

## BIDALGO PLATFORM SOFTWARE AS A SERVICE TERMS AND CONDITIONS

Last Revised: Aug 25<sup>th</sup>, 2016

PLEASE READ THESE SOFTWARE AS A SERVICE TERMS AND CONDITIONS ("**SAAS TERMS**") CAREFULLY BEFORE EXECUTING THE PURCHASE ORDER THAT INCORPORATES THESE SAAS TERMS (THE "**PURCHASE ORDER**"). BY ACCEPTING THESE SAAS TERMS THROUGH THE PURCHASE ORDER, YOU AGREE TO COMPLY WITH AND BE BOUND BY THE TERMS AND CONDITIONS OF THESE SAAS TERMS. IF YOU ARE ENTERING INTO THESE SAAS TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THESE SAAS TERMS AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THESE SAAS TERMS SHALL REFER TO SUCH ENTITY.

IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THESE SAAS TERMS, YOU MAY NOT USE THE SERVICES.

### 1. Definitions

"**You**" and "**your**" refers to the individual or entity that has ordered the Bidalgo Platform from Chompi CCnetworkings Ltd., d/b/a Bidalgo ("**Bidalgo**") or an authorized distributor or reseller by executing the Purchase Order that accompanies and incorporates these SAAS Terms (collectively, the "**Terms**").

The Bidalgo Platform software as a service uses algorithms to analyze and generate optimized and improved social media advertising campaign results through identification and targeting of relevant users and auto-bidding on the most cost-effective ad impressions, and may include other services provided by Bidalgo, as defined in the Purchase Order (collectively, the "**Services**").

The term "**Authorized User**" means an individual who is authorized in accordance with these Terms by you to access and use the Services.

The term "**Customer Data**" refers to all electronic data or information that you or any Authorized User loads or enters into the software product through which the Services are provided, including any end user data collected by you and/or Bidalgo through or in connection with the Product.

and all results from processing such data, including compilations and derivative works of such data or information.

The term "**Product**" means the Software, the Services, and any applicable documentation.

The term "**Purchase Order**" refers to the purchase order signed by the parties that accompanies and incorporates these SAAS Terms, including the Privacy Policy, and any other document referenced or incorporated into the Purchase Order.

The term "**Software**" means Bidalgo's proprietary software which is used to provide the Services.

### 2. Applicability

These SAAS Terms are valid for the Purchase Order which reference these SAAS Terms and is executed by Bidalgo.

### 3. Use of Services

3.1 Upon Bidalgo's acceptance of your Purchase Order and for the duration of the Product term defined in the Purchase Order (the "**Term**"), you have the nonexclusive, revocable, non-assignable, non-transferable, limited right to use the Software to receive the Services solely for your internal business operations and subject to the terms contained hereunder. You may not use the Software or the Services for any personal or commercial purposes, other than for the purpose of enhancing your advertising campaigns on Facebook.

3.2 In your use of the Software and Services, you warrant that you will at all times comply with the advertising policy of Facebook (as set forth on [https://www.facebook.com/ad\\_guidelines.php](https://www.facebook.com/ad_guidelines.php), and as updated from time to time), and Bidalgo reserves the right, without liability to you, to terminate the Term and these Terms or disable your access to the Product if you breach the provisions of Facebook's advertising policy.

3.3 Upon the expiration of the Term or the termination of your rights hereunder, you and your Authorized Users' rights to access or use the Product shall terminate.

### 4. Privacy

4.1. You acknowledge and agree that Bidalgo can view, reproduce and analyze any data points or demographic information with respect to any user of accounts within the Software which are collected, stored or processed by the Software, but solely on an aggregated and anonymous basis. This is for use in improving services and for general market research or research and development of additional or modified features and functionality of the Software.

4.2. You warrant and represent that you own all rights, title and interest in and to Customer Data and that you have the full right, authority, permissions, approvals and consents, including from Authorized Users, to permit Bidalgo to access, store, collect, analyze and process Customer Data in accordance with the Privacy Policy. You agree to indemnify, defend, and hold Bidalgo harmless from and against any claims, damages, losses, and liabilities incurred or arising from your breach or alleged breach of this warranty. You further warrant and represent that all Customer Data has been and will be legally acquired, and the Customer Data does not and will not infringe any third party's rights.

