

# Terms of Service

Effective as of December 1, 2024

## A. Introduction

### 1. General Provisions

- 1.1. These Terms of Service (these “**Terms**”) are a legally binding agreement between accessiBe Ltd. and/or its affiliates (as applicable; the “**Company**”) and its Visitors and Customers.

A “**Visitor**” is a Person who merely browses the Company Website and/or submits their personal data via the Company Website’s online chat, feedback forms or using any other method.

A “**Customer**” is a Person who uses a Service (whether paid or unpaid), other than if such Person has access or uses a Service pursuant to an engagement between such Person and a Reselling Partner (as such term is defined in the Company’s Partner Program). Every Customer is also a Visitor.

A “**Person**” refers to both natural persons and incorporated or non-incorporated entities.

A “**Service**” means each of the products and services offered by the Company (or any portion thereof), including: (a) the Company’s automated accessibility audit tool (“**accessScan**”, formerly known as “aCe”); (b) the Company’s automated web accessibility solution (together with any additional services purchased with such solution, “**accessWidget**”, formerly known as the “accessiBe Solution”); (c) the Company’s platform for testing, monitoring, and remediation of accessibility for websites and web applications (“**accessFlow**”); (d) any services offered, or information available, on the Company’s website available at [www.accessibe.com](http://www.accessibe.com), including any subdomains thereof (the “**Company Website**”); (e) accessServices (as such term is defined below); (f) Litigation Support; and (g) any other software, features, products, content, and services, including any updates, upgrades, improvements or changes thereto, that the Company may provide to Visitors and/or Customers at any time, whether on the Company Website or otherwise.

### 2. Access to Services

- 2.1. By accessing or using a Service, each Visitor or Customer (as applicable) acknowledges that they have read, understood, and agree to be bound by these Terms, whether or not they have clicked a box indicating acceptance of these Terms (if applicable) or provided any other forms of consent or approval.
- 2.2. When accessing or using a Service or any part thereof, the Company may access, collect, and share certain Personal Information (as defined in the Company’s Privacy Notice; the “**Privacy Notice**”) from, and/or about the Customer or anyone accessing such Service on its behalf (“**Customer Data**”), as described in the Privacy Notice. To better understand the Company’s practices with respect to Customer Data, Customers should review the Privacy Notice, which is incorporated herein by reference. To the extent the Company is deemed a processor of any Personal Information through any Service, the provisions of the Data Protection Addendum (the “**DPA**”) shall apply to such processing. A Person agreeing to these

Terms consents to (a) the Company's access, collection, use, and disclosure of Visitor and/or Customer Data and/or End User information (as applicable) as set forth in the Company's Privacy Notice, and (b) where applicable, the processing by the Company of personal information pursuant to the provisions of the DPA; in each case, for providing, maintaining, improving and updating the Services. The provisions of the Privacy Notice and the DPA are incorporated into these Terms by reference.

- 2.3. A Person agreeing to these Terms represents and warrants that (a) it has full corporate power and authority to agree to these Terms and perform its obligations hereunder; (b) these Terms will constitute a valid and legally binding obligation of such Person, enforceable against it in accordance with the terms hereof; and (c) the consent and performance by such party of the provisions of these Terms do not and will not constitute a breach of, or otherwise conflict with, any of its respective corporate documents (if such Person is not a natural person) or any other agreement, instrument or commitment to which it is subject or by which it is bound. If the Person agreeing to these Terms is doing so on behalf of an entity (incorporated or non-incorporated), such Person represents that they have the authority to bind such entity by these Terms.
- 2.4. Customers will have the ability to join their employees and subcontractors ("**Customer Personnel**") to their User Account (as such term is defined below). A Customer is fully liable for any action of its Customer Personnel, and any violation of a provision of these Terms by Customer Personnel (had such Customer Personnel been directly bound by these Terms) shall be deemed a violation of the Customer of such provision of these Terms.
- 2.5. The Services are intended for use by natural persons of the legal age required to form legally binding contracts under applicable law (but in no event are they intended for use by natural persons under 18). Any Visitor and Customer who is a natural person represents and warrants that they are at least 18 years old. A natural person younger than 18 must not access or use any Service.
- 2.6. Any Person who does agree to be bound by these Terms or does not have the legal capacity or authority to accept them may not use or access any Service.
- 2.7. If you are a Partner (as defined in our Partner Program) or wish to become one, you acknowledge and agree to comply and be subject to the terms of our Partner Program.
- 2.8. Where prohibited by law, these Terms are void, and the right to access and use any Service is not granted in such jurisdictions.
- 2.9. In no circumstances may a Service be used by anyone who has had their User Account (as such term is defined below) temporarily or permanently deactivated or suspended or by anyone seeking to use a Service in violation of these Terms.

## **B. Services**

### **3. General**

- 3.1. The purpose of the Services is to provide information and/or software solutions that assist in promoting the accessibility of website(s) in adherence with the Web Content Accessibility Guidelines version 2.1 at the AA level success criteria as

required by the Americans with Disabilities Act, or any other standard that may be communicated to a Customer with respect to a certain Service (the “**Standard**”).

- 3.2. accessWidget and accessFlow are provided on a “Software as a Service” (“**SaaS**”) basis and, as such, require a license to be purchased in order to use such Services. Customers wishing to purchase accessServices will be required to enter into a separate agreement or statement of work with respect to such accessServices (in the event of a conflict between these Terms and any accessServices specific terms, the specific accessServices terms will prevail).
- 3.3. A website or portion thereof (as applicable, including any Website Properties, as such term is defined below), on which accessWidget has been correctly installed or which has been remediated through accessServices, shall be referred to as a “**Customer Website**”.
- 3.4. The Company does not provide legal advice or services, and none of the Services are or should be considered legal services. Visitors and Customers are advised to contact an attorney to obtain advice regarding the compliance of websites (including any Customer Website) with applicable laws, rules, and regulations, including the Standard. Visitors and Customers are solely responsible for all actions taken or not taken by them in connection with any such applicable laws, rules and regulations, including the Standard, and all liability with respect thereto is hereby expressly disclaimed by the Company.

#### **4. accessWidget**

- 4.1. accessWidget enables automatic remediation of website accessibility issues (other than Excluded Issues, as such term is defined below). To activate the automatic remediations on a Customer Website on which accessWidget is installed, a Person accessing such Customer Website (an “**End User**”) is required to activate accessWidget by choosing an applicable disability profile on the accessWidget’s user interface or by using assistive technologies (such as screen readers and suited keyboards). If certain assistive technologies are installed on the device with which an End User accesses a Customer Website, accessWidget will detect such assistive technology and either automatically activate accessWidget or prompt the End User to activate accessWidget. End Users’ IP addresses and URLs may be processed by the Company for the provision of the Service, subject to the Terms and the DPA, and Customers are required to ensure they give all notification and obtain all consents required under applicable law. End Users using screen readers may be referred or redirected to a blog post on the Company Website explaining and instructing them how to operate accessWidget. Customers are advised to notify their End Users about such referral or redirection.
- 4.2. Neither accessWidget nor accessFlow address or resolve certain accessibility issues (“**Excluded Issues**”), an updated list of which can be found on the Website. The Company may update the list of Excluded Issues from time to time at its discretion, without need to provide notice. It is the Customer’s responsibility to periodically review the list of Excluded Issues. Addressing or resolving such Excluded Issues may require a Customer to purchase additional services from the Company or other third parties. The Company provides some such additional services for a fee as part of the accessServices offering. accessServices may be

purchased via a Customer's User Account, or Customers can email the accessServices team at services@accessibe.com, and they will be happy to assist.

