

Phygrid – TERMS OF SERVICE

VERSION: 1/2023

1. SCOPE OF AGREEMENT

- 1.1. These Terms of Service (the "**Terms**") govern the Use of the Phygrid Platform ("**Platform**") and the Phygrid Marketplace ("**Marketplace**") (jointly the "**Service**"). The Service is provided by Phygrid AB, a limited liability company with reg.no. 556841-1333, incorporated under the laws of Sweden and having its registered office at Saltmätargatan 8, 113 59 Stockholm, Sweden ("**Phygrid**").
- 1.2. The contract between Phygrid and Customer related to the Service consists of these Terms and the Data Processing Addendum and any schedules or addenda thereto. In addition, the Acceptable Use Policy and the Privacy Policy will apply for Use of the Service and the Customer shall ensure that its Users comply with the Acceptable Use Policy and the Privacy Policy.
- 1.3. Notwithstanding the foregoing, the Customer may enter into a Customer Agreement with Phygrid relating to the Service. In case of any conflict or inconsistency between these Terms and a Customer Agreement, the Customer Agreement shall take precedence, provided that such Customer Agreement has been signed by an authorized signatory of Phygrid.

2. THE PLATFORM AND THE MARKETPLACE

Phygrid is a solution provider for digital experiences in physical spaces and serves customers in various industries using the Platform and the Marketplace to power seamless customer journeys and to offer its customers ready-to-use apps that can be deployed in the customer's environment. The Service consist of an online marketplace for purchase and deployment of standard apps and a platform for application development. The Service is described in more detail at <https://ombori.com/grid>.

3. DEFINITIONS

In addition to terms defined throughout the Terms, the following definitions shall apply whenever used with a capital initial letter and whether used in singular or plural:

"**Acceptable Use Policy**" means the acceptable use policy for the Service, as made available through the Service and as updated by Phygrid from time to time.

"**Account**" means a Customer or a User account that enables the Customer or a User to Use the Service.

"**Affiliate**" means, with respect to Phygrid or the Customer, any other entity which directly or indirectly controls, is controlled by or is under common control with that Party, where "control" means having more than 50% ownership or the right to direct the management of an entity by way of contract or otherwise.

"**Agreement**" means these Terms, the Data Processing Addendum and any schedules or addenda thereto.

"**App Provider**" means a party who has developed or is otherwise providing an App available on the Marketplace, e.g. Phygrid (for Phygrid Content), Customer (for Customer Apps) or a third party (for Third-Party Content).

"**App Terms**" means separate terms and conditions (if any) applicable for specific Apps, as made available in each App.

"**App**" means an application, including any content therein, available on or offered through the Marketplace, including any Customer Apps developed on the Platform. An App may constitute Phygrid Content, a Customer App or Third-Party Content.

"**Approved Partner**" means a reseller, distributor, partner, agent or other intermediary (including, without limitation, an Authorized Reseller or a Certified Solution Provider) authorized by Phygrid or any of its Affiliates to market, distribute, offer or solicit orders for the Service and/or Apps.

"**Certified Devices**" has the meaning ascribed to it in Section 11.2.

"**Committed Consumption**" means a predefined minimum consumption level for the Service over a set time period, prepaid by the Customer in advance at the start of each set time period, as specified in the Master Service Agreement (where applicable).

"**Confidential Information**" means all non-public, business related or technical information, written or oral or in any other form, disclosed by a Party under this Agreement, whether marked as confidential or not, including, but not limited to, the existence of this Agreement, any trade secrets, know how, inventions, software programs, source code, object code, applications, documentation, contracts, information, knowledge, data, databases, processes, techniques, designs, drawings, programs, formulas or test data, or any similar information. The Service and information generated or made available by Phygrid through or in connection with providing the Service (including, without limitation, Third-Party Content, Phygrid Content and Derived Data) constitutes Confidential

Information of Phygrid. Customer Data constitutes Confidential Information of the Customer. Feedback is not Confidential Information.