4.3. You will own all of Customer Data and are solely responsible for the accuracy, integrity, quality, legality, reliability, appropriateness of and copyright permissions of Customer Data and for adopting procedures to identify and correct errors and omissions in Customer Data. Bidalgo has no obligation to review Customer Data for accuracy. 4.4. You warrant to Bidalgo that Customer Data has been collected, processed and provided to Bidalgo in accordance with applicable laws on the protection of data subjects with regard to the processing of personal data and on the free movement of such data, including in particular the Israeli Data Protection Law and any legislation implementing the EU Data Protection Directive 95/46/EC and the Privacy and Electronic Communications Directive 2002/58/EC (as amended by Directive 2009/136/EC) in the applicable EU member state (collectively, "**Data Protection Laws**"), and also including laws or regulations that will apply to the transfer of Customer Data by Bidalgo to any of its affiliates, employees, contractors and business partners located anywhere in the world. You consent to Bidalgo's use of Customer Data, including consent for Bidalgo to move Customer Data from one environment to another located

anywhere in the world, as required to provide Services, and that you will comply with the Data Protection Laws. The terms "personal data" and "process" shall have the meanings given to them in the applicable Data Protection Laws.

4.5. You further acknowledge and warrant that if Bidalgo processes any personal data, including without limitation any Customer Data, on your behalf when performing its obligations under these Terms, you shall be the data controller and Bidalgo shall be a data processor and in any such case:

4.5.1. You will collect, use, transfer and otherwise process any personal data collected by or through the Product in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments, including but not limited to the Data Protection Laws. In addition, you acknowledge and warrant that the use of the Product is in compliance with any laws, enactments, regulations, collective labor agreements, orders, standards and other similar instruments that might be applicable to you and that you have obtained all necessary approvals, authorizations or other consents, and have performed any registrations, requirements, mandatory procedures, or similar obligations that may be applicable to you. In particular, you are responsible for providing appropriate information and obtaining any required consent from Authorized Users including notice and consent allowing you to own and control all of Customer Data that is provided by Authorized Users; and

4.5.2. You have provided such information and obtained such consent to any processing of personal data by and through the Product in accordance with applicable Data Protection Laws.

4.6. You hereby agree that Bidalgo is reliant on you for direction as to the extent to which you are entitled to use and process the personal data through the Product. Consequently, Bidalgo, in its capacity as data processor, will not be liable for any claim brought by a data subject (including Authorized Users) arising from any action or omission by Bidalgo, to the extent that such action or omission resulted directly from the data controller's instructions. As between Bidalgo and yourself, you are solely responsible and liable for any and all of Customer Data that you or any Authorized User stores, transmits, displays, or otherwise uses in connection with the Services. Bidalgo has no responsibility to you or to any third party in connection with Customer Data and, as between Bidalgo and yourself, you are solely responsible for any losses or damage suffered by Bidalgo in connection with Customer Data. You hereby represent and warrant that neither you nor any Authorized User will store or otherwise use any of Customer Data in connection with the Services that: (i) violates these Terms; (ii) is defamatory, obscene, abusive, invasive of privacy, illegal or otherwise objectionable; (iii) violates any third party's trade secrets, intellectual property rights or other personal or proprietary right; (iv) invades or interferes with the rights of privacy or publicity of any person; or (v) contains a virus, malicious code or any other harmful component.

4.7. Each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

4.8. Bidalgo shall create periodic archives of Customer Data. In the event of any loss or damage to Customer Data, your sole and exclusive remedy shall be for Bidalgo to use reasonable commercial endeavors to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Bidalgo. Bidalgo shall not be responsible for any loss, destruction, alteration or disclosure of the Customer Data caused by any third party (except those third parties sub-contracted by Bidalgo to perform services related to Customer Data maintenance and back-up).

## **5. Restrictions**

5.1. You will use all reasonable endeavors to prevent any unauthorized access to, or use of, the Product and, in the event of any such unauthorized access or use, promptly notify Bidalgo.

5.2. You may not:

- (a) modify, alter, create derivative works from, reverse engineer, decompile, or disassemble any part of the Product, nor attempt in any other manner to obtain the source code or otherwise reduce to human-perceivable form any part of the Product;
- (b) frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product in any form or media or by any means;
- (c) remove any proprietary notices, labels, or marks on or in any part of the Product, including without limitation any trademark or copyright notices;
- (d) disclose the results of testing or benchmarking of the Product to any third party, or access or use the Product or any part thereof in order to build or support, and/or assist a third party in building or supporting, products or services which are competitive to Bidalgo's;
- (e) use the Product to provide services to third parties;
- (f) disseminate, distribute, disclose, or copy any printed documentation which accompanies the Product;
- (g) sublicense, rent, or lease any portion of the Product;
- (h) host, outsource, display, or commercially exploit the Product, or use the Product as part of a facility management, timesharing, service provider, or service bureau arrangement;
- (i) use the Product in any manner not expressly authorized by these Terms.
- (j) Attempt to obtain, or assist third parties in obtaining, access to the Product, the Services and/or documentation; or
- (k) take any actions which (i) would disable the Product or impair in any way its operation based on the elapsing of a period of time, the exceeding of an authorized number of copies, or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); or (ii) would prevent Bidalgo to access the Product for the purposes of its operations.