## 5. **accessFlow**

- 5.1. accessFlow provides Customers with information and guidance regarding website accessibility issues, allowing Customers to address and remediate accessibility issues in websites, web projects and any other supported code, whether they are public or private (collectively, "**Website Property(ies)**"). accessFlow does not address Excluded Issues.
- 5.2. It is within the Customer's discretion whether to implement the remediations suggested by accessFlow. accessFlow Customers are solely responsible for their choice whether or not to implement any suggested remediations, and all liability with respect thereto is hereby expressly disclaimed by the Company.
- 5.3. Customers may not distribute, disclose, share, sublicense, assign, and/or transfer in any way to any third party, the remediation recommendations made by accessFlow. Customers must promptly notify the Company in writing of any suspected abuse and/or misuse of accessFlow by anyone, whether or not it is done on a Customer's behalf.

## 6. **accessServices**

- 6.1. "**accessServices**" include the following:
  - 6.1.1. Files Accessibility Remediation Services.
    - (a) Remediation of files, meaning Word, PDF, PPT, Adobe InDesign, Excel files and ePub ("**File Remediation Services**").
    - (b) The File Remediation Services do not include an upload of the remediated files to a Customer's website.
    - (c) To be provided with File Remediation Services, a Customer must deliver to the Company the relevant final files that it wishes to remediate. The files will be remediated on an as-is basis (i.e., the Company will not modify or alter the text, branding, graphic design, color contrast, or any other feature of the files).
    - (d) Customers must provide the Company with alternative text for visual files (i.e., pictures, graphs, etc.) prior to the Company commencing File Remediation Services relating to such files. If a Customer chooses not to provide alternative text, the Company will provide the alternative text to the best of its ability/understanding, however the Company cannot and does not guarantee that such alternative text will suit the Customer's needs or requirements.
    - (e) Customers acknowledge and agree that according to WCAG 2.0, scanned text images may not be added to accessible files. If the Customer provides the Company with scanned files or scanned text images, the Company will remediate them using full alternative text.
    - (f) If files provided by a Customer to the Company are of poor quality and/or cannot be remediated, the Company will not be able to provide such Customer with the applicable File Remediation Services, and will

refund such Customer the applicable fees paid by it with respect to such File Remediation Services.

- (g) For each PDF file remediated through File Remediation Service the Company will provide a PDF accessibility checker report.
- (h) Customers may request, upon submitting a request for File Remediation Services, to include an accessibility seal on remediated documents, to appear on the first page of the remediated document, and the Company shall provide such seal upon such request.
- (i) If any deliverable of File Remediation Services has errors or fails to comply with their specifications, Customers may reject such deliverables within ten (10) days from receipt thereof. The Company will, at its cost and expense, use commercially reasonable efforts to correct the errors and will submit the corrected deliverables to the Customer. If no deliverables are rejected by Customers within the aforementioned period, then the deliverables of such File Remediation Services will be deemed to have been accepted by such Customer. If the Company is unable to correct such errors, it will refund the Customer the applicable fees paid by it with respect to such File Remediation Services.
- (j) If during the twelve (12) month period after the Company provides File Remediation Services the Customer receives a written complaint alleging that components remediated by such File Remediation Services do not adhere to the Standard (after the date on which such File Remediation Services were completed and delivered to the Customer), in a manner that does not allow an individual with disabilities reasonable use of the Customer Website ("**Inaccessible Content**"), such Customer may notify the Company of such complaint within no later than 30 days of receipt thereof. Such notification must be in writing and must include an attachment with the written complaint alleging the Inaccessible Content. Following receipt of such notice, the Company will investigate the issue(s) raised in such complaint, including ascertaining whether the alleged Inaccessible Content was covered by the applicable File Remediation Services. If the Company determines the existence of Inaccessible Content, the Company will either fix such issue(s) (at no additional cost to the Customer), or inform the Customer why it can not be remediated, and refund the Customer any fees paid for the applicable File Remediation Services. Such action by the Company shall be Customers' sole remedy with respect to any damages resulting from any such complaint.

6.1.2. Media Accessibility Remediation Services.

- (a) Remediation of media, meaning video or audio files/media, including closed captions, video/audio transcripts and audio descriptions ("**Media Remediation Services**").
- (b) The Media Remediation Services do not include an upload of the remediated media to a Customer's website.

- (c) To be provided with Media Remediation Services, a Customer must deliver to the Company the relevant final files that it wishes to remediate. The media will be remediated on an as-is basis (i.e., the Company will not modify or alter the text, branding, graphic design, color contrast, or any other feature of the media).
- (d) If media provided by a Customer to the Company are of poor quality and/or cannot be remediated, the Company will not be able to provide such Customer with the applicable Media Remediation Services, and will refund such Customer the applicable fees paid by it with respect to such Media Remediation Services.
- (e) As part of the process of adding audio descriptions to videos, Customers will have one opportunity to suggest amendments to such audio descriptions (to be communicated in writing to the Company within seven (7) days of the Customer receiving the remediated video file), and the Company shall make best commercial efforts to implement such amendments. Customers shall be fully liable for any amended audio descriptions suggested by them that are implemented by the Company.

6.1.3. Expert Audit Service.

- (a) A manual audit performed by accessibility specialists, which evaluates and examines the accessibility levels of a website's UI, design, source code, and usability, in adherence with the Standard ("**Audit Service**").
- (b) The result of the Audit Service is a checklist report detailing any accessibility issues found, based on the Standard, listed by category, with suggestions on how to remediate the issues identified (an "**Audit Report**").
- (c) It is within Customers' discretion whether to implement the remediations suggested in an Audit Report. Audit Service Customers are solely responsible for their choice whether or not to implement any suggested remediations, and all liability with respect thereto is hereby expressly disclaimed by the Company.
- (d) Within no later than ninety (90) days of receiving the Audit Report, Customer may request (i) a post-audit report of any remediations made based on the Audit Report, and (ii) schedule one 30-minute session with a web accessibility specialist to receive more information about the Audit Report and post-audit report (if applicable).

6.1.4. VPAT Service.

- (a) The deliverable of voluntary product accessibility template (VPAT) services ("**VPAT Services**") is an Accessibility Conformance Report ("**ACR**"). The ACR is a word document detailing a website's level of conformance with digital accessibility standards.
- (b) There are different kinds of VPATs/ACRs, according to the required or applicable digital accessibility standard: Section 508, WCAG 2.1, WCAG 2.2, ISO/IEC 40500, EU/EN 301 549, VPAT-INT. Unless the otherwise

agreed in writing, the ACR will address Section 508 VPAT based on WCAG 2.0.

6.1.5. User Testing Services.

- (a) Manual usability testing is performed by human testers with either visual and/or motor impairments, using assistive technology desktop tools such JAWS, NVDA, and VoiceOver on Windows and MAC, and other tools (such as TalkBack and VoiceOver for Android and iOS) to test the accessibility level of website and digital assets ("**User Testing Services**").
- (b) The deliverables of User Testing Services are reports and/or videos showing the user's experience of using the website or digital asset tested.
- (c) Tested scenarios will be discussed and agreed in writing between the Customer and the Company prior to commencing User Testing Services.
- (d) Fees for User Testing Services are based on time spent, in one-hour blocks (with any partial hour rounded up to a full hour).

6.1.6. accessWidget Inspection Services.

- (a) Human inspection of accessWidget remediation on Customer Websites to verify the correct implementation of accessWidget and ensure that its auditing tools are functioning properly, as well as the Customer Website's user interface and design accessibility ("**accessWidget Inspection Services**").
- (b) The deliverable of accessWidget Inspection Services is an inspection report (an "**Inspection Report**").
- (c) It is within Customers' discretion whether to implement any remediations suggested in an Inspection Report. accessWidget Inspection Services Customers are solely responsible for their choice whether or not to implement any suggested remediations, and all liability with respect thereto is hereby expressly disclaimed by the Company.

6.1.7. Accessibility Consulting Services.

- (d) Accessibility consulting services may include accessibility gap analysis, accessibility road mapping, component library evaluation, troubleshooting, accessibility support, accessibility training, and other similar services, as agreed in writing between a Customer and the Company.
- (e) Fees for Consulting Services are based on time spent, in one-hour blocks (with any partial hour rounded up to a full hour).