"Customer Agreement" means a separate agreement entered into by the Customer with Phygrid regarding the Customer's Use of the Service, e.g. a Master Service Agreement.

"Customer App" means an application, including any content therein, developed by the Customer or by Phygrid or any third party on behalf of the Customer.

"Customer Data" means any data processed by Phygrid, its Affiliates or Approved Partners on behalf of the Customer, including any data or other information uploaded by the Customer and/or any User to the Service, but excluding any Feedback.

"Customer" means the legal entity subscribing to or Using the Service under this Agreement.

"Data Processing Addendum" means the data processing addendum entered into between Phygrid and the Customer.

"Data Residency" means the country or region where the data of the Customer's Tenant is located.

"Derived Data" means anonymized and aggregated data (such as metadata, generated data, by-product data and information about usage of functions or features) which is collected, derived or obtained by Phygrid, its Affiliates or Approved Partners and is based on Customer Data, or otherwise in connection with the Customer's or the Users Use of the Service, through which neither the Customer nor Users are identifiable.

"Developer Account" means an Account permitting Use of the Platform solely to develop new Apps or offer Third-Party Content. All Use or customization of Apps on the Marketplace requires additional Account(s).

"Devices" means any third-party computer, mobile handset, tablet, screen, wearable device, speaker, hardware or any other device provided as part of the Service, or otherwise used together with the Service as specified in Section 11, including Certified Devices. Supply of Devices is subject to separate terms and conditions.

"Feedback" means any feedback, suggestions, ideas, materials or similar that the Customer or any User shares, uploads or otherwise makes available to Phygrid or via the Service.

"Fees" means the prices for the Service, the Apps and any services offered by Phygrid from time to time, including, any Use of the Service or the Apps, any Service Level Agreement or any support offered by Phygrid, and any Tenant Plans and Support Plans.

"Force Majeure Event" means war, natural disaster, order of any government, court or regulatory body having jurisdiction, blockade, embargo, riot, civil disorder, epidemic, pandemic or other similar event, in each case where such event was not foreseeable at the time of entering into this Agreement by the parties and its effects not capable of being overcome without unreasonable expense or loss of time of the Party who is obligated to render performance under this Agreement.

"Grid Usage Unit" means the billing unit that may be used by Phygrid to charge and bill the Fees when an agreement for Use of the Service with the Customer is entered through an Approved Partner.

"Installation" means the combination of an App, a Customer specific configuration of that App, and the number of chosen instances for that App. The same App can have multiple installations but only one configuration is possible per Installation.

"Managed Tenant" means a Tenant created in the Service for a specific Customer and for the Customer's use, which belongs to the Customer but can be managed by an Approved Partner on the Customer's behalf.

"Master Service Agreement" means a separate agreement entered into between Phygrid or any of its Affiliates or an Approved Partner and the Customer for the supply of the Service, sale of Apps and/or development of Customer Apps and/or the provision of other services to the Customer, including any schedules or addenda thereto.

"Phygrid Content" means any Apps, templates, methods, designs, tools, widgets, tool data, and any other information made available by Phygrid or any of its Affiliates to the Customer via the Service from time to time.

"Party" and **"Parties"** means either Phygrid or the Customer and Phygrid and the Customer jointly, respectively.

"Personal Data" shall have the meaning given to it in the General Data Protection Regulation (EU) 2016/679 ("GDPR").

"Pricing Policy" means OmboriGrid's Pricing and Billing Policy, as amended from time to time.

"Privacy Policy" means OmboriGrid's privacy and cookie policy as made available through the Service and as updated by Phygrid from time to time.

"Service Level Agreement" means a service level agreement for the Service entered into between Phygrid and the Customer through the Service. A Service Level Agreement template, as amended from time to time, and the Fees for the Service Level Agreement are available in the Service.