## **6. Intellectual Property**

6.1. You retain all ownership and intellectual property rights in and to Customer Data.

6.2. You acknowledge and agree that Bidalgo and/or its licensors own all intellectual property rights in the Product. Except as expressly stated herein, these Terms does not grant you or Authorized Users any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade-marks (whether registered or unregistered), or any other rights or licenses in respect of the Product or other intellectual property of Bidalgo. The rights provided under these terms are granted to you alone, and shall not be considered granted to any subsidiary or holding company of yours, unless expressly authorized in writing by Bidalgo.

6.3. In the event that you provide to Bidalgo any suggestions, comments and feedback regarding the Product, you hereby grant Bidalgo and its licensors a perpetual, irrevocable, worldwide, royalty-free, fully paid-up license grant to

freely use, have used, sell, modify, reproduce, transmit, license, sublicense (through multiple tiers of sublicensees), distribute (through multiple tiers of distributors), and otherwise commercialize such feedback in connection with the Product or related technologies.

## **7. Support Services and Training**

During the Term, you will be entitled to receive Bidalgo's standard customer support services ("**Support Services**") during normal business hours (if you are located in either Israel and Europe during the hours of 9:00 a.m. to 5:00 p.m., Sunday-Thursday, Israel standard time, and if you are located in the United States during the hours 10:00 a.m. to 5:00 p.m. Pacific Time Monday-Friday) in connection with the Product, as well as emergency tech support on a 24/7 basis. You may be entitled to receive enhanced Support Services in the event such are included under the Purchase Order. During the Term Bidalgo shall make available to you, upon written request, such on-site (at your premises) training services as generally made available by Bidalgo to customers, for a separate training service fee of \$2000 per day of training.

## **8. LICENSE FEES**

8.1. You will pay Bidalgo all license Fees, training fee and any other ancillary due Bidalgo in accordance with the signed Purchase Order.

8.2. Bidalgo shall make available through the Product, a report to your Authorized Users giving details of the license fees payable to Bidalgo, with a summary of the information used by Bidalgo to calculate the licenses fees.

8.3. Bidalgo will invoice you on a monthly basis for the licenses fees incurred during the previous month as set out in the billing report provided to you under Section 8.2 and, unless otherwise agreed in the signed Purchase Order, such invoice will be payable within 15 days of the invoice date.

8.4. Bidalgo shall invoice you for the ancillary fees (including training fees) incurred during the previous month as agreed with you in the Purchase Order, and, unless otherwise agreed in the Purchase Order, such invoice will be payable within 15 days of the invoice date.

8.5. All payments shall be made by You by bank transfer to the account of Bidalgo at a bank to be nominated in writing by Bidalgo.

8.6. If Bidalgo has not received payment within 15 days after the due date, and without prejudice to any other rights and remedies of Bidalgo:

8.6.1. Bidalgo may, without liability to you, disable your password, account and access to all or part of the Product and the Support Services and Bidalgo shall be under no obligation to provide any or all of the Product or Support Services while the invoice(s) concerned remain unpaid; and

8.6.2. interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Bidalgo's bankers in Israel at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.7. All amounts and fees stated or referred to in the Purchase Order:

8.7.1. Shall be payable in US Dollars or other currency as agreed in the signed Purchase Order;

8.7.2. Are non-cancellable and non-refundable;

8.7.3. Are exclusive of value added tax, which shall be added to Bidalgo's invoice(s) at the appropriate rate.

8.8. If any amounts or fee received by Bidalgo is made in a non-Dollar currency Bidalgo reserves the right to convert such payment into US Dollars at a rate of exchange chosen by Bidalgo for the purpose. If such payment when converted falls short of the amount due under or in connection with these Terms, you agree to indemnify Bidalgo and hold Bidalgo harmless against the amount of such shortfall.