6.2. Audit Service (including any Audit Report), VPAT Services, User Testing Services and accessWidget Inspection Services are provided based, and their accuracy relies, on the following assumptions: (i) no changes are made to the audited website during the period that such Services are rendered, and (ii) the Customer provides the Company with the necessary access permissions to the audited websites on a website development server or a sandbox, if required. If during the period during

which the Company performs such Services a Customer chooses to make changes that will impact the scope, timeline, or accuracy of the Services, the Customer will inform the Company immediately, and the Company may (x) renegotiate the Services' scope, timeline, and pricing, to reflect such adjustments, or (y) discontinue the Services, including if the Customer and the Company cannot agree on adjusted scope, timeline or pricing (in which case, the Customer may be entitled to receive a pro-rata refund for any pre-paid work that was not completed in accordance with the original scope of Services).

- 6.3. To access and use accessServices a Customer must submit the applicable information and Customer Content (as such term is defined below) via such Customer's User Account.
- 6.4. Customers that purchase accessServices may request a digital asset list detailing the files and media detected on the Customer Website.
- 6.5. Upon full payment of any applicable fees for accessServices provided, the ownership of deliverables provided to a Customer in connection with such accessServices will transfer to such Customer. The Company may retain a copy of any such deliverables and make use thereof for its purposes as necessary, including without limitation, in connection with its routine backup and archiving procedures for evidence purposes or for the establishment, exercise or defense of legal claims or for compliance with legal obligations under applicable law and such transfer of rights to the Customer shall in no way prevent such use.

## **7. User Account**

- 7.1. Each Customer is required to register and create (and update when and as needed) an active personal user account ("**User Account**"). When registering a User Account, Customers will be asked to provide the Company with information such as full name, business name, email address, and phone number, which will be used to create the User Account, and as prescribed in the [Privacy Notice](#). Customers will also be asked to create a password. Customers are solely responsible for maintaining the confidentiality of all aspects of their User Account (including any passwords). Customer Personnel will also be required to provide the foregoing information, and a User Account will be created for such Customer Personnel.
- 7.2. Customers agree: (a) to provide and maintain true, accurate, complete, and up-to-date information in their User Account, and (b) not to misrepresent their identity or provide a false identity or any other false information.
- 7.3. Customers are solely responsible for all of their activities in their User Account or in User Accounts of their Customer Personnel, including activities undertaken by Customer Personnel. Customers and Customer Personnel may not share User Account registration login credentials or passwords. Customers must notify the Company immediately if their User Account or User Accounts of their Customer Personnel have been compromised, or if they have reason to believe they have been compromised. User Accounts may not be transferred or assigned to any third party, including temporarily.

## **8. Agreements with Partners**



The Company is not a party to any agreement between any Person and a Partner (as such term is defined in the Company's Partner Program) (a "**Partner Agreement**") and shall not be deemed to be bound by any obligations in any such Partner Agreement. Therefore, such Persons may seek redress, exercise or enforcement of such rights solely vis-a-vis the applicable Partner and not the Company.

## **9. Access or Use of Services Pursuant to an Engagement with Shopify**

Customers purchasing Services via Shopify should be aware that Shopify is not liable for any fault in the Services or any harm that may result from their installation or use, and that except where expressly stated by Shopify, Shopify cannot provide assistance with the installation or use of any Service.

## **10. Litigation Support**

- 10.1. Using accessWidget, accessFlow or accessServices does not guarantee that Customers will not receive communications (including demand letters, legal notices, draft or filed complaints, or other such communications) regarding non-compliance of their Customer Website with the Standard or any applicable law. The Company has no control over the actions or activities of third parties who may make such communications.
- 10.2. Promptly following obtaining a License (and in no event later than three business days from such time), Customers are required to notify the Company in writing of any demand letters or claims concerning their Customer Website's accessibility that they received prior to activation of such License, and to provide a copy of any such demand letters or claims, via email to [support@accessibe.com](mailto:support@accessibe.com), or any other means provided by the Company.
- 10.3. The Company may provide its Litigation Support Package to accessWidget Customers in certain Subscription Plans, who have a valid License for the relevant Customer Website, and have properly installed accessWidget on their Customer Website, and receive a third-party complaint (including a demand letter, legal notice, draft or filed complaint, or other such communication) relating to such Customer Website's compliance with the Standard following such installation (other than with respect to, or as a result of the existence of, Excluded Issues on the Customer Website). Such Customers must notify the Company in writing promptly upon (and in any event within three business days of) becoming aware of any such complaint and provide the Company with all information they have in respect thereto, including any documentation and communications available to them. Failure to promptly notify the Company may result in the Company not being able to provide timely litigation support.
- 10.4. The Company's Litigation Support Package includes a review of the complaint and the information provided by the Customer and provision to the Customer with documentation and materials to demonstrate the accessibility features implemented through accessWidget on the Customer's Website. The Company will also provide Customers who are entitled to Litigation Support with dedicated technical support to address specific issues alleged in the complaint.
- 10.5. The Litigation Support Package will be provided through a dedicated email thread. Customers must respond only within such dedicated thread to get the support required.

- 10.6. The Litigation Support Package is provided as technical assistance only and is not a legal service. Customers must always consult with their legal advisors, including with respect to use of any outputs of the Litigation Support Package. The Litigation Support Package does not include the Company providing any affidavits, depositions, opinions, or any other documents or testimony in support of a Customer's defence against a complaint. Customers wishing to obtain such documents or testimony can contact [support@accessibe.com](mailto:support@accessibe.com) with details of such request, which will be considered by the Company, and the Company shall decide whether or not to agree to such request and its sole and absolute discretion. The Company may charge additional fees (including travel and lodging, if required), with respect to any such additional services.
- 10.7. The Litigation Support Package does not include any coverage or indemnification of (a) Customers' legal fees, or (b) any payments or penalties paid or payable to by Customers to third parties.

## **11. Updates; Availability and Functionality**

- 11.1. The Company may, at any time and at its sole discretion, develop and provide updates to Services, which may include upgrades, bug fixes, patches, other error corrections, and/or new features, or modifications or discontinuation of existing features (each, an **"Update"**). All Updates will be deemed part of the applicable Service and be subject to the provisions of these Terms.
- 11.2. The availability and functionality of each Service depend on multiple factors. The Company reserves the right, at its sole discretion, to modify, correct, amend, enhance, improve, remove, and make any other changes to any Service (or any part or feature thereof) without notice, at any time, and at the Company's sole discretion. Each Service and its operation and features available therein may also depend on the network Customers and/or Visitors use. If the Company makes any material changes to a Service that a Customer uses in a way that materially adversely affects the use of such Service, such Customer may terminate its subscription to such Service, and the Company shall refund such Customer any pre-paid License Fee (as such terms are defined below) relating to any remaining post-termination License Period (as such term is defined below).
- 11.3. A Service may display or make available third-party content or services (such as data, information, applications, software, and other products and/or materials) or provide links to third-party websites or services, including through third-party advertising (**"Third-Party Content"**). For the avoidance of doubt, "Third-Party Content" does not refer to software that is embedded or made part of accessScan, accessWidget, accessFlow or any of the accessServices. The Company does not own or control Third-Party Content and is not responsible for Third-Party Content, including their accuracy, completeness, timeliness, validity, quality, or any other aspect thereof, or for any loss or damage of any kind incurred as a result of the use of any Third-Party Content. The Company does not assume and will not have any liability or responsibility to Customers, Visitors or any third party for any Third-Party Content. Third-Party Content and links to them are provided solely as a convenience to Customers and Visitors, and Customers' and Visitors' access and use thereof are entirely at their own risk and subject to such third-parties' terms and conditions, and you are advised to review any such terms and conditions.

