Terms of Service / License Agreement

This Terms of Service / License Agreement ("**Agreement**") constitute a binding agreement between you (the "**Customer**", "**You**") and us, Arkias Inc., ("**Zmartests**" or "**we**" or "**us**"), the owner and operator of the Zmartests web-based assessment solution and govern your access and use of our solution (as defined below).

ACCEPTANCE OF TERMS AND CONDITIONS
BY USING THE ZMARTESTS SITE, CHECKING THE "ACCEPTED AND AGREED" BUTTON WHEN COMPLETING THE SIGNUP FORM, SIGNING A PAPER ORDER REFERENCING THIS AGREEMENT, OR DOWNLOADING, ACCESSING, OR USING THE SERVICE, YOU EXPRESSLY (A) ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT IN ITS ENTIRETY; (B) IF CUSTOMER IS A COMPANY, YOU CONFIRM THAT THE PERSON ACCEPTING AND AGREEING TO THIS AGREEMENT IS AUTHORIZED BY CUSTOMER TO ENTER INTO THIS AGREEMENT FOR CUSTOMER; AND (C) AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ASSUME RESPONSIBILITY FOR ANY NONCOMPLIANCE WITH THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE EXIT THE WEBSITE AND DO NOT ACCESS, OR USE THE SITE AND/OR SOLUTION.

1. Definitions

i.   "**Application**" means the Zmartests web-based solution developed by Arkias inc. and licensed to Customer in accordance with the provisions of this Agreement;

ii. "**Confidential Information**": has the meaning given to such term in Section 11 of this Agreement.

iii. "**Zmartests Data**" means data created by Zmartests, including data derived from Customer Data, which does not include references to identifiable Customers or Users;

iv. "**Customer Data**" means any content, which may include Personal Information of Users, that Customer or Users submit or transfer to the Application, including all data identifying Customers or Users, results to assessments and answers to questions;

v.   "**Effective Date**" means (i) for a User, the first date a User accessed the Application; or (ii) for a Customer, the date on which the Agreement is accepted by Customer and Zmartests;

vi. "**Zmartests Tests**" means the Zmartests assessments developed by Zmartests and licensed to Customer in accordance with the provisions of this Agreement;

vii. "**Purchase Order**" means the documents, in any format, exchanged and accepted by the parties in connection with the purchase of tests and the use of the Application by Customer.

viii. "**Test Takers**" means any User invited by Customer to submit answers to assessments through the Application;

ix. "**Subscription Period**" means the period of Subscription as specified on the Purchase Order, as such period may be extended or renewed in accordance with this Agreement;

x.   "**Subscription**" means the Customer's right to use the Application and the Zmartests Tests purchased by Customer or licensed by Zmartests to Customer as detailed on the Purchase Order.

xi. "**Update**" means all upgrades, patches, revisions, modifications, enhancements, fixes, copies, or additions to the Application.

xii. "**Users**" means those individuals authorized or designated by the Customer to use the Application, including without limitation Customer's employees, directors, officers, representatives, and consultants.

xiii. "**Documentation**" means all documentation, manuals, technical information, and other materials describing the features and functionalities of the Application or the Zmartests Tests, including any training materials with respect to the Application or the Zmartests Tests;

xiv. "**Personal Information**" means information about an identifiable individual;

2. Subscription

The Application shall be used by Customer and its Users after purchase of Zmartests Tests or through a subscription on the Application for a Subscription Period and other Subscription conditions as specified on the Purchase Order. Each Subscription may

include Updates, professional services, support services, additional or tailored functionalities and applications, each of which is subject to the terms of this Agreement as applicable.

Zmartests may add, change, or discontinue any component of the Application or the Subscription at any time; provided, however, that no such change shall materially increase Customer's obligations or materially decrease Customer's entitlements under this Agreement.

3. Fees and Payment

Customer shall pay Zmartests the fees specified on the Purchase Order, in accordance with the timing, currency and method of payment specified therein. Any amounts past due shall accrue interest at an annual rate of 18% or the maximum rate allowed by the law, whichever is lower.

