

THIS TERMS OF USE AGREEMENT (“*Agreement*”) WILL GOVERN YOUR USE OF THE ISKENA PLATFORM (AS DEFINED BELOW) OF ISKENA OPERATIONS LIMITED (“iSkena”). **IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE ISKENA PLATFORM.** BY ACCEPTING THESE TERMS BELOW OR BY USING THE ISKENA PLATFORM IN ANY MANNER, YOU, THE ENTITY YOU REPRESENT AND ANY AFFILIATE OF SUCH ENTITY (COLLECTIVELY, “*Customer*”) AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS. THIS AGREEMENT IS ENTERED INTO AS OF THE DATE YOU ACCEPT THESE TERMS OR USE THE ONLINE SERVICES (“*Effective Date*”).

## 1. LICENSE TO USE THE SERVICES

- 1.1. Subject to the terms of this Agreement, iSkena grants to the Customer a limited, non-exclusive, non-transferable right to;
- 1.2. Access and use the Services and allow its Authorized Users to access and use the Services, for the Customer’s internal business purposes. The Customer’s right to use the iSkena Platform is limited by all terms and conditions herein. Customer shall be responsible for its Authorized Users compliance with the Customer’s obligations under the terms of this Agreement. Except for this limited access granted to the Customer, iSkena retain all right, title and interest in and to the Services, including all related intellectual property rights. The Services are protected by applicable intellectual property laws, including international treaties.
- 1.3. “**Admin**” means the person or persons designated by you to administer the Services on your behalf.
- 1.4. “**Affiliate**” means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party.
- 1.5. “**Aggregated Data**” means any dataset or data which no longer allows Iskena to identify any individual or Customer (including its activities), whether directly or indirectly. Aggregated Data is no longer considered Confidential Information of Customer and does not include any Personal Data.
- 1.6. “**Anonymized Data**” means Customer Data which have been processed through an industry-standard de-identification technology or method and which, therefore, no longer allows for the identification of individuals and does not contain any Personnel Data. For the avoidance of doubt, Anonymized Data does not include Personal Data.
- 1.7. “**Authorized User**” means any individual provided with access to the Services by Customer.
- 1.8. “**Customer Data**” means the Personal Data, Anonymized Data and Customer’s Confidential Information which are processed through the Services by Iskena on behalf of the Customer. Customer Data does not include Service Data, Risk Data and Aggregated Data.

- 1.9. **“Confidential Information”** means all information (written, oral or electronic) disclosed by one Party to the other Party whether before or after the Signature Date and concerning the business affairs of the disclosing Party including any information relating to that Party's operations, processes, plans, intentions, product information, know-how, designs, trade secrets, software, market opportunities, customers and shall include this Agreement.
- 1.10. **“Documentation”** means the documentation and other materials made available to Customer (and Authorised Users) in accordance with the provision of the Services, including service specifications and descriptions that are publicly available on iSkena's website.
- 1.11. **“Intellectual Property”** means without limitation, all patents, trademarks, designs, design rights, copyright (including all copyright in any designs and computer software), source codes, proprietary material, know-how, ideas, concepts, trade secrets, methods, techniques, rights in databases, confidential information and all other intellectual property rights and rights of a similar character whether registered or capable of registration, rights in the nature of any of the aforesaid items in any country or jurisdiction and all applications and rights to apply for protection of any of the same.
- 1.12. **“iSkena API”** means application programming interface used to search Risk Data or for other purposes related to the Services, as further described in the Documentation, and an Workorder, where applicable.
- 1.13. **“iSkena Platform”** means the web application which is made available to Customer and its Authorised Users in accordance with an Workorder, and from which Services are accessed and provided.
- 1.14. **“Updates”** means anti-virus databases, improvements, patches, extensions and/or modifications for the Iskena Platform.
- 1.15. **“Rightsholder”** - means owner of all rights, whether exclusive or otherwise to the Services being iSkena Operations Limited, situated at Inniscara Main Street, Rathcoole,Co, Dublin, with registration, number: 738921, company incorporated according to the laws of the Republic of Ireland.
- 1.16. **“Risk Data”** means risk data obtained from various public and dark web sources by the use of iSkena's Services which is used to scan your domains for vulnerabilities.
- 1.17. **“Security Breach”** means unauthorised access, use or disclosure of Customer Data in breach of security safeguard, or otherwise as defined in any applicable Data Protection Laws. (i) access, use and communication not authorised by law of any Personal Data and (ii) loss of Personal Data or any other breach of the protection of such information.
- 1.18. **“Service”** means to conduct monitoring for information security and cybersecurity purposes, to minimise and manage fraud, to manage information security and other systems' risks, including risks associated with external attack vectors, to enrich threat intelligence or other threat data, to conduct threat modelling and for preparing and participating in security activities, as well as any reasonably related purposes which are not in breach of this Agreement.