## 12. Unpermitted Use

- 12.1. Customers and Visitors (and anyone else acting on their behalf) will not, while accessing or using any Service or through use of any Service: (a) impersonate another Person, defame, abuse, harass, threaten, or otherwise violate the legal rights of others, including privacy and intellectual property rights; (b) remove, disable, circumvent, or otherwise create or implement any workaround to any intellectual property rights, rights management, or security features in or protecting the Services; (c) make a Service available on a network where they may be accessed by any third party; (d) use a Service on or in connection with any website which is or promotes content that is obscene, excessively profane, racist, ethnically offensive, threatening, infringing, excessively violent, libelous, gambling-related, or discriminatory, offensive, misleading or deceptive, or any other content that is illegal under applicable law; (e) change, edit, add to, copy or extract any content from or produce summaries of a Service or Company Content (as such term is defined below) or any part thereof for any commercial purposes and other than as expressly provided herein; (f) attempt to interfere with or disrupt a Service, or attempt to gain access to any systems or networks that connect thereto; (g) use a Service in any unlawful manner, for any unlawful purpose, or in any manner contrary to or inconsistent with these Terms or applicable law (including privacy and consumer protection laws); (h) use a Service in any way that may damage, disable, overburden or impair it or any other Service; (i) create or attempt to create a service that is similar to any Service; (j) use a Service for the delivery to a third party pre-litigation, "cease and desist", legal complaints, or any similar communications; (k) use a Service for any commercial purpose not permitted by these Terms; or (l) use a Service in order to compete with the Company or for any other form of competitive or benchmarking purposes. The Company reserves the right to investigate and take any appropriate action against anyone who, in the Company's sole discretion, violates the foregoing provisions, including reporting such activities to the competent authorities.
- 12.2. Customers must notify the Company in writing immediately upon becoming aware of any actual, suspected, or potential security breach or improper use of the Services.

## 13. Beta Services

The Company may offer certain Services as closed or open beta services (each, a "**Beta Service**") for the purpose of testing and evaluation. The Company has the sole authority and discretion to determine the period for testing and evaluation of any Beta Service. The Company will be the sole judge of the success of such testing and the decision, if any, to offer any Beta Service as a commercial service. Customers and Visitors are not obligated to acquire a subscription to use any paid Service as a result of their subscription to any Beta Service. The Company reserves the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, any Beta Service with or without notice to Customers or Visitors. Use of certain Beta Services may require Customers to enter into a separate agreement with the Company. The Company will not be liable to Customers, Visitors or any third party for any harm related to, arising out of, or caused by any Beta Service, or the modification, suspension or discontinuance of any Beta Service, for any reason.

## 14. Trials and Demos

The Company may (but is not obliged to) offer certain Services to certain Customers on a trial or demonstration basis. If a Customer registers for a trial or demonstration of a Service, the Company will make the applicable Service available to such Customer on a trial basis, which may or may not be free of charge, until the earlier of (a) the end of the trial or demonstration period of the applicable Service (unless terminated earlier by the Customer), (b) the start date of the LicensePeriod for the applicable Service, or (c) termination by the Company of the trial or demonstration, at its sole discretion. Any data that a Customer enters into the applicable Service offered on a trial or demonstration basis, and any customizations made to such Service during the trial or demonstration may be permanently lost unless such Customer (i) purchases the corresponding paid License, (ii) purchases applicable Service upgrades, or (iii) exports such data before the end of the trial period. During any trial or demonstration, Services are offered as-is during the free trial, without any warranty, covenant, support or liability whatsoever, to the extent permitted by law.

## 15. Non-Profit Partner Program

The Company may run a partner program for disability-focused non-profit organisations. Participants in such program may be granted free access to certain Services, at the Company's discretion, in which case the provisions of these Terms shall apply. In order to participate in such program, candidates must apply with the Company via the communication channels provided by the Company from time to time. The Company reserves its right to accept or reject applicants, or terminate the program or any Person's participation therein, at any time, for any reason or for no reason. Participation in the non-profit partner program may require applicants to agree to additional terms and conditions, at the Company's sole discretion.

## C. Intellectual Property; Licenses

### 16. Company IP

- 16.1. Each Service, the technology and software underlying such Service or distributed in connection therewith ("**Software**"), any Company content, information, graphics files, media and audio files, materials, including designs and graphics (collectively, "**Company Content**"), and any Company databases, systems and applications, including all Updates and all copyrights and other intellectual property rights related thereto (collectively, "**Company IP**") are the property of the Company, its affiliates and its licensors (as applicable), and the Company, its affiliates, and licensors (as applicable) retain all right, title, and interest in and to the Company IP.
- 16.2. Any use of Company IP other than as specifically authorized herein is prohibited.
- 16.3. All use of Company IP shall inure to the benefit of the Company, its affiliates, and licensors (as applicable). All rights in the Company IP not expressly granted herein are reserved by the Company, its affiliates, and licensors (as applicable). No property right to any Company IP is transferred to any Customer or Visitor by virtue of them using any Service.
- 16.4. Except as expressly authorized by the Company in writing, Customers and Visitors shall not (a) use, modify, copy, frame, mirror, adapt, scrape, or create derivative

works based on Company IP, in whole or in part; (b) rent, lease, loan, sell, distribute, assign, lease, sublicense, or otherwise transfer any right in Company IP; or (c) disassemble, decompile, reverse engineer, reverse assemble, or otherwise attempt to discover any source code or otherwise transfer any right in Company IP.

## **17. Company Marks**

- 17.1. The Company's name, logos and other distinguishing verbal and graphic features (each, a "**Company Mark**") are trademarks, tradenames and service marks of the Company. Nothing in these Terms should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Company Mark without the Company's prior written permission in each instance.
- 17.2. The Company is the owner of the Company Marks, including all goodwill associated therewith, and Customers' and Visitors' use of any Company Mark (subject to the Company's prior written consent) will confer upon any such Customer or Visitor no additional interest in or ownership of any Company Mark, but inures to the Company's benefit.
- 17.3. All other company, product, and service names and logos used and displayed via a Service, which are not Company Marks, may be trademarks or service marks of their respective owners who may or may not endorse, be affiliated with, or connected to Company.
- 17.4. Customers and Visitors will not in any way modify, alter or tamper with any proprietary marks, copyright notices, or other notices, or any Company Mark, that may be provided and/or displayed through the Services.

## **18. License Out**

- 18.1. Subject to the provisions of these Terms, the Company hereby grants each Customer and Visitor a limited, revocable, non-exclusive, non-sublicensable, non-transferable, and non-assignable license to access and use the applicable Services and relevant Company Content (as applicable), in each case strictly in accordance with these Terms.
- 18.2. With respect to any Service that requires payment to use (including accessWidget, accessFlow, and accessServices): (a) the License is contingent on payment of the applicable fees for such Service and shall be in effect only during periods the applicable LicensePeriod; and (b) a separate License must be acquired for use of such Service on each website. Accordingly, Customers may not use the same License on more than one website, may not transfer a License used on a certain Customer Website and/or Website Property (as applicable) to another website and/or Website Property, whether owned by such Customer or not. A Customer's User Account must accurately reflect such Customer's Customer Websites and/or Website Properties (as applicable) on which such Customer uses its License(s).
- 18.3. The applicable Services and the Company Content are licensed, but not sold, to Customers. Customers do not acquire any ownership interest in any Service, Company IP, Company Content or any Company Mark, or any other rights thereto, other than the right to use the foregoing in accordance with these Terms.