Zmartests shall be entitled to suspend the whole or part of the Subscription or the performance of the services if Customer is in breach of its obligation to pay any amount to Zmartests and such breach continues for a period of 10 days after Customer is notified.

Other than as expressly provided herein, no refund shall be granted by Zmartests to Customer. Zmartests reserves its right to modify advertised fees and any associated charges without advance notice. Fees are net of any applicable federal, state and/or provincial taxes, unless specifically quoted or referenced in writing.

4. Grant of License

Subject to the terms and conditions set forth in this Agreement, Zmartests hereby grants to Customer a limited, nonexclusive, non-sublicensable, non-transferable and revocable right (the "**License**"), only for Customer's own business activities or operations: (i) to use the Application, subject to all of the terms of this Agreement and only for the number of authorized products and services that are specified on the Purchase Order.

Customer shall be responsible for ensuring that the Users using the Application and the Zmartests Tests comply at all times with the provisions of this Agreement and Customer shall be responsible towards Zmartests for all actions committed (intentionally or not) by Users in violation of this Agreement.

5. License Restrictions

The rights granted in Section 4 are subject to the following restrictions. Customer shall not, and will not permit its Users or other third parties to: (i) reverse engineer, disassemble, compile or decompile the Application and Zmartests Tests, or otherwise attempt to derive, reconstruct or discover any source code, underlying ideas, algorithms, file formats, programming of interfaces of the Application, by any means whatsoever; (ii) use unauthorized modified versions of the Application or use the Application to develop commercially competitive or similar products; (iii) engage in any conduct that disrupts or impedes a third party's use and enjoyment of the Application; (iv) except as specifically provided herein, disclose, distribute, rent, lease, sublicense, assign, sell, transfer or otherwise make available the Application to any third party; (v) use the Application for commercial time-sharing, outsourcing, application service provider or service bureau use, unless previously agreed to in writing by Zmartests or except as specifically provided herein; (vi) modify, translate, incorporate into or with other software or create derivative works of the Application, except as expressly authorized by Zmartests; (vii) remove any product identification, copyright, trademark or other Zmartests notices from the Application, except as expressly authorized by Zmartests; (viii) use the output or other information generated by the Application for any purpose other than as contemplated by this Agreement or for purposes prohibited by applicable laws; (ix) use the Application for any purpose other than the purposes authorized hereunder or authorized in writing by Zmartests; or (x) use the Application in any way that is contrary to or in violation of applicable local, state/provincial, federal and foreign laws, including without limitation those relating to privacy, electronic communications and anti-spam legislation.

If the Application is used by Customer for a trial period, the Application shall be used only for evaluation purposes and only during the trial period specified on the Purchase Order. Any use of the Application for other purposes or beyond the applicable trial period is strictly prohibited.

6. Audit Rights

Zmartests reserves the right to monitor and audit Customer's and its Users' use of the Application for the purpose of (among others) ensuring compliance with the terms of this Agreement. Any such audit may be carried out by Zmartests or a third party authorized by Zmartests, at its own expense.

If Zmartests monitoring activities or audit reveals that Customer's or any Authorized User's use of the Application is in breach of this Agreement, including any use in breach of any applicable law, Zmartests may immediately suspend and discontinue Customer's or a specific User's access to the Application, at Zmartests sole discretion and without notice to Customer. Zmartests shall notify Customer of such suspension as soon as reasonably possible, which notice shall set out the circumstances of the suspension. If Customer rectifies the situation to Zmartests satisfaction, then Zmartests will reinstate access to the Application. If Customer does not rectify the situation within a reasonable period of time, then it shall be deemed a material breach of this Agreement and Zmartests shall be free to terminate this Agreement in accordance with Section 18.

7. Subscription Period and Renewal

7.1. Time based Subscriptions
The Subscription and this Agreement shall be valid for the Subscription Period, unless suspended or terminated by Zmartests in accordance with the provisions herein. Upon expiration of the applicable Subscription Period and unless otherwise stated in the Purchase Order, the Subscription and this Agreement will be automatically renewed on the first day following the expiration of a subscription term (the "**Renewal Date**") for the same Subscription Period as the expiring Subscription Period at the same conditions subject to modifications made pursuant to Section 7.4.

