

GRUBMARKET SOFTWARE - PLATFORM AGREEMENT
(04/01/2024)

The following Platform Agreement ("Agreement") governs Customer's use of the software and services provided by GrubMarket, Inc. (and its subsidiaries) ("GrubMarket"). This is a legal agreement between Customer and GrubMarket and incorporates GrubMarket's Privacy Policy. By registering the use of the Services (as defined below), Customer accepts to be bound to the terms of this Agreement. This Agreement sets forth the terms pursuant to which Customer will receive access from GrubMarket to use certain subscription services and provided professional services, including, but not limited to, GrubMarket's: (a) enterprise resource planning, an operations management platform ("Wholesaleware"); (b) artificial intelligence platform ("GrubAssist"); (c) e-commerce platform ("Order IO"); (e) CSA/Food Hub software ("Farmigo"), (f) Professional Services (defined below) and (g) all other products and services offered by GrubMarket. Each of GrubMarket and Customer is a "Party" and together, the "Parties."

CUSTOMER REGISTERS ITS USE OF THE SERVICES AND ACCEPTING THE TERMS OF THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING CUSTOMER'S ACCEPTANCE, EXECUTING AN ORDER FORM OR OTHER DOCUMENT THAT REFERENCES THIS USER LICENSE AGREEMENT, USING (OR MAKING ANY PAYMENT FOR) ANY SUBSCRIPTION SERVICES, ENGAGING GRUBMARKET TO PROVIDE PROFESSIONAL SERVICES, OR OTHERWISE AFFIRMATIVELY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, CUSTOMER: (A) AGREES TO THIS AGREEMENT ON BEHALF OF CUSTOMER'S ORGANIZATION OR OTHER LEGAL ENTITY FOR WHICH CUSTOMER ACTS; AND (B) REPRESENTS THAT SIGNATORY HAS THE AUTHORITY TO BIND CUSTOMER AND ITS AFFILIATES TO THIS AGREEMENT. IF CUSTOMER DOES NOT HAVE SUCH AUTHORITY, OR IF CUSTOMER DOES NOT AGREE WITH THIS AGREEMENT, CUSTOMER MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE ANY SUBSCRIPTION SERVICES OR RECEIVE ANY PROFESSIONAL SERVICES.

1. STRUCTURE

1.1. **Products and Services; Orders.** This Agreement sets forth the terms and conditions on which GrubMarket may make available to Customer the Services, one or more APIs (defined below), Subscription Services (defined below), and Professional Services (defined below), to the extent applicable and as expressly identified (a) as part of the online Platform subscription process completed by Customer on GrubMarket's website (a "Website Order") or (b) in a quote, order form, statement of work, or other ordering document signed by the Parties that expressly references and incorporates this Agreement (defined below) (each, an "Order Form"). Collectively, the Platform, APIs, and software as a service are the "Subscription Service." Each order for any Product(s) made through a Website Order or an Order Form is an "Order." Each Order is subject to the terms of, and is deemed incorporated into, this Agreement.

1.2. **Subscription Term.** Unless earlier terminated in accordance with this Agreement, the term of this Agreement with respect to the applicable Order will continue for the initial term specified in the applicable Order ("Initial Term") and continually and automatically renew thereafter. The renewal term of the Order (each, a "Renewal Term") shall be equal in length to the Initial Term or expiring Renewal Term up to maximum of one year (the Initial Term and each Renewal Term, if any, collectively, the "Order Term" of such Order). Notice of non-renewal of an Order must be provided by a Party in writing at least 60 days prior to the end of the Initial Term or then-current Renewal Term, as applicable (or such other period as expressly specified on the applicable Order). Renewal of any Order may be conditioned on and/or subject to Customer's agreement to changes to this Agreement. Termination of this Agreement will terminate all Order Terms then in effect unless otherwise specified on the applicable Order. Orders that are solely for Professional Services will remain in effect until the Professional Services are completed (unless earlier terminated in accordance with this Agreement or the applicable Order) and will not automatically renew, nor will any Professional Services included in any other Order automatically renew for a Renewal Term unless expressly specified on the applicable Order. Customer acknowledges and agrees that its access to the Services (or certain features thereof) may be automatically disabled upon expiration of the applicable Order Term.

1.3. **Conflict of Terms.** Any conflict between the terms in an Order versus Sections 1–13 of this Agreement (the "Master Terms") will be resolved in favor of the applicable Order.

2. PRODUCT RIGHTS AND RESTRICTIONS

2.1. Access Rights

A. **Subscription Services.** Customer may access and use the Services (i) for the term set forth in the applicable Order, and (ii) in accordance with all applicable Documentation (defined below) and the restrictions set forth in this Agreement.

