



User Terms and Conditions

Version 2.6.1
23 February 2023

We are Zivver (www.zivver.com). We offer services that help to secure digital communications and prevent data leaks (the “**Services**”). These User Terms and Conditions are a legally binding contract between you and the applicable Zivver Contracting Entity (as defined below) regarding your use of the Services. If you have any questions on these User Terms and Conditions, do not hesitate to reach out to Zivver Support (support.zivver.com).

BY CLICKING “I AGREE,” OR BY DOWNLOADING, INSTALLING, OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU AGREE THAT: i) YOU HAVE READ AND UNDERSTOOD; AND ii), AS A CONDITION TO YOUR USE OF THE SERVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS INCLUDING ZIVVER’S PRIVACY POLICY (TOGETHER: THE USER TERMS AND CONDITIONS (as defined below)). IF YOU ARE NOT ELIGIBLE TO USE THE SERVICES, OR DO NOT AGREE TO THE USER TERMS AND CONDITIONS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICES. YOUR USE OF THE SERVICE, AND ZIVVER’S PROVISION OF THE SERVICE TO YOU, CONSTITUTES AN AGREEMENT BETWEEN ZIVVER AND YOU TO BE BOUND BY THESE USER TERMS AND CONDITIONS.

Only for Users for which Zivver Corporation is the Zivver Contracting Entity:

- YOU AGREE TO RECEIVE TEXTS FROM OR ON BEHALF OF ZIVVER AT YOUR PHONE NUMBER. THESE TEXTS CAN INCLUDE OPERATIONAL INFORMATION. YOU UNDERSTAND AND AGREE THAT THESE TEXTS MAY BE CONSIDERED TELEMARKETING UNDER APPLICABLE LAW, THEY MAY BE SENT USING AN AUTOMATIC TELEPHONE DIALING SYSTEM OR OTHER AUTOMATED TECHNOLOGY, AND YOUR CONSENT IS NOT A CONDITION OF ANY PURCHASE.
- **Arbitration NOTICE.** Except for certain kinds of disputes described in Article 15, you agree that disputes arising under these User Terms and Conditions will be resolved by binding, individual arbitration, and BY ACCEPTING THESE USER TERMS AND CONDITIONS, YOU AND ZIVVER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING.

READING GUIDE

This reading guide is intended to provide some guidance on the structure of these User Terms and Conditions and to give a high-level description which topic each article covers.¹ These User Terms and Conditions apply to all Users regardless of where they are located. However, some articles only apply to User located in certain countries. If that is the case, you will see a reference to Zivver BV (Users located outside the US and UK, including the Netherlands), Zivver Limited (Users located in the UK) or Zivver Corporation (Users located in the USA). If you have any questions on these User Terms and Conditions, you can contact Zivver Support (support.zivver.com).

Article	Description
1.	This article contains definitions used throughout these User Terms and Conditions. The definitions describe the meaning of certain terms used throughout this document.
2.	We describe when these User Terms and Conditions are applicable .

¹ This reading guide is intended for informational purposes only. In case of any ambiguity or differences between this reading guide and the articles of the User Terms and Conditions, the articles shall prevail.

3 and 4.	These articles regard the Use (article 3) and Misuse (article 4) of the services offered by Zivver. They basically provide what is allowed and what is not allowed when using the services.
5 and 6.	These articles <i>inter alia</i> describe what you can expect from us in terms of availability (article 6) and maintenance and support of the services (article 5).
7	Intellectual property rights are important to Zivver and this article describes who has what intellectual property rights.
8.	If you use the Zivver app, you may receive push notifications from us, unless you turn these notifications off. In addition, there are some additional provisions on communications by us that apply to users that are located in the United States.
9.	It may be that, by using our services, you interact with services of third parties . This article describes Zivver's responsibility in this regard.
10.	This article describes the way in which we may modify these User Terms and Conditions.
11 and 12.	These articles describe how our liability is limited (article 11) and what we do and do not warrant (article 12).
13.	We have also set out how termination of your use of our services works.
14, 15 and 16	We have described here which law governs these User Terms and Conditions and how disputes are to be resolved (article 15). In addition, we have included some other terms here that are important, but do not fall under the topics of any of the other articles (article 14 and 16).
17.	This article contains a notice for users that use our app on an Apple iOS device and clarifies that Apple bears no responsibility for the services that we provide.

1. DEFINITIONS

“**Account**” means the account with Zivver through which a Business User or a Consumer User has access to the Services;

“**Agreement**” means the separate legally binding contract that is entered into by and between: (1) a Business User and Zivver; or (2) an Organisation (for and on behalf of its Business Users) and Zivver; or (3) a Consumer User and Zivver, in any case, on the basis of which the Services are offered by Zivver to Business Users and/or Consumer Users as applicable Services;

“**Business User**” means a user accessing and/or using the Services for purposes relating to trade, business, craft, or profession and accessing the Services via an Account. Employees, officers, contractors and/or other personnel working at an Organisation are always Business Users;

“**Consumer**” means an individual acting for personal and non-commercial purposes that are wholly or mainly outside of their trade, business, craft, or profession;

“**Consumer User**” means a user accessing and/or using the Services for personal and non-commercial purposes that are wholly or mainly outside of their trade, business, craft, or profession via an Account;

“**Guest**” means a person who has been invited to access the Services without having their own Account, and thereby only being authorised for limited free access;