8.9. You agree to make all payments under each Purchase Order and these Terms without set-off or counterclaim and free and clear of any withholding or deduction (save as required by law) for any present or future taxes, levies, imposts, duties or other charges. If you are obliged by law to make any such withholding or deduction, you will pay to Bidalgo in the same manner and at the same time additional amounts to ensure that Bidalgo receives a net amount equal to the full amount which Bidalgo would have received if no such deduction or withholding had been required.

## **9. Your Obligations**

9.1. You undertake that you will provide Bidalgo with all necessary co-operation access to information in relation to these Terms as may be required by Bidalgo, in order to render the Support Services, including Customer Data, security access information and configuration services.

9.2. You agree to comply with all applicable laws and regulations with respect to your activities under these Terms.

9.3. You agree that you will carry out all other responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, Bidalgo may adjust any agreed timetable or delivery schedule as reasonably necessary.

9.4. You are responsible and you agree that you will obtain and shall maintain all necessary licenses, consents, and permissions necessary for Bidalgo, its contractors and agents to perform their obligations under these Terms.

9.5. You are responsible and you agree at all times throughout the Term to ensure that your network and systems comply with the relevant specifications provided by Bidalgo from time to time.

9.6. You agree to be solely responsible for procuring and maintaining your network connections telecommunications links from your systems to Bidalgo's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

9.7. You are solely responsible and you agree to regularly track, review and verify that the Product is duly performing in accordance with your requirements, specifications, expectations and goals. Without derogating from any of the foregoing or from the provisions of Sections 11 and 18 below, you acknowledge and agree that in the event that the Product does not perform as required, specified, expected and/or desirable by you, your only recourse is to terminate the Terms in accordance with the provisions of Section 14 below, and Bidalgo shall not be liable to you or to any third party with respect thereto. You further acknowledge, represent and agree that your continued use of the Product following any such non-performance, will constitute your acceptance of, and agreement to continue to experience, such Product performance.

## **10. THIRD PARTY PROVIDERS**

You acknowledge that the Product will enable or assist you to access the website content of, correspond with, manage your advertising, and purchase services from Facebook or other third parties via third-party websites, and you do so solely at its own risk. Bidalgo makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not Bidalgo. Bidalgo recommends that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party

## **11. Warranties and Disclaimers**

11.1 Bidalgo warrants and represents that (i) the Software does not infringe upon the intellectual property rights of any third party, and (ii) the Product will substantially conform to the documentation. This warranty shall not apply to the extent of any non-conformance which is caused by use of the Product contrary to Bidalgo's instructions, or modification or alteration of the Product by any party other than Bidalgo or Bidalgo's duly authorized contractors or agents.

11.2 If the Product does not substantially conform to the Documentation, Bidalgo will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of the warranty set out in Section 11.1.

11.3 EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, YOU UNDERSTAND AND AGREE THAT THE PRODUCT AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OR RELIABILITY. WITHOUT DEROGATING FROM THE GENERALITY OF THE FOREGOING, YOU ACKNOWLEDGE THAT BIDALGO DOES NOT GUARANTEE THAT THE PRODUCT OR THE PERFORMANCE OF THE SERVICES WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF ANY PROGRAM LIMITATIONS OR FAILURES, OR THAT THE PRODUCT AND/OR ANY FEATURE AVAILABLE THEREIN (WHETHER OR NOT CONFIGURABLE BY YOU) AND/OR ANY INFORMATION OBTAINED BY YOU THROUGH THE USE OF THE PRODUCT WILL MEET AND/OR PERFORM IN ACCORDANCE YOUR REQUIREMENTS, SPECIFICATIONS, EXPECTATIONS, CONFIGURATIONS AND/OR GOALS, OR THAT BIDALGO WILL CORRECT ANY OR ALL PRODUCT ERRORS, DEFICIENCIES AND/OR NON-PERFORMANCES. YOU ACKNOWLEDGE THAT BIDALGO DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. BIDALGO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **12. Indemnification**

12.1. If a third party makes a claim against you resulting from your authorized use of the Product in accordance with these Terms, and such claim alleges that the Software infringes such third party's intellectual property rights, Bidalgo, at its sole cost and expense, will defend you against the claim and indemnify you from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Bidalgo, provided you do the following:

notify Bidalgo promptly in writing, not later than 30 days after you receive notice of the claim (or sooner if required by applicable law);

- i. give Bidalgo sole control of the defense and any settlement negotiations; and
- ii. gives Bidalgo the information, authority, and assistance Bidalgo needs to defend against or settle the claim.