If the Subscription Period is equal or greater than 12 months, or if fees or conditions are modified by Zmartests, Zmartests shall send to Customer a prior notice of renewal at least 30 days before the Renewal Date, and thus if Customer no longer wishes to renew the Subscription and this Agreement, Customer is responsible for timely canceling its Subscription prior to automatic renewal.

7.2. Zmartests Tests based Subscriptions
Subscriptions based on the purchase of Zmartests Tests are determined in accordance with the number of Zmartests Tests purchased by Customer as specified on applicable Purchase Order(s). If Customer wishes to add additional Zmartests Tests used in the Application, Customer may at any time increase the number of the Zmartests Tests through the "Buying" section of the Application or by contacting a Zmartests Sales representative.

Zmartests Tests do not have a limited duration and don't expire. When all Zmartests Tests purchased by a Customer have been used, the Customer can continue to have access to the Application if (a) more Zmartests Tests are purchased, (b) the Customer agrees to pay a usage fee to continue using the Application. If none of the above conditions are met, Zmartests will notify such Customer and the Customer's Subscription and access to the Application will terminate without further notice after 5 days.

7.3. Free Trial
Zmartests may make the Application available to Customers on a free trial basis ("Free Trial") and the term of this Agreement shall be limited to the duration of the trial period identified in the Purchase Order. During the Free Trial the Application is provided "AS IS" without any warranty and Zmartests will have no warranty, indemnity or other obligations or liabilities with respect to the Free Trial. Access to the Application shall be discontinued automatically and without prior notice at the end of the trial period.

7.4. Modification to fees and conditions
Zmartests may increase the fees payable by Customer or modify other conditions for any renewed or extended Subscription, upon not less than 30-days written notice prior to the renewal or extension.

7.5. End of Subscription
When a Subscription is terminated for any reason, the Customer will no longer have access to the Application and may only access Customer Data and data provided by Zmartests to the Customer through the Application by downloading such data using the download feature available on the Application before the end of the Subscription. Zmartests will keep backup copies of Customer Data for 60 days after the end of a Subscription and will make such copies (except for answers to questions) available to Customer upon request upon payment of reasonable fees.

8. Additional Services
If the Purchase Order provides for the performance of additional services by Zmartests or the provision or development of additional or adapted functionalities, the following provisions shall apply in connection with such additional services (in addition to the other provisions of this Agreement): (i) Zmartests shall perform the services to Customer in accordance with currently

accepted standards and practices for services of a similar nature and shall assign such personnel as may be required to render the services efficiently, **and there shall be no other warranty, express or implied, applicable to such services**; (ii) Customer shall furnish Zmartests in a timely manner with data and information as may be required by Zmartests for performing the services, and shall ensure that the information furnished to Zmartests is complete and accurate, and Zmartests shall be entitled to rely upon such data and information; (iii) Customer shall provide such assistance to Zmartests as may be required by it for the carrying out of the services, including reviewing and approving promptly all works prepared and submitted by Zmartests and (iv) additional fees shall apply in respect of such additional services.

9. License Transfer

Customer shall not transfer or assign any of the rights granted to it under this Agreement, the License, or any of its obligations pursuant hereto without Zmartests prior written consent.

10. Title, Retention of Rights and Intellectual Property

Customer and Users acknowledge that the Application and the Zmartests Tests, any Updates, derivative works thereof, custom configurations and functionalities, Documentation, Zmartests Data all intellectual property related thereto and all other items delivered by Zmartests under this Agreement or a Purchase Order, developed or provided by Zmartests, shall remain the exclusive property of Zmartests and its successors and assigns, and Customer and Users acknowledge that they have no right to or interest in such items other than as expressly granted herein. Zmartests reserves all rights not expressly granted to Customer in this Agreement. Without limiting the generality of the foregoing, Customer and Users acknowledge and agree that if they suggest any new features, functionality, or performance for the Application that Zmartests subsequently incorporates into the Application, the Application incorporating such new features, functionality, or performance, and all intellectual property related thereto, shall be the sole and exclusive property of Zmartests. To the extent that Customer or a User (as the case may be) is the first owner of intellectual property rights in such suggested new features, Customer or User (as the case may be), agrees to assign any such rights to Zmartests.