B. **API.** If an Order indicates that Customer will receive access to an application programming interface, or if GrubMarket provides credentials to Customer that enable Customer to access a GrubMarket-provided application programming interface in connection with another service or produce (each, an "API"), then GrubMarket hereby grants Customer a non-exclusive, non-transferable right under GrubMarket's rights in that API to access such API solely (i) for the Order Term, and (ii) in accordance with all applicable Documentation and the restrictions set forth in this Agreement (including the applicable Order). Without limiting the foregoing, Customer will comply with any volume or other usage-based restrictions described in an Order or the Documentation.

C. **Artificial Intelligence.** If an Order indicates that Customer will receive access to GrubAssist or any other artificial intelligence services or products offered by GrubMarket (collectively "GrubAssist AI"), then GrubMarket hereby grants Customer a limited, revocable, non-exclusive and non-transferable right to use GrubAssist AI. The use of GrubAssist AI is subject to the Customer's compliance with all applicable laws and the terms herein including the terms in section 10 below.

2.2. Additional Features. Customer acknowledges that not all of the features or functionality of a Product may be available at Customer's subscription level irrespective of whether such feature or functionality is described in the Documentation, and that access to such features or functionality may require payment of additional fees or the purchase of additional access. The availability of a feature or function of a Product may be removed or added at GrubMarket's sole discretion.

2.3. Evaluation Products. Rarely, but at times, GrubMarket may make available to Customer certain products or product functionality to try at Customer's option at no additional charge, which will be designated as being on an evaluation, pilot, trial, beta, non-production, limited release, preview, or similar basis (such Products or functionality, "Eval Products") for the period specified by GrubMarket (the "Eval Period"). Additional trial terms and conditions may appear on the registration page for the applicable Eval Products. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. If GrubMarket provides Customer with access to an Eval Product, then, subject to the terms of Section 8 wherein the Eval Product is Confidential Information as therein defined, Customer may use the Product only for the purpose of evaluating the functions and performance of the Eval Product, solely during the Eval Period, and subject to any additional usage restrictions specified on the applicable Order. Customer acknowledges that Eval Products may be automatically disabled upon expiration of the Eval Period (at the end of which Customer's right to use the Product under the applicable Order also expires), and that any data stored in such Products may become unavailable at that time.

2.4. Use Restrictions. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties (or other persons not authorized by this Agreement) to use a Product or the Documentation; (b) use a Product to provide services to third parties (e.g., as a service bureau); (c) use a Product for any benchmarking activity or in connection with the development of a competitive product; (d) circumvent or disable any security or other technological features or measures of a Product or use a Product in a manner that GrubMarket reasonably believes poses a threat to the security of GrubMarket-controlled computer systems; (e) modify, translate, reverse engineer, decompile, disassemble, or otherwise derive the source code or the underlying ideas, algorithms, structure, or organization from a Product (except to the extent that applicable law prevents the prohibition of such activities); or (f) use or access any Product in a manner that materially impacts or burdens GrubMarket or GrubMarket's servers and other computer systems, or that interferes with GrubMarket's ability to make available any Product to any third party.

2.5. Documentation. To the extent that the Services are accompanied by any GrubMarket-provided user manuals, help files, specification sheets, or other documentation, in whatever form, relating to the Services ("Documentation"), GrubMarket hereby grants to Customer a non-exclusive, non-transferable right under GrubMarket's rights in the Documentation to use such Documentation solely to enable Customer to exercise its rights under the applicable grant of access and usage rights for such Services set forth in Section 2.1.

2.6. Third-Party Products. To the extent that the Services include or are accompanied by third-party software, artificial intelligence platforms or other products (e.g., cloud hosting instances or data analysis tools) that GrubMarket provides to Customer or that is otherwise identified in the Documentation as being required to properly use such products ("Third-Party Products"), the Third-Party Products and their use by Customer are subject to all access and other terms that accompany such Third-Party Products. Customer will abide by and comply with all such terms. Without limiting the foregoing, if GrubMarket enables Customer to access a hosted environment offered by a third-party cloud or platform service provider, then Customer must agree to the applicable service provider's terms and conditions prior to accessing such a hosted environment, and Customer will comply at all times with such terms and conditions.

2.7. Compliance with Laws. Customer will use the Services and Documentation in compliance with all applicable laws and regulations.

2.8. Protection against Unauthorized Use. Customer will prevent any unauthorized use of the Services and Documentation and will immediately notify GrubMarket in writing of any unauthorized use of which Customer becomes aware. Customer will immediately terminate any unauthorized use by persons having access to a Product or Documentation through Customer.

2.9. Ownership; Data. As between GrubMarket and Customer, Customer retains all right, title, and interest, including all intellectual property rights, in and to (a) any data or information that Customer uploads or inputs into a Product or otherwise makes available to GrubMarket, including in connection with Customer's use of a Product or receipt of Professional Services and (b) data that is generated and made available to Customer by any Product through use of the data described in part (a) above ((a) and (b) collectively, "Customer Data").