- 1.19. **“Services”** means the vulnerability scanning Services to be provided through the iSkena Platform to the Customer in respect of each stated Customer domain as set out in the Workorder.
- 1.20. **“Service Data”** - means information which Customer and/or its Authorised Users obtain through the Services.
- 1.21. **“Subscription Term”** means the term during which the Services are made available to Customer (and its Authorised Users) in accordance with a Work Order, which shall be a fixed period of 12 (twelve) months from the date on which the Workorder is accepted by iSkena.
- 1.22. **“Work Order”** means a quotation, a work order, an estimate or a procurement document which is approved, executed, signed or accepted by Customer, including through the issuance of a purchase order issued by the Customer, and which is deemed attached and part of the Agreement.
- 1.23. **“Fees”** means the amounts payable by the Customer to iSkena and as set out in the Work Order and/or
- 1.24. The Fees paid or payable by Customer for the Services, are non-refundable and shall be billed in Dollars (USD). Except as otherwise set forth in the Work Order.
- 1.25. Payment of the Fees by the Customer to iSkena shall be made:
- 1.25.1. free of exchange and without any deduction or set off;
  - 1.25.2. into the nominated bank account of iSkena;
  - 1.25.3. by credit card or by electronic fund transfer, unless otherwise agreed to by iSkena;
  - 1.25.4. prior to the expiry of any credit period agreed to between the Customer and iSkena, or if there is no credit period agreed then cash on order.
- 1.26. The Customer must provide current, complete and accurate billing information.
- 1.27. Fees do not include any local, provincial or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, **“Taxes”**). The Customer is responsible for payment of all Taxes associated with its purchases hereunder (excluding taxes based on iSkena’s net income or property), and any related penalties and interest. The Customer will make payment of the Fees to iSkena free and clear of, and without reduction for, any withholding taxes. The Customer will, upon iSkena’s request, provide iSkena with official receipts issued by appropriate taxing authorities, or such other evidence as iSkena may reasonably request, to establish that such Taxes have been paid.

## 2. ACCESS TO THE SERVICES

- 2.1. iSkena does not provide the equipment required to access the Services. The Customer is responsible for all fees charged by third parties related to the Customer's access and use of the Services (e.g., charges by Internet service providers).
- 2.2. The Customer is responsible for understanding and managing the settings, privileges and controls for the Services and iSkena Platform and for controlling whom you permit to become an Authorised User and what are the settings and privileges for such Authorised User. iSkena shall not be responsible for managing Authorised Users, settings, and made available as part of the iSkena Platform, including for registering and setting up the Customer's and/or Authorised-Users account.
- 2.3. You agree to notify us without undue delay if your contact information change. If you fail to do so, we shall have no liability whatsoever for notices or communications that are not received by you. Customer is solely responsible for determining the number of Authorised Users who will have access to the iSkena Platform and usage rights required for the performance of the Services, including any strategic location of any data input points or monitoring requirements within Customer's networks and information technology ("IT") systems. Customer may add additional Authorised Users to the extent permissible by iSkena.

### 2.4. Hosted (Subscription) Application Services

- 2.4.1. iSkena reserves the right to restrict, suspend, or terminate access to the Services at any time, if in iSkena's sole determination, the Customer and/or End User is using the Services in a manner that violates applicable laws or the terms of this Agreement, fails to make payment to iSkena or creates an Excess Burden on iSkena's systems. "**Excess Burden**" means when the Services are being used to engage in any illegal activity, and/or use of Services is causing immediate, material and ongoing harm to iSkena or iSkena's other customers.
- 2.5. iSkena may, from time to time, develop new modules, versions, functionalities or features to the Services (each an "Upgrade"). Upgrades are generally included with your subscription to the Services, except if we indicate otherwise (the "Excluded Upgrade"). For further clarity, Excluded Upgrades may include new features, modules or offerings that are excluded from Upgrades at the discretion of iSkena, but shall not include security patches and updates that are required for the Services to function substantially as described in the Documentation or this Agreement.