Customer and Users further agree that the systems, methods of operation, configurations, Documentation and other information contained in the Application, the Zmartests Tests and Updates (other than proprietary information provided by Customer), are proprietary intellectual property of Zmartests and are as such protected by national and international copyright, trade secret, trademark and patent laws. This Agreement or the use of the Application do not transfer any title in such intellectual property to Customer or Users and Customer and Users acknowledge that the License granted under this Agreement only provides a right of limited use under the terms and conditions of this Agreement.

11. Confidential Information

Customer acknowledges that the Application, the Updates and the Documentation contain confidential information of Zmartests. Each party (and, in the case of Customer, its Users) shall retain in confidence all information received from the other party pursuant to or in connection with this Agreement that the other party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("**Confidential Information**"), and will make no use of such Confidential Information except as necessary to fulfill their respective obligations under the terms of this Agreement or as authorized pursuant to this Agreement.

Without limiting the generality of the foregoing, Confidential Information shall include (i) information pertaining to the Zmartests Tests, the Application and relating to technologies, designs, procedures, techniques, products, software systems, methods, training and consulting service methodology, know-how, data, analyses, reports, accounts per activity area, trade secrets; (ii) content provided on the Application, including formative content provided by Zmartests, lists and arrangement of skills and competencies available through the Application and (iii) all information received or concerning firms with which Zmartests does business relating to one of the aforementioned elements.

Each party shall treat the terms and conditions of this Agreement as confidential and shall not (a) disclose, directly or indirectly, any Confidential Information of the other party to any person without the prior written approval of the other party, except to its employees or consultants who need to have access to such Confidential Information for the purposes of this Agreement and to its legal and financial advisors as required in the ordinary course of that party's business; provided, however, that a party shall remain liable for any breach of the confidentiality obligations by any such person; or (b) use, disclose or make a copy of any of the other party's Confidential Information otherwise than for the purposes of this Agreement, and each party must immediately notify the

other party if it becomes aware of any unauthorized access to, or use or disclosure of, any of the other party's Confidential Information.

Notwithstanding the foregoing, the restrictions set forth above will not apply to (i) information previously known to the receiving party without reference to the disclosing party's Confidential Information, (ii) information which is or becomes publicly known through no wrongful act of the receiving party, (iii) information that is independently developed by either of the parties, provided that there is sufficient documented records to establish independent development or (iv) information required to be disclosed pursuant to applicable law, provided that, unless prohibited by law, any party required by law to disclose Confidential Information shall promptly notify the other party and reasonably cooperate with the other party to ensure that such disclosure is strictly limited to what is necessary and that reasonable measures are taken to ensure that the Confidential Information is kept confidential following the disclosure.

12. Data

12.1. Customer Data. Customer or the User represents and warrants that it owns or has obtained all necessary rights, title and interest, and obtained all necessary consents to transfer Customer Data in relation with the Agreement, and that Customer Data doesn't infringe any third-party intellectual property right.

12.2. Ownership. As between Customer, Zmartests and Users, subject to the applicable rights of Users provided by law and subject to the license described below, intellectual property rights on Customer Data are owned by Customer and intellectual property rights on Zmartests Data are owned by Zmartests. Users acknowledge that except for rights existing pursuant to privacy legislation or other rights pursuant to applicable law which may not be waived, Users cannot claim any proprietary right or right of ownership on Customer Data provided to Zmartests through the Application.

12.3. License on Customer Data. Customer and the User grants Zmartests a worldwide, non-exclusive, perpetual and royalty-free right to access, use, process, copy, distribute, perform, export and display Customer Data, only to the extent permitted by law, for the purpose of (i) providing, maintaining and improving the Application and Zmartests services; (ii) preventing or addressing service, security, support or technical issues; (iii) creating personalized reports to be provided directly to Users with their consent during or after this Agreement or (iv) creating Zmartests Data, including for use as benchmarking, scientific validation and marketing purposes in accordance with the Privacy Policy or as otherwise expressly permitted in writing by Customer or as required by law.