"Support Plan" means any plan offered by Phygrid setting out the support offered by Phygrid to the Customer, in each case as described in the Service.

"Tenant" means an instance of the Service used by a Customer which provides a single place to manage the Users, permissions, roles, Devices, Installations and any other unit which generates billable consumption. A Tenant may consist of one or several Sub-Tenants. Each Tenant is billed separately. If a Tenant has one or multiple Sub-Tenants, the billing for the Tenant will include the Sub-Tenants.

"Tenant Plan" means any plan offered by Phygrid which contains a certain consumption amount and certain additional features (where applicable), in each case as described in the Service.

"Third-Party Content" means applications, software, software services, licenses, plugins, open source software, materials, user-generated content, or other content provided by third parties as part of, or made available via links in the Service, or otherwise used together with the Service as specified in Section 10.

"Sub-Tenant" means a sub-instance of a Tenant. The content available in a Sub-Tenant is managed by and billed through the Tenant to which the Sub-Tenant belongs.

"Trademark Guidelines" means the Guidelines for the Use of OmboriGrid's Trademarks and Copyrights, as amended and as made available in the Service from time to time.

"Use" or **"Using"** means to access or otherwise use the Service or any part thereof.

"User" means an individual who is authorized by the Customer to use a Service, for whom the Customer has ordered and paid for the Service, and to whom the Customer (or when applicable, Phygrid at Customer's request) has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents of the Customer.

4. ACCESS TO THE SERVICE AND SUPPORT

- 4.1. By entering into this Agreement, and subject to payment of applicable Fees and compliance with this Agreement, the Customer receives a non-exclusive, non-transferable, non-sublicensable and time-limited license and right to Use the Service within the Customer's business and in the specified territory on a subscription basis until terminated in accordance with this Agreement.
- 4.2. Phygrid will use commercially reasonable efforts to keep the Service available and accessible at all times. Nonetheless, interruptions and incidents may occur and Phygrid hereby disclaims any and all obligations or guarantees to keep the Service available. Upon Customer's request, Phygrid may offer the Customer to enter into a separate Service Level Agreement. The Customer shall enter into separate Support Plans, Service Level Agreements and Tenant Plans for each Tenant and Sub-Tenant.
- 4.3. The Customer agrees and acknowledges that Phygrid has no responsibility for providing any support and maintenance as regards the Apps, unless explicitly stated in the App Terms for a particular App.
- 4.4. The Customer is solely responsible and liable for Customer Apps, including any content therein, and acknowledges and agrees that Phygrid will not be liable for the correctness, contents, availability or function or any Customer App and that Phygrid has no responsibility for providing any support and maintenance as regards the Customer Apps to the Customer, any User or any third party.
- 4.5. Phygrid may update, improve, modify or otherwise change the Service at OmboriGrid's discretion and without prior notice to the Customer. Such changes and modifications to the Service may include changes to the functionality, quality and/or scope of the Service. The Customer acknowledges that such changes and modifications, or other maintenance work, may lead to downtime and decreased availability in the Service. In the event of any changes to the scope or quality of the Service that is likely to have a material impact on the Customer's ability to use the Service, Phygrid will use reasonable efforts to notify the Customer in advance, (unless otherwise set out in the relevant Support Plan).
- 4.6. Phygrid will provide Customer with support for the Service (where applicable), as described and at the prices set out in the Service.
- 4.7. The Customer acknowledges and agrees that Phygrid may provide certain Approved Partners and OmboriGrid's Affiliates access to the Service, including any Customer Data. The Customer may at any time oppose to such Approved Partner's use of the Customer Data, in which case Phygrid and/or the Approved Partner shall be given reasonable time to revoke the Approved Partner's access to the Customer Data.
- 4.8. By entering into this Agreement, the Customer authorizes any of its Users to accept and enter into any App Terms thereby entering into binding agreements as regards the Apps on behalf of the Customer.