### 3. THIRD PARTY MATERIALS

- 3.1. The Services may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising ("**Third-Party Materials**"). You acknowledge and agree that the iSkena Platform is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. iSkena Platform does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

### 4. RESTRICTIONS

- 4.1. The Customer shall use the Services only in compliance with all applicable laws, including any applicable privacy laws, and the terms of this Agreement. The Customer shall not and shall not permit or authorize any third party to: (i) copy, rent, sell, lease, sublicense, distribute, assign, or otherwise transfer or encumber rights to the Services, or use the Services for the benefit of any third party, or make the Services or iSkena Platform available to anyone other than its Authorized Users; (ii) use the Services to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws, or to process, send or store Sensitive Information, infringing or unlawful material, viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (iii) circumvent or disable any digital rights management, usage rules, or other security features of the Services, or otherwise attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Services or the data contained therein; (iv) modify, copy, translate, enhance, decompile, disassemble, reverse engineer or create derivative works based on the Services, or any portion thereof; (v) access or use the Services for the purpose of building a competitive product or service or copying its features or user interface; (vi) remove, alter, or obscure any copyright, trademark or other proprietary notices appearing in or on the Services; or (vi) use the Services in a manner that overburdens, or that threatens the integrity, performance, or availability of, the Application Services.

### 5. PRIVACY POLICY

- 5.1. To the extent the Customer Data includes Personal Data that is inserted by the Customer through the iSkena Platform, the Customer agrees that the Customer is deemed to be the responsible party and iSkena is deemed to be the operator as those terms are understood by the [Protection of Personal Information Act], or other applicable legislation or regulation, on the protection of individuals with regard to the processing of personal information and on the free movement of such data ("**POPI**"). [Where applicable, the Customer content shall be hosted and persistently stored by iSkena or its third-party service providers in the Republic of Ireland]. In providing the Services, iSkena may engage sub-processors to process the Customer Data, including, without limitation, any associated Personal Information pursuant to this Agreement within in other countries and territories. Under no circumstances will iSkena be deemed the responsible party with respect to the Customer content under POPI or any relevant or replacement law or regulation. "**Personal Data**"

means any the Customer Content processed by iSkena pursuant to this Agreement, relating to an identified or identifiable natural person; where an “identifiable natural person” means an individual who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to the individual’s physical, physiological, mental, economic, cultural or social identity.

- 5.2. The Customer agrees to comply with all applicable privacy and data protection regulations. Further, the Customer agrees to not use the Services or iSkena Platform to send or processes Sensitive Information. “**Sensitive Information**” shall means information the unauthorized disclosure of which could cause material, severe, or catastrophic harm or impact to iSkena, any data subjects or third parties, including but not limited to passwords, authentication/authorization credentials, business secrets deemed highly confidential (e.g., highly-confidential business strategies and communications, sensitive attorney-client privileged and confidential communications), and information under regulatory or contractual handling requirements
- 5.3. For the Services, iSkena provides the Customer with access to the Customer Data and the ability to delete the Customer Data upon request. Upon cessation of iSkena’s relationship with the Customer, iSkena may delete the Customer Data no longer in active use. iSkena agrees to maintain commercially reasonable technical and organizational measures designed to safeguard the Customer Data a from unauthorized access, use or disclosure. These will include measures designed to: (i) store the Customer Data on servers located in a physically secured location and (ii) use firewalls, access controls and similar security technology designed to protect the Customer Data from unauthorized disclosure. iSkena takes no responsibility and assumes no liability for any the Customer Data other than its express security obligations in this section.
- 5.4. The Customer provides its express consent to iSkena’s collection of information (including but not limited to Anonymised Data and Aggregated Data) relating to the Customer’s use of the Services or iSkena Platform and the Customer agrees to the use of cookies for tracking purposes. Customer will be responsible for obtaining and all consents necessary in order to disclose information (including Personal Information) to iSkena and including the right to use such information in accordance with this Agreement.
- 5.5. iSkena may also collect registration and other information about the Customer as iSkena’s customer through iSkena’s website. iSkena’s collection and use of information collected about the Customer on Iskena’s website is governed by the iSkena’s Privacy Policy. iSkena’s Privacy Policy does not cover information iSkena collects on the Customer’s behalf from the Customer’s web properties. It is the Customer’s obligation to provide the Customer’s own privacy policy or notice to the Customer’s Authorised users and any related third parties.