Customer hereby grants GrubMarket a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, fully transferable, irrevocable license to use, process, transmit, store, and disclose the Customer Data during the Term (defined below), for the purpose of exercising GrubMarket's rights and performing its obligations under this Agreement.

GrubMarket may further, for the purposes of developing its technology products and services and reporting on its technology business performance, use Customer Data in a form that does not identify Customer as the source thereof and does not reveal or disclose any sensitive information (including but not limited to vendor and customer lists, employee lists, and product pricing). Customer represents and warrants that Customer has all rights necessary to grant GrubMarket the licenses set forth in this Section 2.9 and to enable GrubMarket to exercise its rights under the same without violation or infringement of the rights of any third party during the Term (defined below), for the purpose of exercising GrubMarket's rights and performing its obligations under this Agreement.

As between the Parties, GrubMarket owns all right, title, and interest, including all intellectual property rights, in and to the Services,

its products, Documentation, and any improvements to any GrubMarket technology products or services made as a result of GrubMarket's use, processing, or generation of Customer Data. During the applicable Order Term, Customer may request that GrubMarket make available to Customer a copy of Customer Data stored in certain Services, and GrubMarket may agree to do so for an additional fee.

2.10. Feedback. If Customer provides any feedback to GrubMarket concerning the functionality and performance of the Services or a product, any Documentation, or the Professional Services (including identifying potential errors and improvements), Customer hereby assigns to GrubMarket all right, title, and interest in and to the feedback, and GrubMarket is free to use the feedback without payment or restriction.

2.11. Technical Support Services. For so long as Customer is current with its payment of the Fees (defined below), GrubMarket will use reasonable efforts to provide Customer with technical support services relating to the Services as described in the Order form.

2.12. Ownership. Documentation and Services, including, but not limited to, all programming code, is owned solely by GrubMarket and Customer shall hold in confidence and not disclose to any other parties. Customer agrees and acknowledges that the disclosure to third parties of Documentation and Services shall cause GrubMarket to suffer irreparable injury.

3. PROFESSIONAL SERVICES

3.1. Provision of Professional Services. Subject to the terms of this Agreement, GrubMarket will use commercially reasonable efforts to provide any implementation, configuration, or other professional services expressly identified on the Order or future Orders (which may be in the form of a Statement of Work) (the "Professional Services"). GrubMarket shall perform the Professional Services in a professional manner in accordance with industry standards.

3.2. Professional Services. GrubMarket retains all right, title, and interest, including all intellectual property rights, in and to any work product or other materials created by GrubMarket in connection with its performance of Professional Services. If GrubMarket provides any Professional Services to Customer pursuant to the applicable Order, GrubMarket hereby grants to Customer a non-exclusive, royalty-free, fully paid up, worldwide access under GrubMarket's rights in the Professional Services to use and exploit such Professional Services in connection with the Products and Professional Services during the applicable Order Term.

3.3. Modifications. The terms of this Section 3.3 will apply to any Order for Professional Services that does not expressly set forth a procedure in accordance with which the Parties may make changes to such Order. Customer may request a modification to the Professional Services to be performed pursuant to any particular Order by written request to GrubMarket specifying the desired modifications (each a "Change Order"). GrubMarket will, within a reasonable time following receipt of such Change Order, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the applicable Change Order. If Customer accepts, in writing within 10 days of receiving the estimates of cost and time to perform the modifications described in the Change Order, such modifications in the Change Order shall be performed under the terms of this Agreement.

3.4. One-Time Professional Services. All one-time Professional Services (as defined in an Order) sold with a Subscription Services must be used by the date that is defined in the Order ("Use Deadline") from the Subscription Services' start date (as defined in an Order). All services provided after the Use Deadline, shall be charged to Customer on a time and materials basis at then regular hourly charges of GrubMarket Software's personnel.

4. PERSONNEL

4.1. Suitability. GrubMarket will assign employees and subcontractors with qualifications suitable for the work described in the relevant Order. GrubMarket may replace or change employees and subcontractors, in its sole discretion, with other suitably qualified employees or subcontractors.

4.2. Customer Responsibilities. Customer will make available in a timely manner, at no charge to GrubMarket, all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Customer required by GrubMarket for the performance of the Professional Services. Customer is responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness, and consistency of all such data, materials, and information. Customer will provide, at no charge to GrubMarket, office space, services, and equipment as GrubMarket reasonably requires to perform the Professional Services.

4.3. Non-solicitation. The employees and consultants of GrubMarket who perform the Professional Services are a valuable asset to GrubMarket and are difficult to replace. Accordingly, Customer agrees that, during the Term, and for a period of one year after completion of the Professional Services under an Order, to the extent the following restriction is permitted under applicable law, it shall not solicit for employment or engagement (whether as an employee, independent contractor or consultant) any GrubMarket employee or consultant who performed any of the Professional Services under that Order. Customer is not restricted from hiring any personnel that respond to public job advertisements or similar general solicitations.