## **19. License In**

- 19.1. Subject to the provisions of these Terms, each Customer grants the Company a limited, non-exclusive, royalty-free, fully paid, license, during the LicensePeriod, to:  
(a) with respect to accessWidget: (i) access and use such Customer's Customer Website(s), including any Customer Content (as such term is defined below) thereon, solely as required to provide such Customer with the accessWidget Service; and (ii) translate, adapt and display the content of such Customer Website, including any Customer Content thereon, such that it will be available to End Users of such Customer Website; (b) with respect to accessFlow, access to such Customer's Website Properties that such Customer is lawfully permitted to access and grant access to, solely as required to provide the accessFlow Service; and (c) with respect to any other Service that a Customer or Visitor may use, the right to access and use such Customer's Customer Website(s) (including Customer Content thereon) and/or Website Properties (as applicable) as required to provide such Service.
- 19.2. If a Customer is not the owner of the Customer Website(s) and/or Website Properties or any other website or website properties for which such Customer is using a Service, by using such Service, such Customer represents and warrants to the Company that they have full authority to use such Service with respect to such Customer Website(s) and/or Website Properties or any other such website or website properties.
- 19.3. Unless a Customer notifies the Company otherwise in writing, you hereby acknowledge and agree that the Company may use information regarding, or included on, a Customer Website and its accessibility features, for commercial purposes, including for the development of additional Services, indexation in an accessibility-focused website search engine, and training of the Company's artificial intelligence software and capabilities ("AI").
- 19.4. Unless a Customer notifies the Company otherwise in writing, the Company may, and such Customer hereby grants the Company a limited, non-exclusive, royalty-free and fully-paid up, non-transferable (except as set forth herein) right and license to, refer to such Customer as a customer of the Company and to use such Customer's logo and other identifiers as part of such reference (including on the Company Website), provided that the Company complies with any trademark usage requirements of which the Customer notifies the Company in writing.

#### **D. Fees; Payment**

##### **20. Payments for accessWidget and accessFlow**

- 20.1. To access and use accessWidget or accessFlow, a Person must purchase a license ("**License**"). accessWidget and accessFlow are provided on a monthly or annual subscription basis ("**License Period**") and are tiered based on the website's features, as set forth on the Company Website (each, a "**Subscription Plan**"). Customers shall pay the Company the applicable fees in accordance with their applicable Subscription Plan ("**License Fees**").
- 20.2. The Subscription Plan chosen must correspond to the features of the Customer Website or Website Properties in relation to which the Services are to be used. A Customer may upgrade its Subscription Plan to a higher-tiered plan at any time via

such Customer's User Account (a "**Plan Upgrade**"). If the features of a Customer Website require a higher-tiered Subscription Plan than the one to which a Customer is subscribed, the Company will notify such Customer and ask that they implement an appropriate Plan Upgrade. If such Customer does not implement a Plan Upgrade within seven (7) days of such notification, the Company may (at its sole discretion) implement an automatic Plan Upgrade so that the appropriate Subscription Plan applies to such Customer Website. Alternatively, the Company may (at its sole discretion) terminate such Customer's License, and starting on the date of such termination such Customer will not be able to use the applicable terminated Service(s), in which case such Customer shall be entitled to a refund of any pre-paid License Fee (as such term is defined below) relating to any remaining post-termination License Period. Upon a Plan Upgrade, Customers will be billed for the applicable increased amount of License Fees, at the Company's then-current rates (as set forth on the Company Website), the Company will deduct the License Fees already paid by the Customer (with respect to the previous License remaining Period) from the new upgraded License Fees, and the difference shall be due and payable by the Customer on the date on which the Plan Upgrade is implemented.

20.3. Customers may cancel their accessWidget License within fourteen (14) days of the initial date on which License Fees were due (the "**Refund Period**"). In such case, the Company will refund the cancelling Customer any accessWidget License Fees pre-paid in respect to the period following the effective date of cancellation (a "**Refund**"). Each Customer Website is entitled to one Refund only. The Company may deduct a cancellation fee from the Refund, in accordance with applicable law, using the payment method the Customer provided upon purchasing the License. An accessWidget License may be cancelled on a Customer's User Account, or Customers may e-mail the Company at [support@accessibe.com](mailto:support@accessibe.com), and include their full name, the details of the Customer Website for which cancellation is sought, and a copy of their transaction receipt. After the Refund Period, accessWidget License Fees for the License Period are non-refundable and non-cancellable, unless explicitly provided otherwise herein. Upon cancellation of an accessWidget License following the Refund Period, all outstanding payment obligations shall immediately become due.

20.4. To ensure Customers do not experience any interruption or loss of services, **Licenses are AUTOMATICALLY RENEWED by default** for thirty (30) day periods (for monthly subscriptions) or twelve (12) month periods (for annual subscriptions). Any such renewal period(s) are considered a "License Period". Unless a Customer cancels their License at least seven (7) days prior to the expiration of the then-current License Period, or disables auto-renewal through its User Account, it will renew automatically.

## **21. Payments for accessServices**

21.1. Anyone wishing to use accessServices must request a quote via their User Account and following receipt of such quote pay the applicable quoted fees ("**accessServices Fee**"). The Company will not commence provision of accessServices until the applicable accessServices Fee is paid in full.

21.2. Other than as expressly set forth in these Terms, accessServices Fees are non-cancelable and non-refundable, even if any accessServices are canceled or unused.

## 22. Payments – General

- 22.1. A valid payment method, approved by the Company, is required to process License Fees. Customers must provide the Company or Payment Provider (as such term is defined below), if applicable, with accurate and complete billing information, including full name, address, state, zip code, telephone number, and valid payment method information. By submitting such payment information, each Customer automatically authorizes the Company (either directly or through the Company's affiliates, subsidiaries, or other third parties, including Payment Providers) to charge and collect payment (or refund or take any other billing actions) all fees incurred through such Customer's account to any such payment methods. Each Customer also authorizes any such party to make any inquiries that they may consider necessary to validate such Customer's financial information to ensure prompt payment, including for the purpose of receiving updated payment details from such Customer's credit card company (e.g., updated expiry date or card number). Each Customer providing payment method information represents and warrants that they have full authority to use such payment method for making payments to the Company. The Company reserves the right, at its sole discretion, to update the payment methods available on the Company Website at any time.
- 22.2. The Company may collect payments through third-party payment processing service providers (each, a "**Payment Provider**") to process and collect payments from Customers. The Company's current Payment Provider is Stripe. The Company may, at its sole discretion, change, add, or replace any Payment Provider at any time. Customers shall provide all information and execute any documents that the Company or any Payment Provider may require, at any time, to facilitate payments. Each Customer authorizes the Company to share any information regarding their payment method and related information with any Payment Provider. Payments made through Payment Providers are subject to the Payment Provider's terms of use and privacy policy.
- 22.3. Each Customer authorizes the Company, either directly or through a Payment Provider, to charge the License Fees via their selected payment method upon their due date(s). The Company may use any means of payment provided by a Customer to process payment of fees due from that Customer.
- 22.4. Upon failure to collect fees from a Customer, the Company may, at its sole discretion (but shall not be obligated to) retry to collect such fees at a later time and/or suspend or terminate such Customer's access to the applicable Service(s), without notice. Should automatic billing fail to occur for any reason, the Company may issue an electronic invoice indicating that the Customer must proceed to pay manually, within a certain period, with the full payment corresponding to the billing period as indicated on the invoice.
- 22.5. All fees are quoted and are to be paid in U.S. dollars.
- 22.6. Fees are exclusive of taxes (including value added tax and sales tax), levies or duties, which may be imposed in respect of Services purchased under applicable law, except for Taxes imposed on the Company for its income (collectively, "**Taxes**"). Customers may not withhold taxes from fees payable to the Company so that the net amount that the Company receives shall be equal to the amount the Company would have received had no such withholding been applied.



22.7. The Company reserves the right to correct any errors or mistakes in pricing, even if the Company has already requested or received payment. The Company reserves the right, at its sole discretion, to update the fees, and will notify Customers whom such update affects their License Fees. Increases to License Fees will take effect upon renewal of a License Period. Notwithstanding the foregoing, the Company reserves the right, at its sole discretion, to increase accessWidget License Fees for Customer Websites that exceed 100,000 monthly visits.

## **E. Customer Referral Program**

### **23. Referral Program**

23.1. The Company may offer Customers a shareable link (“**Referral Link**”) that they may share and publish as a recommendation to become a Customer (“**Referral Program**”). The Company may reward Customers for any other Customer that purchases Services via such Customer’s Referral Link, as the Company may determine and publish from time to time.