## **6. ACCESS TO THE ISKENA PLATFORM**

- 6.1. The Customer agrees that the Customer is entirely responsible for the creation of an account on the Iskena Platform and maintaining the confidentiality of the Customer's password and agrees to notify iSkena if the password is lost, stolen, disclosed to an unauthorized third party, or otherwise may have been compromised. The Customer agrees that the Customer is entirely responsible for any and all activities that occur under the Customer's account, whether or not the Customer undertakes such activities. The Customer agrees to immediately notify iSkena of any unauthorized use of the Customer's account or any other breach of security in relation to the Customer's password or the Services that is known to the Customer.
- 6.2. Customer agrees and understands that the use of the Services is subject to the restrictions set forth in this Section, and Customer will not authorize or allow the use of the Services in violation of the Agreement. Customer remains liable for the act and omissions of its Authorised Users.
- 6.3. The Services allow End Users to conduct queries through real-time monitoring of the dark web and other forums or networks known to be used for fraudulent or criminal purposes, such as selling stolen credentials (the "Dark Web"). The following restrictions are applicable to the use of these query functions, as well as for any monitoring capabilities made available as part of the Services:
  - 6.3.1 Customer may not use the Services for the purpose of monitoring and profiling individuals based on their personal characteristics. For greater clarity, the Services may not be used to monitor or to obtain Service Data on third parties other than Affiliates, employees, directors, officers and individuals which Customer has a legitimate interest in monitoring, investigating, profiling and protecting (together with the consent permitting the Customer to do so). The Services may not be used for targeting individuals based on Service Data, including for discriminatory purposes or for abusing surveillance purposes in violation of their right to privacy.
  - 6.3.2 Customer is solely responsible for ensuring that it has a lawful basis for processing the Service Data and for providing adequate transparency notices in complying with Applicable Law. Customer may not use or otherwise process any Service Data or use the Services without ensuring that it complies with Applicable Law when doing so.
  - 6.3.3 Customer may not use the Services for monitoring individuals or assets which it is not authorized to monitor. Without limiting the generality of the foregoing, Customer may not monitor third party assets, including websites, without such third party's prior consents and authorizations. Customer hereby represents and warrants that it has all such consents and authorizations to allow iSkena to provide the Services.

- 6.4 Data insights may be provided by combining different datasets and augmenting Customer Data with Risk Data to provide certain outputs. Customer agrees and understands that (a) these outputs may not be used for discriminatory purposes, or in violation of Applicable Law and (b) iSkena is not responsible for any actions or decisions taken based on any output. Customer must ensure that it verifies assumptions and conducts independent reviews prior for making decisions or taking actions which can affect individuals, or the conduct of its affairs.
- 6.5 The Services may not be used in high-risk situations such as (a) to prevent death and bodily harm on individuals; (b) to conduct criminal inquiries for a forensic report; (c) in high-risk industries and settings such as nuclear power facilities; (d) to conduct criminal checks and (e) as part of automated decision-making, especially for making decisions affecting the rights and freedoms of individuals.
- 6.6 Customer represents and warrants that it will not use the Services, nor authorize the use of the Services, in a manner:
- 6.6.1 that is prohibited by Applicable Law or otherwise by this Agreement;
  - 6.6.2 that constitutes the selling, reselling or commercialization of the outputs, Risk Data or any other proprietary information of iSkena;
  - 6.6.3 that will disrupt third parties' use or enjoyment of the Services, including if this use results in automated, constant and repeated requests for data other than as permitted under this Agreement and has a negative effect on our systems or network, including abnormal usage that overloads servers or cause portions of our network to be blocked (e.g. denial-of-services and distributed-denial-of-service attacks);
  - 6.6.4 that uses the Services to create, transmit, distribute or store material that violates Intellectual Property, privacy, publicity or other personal rights of individuals, export control or that can otherwise be threatening, abusive, hateful or constitutes or encourages conduct that would be considered a fraud, a criminal offence or likely to give rise to civil liability.
  - 6.6.5 that results in (a) the sharing of credentials, identifiers and passwords among End Users or among End Users and third parties, and (b) the distribution, disclosure or use of any of the Services in any format to or by unauthorized third parties (i.e. other than End Users), including through any time-sharing service, service bureau, network or by any other means;