5. FEES AND PAYMENT

5.1. Fees and Payment Terms. Customer shall pay GrubMarket the fees, charges and any other amounts owing under this

Agreement as specified in the applicable Order (the "Fees"). Any additional functions to Subscription Services not listed on the original Order subsequently purchased by Customer shall be charged on a prorata basis so that its Term will be the same as the original Order. Any request to terminate additional user subscriptions shall not be effective until the end of the then current Term. Except as specifically stated otherwise in the applicable Order or in this Agreement, all fees paid by a customer are non-refundable and are for services provided and rendered or to be provided and rendered. If Customer purchases through an Order Form, then, unless otherwise specified in the applicable Order Form, Customer will pay all amounts due within 30 days of the date of the invoice (as defined below) or the applicable Order Form, whichever is earlier. GrubMarket may, notwithstanding its other rights and remedies herein, condition or restrict Agreement renewals and future Order Forms to adjusted payment terms from the terms stated above. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. If Customer elects to pay fees with a credit card through the online purchasing portal, Customer hereby authorizes GrubMarket to charge all sums for the orders and level of service selected by Customer through the online purchasing portal, including all applicable Taxes and Fees (defined below), to the payment method specified in Customer's account. GrubMarket may seek pre-authorization of Customer's credit card account prior to purchase to verify that the credit card is valid and has the necessary funds or credit available to cover the purchase. Customer shall reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by GrubMarket to collect any amount that is not paid when due. Amounts due from Customer under this Agreement may not be withheld or offset by Customer against amounts due to Customer for any reason.

5.2. Taxes. Other than net income taxes imposed on GrubMarket, Customer will bear all taxes, duties, and other governmental charges (collectively, "Taxes") resulting from this Agreement. Customer will pay any additional Taxes as are necessary to ensure that the net amounts received by GrubMarket after all such Taxes are paid are equal to the amounts to which GrubMarket would have been entitled in accordance with this Agreement if such additional Taxes did not exist.

5.3. Professional Services Charges. Customer shall pay GrubMarket at GrubMarket's standard hourly rates, as adjusted, or based on the fees stated in the applicable Order. Customer shall reimburse GrubMarket for (a) reasonable travel and living expenses incurred by GrubMarket's employees and contractors for travel from GrubMarket's offices in connection with the performance of the Professional Services; (b) reasonable international telephone charges (if applicable) that are necessary for the performance of Professional Services under this Agreement; and (c) any other expenses for which reimbursement is contemplated in the applicable Order. Except as provided above, each Party will be responsible for its own expenses incurred in rendering performance under this Agreement and each applicable Order.

5.4. Invoicing. GrubMarket will issue Customer invoices for the fees, charges and other amounts owed pursuant to this Agreement and the applicable Order Form. Invoices will be delivered to the Customer in pdf format by email to the email address indicated by the Customer in the Order Form. At Customer's request, the invoices can also be mailed to Customer at its principal office or any other address indicated in the Order Form. Customer is responsible for providing complete and accurate contact information for billing and communication purposes and shall timely notify GrubMarket in writing of any changes to its contact information. By providing GrubMarket with Customer's credit card information or ACH payment information, Customer authorizes GrubMarket to charge Customer all fees, charges and/or other amounts owed pursuant to this Agreement to Customer's credit card or from Customer's bank account through an ACH transaction.

5.5. Discounts. Unless specifically stated in the Order, any discounts given to a Customer shall only apply to the first year's fees and charges. All renewals thereafter shall be at the listed prices and then current charges.

5.6. Changes to Fees and Charges. GrubMarket may adjust the Services Fees upon at least thirty (30) days prior written notice and any changes to fees and charges shall be effective upon the commencement of the next Subscription Term.

6. TERM AND TERMINATION

6.1. Term. This Agreement will remain in effect until all Orders hereunder expire or have been terminated (the "Term").

6.2. Termination for Material Breach. Either Party may terminate this Agreement or one or more Orders if the other Party does not cure its material breach of this Agreement or the applicable Order(s) within 30 days of receiving written notice of the material breach from the non-breaching Party. Termination in accordance with this Section 6.2 will take effect when the breaching Party receives written notice of termination from the non-breaching Party, which notice must not be delivered until the breaching Party has failed to cure its material breach during the 30-day cure period. Notwithstanding the foregoing, GrubMarket may immediately terminate this Agreement upon notice to Customer if GrubMarket reasonably believes that Customer has made or distributed any unauthorized copies of any Subscription Services, has violated Section 2.4, has attempted to assign any right granted by this Agreement except as expressly permitted herein, or has otherwise taken any actions that threaten or challenge GrubMarket's intellectual property rights, including rights in and to any Subscription Services. Without limiting any other provision of this Section 6.2, if Customer fails to timely pay any fees and/or charges, GrubMarket may, without limitation to any of its other rights or remedies, suspend access to the Subscription Services or performance of the Professional Services under all Orders until it receives all amounts due.