23.2. The Company reserves the right to terminate the Referral Program at any time at its sole discretion and without any liability. Upon such termination, Customers will immediately cease to distribute, publish, or otherwise use the Referral Link.

### **24. Prohibited Activities and Improper Conduct**

By sharing the Referral Link, Customers agree to abide by these Terms, any applicable laws, including in relation to privacy and data protection, notifying data subjects of any applicable rights and obtaining consent where required, as well as to the Company’s Prohibited Activity and Improper Conduct Policy and any other guidelines that the Company may provide Customers with relating to the Referral Program. Any reward under the Referral Program is subject to the Customer’s compliance with all such applicable terms.

### **25. Use of Third-Party Providers**

The Company may use third-party providers to run the Referral Program or parts thereof, including distributing rewards, as shall be determined by the Company from time to time. Customers participating in the Referral Program may be required to approve third-party terms and conditions, including their privacy policy. Customers may accept such third-party terms and policies at their sole discretion and responsibility. The Company is not liable for any acts or omissions of such third party, and Customers are solely responsible for complying with the terms regarding the collection of their rewards.

## **F. Customer Content; Feedback**

### **26. Customer Content**

Each Customer is solely responsible for their Customer Website(s) and/or their Website Properties (as applicable) and all content and information, including code, images, data, text, software, sound, photographs, graphics, messages, and other materials made available to the Company whether as part of their Customer Website(s) and/or Website Properties (as applicable), or otherwise (collectively “**Customer Content**”). Each Customer represents and warrants that (a) they own all intellectual property rights, and/or

have all necessary licenses, consents and permissions required under applicable law in and to their Customer Content, including all intellectual property rights and rights of publicity contained therein or thereto, (b) they are responsible for their Customer Content including its availability, maintenance, any content available therein and its systems and infrastructure, and (c) their Customer Content and accessiBe's use thereof in accordance with these Terms does not violate the provisions of any applicable law and/or any third party right. Each Customer hereby grants the Company a worldwide, unrestricted, non-exclusive, royalty-free, transferable and sublicensable right and license to use, copy, distribute, disseminate, prepare derivative works of, upload, perform, store, modify and display their Customer Content as required for the provision of the Services or as otherwise permitted in these Terms. Each Customer assumes all risk associated with their Customer Content and its transmission and has sole responsibility for the accuracy, quality, legality, and appropriateness of such Customer Content.

## **27. Feedback**

Any questions, comments, suggestions, ideas, feedback, reviews, or other information about the Services (collectively, "**Feedback**") that a Customer provides the Company are non-confidential, are the sole property of the Company, and the Company is entitled to unrestricted use and dissemination of such Feedback for any purpose, commercial or otherwise, without acknowledgement, attribution, or compensation to any Customer.

## **G. Technical Information**

### **28. accessWidget and accessFlow**

- 28.1. accessWidget is compatible with the following operating systems and browsers: Chrome, Microsoft Edge, Android, and iOS. accessFlow is compatible with the following operating systems and browsers: Chrome, Android, and iOS. In order for accessWidget and/or accessFlow to function as intended, a website must be based on HTML files and tags. Flash, OpenGL XML, and other non-HTML-based applications ("**Non-HTML Elements**") are not supported.
- 28.2. Prior to installing accessWidget and/or accessFlow each Customer must verify: (a) that accessWidget and/or accessFlow (as applicable) is compatible with their needs and that the Customer Website and/or Website Property (as applicable), including its content management system, is properly maintained (for example, using HTML tags for their intended purpose, using clear, descriptive names for classes and IDs, minifying code, and avoiding deprecated or outdated elements; (b) and that there are no JavaScript errors, HTML validation errors or invalid tags and/or other various errors that may be caused by the programming language that runs in its web browser; and (c) the integrity of the Customer Website's and/or Website Property (as applicable) connectivity, and the server on which it is stored to the internet network and to Customer's infrastructure (telephone, computer and so forth). The Company recommends that Customers validate their Customer Website's code using tools like the W3C markup validation service to check HTML and CSS for errors or warnings.
- 28.3. accessWidget must be installed directly within the BODY HTML tag of the website and the installation code must appear on the browser's "view source-code" feature. The installation of accessWidget may be executed either by the use of (a) a plugin,

(b) the installation code directly, (c) a third-party script manager, or (d) any other means, as long as such means meet the foregoing requirements. Any installation of accessWidget not in accordance with the foregoing may result in accessWidget not functioning as intended.

- 28.4. Prior to installing accessWidget on a Customer Website, the Company recommends that Customers install accessWidget on a staging or testing website. Customers may install accessWidget on their Customer Website only after verifying that there are no errors or damage caused to such staging or testing website.
- 28.5. Prior to integrating any remediations suggested by accessFlow into any Website Properties, Customers must integrate such remediations in a staging or testing website. Customers may integrate remediation suggestions generated by accessFlow on their Website Properties only after verifying that there are no errors or damage caused to such staging or testing website.
- 28.6. accessWidget and accessFlow respect any other accessibility measures (including manual accessibility remediation measures or additional automatic remediation measures) ("**Other Remediation Measures**") a Customer (or anyone on their behalf) has implemented, continue to implement, or may in the future implement, on their Customer Website and/or Website Properties, whether prior to or after installing and/or using accessWidget and/or accessFlow (as applicable). However, the Company cannot guarantee that the Services will not affect, or be affected by, any Other Remediation Measures, nor that the Services will operate as intended in tandem with any Other Remediation Measures. Specifically, accessWidget will not override some Other Remediation Measures, and such Other Remediation Measures will not be corrected or adjusted by accessWidget, even if they are incorrect or do not comply with the Standard. Any effect that a Service may have on Other Remediation Measures, or that Other Remediation Measures may have on a Service are explicitly excluded from any warranties hereunder.
- 28.7. Following installation of accessWidget, Customers must carefully verify the installation of accessWidget using the Website Onboarding Guide that will be made available to Customers via the Customer's User Account or via email after. The Website Onboarding Guide is considered a material part of the installation process of accessWidget, and contains explanations on how to verify that accessWidget is working properly.
- 28.8. The Company provides Customers with tools and documentation to ensure that they install and/or use accessWidget and/or accessFlow correctly. Customers must install and use accessWidget on their Customer Website strictly in accordance with such tools and documentation.
- 28.9. Following the integration of accessWidget onto a Customer Website, it is the Customer's responsibility to (a) ensure that the installation is in accordance with the tools and documentation provided by the Company, and (b) test and verify the functionality of accessWidget on the Customer Website.
- 28.10. Following receipt of remediation suggestions through accessFlow, it is the Customer's responsibility to: (a) correctly integrate the proposed remediation into their applicable Website Properties, and (ii) test and verify that such Website Properties function as intended following such integration.