12.4. No License on Zmartests Data. Other than expressly provided by the terms of a Subscription, Customer does not have the right to access or use Zmartests Data. Zmartests shall be free to use Zmartests Data for any lawful purpose.

12.5. Protection of Customer Data. Zmartests shall store and process Customer Data in accordance with the Privacy Policy. Zmartests has implemented technical, organizational, and administrative systems, policies and procedures as well as other measures detailed in the Privacy Policy to help ensure the security, integrity, availability and confidentiality of Customer Data, and to mitigate the risk of unauthorized access to or use of Customer Data. Nonetheless, hosting data online involves risks of unauthorized disclosure, loss, or exposure and, in accessing and using the Application, Customer assumes such risks, except for gross negligence or unlawful conduct of Zmartests.

12.6. Telemetric Data from Application. Telemetric data related to how Users access and use the Website and the Application (including features and functions of the Website and the Application being used by Users, stack trace data and reports related thereto) does not constitute Customer Data, and the anonymized data derived from such telemetric data is owned by Zmartests.

12.7. Personal Information. When using the Application and Zmartests Tests, Customer may transfer to Zmartests Customer Data containing Personal Information. Zmartests shall collect, access, or process any Personal Information in accordance with the Privacy Policy. Customer warrants that except with respect to Customer Data provided directly to Zmartests by Users, it is authorized to disclose any Personal Information included in Customer Data to Zmartests and to authorize Zmartests to use such Personal Information for the purposes contemplated in this Agreement. Customer consents to the transfer, processing and storage of Personal Information in accordance with the Agreement and the Privacy Policy.

12.8. Data Subject Rights. Zmartests processes Personal Information in part based on consent given by Users. If obligated by law, Zmartests will respond to Users' requests to exercise their rights in accordance with applicable laws and regulations, including

laws and regulation governing Personal Information and privacy rights. If allowed by law, Zmartests shall notify Customer of any such request and of Zmartests response.

13. Publicity

Customer grants Zmartests the right to use Customer's company name and logo as a reference for marketing or promotional purposes, including on its website or blog and in other public or private communications with Zmartests existing or potential customers. If Customer wishes to limit such right at any time, it shall notify Zmartests at the following email: support@zmartests.com. Customer retains all right, title, and interest in and to such company name and logo.

14. Accounts

Customer and its Users are responsible for maintaining the confidentiality of the usernames and passwords provided by Zmartests for accessing the Application. Customer shall be responsible for all uses of any such usernames and passwords, or any action taken under Customer's accounts with Zmartests, whether or not authorized by Customer. Zmartests shall not be liable for any loss or damage arising from any unauthorized use of Customer's accounts, usernames, or passwords.

15. Warranties and Indemnification

Customer represents and warrants that (i) it is fully authorized to enter into this Agreement and that its Users are fully authorized to use the Application and the Zmartests Tests, (ii) Customer and its Users are and will remain in compliance with all applicable laws and regulations with respect to their activities related to this Agreement and the use of the Application and the Zmartests Tests, including but not limited to privacy laws, laws relating to the protection of personal information and data, anti-spam legislation, gaming and lottery rules and regulations, and it shall be Customer's sole responsibility to ensure that the Zmartests Tests, interface and interactions of the Application comply with such laws and regulations; (iii) all media assets created, developed or provided to Zmartests by Customer do not and will not breach any third party's intellectual property rights or violate the privacy, publicity or other personal rights of others, and do not or will not contain any data or content that is illegal, defamatory, obscene, threatening, abusive, disruptive or hateful.

Customer shall indemnify, defend and hold harmless Zmartests and its officers, employees, agents, representatives and affiliates from and against all losses, expenses, liabilities, claims, damages and costs including, without limitation, reasonable attorneys' fees (collectively "**Costs**"), to the extent that such Costs are attributable to (i) any breach by Customer or any Users of any representations, warranties or other obligations set forth in this Agreement, or (ii) any media assets created, developed or provided to Zmartests by Customer.

16. Limited Warranty

Zmartests warrants and represents to Customer that it has the right to license the Application and Zmartests Tests to Customer. Zmartests further warrants that during the applicable Subscription Period, the Application will perform substantially in accordance with the Application's functionalities and features as described in the Purchase Order.