“Intellectual Property Rights” means any and all intellectual property rights, including without limitation, patents, design rights, copyrights, neighbouring rights, database rights, trademark rights, chip rights, trade name rights and Knowhow;

“Knowhow” means all business secrets, secret formulas, inventions, designs, standards, (technical) data or information, processes, methods, raw materials, and business methods, as well as all related information, knowledge, details, trade practices and improvements;

“Login Credentials” means the username and password that either a Consumer User or a Business User uses in order to access their Account;

“Organisation” means the organisation that a Business User works for and on behalf of, that has purchased the Services from Zivver by entering into an Agreement with Zivver, thereby enabling that Business User to create an Account with Zivver in accordance with these User Terms and Conditions;

“Organisation Helpdesk” means the helpdesk of the Organisation, if any;

“Personal Data” means:

1. For Users for who Zivver B.V. is the relevant Zivver Contracting Entity: all data that can directly or indirectly be traced to a natural person, as referred to in article 4 sub 1 of the General Data Protection Regulation (EU) 2016/679;
2. For Users for who Zivver Limited is the relevant Zivver Contracting Entity: any information relating to an identified or identifiable living individual as referred to in article 3 sub 2 of the UK Data Protection Act

“User” shall include you as a Consumer User, a Business User, or a Guest, each being an end-user of some or all of the Services;

“User Terms and Conditions” means these user terms and conditions, including Zivver’s Privacy Policy, as may be amended from time to time;

“we”, “us” or “our” refers to Zivver;

“Website” means www.zivver.com along with related websites;

“Zivver” means the relevant Zivver Contracting Entity;

“Zivver Contracting Entity” means:

1. For Users who reside or are domiciled in the United Kingdom: Zivver Limited, based in London, United Kingdom, registered under company number 11931745 and with an address at 5 New St. Square, EC4A 3TW London, United Kingdom and with VAT number 338553873;
2. For Users who reside or are domiciled in the United States of America: Zivver Corporation, based in Wilmington, Delaware, United States of America registered under company number 5698771 and with an address at 228 East 45th Street, Suite 9E, NY 10017, New York, United States of America; or
3. For Users who reside or are domiciled in any other country besides the United Kingdom or the United States of America: Zivver B.V., based in Amsterdam, the Netherlands, registered under company number 64894665 and with an address at Koningin Wilhelminaplein 30-7, 1062 KR, Amsterdam, the Netherlands and with VAT number 8558.91.506B01; and

“Zivver Support” shall mean the support desk of Zivver that can be reached through support.zivver.com.



2. APPLICABILITY

- 2.1 These User Terms and Conditions are effective beginning when you accept the User Terms and Conditions or first download, install, access, or use the Services, and ending when terminated as described in Article 13.
- 2.2 You must be at least 18 years old to use the Services. By agreeing to these User Terms and Conditions, you represent and warrant to us that: (1) you are at least 18 years old; (2) you have not previously been suspended or removed from the Services; (3) your registration and your use of the Services is in compliance with any and all applicable laws and regulations; and (4) the information you provide about yourself, *exempli gratia*, your country of residence, is complete and accurate. If you are an entity, organisation, or company, the individual accepting these User Terms and Conditions on your behalf represents and warrants that they have authority to bind you to these User Terms and Conditions and you agree to be bound by these User Terms and Conditions. If you use the Services as an employee, please also reach out to the Organisation Helpdesk to ensure what rules apply to you, as the Organisation may have made additional arrangements with Zivver.
- 2.3 In addition, please note that:
- 2.3.1 Where applicable, the Organisation where User is employed has entered into an Agreement with Zivver. In the Agreement the Organisation has explicitly confirmed that the User Terms and Conditions shall apply to each use of the Services by a User, provided that the terms and conditions of the Agreement shall prevail;
- 2.3.2 for all Users, the Website uses cookies, the use of which are governed by our cookie policy ([available here](#)); and
- 2.3.3 for all Users, we only use your personal information in accordance with our Privacy Policy ([available here](#)).

3. USE OF THE SERVICES

- 3.1 The Services is only offered and made available for use in the European Union, the United Kingdom and United States of America. You are not permitted to use the Services in any other jurisdiction. For the avoidance of doubt, Zivver does not guarantee, warrant, or represent that the Services is appropriate for use, permitted or available in any other jurisdiction. If any User nevertheless accepts such offer and chooses to access the Services or to enable certain features from a location outside of the jurisdictions mentioned in the first sentence, that User does so on its own initiative and is solely responsible for complying with applicable local laws.
- 3.2 Access to the Services from countries or territories or by individuals where such access is illegal is prohibited. Any offer for the provision of the whole or any part of the Services made by Zivver is void where prohibited by applicable law.
- 3.3 For the use of the Services, each Business User and Consumer User must have an Account. The relevant User can create an Account independently, or, where applicable, the Organisation may create an Account for the relevant User or delegate an Account to the relevant User.
- 3.4 When you register for an Account, you may be required to provide us with some information about yourself, such as your name, email address, or other contact



information. You agree that the information you provide to us is accurate, complete, and not misleading, and that you will keep it accurate and up to date at all times. When you register, you will be asked to create a password. You are solely responsible for maintaining the confidentiality of your Account and password, and you accept responsibility for all activities that occur under your Account. If you believe that your Account is no longer secure, then you should immediately notify us via support@zivver.com.