6.3. Termination for Bankruptcy or Insolvency. Either Party may terminate this Agreement or one or more Orders if the other Party is declared bankrupt, or is the subject of any liquidation or insolvency proceeding which is not dismissed within 120 days, or makes any assignment for the benefit of creditors.

6.4. Post-Termination Obligations. If this Agreement is terminated for any reason, Customer will pay to GrubMarket any fees or other amounts that have accrued prior to the effective date of the termination, any and all liabilities accrued prior to the effective date of the termination will survive, and within ten (10) days of the termination, Customer will provide GrubMarket with a written certification

signed by an authorized Customer representative certifying that all use of Services and Documentation by Customer has been discontinued and that all Confidential Information (defined below) in Customer's possession or control has been returned or destroyed.

6.5. Survival. Notwithstanding anything to the contrary herein, Sections 1, 2.9, 2.10, 4.3, 5.4, 5.5, 6, 8, 9, 10, 11, and 12 will survive termination or expiration of this Agreement.

7. PRIVACY

7.1. Customer governs access to Customer Data within the Platform. Customer agrees to permit members of GrubMarket's team to access Customers Data for the purposes of technology training and technical support.

7.2. Customer Data will not be viewed, duplicated, or shared, unless Customer gives GrubMarket express permission to do so.

7.3. Like most websites and technology services delivered over the Internet, GrubMarket automatically collects and stores information when users visit GrubMarket's website and use the platform ("Log Data"). This information can include the user's IP address, browser type, internet service provider (ISP), files viewed (e.g., HTML pages, etc.), actions performed by the user (e.g. login), operating system, and access times. Data will be encrypted, and data unique to the user's system including item name, customer name, and vendor name will not be collected or stored. This Log Data is used for troubleshooting issues reported by customers and to enable GrubMarket to continuously improve the platform.

8. CONFIDENTIALITY

8.1. Definition. As used herein, "Confidential Information" means all confidential information disclosed by or otherwise obtained from a Party ("Disclosing Party") to or by the other Party ("Receiving Party"), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. "Confidential Information" of a Disclosing Party includes such Disclosing Party's business and marketing plans, technology and technical information, product plans and designs, and business processes. Without limiting the foregoing, GrubMarket's "Confidential Information" includes each Product, all Documentation, all GrubMarket technical information, and all information concerning Product-related database structure information and schema. However, "Confidential Information" does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

8.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, GrubMarket is permitted to disclose Confidential Information of Customer on a need to know basis to employees, contractors, and agents of its Affiliates. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information. "Affiliate" means any corporation, partnership, joint venture, or other entity: (i) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (ii) if a partnership, as to which a Party or another Affiliate is a general partner; or (iii) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations.

9. WARRANTIES AND DISCLAIMER

9.1. Limited GrubMarket Warranties. GrubMarket hereby warrants, for the benefit of Customer only, that the Platform will materially conform to the applicable Documentation (the "Platform Warranty") during the Order Term (the "Warranty Period"), provided that the Platform Warranty will not apply to failures to conform to the applicable Documentation to the extent such failures arise, in whole or in part, from any modification of the Platform by Customer or any third party or any combination of the Platform with APIs, software, hardware, or other technology not provided by GrubMarket under the applicable Order. If any defect or error covered by the Platform Warranty occurs, Customer will provide GrubMarket with sufficient detail to allow GrubMarket to reproduce the defect or error. If notified in writing by Customer during the Warranty Period, GrubMarket will, at its sole option, either (a) correct such error or defect in the Platform, at no cost to Customer and within a reasonable time, by issuing corrected instructions, a restriction, or a bypass or (b) refund prorated subscription fees and terminate this Agreement and any applicable Order Form. The foregoing sentence sets forth Customer's sole and exclusive remedy for GrubMarket's breach of the warranty described in the first sentence of this Section 9.1. GrubMarket is not responsible for any defect or error not reported during the Warranty Period or any defect or error caused by a Product that Customer has modified, misused, or damaged.

9.2. Mutual Warranties. Each Party represents and warrants to the other that: this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms and no authorization or approval from any third party is required in connection with such Party's execution, delivery, or performance of this Agreement.

9.3. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 9 OR AN ORDER, GRUBMARKET MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. GRUBMARKET EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. GRUBMARKET DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SUBSCRIPTION OR PROFESSIONAL SERVICES. GRUBMARKET DOES NOT WARRANT THAT THE SERVICES, DOCUMENTATION, OR PROFESSIONAL SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SUBSCRIPTION SERVICES OR PROVISION OF THE PROFESSIONAL SERVICES WILL BE SECURE OR UNINTERRUPTED. GRUBMARKET DOES NOT WARRANT THAT ANY INFORMATION PROVIDED BY A PRODUCT OR DOCUMENTATION, OR IN CONNECTION WITH THE PROFESSIONAL SERVICES, IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. GRUBMARKET EXERCISES NO CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER'S USE OF THE SERVICES OR DOCUMENTATION OR RECEIPT OF THE PROFESSIONAL SERVICES.