Notwithstanding the foregoing, this limited warranty shall not apply in the following cases: (i) malfunctions, defects, or failures of the Application or Zmartests Tests resulting from misuse, abuse, accident, neglect, or improper operation or maintenance by Customer or its Users, theft, vandalism, acts of God, acts of terrorism, power failures, failure of our cloud and hosting services provider or surges, battery failures, wi-fi failures or insufficient wi-fi network, non-permitted alteration or modification, any other Customer's, Users' or third parties' acts or omissions, or any causes beyond Zmartests reasonable control; (ii) any defect not made known by Customer to Zmartests as soon as practical after the defect first appears; (iii) the Application is not used in accordance with the Documentation and this Agreement; and (iv) Customer or its Users modify the Application or add other software that interferes with their operation. Customer acknowledges, accepts and agrees that no software (including the Application) is error free.

Zmartests sole liability and Customer's sole and exclusive remedy for breach of the above warranty shall be, at Zmartests sole option, to either (i) refund the fees paid by Customer for the Subscription or for the Zmartests Tests, on a pro rata basis; (ii) replace the defective Application with a new compliant Application; or (iii) repair or correct the nonconformity or defect reported in writing to Zmartests; provided, however, that Customer provide Zmartests with sufficient information (which may include access to Customer's Devices) to reproduce the defect in the Application. Zmartests Minor discrepancies in the Documentation shall not constitute errors or defects in the Application.

THE APPLICATION IS PROVIDED "AS IS" AND ZMARTESTS EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED (WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, WARRANTY OF TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. CUSTOMER ASSUMES THE ENTIRE RISK AS TO PERFORMANCE AND RESPONSIBILITY FOR SELECTING THE APPLICATION TO ACHIEVE ITS INTENDED RESULTS, AND FOR THE USE OF, AND RESULTS OBTAINED FROM THE APPLICATION. WITHOUT LIMITING THE FOREGOING PROVISIONS, ZMARTESTS MAKES NO REPRESENTATION AND GIVES NO WARRANTY THAT THE APPLICATION WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE APPLICATION WILL MEET ANY OR ALL OF CUSTOMER'S REQUIREMENTS, GOALS AND OBJECTIVES (INCLUDED ANTICIPATED REVENUES OR PROFITS DERIVED FROM THE USED OF THE APPLICATION), WHETHER OR NOT DISCLOSED TO ZMARTESTS.

17. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ZMARTESTS, ITS DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS AND AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, DAMAGES FOR LOSS OF PROFITS, LOSS OF CONFIDENTIAL OR OTHER INFORMATION, BUSINESS INTERRUPTION, LOSS OF PRIVACY, LOSS OF DATA OR PROGRAMS, ECONOMIC LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE APPLICATION AND THE DEVICES, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATON AND RELATED CONTENT THROUGH THE APPLICATION OR OTHERWISE, OR ARISING OUT OF ANY BREACH OF CONTRACT OR ANY TORT (INCLUDING NEGLIGENCE, MISREPRESENTATION, ANY STRICT LIABILITY OBLIGATION OR DUTY), OR ANY BREACH OF STATUTORY DUTY, OR ANY BREACH OF WARRANTY OF THE ZMARTESTS, EVEN IF THE ZMARTESTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PROVISIONS OF THIS SECTION FAIRLY ALLOCATE THE RISKS UNDER THIS AGREEMENT AS BETWEEN THEM.

Customer agrees that in the event that Zmartests is found liable pursuant to this Agreement, the maximum cumulative liability of Zmartests under this Agreement for any claims made by Customer or a User in warranty, contract, tort, or otherwise, shall not exceed the total amount of all fees paid to Zmartests by Customer during the three (3) month period preceding the occurrence of the event leading to such liability (or, if the payment of the fees is made on an annual basis, Zmartests liability shall be limited to the value of the fees paid for the three month period preceding the occurrence of the event leading to such liability, on a pro rata basis). The limitation of liability provided in the preceding sentence shall not apply where such liability is caused by fraud, gross negligence, or intentional breach by Zmartests, or infringement by Zmartests of any third party's intellectual property. In the event any disclaimer, exclusion or limitation in this Agreement cannot be excluded or limited according to applicable law, then only such disclaimer, exclusion or limitation shall not apply to Customer and Customer shall continue to be bound by all the remaining disclaimers, exclusions, and limitations.