- 3.5 If you have access to the Services via an Account, you acknowledge and agree that:
- 3.5.1 an Account is strictly personal and may only be used by the User to whom it is registered, unless specifically delegated by your Organisation;
 - 3.5.2 you shall not share your Login Credentials with others, including colleagues, friends, and/or family;
 - 3.5.3 you shall ensure that the Account is protected from unauthorised use by keeping the Login Credentials and, if applicable, the related second factor authentication confidential;
 - 3.5.4 you shall ensure and therefore Zivver may assume that all activities on the Account, after logging in with the Login Credentials, occur under the governance and supervision of User;
 - 3.5.5 If you suspect misuse of the Account and/or the Login Credentials, then you must report this as soon as possible to Zivver Support and, where applicable, the Organisation Helpdesk. In addition, you shall take any and all measures within User's ability to stop and mitigate such misuse;
 - 3.5.6 Zivver reserves the right to change the login procedure and/or change your Login Credentials if we deem this necessary in the interest of the functioning and/or preservation of the Services. Zivver shall endeavour to notify User or, where applicable, the connected Organisation, in advance of any changes regarding the login procedure and/or the Login Credentials, provided that such notification shall not be required if it may seriously impair Zivver's objective to prevent any (future) misuse.
- 3.6 If you are a Guest, you can access the Services without an Account upon invitation by either a Consumer User or a Business User. A Guest's access to the Services will be limited to responding to and/or interacting with only the materials that the Consumer User or Business User has invited you to access.
- 3.7 You and/or, if applicable, your Organisation shall be responsible for making sure that the devices you use to access and use the Services shall meet the functional and technical requirements for the Services and the use thereof.
- 3.8 Each User determines which information and in which manner such information is sent using the Services. User and, if applicable, the User's Organisation, is/are responsible for ensuring that everything sent or done using the Services is in accordance with applicable laws and regulations and that such information does not and will not violate any rights of third parties. This responsibility of the User and, if applicable, the Organisation includes, but is not limited to, acting in accordance with



the General Data Protection Regulation (EU) 2016/679 or UK Data Protection Act, as applicable.

- 3.9 If you are a Business User or a Guest acting in a non-Consumer capacity or a User for who the relevant Zivver Contracting Entity is Zivver Corporation, you hereby represent and warrant that your access to and use of the Website, use of the Account (if applicable) and/or use of the Services by you or, if applicable, any Guest, as well as the information sent by you or, if applicable, a Guest using the Services:
- 3.9.1 shall not infringe any Intellectual Property Rights;
 - 3.9.2 shall not violate any law or regulation;
 - 3.9.3 shall not be defamatory or trade libellous;
 - 3.9.4 shall not include incomplete, false, or inaccurate information about yourself or any other individual;
 - 3.9.5 shall not contain any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programs that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or Personal Data; and
 - 3.9.6 shall not abuse features of the Services in a way that has a negative financial impact on Zivver (e.g. cryptojacking).
- 3.10 With respect to a Guest who is acting in a non-Consumer capacity and who has been invited to access the Services by a Business User, such Business User shall actively procure that such Guest shall refrain from the activities referred to in Article 3.9.1 to 3.9.5 and shall, where applicable, liaise with its Organisation, when such activities by Guest occur or are reasonably suspected.
- 3.11 If you are a Consumer User or a Guest acting in a Consumer capacity, you agree that:
- 3.11.1 all of the information that you provide to us in connection with your Account (if applicable) is complete and accurate;
 - 3.11.2 the details that you have provided relate to you alone; and
 - 3.11.3 you will notify us immediately if there are any changes to the information that you have provided to us.
- 3.12 When a User makes use of a free so-called 'Freemium' account, the following additional terms are applicable:
- 3.12.1 User is not permitted to use the Freemium account for business purposes, except for when Zivver has given explicit written permission;
 - 3.12.2 Zivver shall always be entitled to limit, suspend, terminate, or modify this account and any corresponding functionality without any notice being required;
 - 3.12.3 if User loses access to the login-credentials to its Freemium account, Zivver is not obliged to restore access of User to its account; and



- 3.12.4 to the extent permitted by law, no explicit or implied warranty applies in connection with this account and/or the use of this account.
- 3.13 Zivver may suspend or terminate access to the Services, including fee-based portions of the Services, for any Account for which any amount is due but unpaid. In addition to the amount due for the Services, a delinquent Account will be charged with fees or charges that are incidental to any chargeback or collection of any the unpaid amount, including collection fees. If your payment method is no longer valid at the time a renewal fee is due, then Zivver reserves the right to delete your Account and any information or User Content (as defined below) associated with your Account without any liability to you or your Organization.