5. USE OF THE SERVICE

- 5.1. Subject to the Terms and/or a Customer Agreement, Customer is entitled to Use the Service on a subscription basis. The details of the subscription licenses, including the term and duration of Customer's subscription period, applicable Fees and payment terms, details on the scope of the Service and number of Users and other usage limits, are set out in the Customer Agreement.
- 5.2. When subscribing to the Service, a Tenant will be set up for the Customer. The Customer is able to create multiple Sub-Tenants within the Service. If the Customer has subscribed to the Service via an Approved Partner who is a "Certified Solution Provider", a Managed Tenant will be set up for the Customer by the Approved Partner.
- 5.3. The Customer acknowledges and approves that its access to a Tenant may be suspended or revoked by Phygrid, an Approved Partner or any third party which is responsible for the infrastructure of the Service, at any given time and at such party's sole discretion, if the Customer is in violation of its obligations in relation to Phygrid, and/or an Approved Partner, and/or a third party responsible for the infrastructure of the Service. To access the Service, the Customer and individual Users will need to create an Account. The Customer shall be solely responsible for all activities conducted through its Account and by individual Users through the Customer's Account or each individual User's Account. All use of the Service must be in strict compliance with the Acceptable Use Policy, and this Agreement.
- 5.4. The Customer undertakes to indemnify and hold Phygrid, its Affiliates, and/or any Approved Partner, harmless and upon Phygrid's request defend Phygrid, its Affiliates and/or an Approved Partner, from any claim, proceeding, liability, loss, cost or expense inflicted upon or incurred by Phygrid, its Affiliates and/or an Approved Partner, resulting from any Use of the Service by the Customer, any User or by a third party who has obtained, lawfully or unlawfully, access to the Service (including any content therein) from the Customer or any User, including, but not limited to, claims from third parties, damages, lost profits, additional fees, or other any other costs (including reasonable attorney's fees) resulting from such access.
- 5.5. The Customer shall not (and shall not allow any User or any third party to), during the term of this Agreement or at any time thereafter:
- a) transfer, sublicense, or assign the Customer's rights under this Agreement to any other person or entity;
 - b) modify, adapt or create derivative works of any part of the Service or reverse engineer, decompile, decrypt, disassemble or otherwise attempt to derive any source code, underlying ideas, algorithms, libraries, file formats, data, databases or programming interfaces for the Service;
 - c) access the Service or Phygrid Content in order to build a competitive product or service;
 - d) distribute, publish, or otherwise make any Phygrid Content, or other part or functionality of the Service available to third parties, whether as an application service provider, or on a rental, service bureau, hosted service, cloud service or other similar basis;
 - e) remove, modify, or conceal any product identification, copyright, proprietary, intellectual property notices or other marks on or within the Service or Phygrid Content;
 - f) upload or otherwise make available any data to the Service which is illegal, which may violate applicable laws, including data protection legislation, intellectual property rights, confidentiality obligations, or any other rights or restrictions in relation to third parties; or
 - g) upload or otherwise make available any data to the Service that may damage the Service or which otherwise contains any malware, viruses, Trojans, other harmful software or code, or similar.
- 5.6. The Customer shall ensure that the Service and each App is properly tested prior to any Use, as necessary to ensure safe and correct Use of the Service or any App, as applicable. The Customer assumes sole responsibility for all Customer Data, and any other data and results obtained from its use of the Service, and for conclusions or courses-of-action drawn from such use, and for maintaining validation, error correction, back up and reconstruction of its own data input to, or output by, the Service.
- 5.7. The Customer is responsible for ensuring that its use of the Service as well as any Customer Data and Feedback complies with all relevant terms and conditions as well as applicable legislation and undertakes to indemnify and hold harmless Phygrid, its Affiliates and/or any Approved Partner, against any damages, claims, losses and costs resulting from any such incorrect or illegal use.