- 6.6.6 that involves using any robot, spider, scraper, deep link or other similar automated data gathering or extraction tools, programs, algorithms, or methodology to access, acquire, copy or monitor the Services and/or iSkena Platform, or any portion of the Services and/or iSkena Platform, including the iSkena Platform. The foregoing shall include any data scraping or screen or web scraping, even with the consent of the End Users;
  - 6.6.7 that involves modifying, decompiling, disassembling, deciphering, decrypting, seeking or otherwise reverse engineering or attempting to reconstruct or discover any source code or ideas or algorithms of any of the Services and their underlying technology by any means whatsoever;
  - 6.6.8 that involves scanning, probing, or performing discovery on computer devices, networks, applications and/or other related digital assets for which it does not own or is not fully authorized to perform such actions;
  - 6.6.9 that involves penetrating our security, including, without limitation, by posting or transmitting files which can contain viruses, worms, Trojan horses or contaminating or destructive features, by circumventing security measures, by attempting to access any part of the Services and/or iSkena Platform which is not otherwise authorized for Customer's access and by manipulating identifiers to disguise the origin of content shared through the Services and/or iSkena Platform.
- 6.7 If you breach this Clause 6, or if we reasonably believe that a breach is imminent, we may suspend part or all of the Services to the minimum extent necessary to ensure that the breach is resolved or contained, and iSkena will reactive access to the Services as soon as reasonably practicable, except that iSkena reserves the right to terminate or suspend access to End Users who have breached this Clause 6.

## **7. AVAILABILITY OF THE ISKENA PLATFORM, SECURITY & ACCURACY**

- 7.1. iSkena makes no warranty that the Customer's access to the iSkena Platform and Services will be uninterrupted, timely or error-free. In addition, iSkena may occasionally need to carry out repairs, maintenance or introduce new facilities and functions.
- 7.2. Access to the Services and/or iSkena Platform may be suspended or withdrawn to or from the Customer personally or all Authorised Users temporarily or permanently at any time and without notice. iSkena may also impose restrictions on the length and manner of usage of any part of the Services and/or iSkena Platform for any reason. Should iSkena impose restrictions on the Customer personally, then the Customer must not attempt to use the Services under any other name or user or on any other hardware.

- 7.3. iSkena shall not be liable for damage to, or viruses or other code that may affect, any equipment (including but not limited to your mobile device), software, data or other property as a result of the Customer's access to or use of the Services or iSkena Platform or the Customer obtaining any material from, or as a result of using, the Services and/or iSkena Platform. iSkena shall also not be liable for the actions of third parties.
- 7.4. iSkena may change or update the Services and/or iSkena Platform, and anything described in it without notice to the Customer. If the need arises, iSkena may suspend access to the Services and/or iSkena Platform, or close it indefinitely.
- 7.5. iSkena makes no representation or warranty, express or implied, that information and materials on the Services and/or iSkena Platform are correct, no warranty or representation, express or implied, is given that they are complete, accurate, up to date, fit for a particular purpose and, to the extent permitted by law, iSkena does not accept any liability for any errors or omissions. The Customer's reliance on the accuracy of any results obtained from the Services, is done solely at the Customer's risk without any warranty or guarantee on the part of iSkena.

## **8. USE POLICIES**

- 8.1. The Customer is solely responsible for any content and other material that the Customer submits, publishes, transmits, processes, or displays on, through, or with the Services and/or iSkena Platform.
- 8.2. The Customer assumes sole responsibility for results obtained from the use of the Services and iSkena Platform, for conclusions drawn from such use, and any reliance on the accuracy of such results. iSkena shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to iSkena by the Customer in connection with the Services.