4. MISUSE OF THE SERVICES

- 4.1 Each User agrees not to in respect of the Website, their Account (if applicable) or the Services:
 - 4.1.1 breach these User Terms and Conditions;
 - 4.1.2 breach any applicable local, national, or international law or regulation;
 - 4.1.3 do any act or thing that might damage, disrupt, or otherwise interfere with the Zivver operations, equipment, network, or software;
 - 4.1.4 knowingly introduce viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful;
 - 4.1.5 attempt to gain unauthorised access to the Website or Services, the server on which the Website or Services is stored, or any server, computer or database connected to the Website or Services;
 - 4.1.6 attack via a denial-of-service attack or a distributed denial-of service attack; or
 - 4.1.7 abuse features in a way that has a negative financial impact on Zivver (e.g. cryptojacking)
- 4.2 If you violate these User Terms and Conditions, Zivver may intervene to do any of the following (without limitation), and in these circumstances, Zivver is not obliged to reimburse you or, if applicable, your Organisation, for any fees or other amounts already paid to Zivver in respect of your Account:
 - 4.2.1 take steps to mitigate the effects of your violation;
 - 4.2.2 issue a warning to you;
 - 4.2.3 temporarily or permanently suspend or terminate your access to the Website and/or your Account (if applicable), with or without notice, and without any liability arising to you arising from such termination;
 - 4.2.4 issue legal proceedings against you for reimbursement of all costs resulting from your violation (including, but not limited to, reasonable administrative and legal costs);
 - 4.2.5 take further legal action against you; and/or



4.2.6 disclose such information to law enforcement authorities as we reasonably feel is necessary to do so.

4.3 If, in the opinion of Zivver, hindrance, damage, and/or any other danger arise or is expected to arise for the functioning of the Services, the systems and/or the network of Zivver or of third parties, in particular due to excessive sending of email or any other data, leakage of Personal Data or activities, the abuse of features in a way that has a negative financial impact on Zivver, or viruses, Trojan horses, worms, time bombs, cancelbots and similar software, Zivver is entitled to take all measures it deems necessary to avert or prevent and mitigate such hindrance, damage and/or danger.

4.4 In the event of a suspicion of fraud or misuse of the Services, Zivver will only hand over the Personal Data of User and/or Guest to the competent authorities if it has a specific statutory obligation or obligation based on a court order to do so.

4.5 Zivver is at all times authorised to report established or alleged criminal offenses to the competent authorities.

5. MAINTENANCE, SUPPORT AND MODIFICATION OF THE SERVICES

5.1 Zivver has the right to modify and maintain the Services or a part thereof.

5.2 As a result of maintenance and modification of the Services by Zivver, the Services may be temporarily, fully, or partially out of use (including limitations on or discontinuation of certain features of the Services). Maintenance can take place at any moment, even when this can lead to a limitation of the availability of the Services. Zivver shall use its best efforts to plan maintenance of the Services outside office hours as much as possible and shall endeavour to announce substantial limitations in usage of the Services on a timely basis (to the extent possible given the circumstances at hand).

5.3 Zivver will have no liability and is not obliged to compensate any User for any loss, damage or other costs caused by a change of or limitation in the usage of the Services as a result of maintenance and/or modification of the Services.

5.4 For (technical) support, you can contact Zivver Support (support.zivver.com) or, if applicable, your Organisation Helpdesk.

6. AVAILABILITY OF THE SERVICES

Zivver does not provide any explicit or implied guarantee that the Services will be accessible at all times and without interruptions or any failures, nor that the Services will be delivered without error and/or will be complete. Malfunctions in the Services may occur as a result of failures in the internet connection, by viruses or errors and defects. If you experience problems when using the Services, you can report this to Zivver Support, and/or, if applicable, your Organisation Helpdesk.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All title, ownership rights and Intellectual Property Rights in and directly or indirectly relating to Zivver, the Services, your Account (if applicable) and any corresponding software and all copies thereof, are owned by or vest in Zivver, its affiliates and its or their respective licensors (except as set out in relation to User Content in Articles 7.5 to 7.6). All such rights are reserved.



- 7.2 The Services contain certain licensed materials and Zivver, its affiliates and its or their respective licensors may protect their rights in the event of any violation of these User Terms and Conditions and/or, where applicable, the Agreement.
- 7.3 Except as otherwise permitted by law, none of the Intellectual Property Rights described in this Article may be copied or used in any way without the explicit written permission of Zivver.
- 7.4 Under the terms and subject to the conditions as stated in these User Terms and Conditions, Zivver hereby grants User a non-exclusive, revocable, limited, and non-transferable right to use the Services.
- 7.5 Certain features of the Services may permit you to submit, upload, publish, broadcast, or otherwise transmit ("**Post**") content to the Services, including messages, reviews, photos, video, or audio (including sound or voice recordings and musical recordings embodied in the video or audio), images, folders, data, text, and any other works of authorship or other works ("**User Content**"). You retain any copyright and other proprietary rights that you may hold in the User Content that you Post to the Services, subject to the licenses granted in these User Terms and Conditions and subject to any pre-existing rights that third parties may have in its content. If your User Content contains material and/or content owned or generated by a third party, you should ensure that you have permission from that third party to use such material and/or before Posting your User Content.
- 7.6 Limited License Grant to Zivver. By Posting User Content to or via the Services, you grant Zivver a worldwide, non-exclusive, irrevocable, royalty-free, perpetual, fully paid right and license (with the right to sublicense through multiple tiers) to use, copy, adapt, amend, host, store, transfer, publicly display, publicly perform (including by means of a digital audio transmission), communicate to the public, reproduce, modify, create derivative works as authorized in these User Terms and Conditions, transmit and distribute your User Content, in whole or in part, in any media formats and through any media channels, in each instance whether now known or hereafter developed. You agree to pay all monies owing to any person or entity resulting from Posting your User Content and from Zivver's exercise of the license set forth in this Article 7.6.
- 7.7 Zivver shall not take cognisance of confidential data (such as personal messages) that User stores, sends or otherwise processes via the Services, insofar as this is not necessary for the delivery of the Services.
- 7.8 Zivver has the right to process data regarding the use of the Services aggregately and anonymised for statistical purposes only, which data can in no way be traced to a natural person.
- 7.9 If User, or, if applicable, the Organisation Helpdesk on behalf of User, sends information to Zivver, for instance feedback on an error or a suggestion for improvement, ("**Feedback**") then you hereby grant Zivver an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right and license to exploit the Feedback in any manner and for any purpose, including to improve the Services and create other products and services. We will have no obligation to provide you with attribution for any information you provide to us. This provision does not apply to information that is explicitly marked as confidential.