18. Term & Termination

18.1. Term. The Agreement is effective as of the Effective Date, and (i) for Customer, until all subscriptions terms to the Application have expired or until they are terminated by any or both Parties in accordance with Section 18.2 (Termination); or (ii) for a User, as long as he or she is accessing the Application (the "Term").

18.2. Termination. The Agreement may be terminated:

- If Customer cancels its annual Subscription with a Zmartests customer representative in accordance with the terms of this Agreement;
- If Customer or any User neglects or fails to perform or observe any of its obligations under this Agreement, including, without limitation, if Customer or any User uses the Application or the Zmartests Tests in violation of the provisions of this Agreement, Zmartests, in addition to other legal remedies it may have pursuant to this Agreement or applicable law, may terminate the Subscription, this Agreement and the License granted hereunder upon fifteen (15) days written notice to Customer should Customer fail to correct the default within such period, without further notice. In addition, Zmartests may suspend Customer's access to the Application and Zmartests Tests immediately without notice if Zmartests, in its sole discretion, believes that: (i) such suspension is required by law; (ii) Customer or any User has breached this Agreement; or (iii) there is a security or privacy risk to Customer or any User. Any suspension of Customer's access to the

Application or Zmartests Tests shall not limit or waive Zmartests rights to terminate this Agreement, the License or the Subscription.

- If Customer ceases doing business as a going concern, or if a petition is filed proposing the adjudication of Customer as a bankrupt or its reorganization pursuant to any applicable bankruptcy or insolvency law which is not opposed by the Customer or if opposed, is not discharged within 60 days of filing or such longer period as the proceedings for discharge are proceeding so long as the Customer is proceeding expeditiously to obtain such discharge, if Customer makes an assignment or composition with creditors, or if a receiver, trustee in bankruptcy, or similar officer is appointed to take charge of all or part of its property, or if it is adjudged bankrupt, Zmartests, in addition to other legal remedies it may have, may immediately terminate the Subscription, this Agreement and the License granted hereunder upon written notice.

18.3. <u>Termination by Customer</u>. Unless expressly provided otherwise in this Agreement, Customer may not terminate this Agreement or a Subscription prior to the expiration of its term. The Customer agrees that this Agreement may only be terminated before its term in case of breach by Zmartests and that it may not be terminated under article 2125 of the Civil Code. In any event, any fees paid by Customer to Zmartests for services to be rendered after the termination of this Agreement by Customer shall be considered liquidated damages for the early termination of the Agreement and not be subject to reimbursement, the whole without limiting other remedies available to Zmartests, including obtaining compensation for any other damage suffered.

18.4. <u>Effect of Termination</u>. Upon the termination or expiration of this Agreement or the Subscription, for any reason, (i) Zmartests shall be entitled to immediately deactivate Customer's accounts, usernames and passwords and cancel access to Customer's Zmartests Tests from the Application, without any liability, and (ii) Customer and the Users shall immediately discontinue the use of the Application and Zmartests Tests and destroy or return to Zmartests all Confidential Information of Zmartests in its possession.

Notwithstanding any provisions herein, the termination of this Agreement by Zmartests shall not limit Customer's obligation to pay all of the applicable fees, nor entitle Customer to receive any refund, nor restrict Zmartests from pursuing any other remedies available to it, including injunctive relief. The obligations of the parties that are intended by their nature to survive the termination of this Agreement shall survive indefinitely after the termination or expiration of this Agreement.

19. Consent to communicate

Zmartests is committed to protecting and respecting your privacy, and we'll only use your personal information and that of your users to administer your account and to provide the products and services you requested from us. From time to time, we may contact you about our products and services, as well as other content that may be of interest to you as permitted by applicable law.

You and your users may unsubscribe from these communications at any time. For more information on how to unsubscribe, our privacy practices, and how we are committed to protecting and respecting your privacy, please review our Privacy Policy.