## **9. TRADEMARKS AND PUBLICITY**

- 9.1. "iSkena," the iSkena logo, and any other product or service name or slogan displayed on the Services and iSkena Platform are trademarks of iSkena or its affiliates, and its suppliers or licensors, and may not be copied, imitated or used, in whole or in part, without the prior written permission of iSkena or the applicable trademark holder. The Customer shall not use any metatags or any other "hidden text" utilizing "iSkena" or any other name, trademark or product or service name of iSkena without prior written permission. In addition, the look and feel of the Services and iSkena Platform, including all page headers, custom graphics, button icons and scripts, is the service mark, trademark and/or trade dress of iSkena may not be copied, imitated or used, in whole or in part, without prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned in the Services and iSkena Platform are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation thereof by iSkena.

## 10. CONFIDENTIAL INFORMATION AND FEEDBACK.

- 10.1. ***“Confidential Information”*** shall mean all written or oral information, disclosed by either party to the other, related to the operations of either party or a third party that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential. The parties acknowledge that during the performance of this Agreement, each party will have access to certain of the other party’s Confidential Information or Confidential Information of third parties that the disclosing party is required to maintain as confidential. Both parties agree that all items of Confidential Information are proprietary to the disclosing party or such third party, as applicable, and will remain the sole property of the disclosing party or such third party.
- 10.2. Each party agrees as follows: (a) to use Confidential Information disclosed by the other party only for the purposes described herein; (b) that such party will not reproduce Confidential Information disclosed by the other party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (c) that neither party will create any derivative work from Confidential Information disclosed to such party by the other party; (d) to restrict access to the Confidential Information disclosed by the other party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (e) to the extent practicable, return or destroy all Confidential Information disclosed by the other party that is in its possession upon termination or expiration of this Agreement, upon request of the other party.
- 10.3. Notwithstanding the foregoing, the provisions of Sections 10.1 and 10.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient’s possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing party without restriction. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that, to the extent permitted by law, the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (y) to establish a party’s rights under this Agreement, including to make such court filings as it may be required to do.

- 10.4. If the Customer or its Authorized Users provide iSkena with any suggestions, recommendations, or other feedback relating to the Services, the iSkena Platform or iSkena's current or future services ("**Feedback**"), iSkena shall have the right to use the Feedback in any manner, including but not limited to future enhancements and modifications to the Services. the Customer hereby grants to iSkena and its assigns a perpetual, worldwide, fully transferable, sublicensable, fully paid-up, irrevocable, royalty free license to use, reproduce, modify, create derivative works from, distribute, and display the Feedback in any manner any for any purpose, in any media, software, or technology of any kind now existing or developed in the future, without any obligation to provide attribution or compensation to the Customer or any third party. In addition, iSkena shall be free to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) related to or acquired during provision of the Services.

## **11. WARRANTIES; DISCLAIMER OF WARRANTIES**

- 11.1. iSkena warrants to the Customer that the Services will perform materially in accordance with the documentation that accompany or is available for the Services by iSkena. iSkena's sole liability and the Customer's exclusive right and remedy for a breach of the foregoing warranty is for iSkena to correct or re-perform the nonconforming Services.
- 11.2. The Customer warrants that the Customer owns or has obtained all necessary rights, title and interest, and obtained all necessary consents, to transfer the Customer data to the iSkena Platform and its data center provider(s) for the purpose of processing such the Customer data in accordance with this Agreement.
- 11.3. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, USE OF the ISKENA PLATFORM AND ANY SERVICES PROVIDED BY iSkena INCLUDING BUT NOT LIMITED TO THE APPLICATION SERVICES, ANY PROFESSIONAL SERVICES AND CUSTOMER SUPPORT SERVICES IS AT CUSTOMER'S SOLE RISK. SUCH SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ISKENA AND ITS SUPPLIERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED INDEMNITIES AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. ISKENA DOES NOT GUARANTEE THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ITS SERVICES, AND CUSTOMER RELIES ON SUCH SERVICES AT CUSTOMER'S OWN RISK. NEITHER DOES iSkena GUARANTEE THE ACCURACY, USABILITY, COMPLETENESS, OR USEFULNESS OF ANY CUSTOM REPORT, AND CUSTOMER USES CUSTOM REPORTING FEATURES AT CUSTOMER'S OWN RISK. ANY MATERIAL THAT CUSTOMER ACCESSES OR OBTAINS THROUGH ISKENA'S SERVICES, INCLUDING CUSTOMER CONTENT, IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY MATERIAL THROUGH ISKENA'S SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM ISKENA OR THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## **12. LIMITATION OF LIABILITY**