8. COMMUNICATIONS

- 8.1 When you install our app on your mobile device, you agree to receive push notifications, which are messages an app sends you on your mobile device when you are not in the app. You can turn off notifications by visiting your mobile device's "settings" page.
- 8.2 You agree that Zivver and those acting on our behalf may send you text (SMS) messages at your phone number. These messages may include operational messages about your use of the Services, as well as marketing messages. Text messages may be sent using an automatic telephone dialling system. Standard data and message rates may apply whenever you send or receive such messages, as specified by your carrier. IF YOU WISH TO OPT OUT OF MARKETING TEXT MESSAGES FROM ZIVVER, YOU CAN CONTACT US AT SUPPORT.ZIVVER.COM OR TEXT THE WORD "STOP" TO THE NUMBER FROM WHICH YOU ARE RECEIVING THE MESSAGES. IF YOU WISH TO OPT OUT OF ALL TEXT MESSAGES FROM ZIVVER, YOU CAN CONTACT US AT SUPPORT.ZIVVER.COM OR TEXT THE WORD "STOPALL" TO THE NUMBER FROM WHICH YOU ARE RECEIVING THE MESSAGES, HOWEVER YOU ACKNOWLEDGE THAT OPTING OUT OF RECEIVING ALL MESSAGES MAY IMPACT YOUR USE OF THE SERVICES. You may continue to receive text messages for a short period while we process your request, including a message confirming the receipt of your opt-out request. Your agreement to receive marketing texts is not a condition of any purchase on or use of the Services.
- 8.3 We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.
- 8.4 Article 8.2 and 8.3 only apply to Users for which Zivver Corporation is the Zivver Contracting Entity.

9. THIRD-PARTY TERMS

- 9.1 Zivver may provide tools through the Services that enable you to export information, including User Content, to third-party services. By using one of these tools, you hereby authorize that Zivver to transfer that information to the applicable third-party service. Third-party services are not under Zivver's control, and, to the fullest extent permitted by law, Zivver is not responsible for any third-party service's use of your exported information. The Services may also contain links to third-party websites. Linked websites are not under Zivver's control, and Zivver is not responsible for their content. Please be sure to review the terms of use and privacy policy of any third-party services before you share any User Content or information with such third-party services. Once sharing occurs, Zivver will have no control over the information that has been shared.
- 9.2 The Services may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third-Party Components**"). Although the Services are provided to you subject to these User Terms and Conditions, nothing in these User Term and Conditions prevents, restricts, or is intended to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.



10. MODIFICATION USER TERMS AND CONDITIONS

Zivver may, from time to time, amend these User Terms and Conditions (for example, if there is a change in the law that means that we need to change these User Terms and Conditions). Zivver shall use its best efforts to notify Users on amendments of the User Terms and Conditions. However, please check User Terms and Conditions periodically for amendments. If you do not agree with certain amendments of the User Terms and Conditions, please send an e-mail to support@zivver.com.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these User Terms and Conditions excludes or limits Zivver's liability for:
- 11.1.1 death or personal injury caused by our negligence;
 - 11.1.2 fraud or fraudulent misrepresentation; and
 - 11.1.3 any matter in respect of which it would be unlawful for us to exclude or restrict our liability.
- 11.2 Subject to Article 11.1, Zivver's aggregate liability (including any liability of its directors and employees) towards a User shall in no event, whether in contract or otherwise, exceed the lesser of: (1) EUR 100 (or the equivalent in the local currency of the place of residence of the User); or (2) the fees paid by you and/or your Organisation (as applicable) under the relevant Agreement during the three months immediately preceding the date of the claim giving rise to such liability. The liability of Zivver under this Article shall not in any event exceed the amount paid out under the liability insurance policies taken out by Zivver.
- 11.3 In no event shall we be liable to you for any indirect damages, including loss or corruption of (personal) data, loss of profits, loss of business or business opportunity, loss of revenue, loss of contracts, business interruption, failure to realise anticipated savings or for any indirect or consequential loss, whether arising from negligence, breach of contract or otherwise. However, if you are a Consumer User or Guest acting in a Consumer capacity and Zivver B.V. or Zivver Limited is the Zivver Contracting Entity, then we are responsible for loss or damage you suffer that is a foreseeable result of our breach of these User Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable (loss or damage is foreseeable if it was an obvious consequence of our breach or if it was contemplated by you and us at the time that you accessed the Website and/or Service).
- 11.4 Zivver shall have no liability to an Organisation under these User Terms and Conditions whatsoever.
- 11.5 Zivver shall not be liable for damages of whatever nature suffered by User and/or Guest as a result of the termination of the Services, or as a result of any actions or omissions of Zivver in accordance with Article 4, to the extent permitted by the law governing these User Terms and Conditions.
- 11.6 To the fullest extent permitted by law, you are responsible for your use of the Services, and you (and/or Guest(s)) will defend and indemnify Zivver, its affiliates and their respective shareholders, directors, managers, officers, employees, contractors, consultants, and agents from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including attorneys' fees and costs, arising out of, or connected with:



- 11.6.1 your unauthorized use of, or misuse of, the Services;
 - 11.6.2 your violation of any portion of these User Terms and Conditions, any representation, warranty, or agreement referenced in these User Terms and Conditions, or any applicable law or regulation;
 - 11.6.3 your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or
 - 11.6.4 any dispute or issue between you and any third party.
- 11.7 We reserve the right, at our own expense, to assume the exclusive defence and control of any matter subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defence of those claims.
- 11.8 Unless agreed otherwise in the Agreement, User and/or Guest shall indemnify Zivver for any type of claim, indictment or dispute of a third party in connection with (the content of) the data traffic of the information sent via the Services coming from User and/or Guest.
- 11.9 Unless agreed otherwise in the Agreement, User and/or Guest shall indemnify Zivver for any type of claim, indictment or dispute of a third party in connection with (the content of) the data traffic of the information sent via the Services coming from User and/or Guest.

12. DISCLAIMER; NO WARRANTIES BY ZIVVER

- 12.1 THE SERVICES AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. ZIVVER DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE DIENSTEN AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICES, INCLUDING: (1) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (2) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. ZIVVER DOES NOT WARRANT THAT THE SERVICES OR ANY PORTION OF THE SERVICES, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICES, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND ZIVVER DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.
- 12.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ZIVVER OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE ZIVVER ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE USER TERMS AND CONDITIONS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SERVICES AND YOUR DEALING WITH ANY OTHER USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SERVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICES) OR ANY LOSS OF DATA, INCLUDING USER CONTENT.



12.3 THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS ARTICLE 12 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. Zivver does not disclaim any warranty or other right that Zivver is prohibited from disclaiming under applicable law.

13. TERMINATION

13.1 If you no longer wish to use the Services:

13.1.1 if you are a Consumer User, you can terminate the Account within your profile;

13.1.2 if you are a Business User, you can terminate the Account within your profile or arrange this internally with your Organisation Helpdesk;

13.1.3 if you are a Guest, you should cease access to and use of the Services; and

13.1.4 in any case, Zivver is not obligated to refund or return any amounts that have already been paid in respect of the terminated Services.

13.2 In the case of Business Users and Guests acting in a non-Consumer capacity, Zivver has the right to terminate your Account and/or access to the Website or Services at any time, without cause, and without prior notification.

13.3 In the case of Business Users or Consumer Users, if the Agreement under which you are granted access to the Services expires or is terminated, for whatever reason, you cannot and may no longer make use of the Services or your Account. For Business Users, if your Organisation entered into an Agreement, then it is the obligation of the Organisation to notify you of the end of the Agreement and thereby your access to and use of the Services and your Account.

13.4 You may terminate your Account and these User Terms and Conditions at any time by contacting Zivver Support via support.zivver.com.

13.5 Upon termination of these User Terms and Conditions for any reason:

13.5.1 your license rights will terminate, and you must immediately cease all use of the Services;

13.5.2 you will no longer be authorized to access your Account or the Services;

13.5.3 you must pay Zivver any unpaid amount that was due prior to termination;

13.5.4 all payment obligations accrued prior to termination shall directly become due and payable in full;

13.5.5 any Articles of these User Terms and Conditions that are intended by their nature to survive expiry or termination shall so survive;

13.5.6 you are solely responsible for retaining copies of any User Content you Post to the Services since upon termination of your Account, you may lose access rights to any User Content you Posted to the Services; and

13.5.7 if your Account has been terminated for your breach of these User Terms and Conditions, then you are prohibited from creating a new Account on the

Services using a different name, email address or other forms of Account verification.

14. OTHER IMPORTANT INFORMATION

- 14.1 If we fail to insist that you perform any of your obligations under these User Terms and Conditions, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

15. GOVERNING LAW AND DISPUTE RESOLUTION

The following Articles 15.1 to 15.4 only apply if the applicable Zivver Contracting Entity is Zivver B.V.:

- 15.1 These User Terms and Conditions are governed by Dutch law.
- 15.2 User shall first submit a complaint or claim to Zivver and/or your Organisation in order to reach an amicable settlement with Zivver.
- 15.3 If you are a Business User or a Guest acting in a non-Consumer capacity and an amicable settlement cannot be reached, all disputes shall be submitted to the competent court in Amsterdam, the Netherlands.
- 15.4 If you are a Consumer User or a Guest acting in a Consumer capacity:
- 15.4.1 you may bring any dispute which may arise under these User Terms and Conditions at your discretion to either the competent court of Amsterdam (the Netherlands) or to the competent court of your country of habitual residence if this country of habitual residence is a European Union Member State, which courts are with the exclusion of any other court competent to settle any of such a dispute;
 - 15.4.2 we shall bring any dispute which may arise under these User Terms and Conditions to the competent court of your country of habitual residence if this is a European Union Member State, or otherwise the competent court of Amsterdam (the Netherlands);
 - 15.4.3 if you are resident in the European Union and we direct the Website and/or Service to (and/or pursue our commercial or professional activities in relation to the Website and/or Service in) the country in which you are resident, you will benefit from any mandatory provisions of the law of the country in which you are resident. Nothing in these User Terms and Conditions affects your rights as a consumer to rely on such mandatory provisions of local law; and
 - 15.4.4 if you wish to have more information on online dispute resolution, please follow this link to the website of the European Commission: <http://ec.europa.eu/consumers/odr/>. This link is provided as required by Regulation (EU) No 524/2013 of the European Parliament and of the Council, for information purposes only. We are not obliged to participate in online dispute resolution.