12.2. If Bidalgo believes or it is determined that the Product may have violated a third party's intellectual property rights, Bidalgo may choose to either modify the Product to be non-infringing (while substantially preserving their utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Bidalgo may terminate your rights under the Terms and refund any unused, prepaid fees you may have paid for the Product. Notwithstanding anything to the contrary contained hereunder, Bidalgo will not indemnify or defend you if you altered the Product or used them outside the scope of use identified in the Terms, or if you used a version of the Software which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Software which was provided to you. In addition, Bidalgo will not defend or indemnify you to the extent that an infringement claim is based upon (i) any information, design, specification, instruction, software, data, or material not furnished by Bidalgo, or (ii) any materials from a third party portal or other external source that is accessible to you within or from the Product (e.g., a third party Web page accessed via a hyperlink). Bidalgo will not indemnify you to the extent that an infringement claim is based upon the combination of the Product with any products or services not provided by Bidalgo. Bidalgo will not indemnify you for infringement caused by your actions against any third party if the Product as delivered to you and used in accordance with the terms of the Terms would not otherwise infringe any third party intellectual property rights. Bidalgo will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of the Terms (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of the Terms. This section provides your exclusive remedy for any infringement claims or damages.

## **13. Amendments to the Terms**

Bidalgo may change the Terms from time to time, at its sole discretion and without any notice. We will notify regarding substantial changes of these Terms on the homepage of the Site. Such substantial changes will take effect seven (7) days after such notice was first provided on any of the abovementioned methods. Otherwise, all other changes to these Terms are effective as of the stated "Last Revised" date and your continued use of the Site after the Last Revised date will constitute acceptance of, and agreement to be bound by, those changes.

#### **14. Termination**

14.1. Services provided under these SAAS Terms shall be provided for the period defined in the Purchase Order unless earlier terminated in accordance with the Terms. The term of the Services and any renewal years are collectively defined as the "Term." At the end of the Term, all rights to access or use the Product shall end.

14.2. Either you or Bidalgo may terminate the Purchase Order by giving a 15 days' written notice.

14.3. If either you or Bidalgo breaches a material term of the Terms and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the applicable Purchase Order under which the breach occurred. If Bidalgo ends the Purchase Order as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for the Services ordered under the Terms plus related taxes and expenses. If Bidalgo ends the Services under the Indemnification section, you must pay within 30 days all amounts remaining unpaid for services plus related taxes and expenses. The nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under the Terms, you may not use the Services ordered.

14.4. In addition, Bidalgo may immediately suspend your password, account, and access to or use of the Product (i) if you fail to pay Bidalgo as required under the Terms and do not cure within the first ten days of the 30 day cure period, or (ii) if you violate any provision within sections 3, 4 or 5 of these SAAS Terms. Bidalgo may terminate the Services hereunder if any of the foregoing is not cured within 30 days after Bidalgo's initial notice thereof. Any suspension by Bidalgo of the Services under this paragraph shall not excuse you from your obligation to make payment(s) under the Terms.

14.5. You agree and acknowledge that Bidalgo has no obligation to retain Customer Data and that Customer Data may be irretrievably deleted after 60 days following the termination of the Purchase Order.

14.6. All rights and licenses granted to you under this Agreement shall immediately terminate upon expiration or termination of the Term, and you shall cease all use of the Product, and delete and purge all traces of the Product from your systems and custody. The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced by the termination or expiration of the Term.

#### **15. Confidentiality**

15.1. By virtue of the Terms or provision of the Product, the parties may have access to information that is confidential to one another ("**Confidential Information**"). We each agree to disclose only information that is required for the performance of obligations under the Terms. Confidential information shall be limited to the terms and pricing under the Terms, the documentation accompanying the Product, information relating to the technology and code contained in the Product, Customer data, and all information clearly identified as confidential at the time of disclosure.

15.2. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

15.3. We each agree to hold each other's Confidential Information in confidence for a period of ten years from the date of disclosure. Also, we each agree to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under the agreement. Bidalgo will protect the confidentiality of Customer data in accordance with Section 3 of these Terms. Nothing shall prevent either party from disclosing the terms or pricing under the Terms in any legal proceeding arising from or in connection with the Terms or from disclosing the Confidential Information to a governmental entity as required by law.

#### **16. Force Majeure**

Bidalgo shall have no liability to you under these Terms or any Purchase Order if it is prevented from or delayed in performing its obligations, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving the workforce of Bidalgo or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of equipment, plant or machinery, Viruses, fire, flood, storm or default of Vendors or sub-contractors, over intensive use of resources, provided that you are provided with notice of such an event and its expected duration.