- 12.1. ISKENA AND ITS SUPPLIERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF iSkena HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), RESULTING FROM CUSTOMER'S USE OF THE ISKENA PLATFORM, THE SERVICES OR ISKENA'S PROVISION OF ANY OTHER SERVICES. UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY OF ISKENA AND ITS SUPPLIERS AND LICENSORS OF ALL KINDS ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF THE SERVICES (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS) OR ISKENA'S PROVISION OF ANY OTHER SERVICES, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, DELICT, NEGLIGENCE OR OTHERWISE, EXCEED THE AMOUNTS, IF ANY, THAT CUSTOMER HAS PAID TO ISKENA FOR OF THE SERVICES TO WHICH THE CLAIM RELATES.

## **13. INDEMNITY**

- 13.1. the Customer will defend, indemnify and hold harmless iSkena, its suppliers and licensors, and its respective subsidiaries, affiliates, officers, agents, employees, representatives, and assigns, from any costs, damages, expenses, and liability caused by the Customer's use of the Services, the Customer's violation of this Agreement, the Customer content, or the Customer's violation of any rights of a third party through use of the Services.

## **14. GENERAL**

- 14.1. The laws Republic of the Republic of Ireland shall apply to the interpretation of this Agreement and the parties accordingly agree that any dispute between the parties shall be resolved in Republic of Ireland. The parties hereby consent to the jurisdiction of the Court otherwise having jurisdiction in respect of any proceedings (not subject to arbitration in terms of this Agreement) in respect of or arising out of this Agreement or it's cancellation notwithstanding that the amount of the claim may exceed the normal jurisdiction of the applicable Court.
- 14.2. iSkena's failure to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by iSkena in writing. In the event that a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.
- 14.3. The terms and conditions which by their nature are intended to survive termination of this Agreement shall survive, including Restrictions, Disclaimer of Warranties, Feedback, Indemnity, and Limitation of Liability. This Agreement contains the entire understanding of the parties on the subject matter hereof.

- 14.4. At all times it shall be the responsibility of the Customer to have adequate disaster recovery and data back-up systems in place and to maintain these systems. iSkena shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Customer as a result of the Customer's failure to maintain adequate disaster recovery and data back-up systems.
- 14.5. It shall at all times be the responsibility of the Customer to have adequate security and anti-virus systems in place and to maintain these systems. iSkena shall not be liable for any loss or damage, from whatsoever cause and howsoever arising, suffered by the Customer as a result of the Customer's failure to maintain adequate security and anti-virus systems.
- 14.6. The Customer shall be liable for all costs incurred by iSkena in the recovery of any Fees or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel, whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgement.
- 14.7. The Customer shall pay interest on all Fees owing by the Customer to iSkena which have not been paid on the due date thereof, at the maximum permitted rate as published from time to time under the laws of the Republic of Ireland, specifically in accordance with the European Communities (late payment in commercial transactions) Regulations 2012 (S.I. 580/2012), as amended.

## 15. CONTACTING ISKENA

- 15.1. All notices to be provided by iSkena to the Customer under this Agreement may be delivered in writing, either (a) by nationally recognized overnight delivery service ("**Courier**") to the contact mailing address provided by the Customer on any Work Order; or (b) by electronic mail to the electronic mail address provided for the Customer's account owner. If you need to give notice to iSkena you must do so in writing by Courier to Inniscarra Main Street, Rathcoole, Co, Dublin. If you have any questions or concerns about the Services or this Agreement, you may contact us by email at [legal@iskena.com](mailto:legal@iskena.com).

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(END)