The following Articles 15.5 to 15.7 only apply where the applicable Zivver Contracting Entity is Zivver Limited:



- 15.5 These User Terms and Conditions and any dispute or claim arising out of or in connection therewith (including non-contractual disputes or claims) are governed by the laws of England and Wales.
- 15.6 If you are a Business User or a Guest acting in a non-Consumer capacity then in the event of a complaint or claim you must first raise the issue with Zivver and/or your Organisation in order to reach an amicable settlement with Zivver. If an amicable settlement cannot be reached, all disputes shall be submitted to the competent courts of Amsterdam (the Netherlands).
- 15.7 If you are a Consumer User or a Guest acting in a Consumer capacity:
- 15.7.1 you may bring any dispute which may arise under these User Terms and Conditions to the competent court of your country of habitual residence if this country of habitual residence is within the United Kingdom, which court is with the exclusion of any other court competent to settle such dispute;
 - 15.7.2 we shall bring any dispute which may arise under these User Terms and Conditions to the competent court of your country of habitual residence if this is within the United Kingdom;
 - 15.7.3 if you are resident in the United Kingdom and we direct the Website and/or Service to (and/or pursue our commercial or professional activities in relation to the Website and/or Service in) the country in which you are resident, you will benefit from any mandatory provisions of the law of the country in which you are resident. Nothing in these User Terms and Conditions affects your rights as a consumer to rely on such mandatory provisions of local law.

The following Articles 15.8 to 15.19 only apply if the applicable Zivver Contracting Entity is Zivver Corporation:

- 15.8 Except as described in Article 15.10 and 15.11, you and Zivver agree that every dispute arising in connection with these User Terms and Conditions, the Services, or communications from us will be resolved through binding arbitration. Arbitration uses a neutral arbitrator instead of a judge or jury, is less formal than a court proceeding, may allow for more limited discovery than in court, and is subject to very limited review by courts. This agreement to arbitrate disputes includes all claims whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these User Terms and Conditions. Any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement will be resolved by the arbitrator.
- 15.9 YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE USER TERMS AND CONDITIONS, YOU AND ZIVVER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.
- 15.10 Exceptions. Although we are agreeing to arbitrate most disputes between us, nothing in these User Terms and Conditions will be deemed to waive, preclude, or otherwise limit the right of either party to: (1) bring an individual action in small claims court; (2) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (3) seek injunctive relief in a court of law in aid of arbitration; or (4) to file suit in a court of law to address an intellectual property infringement claim.
- 15.11 Opt-Out. If you do not wish to resolve disputes by binding arbitration, you may opt out of the arbitration provisions of this Article 15 within 30 days after the date that you agree to these User Terms and Conditions by sending an e-mail to Zivver with subject



'Attention: Legal Department – Arbitration Opt-Out' via legal@zivver.com, that specifies: your full legal name, the email address associated with your Account on the Services, and a statement that you wish to opt out of arbitration ("**Opt-Out Notice**"). Once Zivver receives your Opt-Out Notice, this Article 15.8 to 15.18 will be void and any action arising out of these User Terms and Conditions will be resolved as set forth in Article 15.19. The remaining provisions of these User Terms and Conditions will not be affected by your Opt-Out Notice.

- 15.12 This arbitration agreement, and any arbitration between us, is subject the Federal Arbitration Act and will be administered by the American Arbitration Association ("**AAA**") under its Consumer Arbitration Rules (collectively, "**AAA Rules**") as modified by these User Terms and Conditions. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at +1-800-778-7879, or by contacting Zivver.
- 15.13 Before initiating arbitration, a party must first send a written notice of the dispute (the "**Notice of Arbitration**") to the other party by certified U.S. Mail or by Federal Express (signature required) together with a copy by electronic mail. Zivver's address for Notice is: Zivver Corporation, FAO Zivver Legal Department, 228 East 45th Street, Suite 9E, NY 10017, New York, United States and legal@zivver.com. The Notice of Arbitration must: (1) identify the name and Account of the party making the claim; (2) describe the nature and basis of the claim or dispute; and (3) set forth the specific relief sought (the "**Demand**"). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 60 days after the Notice of Arbitration is received, you or Zivver may commence an arbitration proceeding. If you commence arbitration in accordance with these User Terms and Conditions, Zivver will reimburse you for your payment of the filing fee, unless your claim is for more than US\$10,000 or if Zivver has received 25 or more similar demands for arbitration, in which case the payment of any fees will be decided by the AAA Rules. If the arbitrator finds that either the substance of the claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules and the other party may seek reimbursement for any fees paid to AAA.
- 15.14 Any arbitration hearing will take place in the county and state of your residence address unless we agree otherwise or, if the claim is for US\$10,000 or less (and does not seek injunctive relief), you may choose whether the arbitration will be conducted: (1) solely on the basis of documents submitted to the arbitrator; (2) through a telephonic or video hearing; or (3) by an in-person hearing as established by the AAA Rules in the county (or parish) of your residence address. During the arbitration, the amount of any settlement offer made by you or Zivver must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based.
- 15.15 Except as provided in Article 15.11, the arbitrator can award any relief that would be available if the claims had been brought in a court of competent jurisdiction. If the arbitrator awards you an amount higher than the last written settlement amount offered by Zivver before an arbitrator was selected, Zivver will pay to you the higher of: (1) the amount awarded by the arbitrator and (2) US\$10,000. The arbitrator's award shall be final and binding on all parties, except (1) for judicial review expressly permitted by law or (2) if the arbitrator's award includes an award of injunctive relief against a party, in which case that party shall have the right to seek judicial review of