9.4. Additional Disclaimer. NOTWITHSTANDING SECTIONS 9.1, 9.2, 9.3, AND 11, EVALUATION (EVAL/TRIAL/DEMO/POC) PRODUCTS ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND GRUBMARKET HAS NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE EVAL PRODUCTS UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE GRUBMARKET'S LIABILITY WITH RESPECT TO THE EVAL PRODUCTS WILL NOT EXCEED \$100.00. WITHOUT LIMITING THE FOREGOING, GRUBMARKET AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (a) CUSTOMER'S USE OF EVAL PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS, (b) CUSTOMER'S USE OF THE EVAL PRODUCTS WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (c) DATA PROVIDED DURING THE EVAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 10, CUSTOMER WILL BE FULLY LIABLE UNDER THIS AGREEMENT TO GRUBMARKET AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE EVAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

10. ARTIFICIAL INTELLIGENCE TERMS

10.1. Content. GrubMarket claims no intellectual property rights in any user input that Customer provides to the GrubAssist AI or any output generated by the GrubAssist AI. GrubMarket also does not review such inputs or outputs, including text, logos, names or slogans, for accuracy, bias or intellectual property rights clearance. Customer is solely responsible to ensure that Customer has all rights necessary (including trademark, copyright and other intellectual property rights) to provide Customer's inputs to the GrubAssist AI. GrubMarket makes no representation, warranty or guarantee as to the accuracy or reliability of the GrubAssist AI or whether such output may infringe on third-party intellectual property rights. Customer shall review the output accordingly and Customer's use thereof is at Customer's sole risk. Outputs may not be unique across users and the GrubAssist AI may generate the same or similar outputs for other users.

10.2. Output. The output insights generated and returned by the GrubAssist AI ("Output") are based on the metadata processed on and through the GrubAssist AI ("Input"), the Input and Output shall collectively be referred herein as "AI Content." The Customer is solely responsible for ensuring that the AI Content complies with applicable laws and these Terms. As between GrubMarket and Customer, AI Content shall be deemed Customer Content, but Third-Party Providers may utilize AI Content as contemplated in the section, Third-Party Providers, below. Due to the nature of machine learning, Output may not be unique and the GrubAssist AI may generate the same or similar output for other users. Output may not be protectable yet may be subject to IP protections. GrubMarket may use technology provided by Third-Party Providers (3PP), such as Open AI, to provide GrubAssist AI. Customer authorizes GrubMarket and such 3PP to store and use Customer input for the purposes of providing Customer with the GrubAssist AI, to review inputs and outputs for abuse or misuse, and to develop and improve the services and products of GrubMarket and such service providers, including as part of the design, training and development process for machine learning models.

10.3. Accuracy. GrubMarket does not guarantee accuracy of any Output generated by the GrubAssist AI. Given the probabilistic nature of machine learning, and artificial intelligence, use of GrubAssist AI may in some situations result in incorrect Output that does not accurately reflect the action generated. The Customer shall have full control of any Output being applied or used and shall evaluate the accuracy of any Output prior to acceptance of the Output.

10.4. Rules of Conduct. All uses of our GrubAssist AI must comply with terms herein. In addition, Customer represents and agrees that Customer will not use, nor authorize anyone to use on Customer's behalf, GrubAssist AI in a manner (as determined by GrubMarket in its sole and absolute discretion, including, without limitation, creating or generating a website or content) that is illegal, or promotes or encourages illegal activity; promotes, encourages, or engages in the exploitation of children, or any activity related to the proliferation of child sexual abuse material ("CSAM"); promotes, encourages or engages in terrorism, violence against people, animals, or property; promotes, encourages or engages in any spam or other unsolicited bulk email, or computer or network hacking or cracking; violates the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 or similar legislation, or promotes, encourages or engages in the sale or distribution of prescription medication without a valid prescription; violates the Fight Online Sex Trafficking Act of 2017 or similar legislation, or promotes or facilitates prostitution and/or sex trafficking; infringes on the intellectual property rights of any other person or entity; violates the privacy or publicity rights of another user or any other person or

entity, or breaches any duty of confidentiality that Customer owes to another user or any other person or entity; interferes with the operation of the GrubAssist AI; contains or installs any viruses, worms, bugs, Trojan horses or other code, files or programs designed to, or capable of, disrupting, damaging or limiting the functionality of any software or hardware; or contains false or deceptive language, or unsubstantiated or comparative claims, regarding GrubMarket or GrubAssist AI.