#### **17. Entire Terms**

You agree that the Terms (including the information which is incorporated into the Terms by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement for the Product ordered by you, and that the Terms supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Product. If any term of these Terms is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of these Terms. It is expressly agreed that the terms of these Terms shall supersede the terms in any Purchase Order and no terms included in any such Purchase Order or other non-Bidalgo document shall apply to the Product ordered unless they expressly state they are intended to prevail over the Terms. The Terms may not be modified and the rights and restrictions may not be altered or waived except in a writing by authorized representatives of you and of Bidalgo.

#### **18. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL BIDALGO, ITS AFFILIATES, OR THEIR RESPECTIVE SUBSIDIARIES, OFFICERS, SHAREHOLDERS, DIRECTORS AND/OR EMPLOYEES BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, ECONOMIC, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE TERMS), TIME, DATA, DATA USE, BUSINESS AND/OR GOODWILL, AND ANY LOSS AND/OR UNAVAILABILITY OF CONTENT, FEATURES, PERFORMANCE LEVEL OR CAPACITY OF USE, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THESE TERMS

AND/OR THE PRODUCT, INCLUDING THE USE OR INABILITY OF USE THEREOF, AND/OR FAILURE THEREOF TO PERFORM AS PRESENTED, REQUIRED, SPECIFIED OR EXPECTED, FAILURE OF BIDALGO TO PERFORM UNDER THESE TERMS, AND/OR ANY OTHER ACT OR OMISSION OF BIDALGO BY ANY OTHER CAUSE WHATSOEVER, INCLUDING ANY SUCH CAUSE BASED UPON BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER BIDALGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT DEROGATING FROM ANY OF THE FOREGOING, ANY DAMAGE IN YOUR FAVOR AGAINST BIDALGO SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE TERMS AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

**19. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Product. You agree that such export control laws govern your use of the Product (including technical data) and any Services deliverables provided under the Terms, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from the Product (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

**20. Miscellaneous**

20.1. Bidalgo is an independent contractor and you agree that no partnership, joint venture, or agency relationship exists between you and Bidalgo. Each party will be responsible for paying its own employees, including employment related taxes and insurance.

20.2. The Terms are governed by the substantive and procedural laws of Israel, without regard to its conflict of law provisions, and you and Bidalgo agree to submit to the exclusive jurisdiction of, and venue in, the courts in Tel Aviv, Israel in any dispute arising out of or relating to the Terms.

20.3. If you have a dispute with Bidalgo or if you wish to provide a notice under the Indemnification section of these SAAS Terms, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: Chompi CCNetworking Ltd., HaYetsira 12 st. Ramat Gan, Israel 5252150 Attention: Legal

20.4. You may not assign the Terms or give or transfer the Product or an interest in them to another individual or entity. If you grant a security interest in any portion of the Product, the secured party has no right to use or transfer the Product or any part thereof.

20.5. Except for actions for nonpayment or breach of Bidalgo's proprietary rights, no action, regardless of form, arising out of or relating to the agreement may be brought by either party more than two years after the cause of action has accrued.

20.6. The Uniform Computer Information Transactions Act does not apply to these SAAS Terms or orders placed under it.

20.7. In consideration of Bidalgo's employees referred to you by Bidalgo in order to provide you with the services, you shall not, directly or indirectly, on your own behalf, or through your employee, representative, agent, subsidiary or by any other means whatsoever, solicit, call up to, employ, or attempt to induce, as an employee or as sub-contractor, any Bidalgo's employee, without Bidalgo's written consent, at any time during the term and for a period of one (1) year following the date of termination of term.

20.8. It is agreed that during the term as agreed in the Bidalgo platform Purchase Order and for a period of 12 months from the end of the term, you will not hire, recruit or solicit in any way any of Bidalgo's employees directly or in directly or through any related party. For the purpose of this section Bidalgo's employees are defined as those who are currently working for Bidalgo either on Bidalgo's payroll or those who are paid by invoice and those who worked for Bidalgo any period in the last 12 months regardless of the reason they stopped being employed by Bidalgo.

20.9. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for the Services.

20.10. You agree that Bidalgo may identify you as a recipient of the Product and use your logo in sales presentations, marketing materials and press releases, and (ii) to develop a brief customer profile for use by Bidalgo on Bidalgo.com for promotional purposes.