6. FREE TRIALS

- 6.1. Phygrid may offer the Service, or parts thereof, to the Customer and Developer Accounts at no charge for a limited period e.g. for trial use ("Free Trial"). The Customer's and/or Developer Account's use of a Free Trial is subject to any additional terms that Phygrid may specify and is only permitted during the term designated by Phygrid (such term not to exceed a maximum period of 30 days unless otherwise specified in writing).

7. RELATIONSHIP WITH Phygrid

- 7.1. Phygrid reserves the right to engage Approved Partners to offer the Service and/or other services connected to the Service. Regardless of whether the Customer has obtained the right to Use the Service via Phygrid or an Approved Partner, these Terms, the Privacy Policy and the Acceptable Use Policy will apply unless otherwise agreed in a Customer Agreement, which is signed or approved in writing by Phygrid.

8. FEES AND PAYMENT

- 8.1. Upon subscribing to the Service, the Customer will be required to provide payment details. Unless otherwise agreed in a Customer Agreement between Phygrid and the Customer, the Customer shall provide all necessary credit card details before or in connection with the Customer being granted access to the Service. Phygrid may charge the Customer's credit card for any Use of the Service or any other Fees owed to Phygrid or any of its Affiliates by the Customer. Instead of charging any credit card registered by the Customer, Phygrid may invoice the Customer for any Use of the Service or any other Fees owed. The Customer shall pay all applicable invoiced Fees no later than 30 days from the date of OmboriGrid's invoice. Phygrid may charge interest on any overdue amounts. Interest will accrue in accordance with the Swedish Interest Act (SFS 1975:635). The Customer agrees and acknowledges that other terms may apply when the Customer has purchased the Service through an Approved Partner.
- 8.2. Unless explicitly stated in a Customer Agreement, applicable Fees for the Service are stated in the Service and the Pricing Policy is available in the Service. Fees may be expressed in the currency supported by Phygrid at the time of the transaction or in Grid Usage Units. One Grid Usage Unit is the equivalent of one (1) USD (i.e. the value of the US dollar at any given time).
- 8.3. Unless agreed otherwise in a Customer Agreement (i) the Fees are based on actual consumption (unless actual consumption is less than the Committed Consumption purchased by the Customer, in which case the Customer will be charged for the minimum Committed Consumption amount), (ii) any payment obligation is non-cancellable and Fees paid are non-refundable, and (iii) purchases are not contingent on the delivery of any future functionality or features, or any public comments made by Phygrid regarding future functionality or features.
- 8.4. Phygrid, at its sole discretion, reserves the right to amend any and all of the Fees and the Pricing Policy, from time to time. All changes to the Fees and the Pricing Policy will become effective upon posting of the amended Fees or a revised copy of the Pricing Policy (as applicable) in the Service. The Customer will be notified of changes to the Fees and/or the Pricing Policy through the Service. If Pricing Policy sets out specific terms regarding changes to the Fees where the Customer in a Customer Agreement has committed to a minimum consumption amount (Committed Consumption), such terms shall apply.

9. SUSPENSION

- 9.1. Phygrid reserves the right to (with advance notice to the Customer where possible or where required by applicable law) suspend, modify or discontinue the Service, or any part thereof, for the Customer and/or any User (as determined in OmboriGrid's sole discretion), and to take all other actions permitted by law, if:
- a) Phygrid determines such course of action necessary to prevent, stop or manage any significant security, safety, strategic or operational incident or potential harm to Phygrid or Customer;
 - b) required, in OmboriGrid's sole discretion, to update, improve, modify, or change the Service or to perform any other maintenance work as regards the Service;
 - c) required by law, regulation, court order or a governmental authority having jurisdiction over Phygrid, any of its Affiliates, an Approved Partner, or Customer;
 - d) Customer fails to pay due amounts in full to Phygrid, any of its Affiliates or to an Approved Partner, as applicable;
 - e) Phygrid has reason to believe that Customer has acted in breach of this Agreement; or
 - f) Phygrid has reason to believe that a User has acted in breach of the Acceptable Use Policy.
- 9.2. If the cause for suspension can be remedied, Phygrid will notify the Customer or affected Users of the measures needed to restore the Service. If the Customer or affected User fails to take such measures within a reasonable period of time, Phygrid may, without prejudice to other remedies available to Phygrid under this Agreement or the Acceptable Use Policy, permanently shut down and cancel affected Account(s) from the Service.
- 9.3. Except as expressly provided herein, Phygrid shall have no obligation to notify the Customer or any User prior to a suspension, modification or discontinuation of the Service or any part thereof.
- 9.4. Phygrid shall not be liable to the Customer or any third party for any such modification, suspension or discontinuation of the Customer's or individual Users' rights to access and Use the Service.