- 28.11. Customers who encounter issues with the installation, use or implementation of accessWidget or accessFlow must contact the Company via [support@accessibe.com](mailto:support@accessibe.com) and describe such issues. The Company will use its commercially reasonable efforts to assist Customers in resolving such issues.
- 28.12. As a security measure, in the event a Customer Website or Website Property requires deciphering of more than 20,000 images and/or links, accessWidget will block any such decipher requests (a "**Decipher Block**"). The Company will contact the applicable Customer and use reasonable commercial efforts to instruct the Customer how to decipher such images/links. If the Customer is unable or unwilling to implement Company's instructions, it may notify the Company, in writing, that it wishes to terminate its engagement with Company hereunder, in which case Company will refund Customer for any amount paid to the Company relating to the period following such termination.
- 28.13. Blocking or Geo-Blocking a Customer Website or Website Properties (or any part thereof) could prevent accessWidget and/or accessFlow from performing as intended on the Customer Website and/or Website Properties. "**Blocking**" means that a Customer Website and/or Website Property (a) has no full public access to scanners; or (b) redirects to a certain location. "**Geo-Blocking**" means that a Customer Website and/or Website Property is (i) unreachable from certain locations; or (ii) redirects to a different website based on the user's location.
- 28.14. Certain aspects of accessWidget are based on AI and as with any other AI software, in order to correct functionalities, it needs to encounter such functionalities repeatedly on different occasions. Therefore: (a) with respect to accessWidget, if a Customer Website includes functionalities that are unique or uncommon, accessWidget may not be able to remediate it; and (b) accessFlow may will not be able to present remediation suggestions for functionalities that are unique or uncommon.
- 28.15. Customers may notify the Company in writing of any error caused by accessWidget (including if accessWidget fails to remediate according to the Standard). The Company will use its reasonable commercial efforts to assist Customers in addressing such issues (insofar they are a result of accessWidget's operations). In order to resolve any issues in a timely manner, Customers are encouraged to provide the Company with as detailed a description of the issues as possible.
- 28.16. The Company provides technical support services to Customers between 9 am and 5 pm New York time, Monday through Friday (excluding holidays), via e-mail or online chat. These technical support services include assistance in operating accessWidget, solutions to errors and bugs in accessWidget as implemented on the Customer Website, as well as operational and financial matters. In order to receive efficient and effective support, Customers must provide the support team with all required information and assistance. Availability, applicability and scope of support may depend on a Customer's Subscription Plan.
- 28.17. The Company may provide accessWidget and/or accessFlow Customers with a template "accessibility statements". Customers are solely responsible for ensuring that the accessibility statement that they publish is compatible with the Customer's needs, including any applicable legislation that may apply to the

Customer or Customer Website, and the language in which an accessibility statement is required to be presented.

## **29. accessScan**

accessScan reports may not accurately reflect the Customer Website's accessibility features. It is Customers' responsibility to verify the features that they have on their Customer Website(s). accessScan scans the specific webpage domain that is input into the search window, and not any other pages or sub-domains. accessScan may not identify Excluded Issues.

## **H. The Company's Limited Liability**

### **30. Disclaimer of Warranties**

USE OF SERVICES AND COMPANY CONTENT IS AT CUSTOMER'S SOLE RISK. THE SERVICES AND THE COMPANY CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE COMPANY, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS, SERVICE PROVIDERS, LICENSORS, AND AGENTS, SUCCESSOR AND ASSIGNS (EACH, A "**COMPANY PARTY**") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, NO COMPANY PARTY PROVIDES ANY WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SERVICES AND THE COMPANY CONTENT WILL MEET CUSTOMERS' REQUIREMENTS, NEEDS OR PREFERENCES, OR ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, UNINTERRUPTED, TIMELY, SECURE, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED, OR THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES WILL BE COMPLETE, ACCURATE OR RELIABLE.

### **31. Limitation of Liability**

NO COMPANY PARTY WILL BE LIABLE TO ANY CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING DAMAGES FOR LOSS OF GOODWILL, USE, OR DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SUCH COMPANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, RESULTING FROM (A) THE USE OR THE INABILITY TO USE THE SERVICES AND/OR THE COMPANY CONTENT; (B) THESE TERMS; (C) UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMERS' TRANSMISSIONS OR DATA, OR (D) ANY OTHER MATTER RELATING TO THE SERVICES AND THE COMPANY CONTENT. IN NO EVENT WILL THE COMPANY PARTIES' TOTAL LIABILITY TO A CUSTOMER FOR ALL DAMAGES, LOSSES, OR CAUSES OF ACTION EXCEED THE AMOUNT SUCH CUSTOMER HAS PAID TO THE COMPANY FOR SERVICES RENDERED DURING THE SIX (6) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO SUCH LIABILITY, IF AT ALL, OR, IF GREATER, FIFTY DOLLARS (\$50). SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR

EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO CERTAIN CUSTOMERS OR BE ENFORCEABLE WITH RESPECT THERETO. THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMERS THAT ARE DISSATISFIED WITH ANY SERVICES (OR PORTION THEREOF), IS TO DISCONTINUE USE OF THE SERVICES.

### **32. Indemnification by Customers**

Each Customer agrees to defend, indemnify, and hold harmless each Company Party from and against any claims or contentions, arising out of or relating to Customer's violation of these Terms. The Company will provide the applicable Customer notice of any such claim or contentions. The Company reserves the right to assume the exclusive defense and control of any claims or contentions, and Customers agree to cooperate with any reasonable requests assisting the Company's defense thereof. A Customer may not settle or compromise any claims or contentions without the Company's prior written consent.

## **I. Term; Termination**

### **33. Term**

These Terms shall be in force and effect unless terminated in accordance herewith.

### **34. Termination for Convenience**

34.1. A Customer may terminate its engagement under these Terms and any License at any time, by written notice, provided that it pays all applicable fees that are due to Company, except where the termination of an accessWidget License is made within the Refund Period or as otherwise specifically stated herein.

34.2. The Company may terminate its engagement with a Customer under these Terms and any License at any time, for any reason, by providing such Customer with a 30-day prior written notice, unless the Company is (a) required to terminate this Agreement or License in accordance with the law or regulation, or (b) believes that it is incapable of maintaining the provisions of this Agreement, in such event, the termination will be effective immediately, or as otherwise determined by the Company, and we will refund to you any prepaid License Fees covering the remainder of your License Period after the effective date of such termination.

### **35. Termination for Cause; Suspension**

35.1. Both the Company and Customers may terminate their engagement under these Terms and any License immediately, by written notice, if ("**Termination for Cause**") (a) the other party is in a material breach of these Terms and such breach, if curable, remains uncured for 14 days of written notice thereof, or (b) the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. The foregoing termination rights are in addition to any other remedies that may be available to the Company in accordance with these Terms and/or applicable law.

35.2. The Company may, at any time and without prior notice, suspend a Customer's access to the Services or any part thereof if the Company believes, at its sole discretion, that such Customer or any third party acting at the instruction or on behalf of such Customer: (a) are using the Services in a manner that may impose a

security risk, may cause harm to the Company or any third party, and/or may give rise to any liability for the Company or any third party; or (b) breach the provisions of these Terms or applicable law. The Company may unsuspend the access to the Services when it is satisfied, to its sole and absolute discretion, that the grounds for suspension no longer exist. The foregoing suspension rights are in addition to any other remedies that may be available to the Company in accordance with these Terms and/or applicable law.

### **36. Effects of Termination**

- 36.1. Upon the termination of an engagement between the Company and a Customer under these Terms: (a) all rights and licenses granted herein by the Company to such Customer shall terminate immediately, and the Customer shall cease all use of the Services, including their User Account; and (b) to the extent applicable, the Customer shall remove the accessWidget from their Customer Website(s).
- 36.2. Termination of an engagement under these Terms following the Refund Period does not relieve Customers from their obligation to pay any fees that are due or payable to the Company for the period up to and until the expiration of such Customer's then-current License Period, or entitle them to any refund unless otherwise specifically stated herein. Notwithstanding the foregoing provisions of this sub-Section 36.2, if the Company terminates its engagement with a Customer under these Terms and any License pursuant to sub-Section 35.2, or if a Customer terminates its engagement hereunder pursuant to sub-Section 35.1 or due to a Material Modification (as set forth in sub-Section 36.3), the Company will refund to the Customer any prepaid License Fees covering the remainder of their License Period after the effective date of such termination.
- 36.3. All the provisions of these Terms that by their nature need to survive termination of these Terms, including any accrued rights related to payments, shall survive such termination. The termination of these Terms, in part or in whole, shall not limit either party from pursuing other remedies available to it, nor shall any Customer be relieved of their obligation to pay any fees that are due to Company under these Terms unless otherwise stated herein. Neither party shall be liable to the other for any damages resulting solely from termination of these Terms as permitted herein.

## **J. Miscellaneous**

### **37. Entire Agreement; Modifications; Assignment**

- 37.1. The most current version of these Terms will appear on the Company Website on the "Terms of Service" page.
- 37.2. These Terms, the Privacy Notice and the DPA constitute the entire agreement between each Customer and the Company governing such Customer's access and use of the Services and the Company Content and supersede any prior agreements between such Customer and the Company with respect thereto. If the Company and a Customer enter into a separate written agreement with respect to any Services (including any order form, statement of work or similar document), and the provisions of such separate written agreement contradict the provisions of these Terms, such provisions of such separate written agreement shall prevail and govern.