10.5. Disclaimers. CUSTOMER SPECIFICALLY ACKNOWLEDGE AND AGREE THAT OUTPUTS OF THE GRUBASSIST AI INCLUDING (WITHOUT LIMITATION) TEXT, LOGOS, NAMES, SLOGANS, HAVE NOT BEEN REVIEWED FOR ACCURACY, BIAS, EXPLAINABILITY OR INTELLECTUAL PROPERTY RIGHTS CLEARANCE. GRUBMARKET MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE ACCURACY, RELIABILITY, OR ERROR-FREE PERFORMANCE OF THE GRUBASSIST AI, INCLUDING (WITHOUT LIMITATION) WHETHER OUTPUTS MAY INFRINGE, MISAPPROPRIATE OR VIOLATE ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. CUSTOMER SHALL SEEK INDEPENDENT PROFESSIONAL LEGAL ADVICE BEFORE CUSTOMER RELY ON ANY OUTPUT GENERATED BY THE GRUBASSIST AI. IN ADDITION TO ANY DISCLAIMERS SET FORTH IN THIS AGREEMENT, GRUBASSIST AI IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. GRUBMARKET AND THE APPLICABLE THIRD-PARTY PROVIDER MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF GRUBASSIST AI, OR THE INFORMATION, TEXT, AND CONTENT INCLUDED IN THE OUTPUT, OR THE USE OF THE INPUT, INCLUDING WITHOUT LIMITATION, ACCURACY OF THE RESULTS, AVAILABILITY, SUITABILITY, RELIABILITY, OR CONTENT OF ANY INFORMATION PROVIDED THROUGH GRUBASSIST AI OR FEATURES. CUSTOMER UNDERSTANDS THAT ARTIFICIAL INTELLIGENCE CONTENT MAY BE SUSCEPTIBLE TO RISKS COMMONLY ASSOCIATED WITH INFORMATION STORED ON THE CLOUD. GRUBMARKET WILL HAVE NO LIABILITY OR RESPONSIBILITY ARISING IN ANY WAY FROM THE USE OF THE GRUBASSIST AI OR ANY ERRORS OR OMISSIONS CONTAINED IN THE CONTENT.

10.6. Limitation on Liability. IN NO EVENT SHALL GRUBMARKET, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR ANY THIRD-PARTY SERVICE PROVIDERS, BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING ANY THAT MAY RESULT FROM ANY OUTPUTS CREATED USING GRUBASSIST AI. EVEN IF GRUBMARKET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, CUSTOMER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL GRUBMARKET'S TOTAL AGGREGATE LIABILITY EXCEED \$10,000.00 U.S. DOLLARS. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW AND SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR CUSTOMER'S USE OF GRUBASSIST AI.

11. INDEMNIFICATION

11.1. Defense by GrubMarket. GrubMarket will, at its expense, either defend Customer from or settle any claim, proceeding, or suit ("Claim") brought by a third party against Customer alleging that Customer's use of the Platform infringes or misappropriates any patent, copyright, or trademark if: Customer gives GrubMarket prompt written notice of the Claim; Customer grants GrubMarket full and complete control over the defense and settlement of the Claim; Customer provides assistance in connection with the defense and settlement of the Claim as GrubMarket may reasonably request; and Customer complies with any settlement or court order made in connection with the Claim. Customer will not defend or settle any Claim subject to indemnification under this Section 10.1 without GrubMarket's prior written consent. Customer will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but GrubMarket will have sole control over the defense and settlement of the Claim.

11.2. Indemnification by GrubMarket. GrubMarket will indemnify Customer from and pay all damages, costs, and attorneys' fees finally awarded against Customer in any Claim under Section 9.1; all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Customer in connection with the defense of a Claim under Section 9.1 (other than attorneys' fees and costs incurred without GrubMarket's consent after GrubMarket has accepted defense of the Claim); and all amounts that GrubMarket agrees to pay to any third party to settle any Claim under Section 9.1.

11.3. Exclusions from Obligations. GrubMarket will have no obligation under this Section 11 for any infringement or misappropriation to the extent that it arises out of or is based upon any of the following (the "Excluded Claims"): use of Services in combination with other products or services not provided by GrubMarket if such infringement or misappropriation would not have arisen but for such combination; a Subscription Service or the Professional Services are provided to comply with designs, requirements, or specifications required by or provided by Customer, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; use of the Services by Customer for purposes not intended or outside the scope of the access granted to Customer; Customer's failure to use the Services in accordance with instructions provided by GrubMarket, if the infringement or misappropriation would not have occurred but for such failure; or any modification of the Services not made or authorized in writing by GrubMarket where such infringement or misappropriation would not have occurred absent such modification.

11.4. Remedy. If GrubMarket becomes aware of, or anticipates, a Claim subject to indemnification under Sections 11.1 and 11.2 or otherwise relating to the Services, then GrubMarket may, at its option (a) modify the Services that are the subject of the Claim so that they become non-infringing, or substitute functionally equivalent products; (b) obtain a license to the third-party intellectual property rights giving rise to the Claim; or (c) terminate the affected Order(s) on written notice to Customer and refund to Customer any pre-paid but unused fees (which, in the case of perpetual access, will be calculated based on 3-year straight-line basis).