the injunctive relief in a court of competent jurisdiction that shall not be bound by the arbitrator's application or conclusions of law. Judgment on the award may be entered in any court having jurisdiction.

- 15.16 YOU AND ZIVVER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Zivver agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.
- 15.17 If Zivver makes any substantive change to this arbitration provision, you may reject the change by sending us written notice within 30 days of the change to Zivver's address for Notice of Arbitration, in which case your Account with Zivver will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 15.18 If Article 15.11 or the entirety of this Article 15 is found to be unenforceable, or if Zivver receives an Opt-Out Notice from you, then Article 15.8 to 15.18 will be void and the exclusive jurisdiction and venue described in Article 15.9 will govern any action arising out of or related to these User Terms and Conditions.
- 15.19 Governing Law. These User Terms and Conditions are governed by the laws of the State of Delaware without regard to conflict of law principles. You and Zivver submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Wilmington County, Delaware for resolution of any lawsuit or court proceeding permitted under these User Terms and Conditions. We operate the Service from our offices in New York, and we make no representation that materials included in the Services are appropriate or available for use in other locations.

16. MISCELLANEOUS

- 16.1 Entire agreement. These User Terms and Conditions, including the Privacy Policy and any other agreements expressly incorporated by reference into these User Terms and Conditions, are the entire and exclusive understanding and agreement between you and Zivver regarding your use of the Services.
- 16.2 Assignment. You may not assign or transfer these User Terms and Conditions or your rights under these User Terms and Conditions, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these User Terms and Conditions and all rights granted under these User Terms and Conditions, including with respect to your User Content, at any time without notice or consent.
- 16.3 Performance. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these User Terms and Conditions, or any provision of these User Terms and Conditions, be a waiver of any subsequent breach or default or a waiver of the provision itself.
- 16.4 Headers. Use of Article headers in these User Terms and Conditions is for convenience only and will not have any impact on the interpretation of any provision.
- 16.5 "Including". Throughout these User Terms and Conditions the use of the word "including" means "including but not limited to".



- 16.6 Enforceability. Each of the Articles of these User Terms and Conditions operates separately. If any part of these User Terms and Conditions is held to be invalid or unenforceable, then the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 16.7 Privacy Policy. Please read the Zivver Privacy Policy (available at <https://www.zivver.com/privacy-policy>) (the “**Privacy Policy**”) carefully for information relating to our collection, use, storage, and disclosure of your personal information. The Privacy Policy is incorporated by this reference into, and made a part of, these User Terms and Conditions.
- 16.8 Additional Terms. Your use of the Services is subject to all additional terms, policies, rules, or guidelines applicable to the Services or certain features of the Services that we may post on or link to from the Services (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these User Terms and Conditions.
- 16.9 Communications. By using the Services, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 16.10 Notice to California Residents. If you are a California resident, then under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Services or to receive further information regarding use of the Services.
- 16.11 Notice to UK residents. Nothing in these User Terms and Conditions affects your statutory rights and advice about your statutory rights is available from your local Citizens' Advice Bureau or Trading Standards Office.
- 16.12 Support. We are under no obligation to provide support for the Services. In instances where we may offer support, the support will be subject to published policies.
- 16.13 Language. These User Terms and Conditions are available both in the English and Dutch language. In case of any ambiguity or discrepancies between these versions, the English version shall prevail.

17. NOTICE REGARDING APPLE

- 17.1 This Article 17 only applies to the extent you are using our mobile application on an iOS device. You acknowledge that these User Terms and Conditions are between you and Zivver only, not with Apple Inc. (“**Apple**”), and Apple is not responsible for the Services or the content of it. Apple has no obligation to furnish any maintenance and support services with respect to the Services. To the maximum extent permitted by applicable law, Apple has no other warranty obligation with respect to the Services. Apple is not responsible for addressing any claims by you or any third party relating to the Services or your possession and/or use of the Services, including: (1) product liability claims; (2) any claim that the Services fails to conform to any applicable legal or regulatory requirement; or (3) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement, and



discharge of any third-party claim that the Services and/or your possession and use of the Services infringe a third party's intellectual property rights. You agree to comply with any applicable third-party terms when using the Services. Apple and Apple's subsidiaries are third-party beneficiaries of these User Terms and Conditions, and upon your acceptance of these User Terms and Conditions, Apple will have the right (and will be deemed to have accepted the right) to enforce these User Terms and Conditions against you as a third-party beneficiary of these User Terms and Conditions. You hereby represent and warrant that: (1) you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

* * *