- 37.3. The Company reserves the right, at its sole discretion, to update, change, modify, add, or remove portions of these Terms at any time. All non-material changes shall be come effective immediately upon posting them on the Company Website. If any such updates, changes, modficaitions, additions or removals would negatively impact Customers' rights or increase their obligations hereunder (each, a "**Material Modification**"), the Company will notify Customers in advance of such via their User Accounts or by e-mail, or in any other similar manner, and such Material Modification shall come into effect no earlier than seven (7) days from the date of such notification. Access or use of the Services after the date any such Material Modification becomes effective, constitutes Customers' acceptance of such Material Modification, and their consent to the updated Terms. If a Customer does not agree to a Material Modification, it may not access or use the Services following such Material Modification becoming effective, and shall have the right to terminate their engagement udner these Terms by notifying the Company in writing prior to such Material Modification becoming effective.
- 37.4. The failure of the Company to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision.
- 37.5. Customers may not assign any rights or obligations they have under these Terms without the Company's prior written consent. The Company may assign any of its rights or obligations under these Terms without restriction.

### **38. Electronic Communications**

- 38.1. The Company may provide Customers with communications about the Services, including their User Account, in electronic form via the email address each Customer submitted or via their User Account. These Terms, any notices, disclosures, and other communications provided electronically satisfy any legal requirement that these communications would satisfy if they were on paper. This provision does not affect any non-waivable rights. Customers will not be able to opt-out of receiving such service messages.
- 38.2. Any call meetings or conference calls (including video calls) the Company may conduct with Customers in relation with the provision of the Services may be recorded (including through third-party vendor platforms) for training, quality assurances and archival purposes. By setting up a demo call, support call, or other any other call with the Company, Customers agree to have the call recorded and kept in the company records.

### **39. Governing Law; Jurisdiction; Arbitration**

- 39.1. For Customers or Visitors who are residents (in the case of individuals) or incorporated (in the case of corporations) in the United States or Canada: (a) these Terms are a legal binding agreement between accessiBe Inc. and such Customer, (b) there Terms are governed by the laws of the State of New York, without regard to its conflict of law provisions, and (c) any action or proceeding arising from or relating to these Terms may only be brought through an arbitration proceeding as set forth in sub-Section 40.3 below.
- 39.2. For Customers or Visitors who are residents (in the case of individuals) or incorporated (in the case of corporations) anywhere but in the United States or Canada: (a) these Terms are a legal binding agreement between accessiBe Ltd. and



such Customer, (b) these Terms are governed by the laws of the State of Israel, without regard to its conflict of law provisions, and (c) any action or proceeding arising from or relating to these Terms may only be brought in the courts located in Tel Aviv, Israel, and each party irrevocably submits to such exclusive jurisdiction and venue.

### 39.3. Arbitration.

39.3.1. In the event of a dispute, claim or controversy arising from or relating to this Agreement, the Customer and the Company agree that the aggrieved party shall send a "Notice of Dispute" to the other party, which contains a brief statement setting forth the facts giving rise to the disputed matter and the relief requested by the aggrieved Party. The Notice of Dispute must be in writing and sent to [legalnotices@accessibe.com](mailto:legalnotices@accessibe.com). The aggrieved party must allow 30 days to elapse from the receipt of the Notice of Dispute by the other party prior to filing a Demand for Arbitration. The parties will take reasonable efforts to resolve any dispute informally during this time. For the avoidance of doubt, sending of a Notice of Dispute is a condition precedent to initiating arbitration in accordance with this sub-Section 39.3 below.

39.3.2. THE PARTIES MUTUALLY AGREE THAT ANY CLAIM OR DISPUTE BETWEEN THEM ARISING FROM OR RELATING TO THESE TERMS SHALL BE SUBMITTED TO BINDING INDIVIDUAL ARBITRATION BEFORE A SINGLE ARBITRATOR PURSUANT TO THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA"). THE COMMERCIAL RULES OF THE AAA ARE AVAILABLE AT [WWW.ADR.ORG](http://WWW.ADR.ORG). BY AGREEING TO ARBITRATE, THE PARTIES EXPRESSLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY.

39.3.3. In the event the AAA is unwilling or unable to hear the dispute, the parties shall agree to, or an appropriate court shall select, another arbitration provider. Unless otherwise agreed upon by the parties, any arbitration hearing shall take place in New York, New York, although either party may elect to participate in the arbitration by telephone or video conference. The party filing the Demand for Arbitration shall be responsible for the initial filing fees and costs charged by AAA and the respondent shall be responsible for payment of filing fees for any cross-complaint or counterclaim. The parties shall share equally the costs of case management fees, arbitrator fees or other fees charged by AAA other than the filing fees referenced above. The parties shall bear their own costs for attorney's fees, court reporter fees, transcript fees and other litigation costs.

39.3.4. Although this agreement to arbitrate is made and entered into between the Customer and the Company, for the avoidance of doubt the Company's affiliates, owners, members, managers, and employees are intended third party beneficiaries of the Terms, including this agreement to arbitrate.

39.3.5. This agreement to arbitrate shall survive the termination of these Terms. Any issues related to the arbitrability of any claim, or the scope, validity or enforceability of this agreement to arbitrate shall be determined by the arbitrator. If either party wishes to initiate arbitration, the initiating party must notify the other party in writing via certified mail, return receipt requested, or hand delivery via courier. The Demand for Arbitration must include a

statement of the legal and factual basis of the claim(s) to be arbitrated. The parties shall be entitled to all discovery rights permitted by the Federal Rules of Civil Procedure and the parties shall be permitted to bring motions under FRCP Rules 12 and 56. The decision of the arbitrator shall be final and binding on the parties and may, if necessary, be reduced to a final judgment in a court of competent jurisdiction.

39.3.6. Subject to the provisions of this sub-Section 40.3, all proceedings relating to the arbitration, its validity or this agreement to arbitrate, shall be brought before the federal court for the Southern District of New York, or the New York State courts located in Manhattan, New York.

39.4. Customer waives her or his right to have any dispute or claim brought, heard or arbitrated as a class or collective action and the Customer and the Company agree that an arbitrator or court shall not have any authority to hear or arbitrate any class or collective action. Notwithstanding any other provision in these Terms, the parties agree that any claim or contention that all or part of this class action waiver is unenforceable may be determined only by a court of competent jurisdiction and not by an arbitrator.

#### **40. Additional Legal Provisions**

40.1. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

40.2. The Services are made available to the U.S. government with "RESTRICTED RIGHTS." Use, duplication or disclosure by the U.S. government is subject to the restrictions contained in 48 CFR 52.227-19 and 48 CFR 252.227-7013 et seq. or its successor. Access or use of the Services (including the Software) by the U.S. government constitutes acknowledgment of the Company's proprietary rights in the Services (including the Software).

40.3. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms remain in full force and effect.

40.4. Regardless of any statute or law to the contrary, any claim or cause of action of a Customer arising out of or related to the use of the Services, or these Terms must be filed within twelve (12) months after such claim or cause of action arose or be forever barred.

40.5. A printed version of these Terms and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

40.6. The Company will not be in default hereunder by reason of any failure or delay in the performance of its obligations where such failure or delay is due to civil disturbances, riot, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or unavailability of electrical power, network access or equipment, or any other circumstances or causes beyond Company's reasonable control.

#### **41. Interpretive Provisions**

- 41.1. The titles in these Terms are for convenience only and have no legal or contractual effect.
- 41.2. As used in these Terms, the words “include” and “including,” and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation.”

#### **42. Contact Us**

If you have any questions or concerns about these Terms or the Services, or wish to give us any notification required under these Terms, please contact us via email at [support@accessibe.com](mailto:support@accessibe.com).