11.5. Limited Remedy. Sections 12.1, 12.2, 12.3, and 12.4 state GrubMarket's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property right by a Product or the Professional Services.

11.6. Defense by Customer. Customer will defend GrubMarket from any actual or threatened third-party Claim arising out of or based upon Customer's use of the Services, provision of the Customer Data, or breach of any of the provisions of this Agreement, or that is an Excluded Claim, if: GrubMarket gives Customer prompt written notice of the Claim; GrubMarket grants Customer full and complete control over the defense and settlement of the Claim; GrubMarket provides assistance in connection with the defense and settlement of the Claim as Customer may reasonably request; and GrubMarket complies with any settlement or court order made in connection with the Claim. GrubMarket will not defend or settle any Claim subject to indemnification under this Section 11.6 without Customer's prior written consent. GrubMarket will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Customer will have sole control over the defense and settlement of the Claim.

11.7. Indemnification by Customer. Customer will indemnify GrubMarket from and pay all damages, costs, and attorneys' fees finally awarded against GrubMarket in any Claim under Section 11.6; all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by GrubMarket in connection with the defense of a Claim under Section 11.6 (other than attorneys' fees and costs incurred without Customer's consent after Customer has accepted defense of the Claim); and, all amounts that Customer agrees to pay to any third party to settle any Claim under Section 11.6.

12. LIMITATIONS OF LIABILITY

12.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, GRUBMARKET WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF GRUBMARKET IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL GRUBMARKET BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, A PRODUCT.

12.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL GRUBMARKET'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO GRUBMARKET UNDER THE APPLICABLE ORDER WITH RESPECT TO WHICH THE LIABILITY AROSE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

12.3. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY GRUBMARKET TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 12 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

13. GENERAL

13.1. Relationship. GrubMarket will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement.

13.2. Assignability. Neither Party may assign its right, duties, or obligations under this Agreement without the other Party's prior written consent, which consent will not be unreasonably withheld or delayed, except that GrubMarket may assign this Agreement to an Affiliate or a successor (including a successor by way of Change of Control or operation of law), or in connection with the sale of all of the assets or business to which this Agreement relates. A Change of Control shall be deemed to cause an assignment of this Agreement. "Change of Control" means a merger, acquisition, divestiture, sale of assets or equity, or similar transaction.

13.3. Export. Customer will comply with all applicable export and import laws, rules, and regulations in connection with Customer's activities under this Agreement. Customer acknowledges that it is Customer's responsibility to obtain any required licenses to export and re-export the Services. The Services, including technical data, are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer represents and warrants that the Services are not being and will not be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals and persons on the Table of Denial Orders, the Entity List or the List of Specifically Designated Nationals, unless specifically authorized by the U.S. Government for those purposes.

13.4. Subcontractors. GrubMarket may utilize subcontractors or other third parties to perform its duties under this Agreement so long as GrubMarket remains responsible for all of its obligations under this Agreement.

13.5. Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate Party at the address set forth on the applicable Order and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 13.5. Notices are deemed given 2 business days following the date of mailing or 1 business day following delivery to a courier.

13.6. Force Majeure. Neither Party will be liable for, or be considered to be in breach of or default under this Agreement (except for failure to make payments when due) on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as that Party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

13.7. Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in San Francisco, California in connection with any action arising out of or in connection with this Agreement.

13.8. Waiver. The waiver by either Party of any breach of any provision of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

13.9. Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use Services will immediately terminate.

13.10. Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation"; (b) the words "such as", "for example" "e.g." and any derivatives of those words will mean by way of example and the items that follow these words will not be deemed an exhaustive list; (c) the word "or" is used in the inclusive sense of "and/or" and the terms "or," "any," and "either" are not exclusive; (d) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (e) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (f) whenever the context may require, any pronouns used in this Agreement will include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns will include the plural, and vice versa. The headings set forth in this Agreement are for convenience of reference purposes only and will not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof. References to "\$" and "dollars" are to the currency of the United States of America. Any law defined or referred to herein means such law as from time to time amended, modified or supplemented, including (in the case of statutes) by succession of comparable successor laws.

13.11. Entire Agreement. This Agreement, including all exhibits and Orders hereunder, is the final and complete expression of the agreement between these Parties regarding the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except that this Agreement does not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to this Agreement being executed, nor does it affect the validity of any agreements between the Parties relating to other products or services of GrubMarket that are not described in the applicable Order and with respect to which Customer has executed a separate agreement with GrubMarket that remains in effect. No employee, agent, or other representative of GrubMarket has any authority to bind GrubMarket with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the Party against whom enforcement is sought. GrubMarket will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, unless GrubMarket specifically provides a written acceptance of such provision signed by an authorized agent of GrubMarket.