20. Consent to process data

By signing this contract, you consent to allow Zmartests to store and process your personal information and that of your Users in accordance with the Privacy Policy to provide you with the products and services you requested from us.

21. Miscellaneous

21.1. <u>Governing Law; Jurisdiction</u>. This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada, without reference to conflicts of law rules and principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any dispute arising out of the interpretation or application of the terms of this Agreement, or any breach thereof shall, unless it is settled by direct negotiation, be settled by the courts of the Province of Quebec, district of Montreal, which shall have exclusive venue and jurisdiction for such disputes, and the parties hereby submit to personal jurisdiction in such courts. Each party hereby waives all defenses of lack of personal jurisdiction and forum in connection with any action brought in the foregoing courts. If Zmartests prevails in any action or proceeding (including for collection) under this Agreement, then Zmartests shall be entitled to recover from Customer, in addition to all other relief, its reasonable attorneys' and other experts' fees and expenses incurred with respect to such action or proceeding.

21.2. <u>Severability</u>. To the extent that any law by its terms as determined by a governmental authority of competent jurisdiction conflicts with this Agreement, the conflicting terms of this Agreement shall be superseded only to the extent necessary by the terms required by such law, statute, treaty, or regulation. If any provision of this Agreement shall be otherwise unlawful, void, or for any reason unenforceable, then that provision shall be enforced to the maximum extent permissible to affect the intent of the parties. In either case, the remainder of this Agreement shall continue in full force and effect.

21.3. <u>Export Administration</u>. Customer agrees to comply fully with all applicable export laws and regulations of United States and Canada to ensure that neither the Application nor any direct product thereof are used or intended to be used for any purposes prohibited by export laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

21.4. <u>Force Majeure</u>. Neither party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement (other than payment obligations) by reason of any act of God, fire, natural disaster, accident, act of government, shortage of materials or supplies, failure of transportation or communication or of suppliers of goods or services, or any other cause to the extent it is beyond the reasonable control of such party.

21.5. <u>Failure to Exercise Rights</u>. The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights nor shall the same be deemed to be a waiver of any subsequent breach.

21.6. <u>Election of Remedies</u>. All rights and remedies, whether evidenced hereby, by law or in equity shall be cumulative and may be exercised singularly or concurrently unless otherwise stated herein. Failure of either party to enforce any provision hereof shall not prevent enforcement on any other occasion.

21.7. <u>Entire Agreement</u>. Each party has read this Agreement, has had the opportunity to obtain independent legal advice, agrees to be bound by it, and agrees that it constitutes, along with any applicable Purchase Order, the entire Agreement between the parties with respect to the subject matter hereof, superseding all proposals, negotiations, and communications, oral or written, between the parties with respect to the subject matter hereof. Any terms or conditions appearing on the face or reverse side of any Purchase Order, acknowledgment, or confirmation that are different from or inconsistent with those set forth in this Agreement shall not be binding on the parties, even if signed and returned, unless expressly stated that such other terms and conditions take precedence over conflicting terms of this Agreement.

21.8. <u>Notices</u>. Any notice or other communication required or permitted under this Agreement shall be given in writing and sent by email. Notices addressed to Customer shall be sent to the email address associated with Customer's account on the Application and notices addressed to Zmartests, shall be sent to info@zmartests.com. Any such notice shall be deemed delivered the next business day after it is sent. Customer is responsible for maintaining access to the email address associated with its account on the Application and to change its email address as required.

21.9. <u>Amendments</u>. Unless Customer has a superseding written agreement with Zmartests, Zmartests may amend the Agreement from time to time, as its business evolves. Any revisions to the Agreement will become effective on the date indicated in the notice. Customer and Users can ask for the most current version of the Agreement at any time by sending an email to info@zmartests.com. If Customer or Users use the Application or Zmartests Tests after the effective date of any changes, such use or access will constitute the acceptance of the revised Agreement.

For more information, send us an email at <u>info@zmartests.com</u>, or by mail at CP 12 SUCC BUREAU-CHEF, LA PRAIRIE, QC J5R 3Y1