principles of the United Nations Global Compact, i.e., the principles related to (i) Human Rights (ii) Labour (iii) Environment and (iv) Anti-Corruption.

29.2. Keepit's Code of Conduct can be found at <https://www.keepit.com/code-of-conduct/>.

## **30. GOVERNING LAW AND VENUE**

30.1. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to principles of conflict of laws that would require the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in any federal court or state court in New Castle County, Delaware and each Party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. If a dispute arising under this Agreement results in litigation, the non-prevailing Party shall pay the court costs and reasonable attorneys' fees of the prevailing Party.