10. THIRD-PARTY CONTENT

- 10.1. The Service may contain or may otherwise interact with certain Third-Party Content, which is provided and licensed solely under the terms and conditions provided by its respective App Provider. The Customer's and any User's Use of such Third-Party Content will be governed solely by and be subject to the terms and conditions, (including, without limitation, any privacy policies and acceptable use policies) applicable to such Third-Party Content.
- 10.2. Phygrid and its Affiliates assume no liability whatsoever for Third-Party Content, or any errors in the Service (or any other liability of any kind) that may occur as a result of Third-Party Content, nor does Phygrid or any of its Affiliates warrant the compatibility or the continuing compatibility of the Third-Party Content with the Service, or any fitness for purpose of the Third-Party Content of any kind. Further, the Customer may at any time, at its sole risk, add additional Third-Party Content not provided or made accessible together with the Service. Phygrid does not support or endorse the use of any particular Third-Party Content available on or via the Service.

11. DEVICES

- 11.1. The Service may contain or may otherwise interact with Devices, which are provided solely under the terms and conditions provided by its respective suppliers. The Customer's and any User's Use of such Devices will be governed solely by and be subject to the terms and conditions applicable to such Devices. Phygrid and its Affiliates assume no liability whatsoever for Devices (including, without limitation, for any defects or errors in the Devices), or any errors in the Service (or any other liability of any kind) that may occur as a result of Devices, nor does Phygrid or any of its Affiliates warrant the compatibility or the continuing compatibility of the Devices with the Service, or any fitness for purpose of the Devices of any kind. Further, the Customer may, at any time and at its sole risk, add additional Devices not provided or made accessible together with the Service.
- 11.2. Phygrid does not support the use of any particular Devices available on or via the Service. Phygrid may endorse certain Devices ("**Certified Devices**"). Notwithstanding anything to the contrary herein, OmboriGrid's endorsement of any such Devices shall be limited to a suggestion as regards the ability of the Service to interact with such Devices at the time when that particular Device is endorsed and Phygrid makes no endorsements or promises for the future. Endorsements, or any references or mentions of Devices (including endorsements of Certified Devices) made by Phygrid shall not be interpreted as a guarantee of any kind of the functionality, condition, fitness for any purpose, compatibility, correctness, or otherwise of any Device. For the avoidance of doubt, any references to Phygrid in this Section 11.2 shall include any of OmboriGrid's Affiliates.
- 11.3. Phygrid shall be entitled to, at any time, in its sole discretion and for any reason, withdraw its endorsement of any Certified Device, reclassify a Certified Device or otherwise remove a Certified Device from its list of Certified Devices. If Phygrid removes a Certified Device from the list over Certified Devices, Phygrid may offer to continue endorsing any such Certified Device for a maximum period of 12 months from the date of the removal, or OmboriGrid's notice to the Customer of such removal (whichever occurs earlier). OmboriGrid shall not be obligated to notify the Customer of such removal. If no notice of removal is issued, Phygrid shall, however, continue to endorse the Device for a maximum period of 12 months from the date of removal (or for the shorter time period agreed by the Parties).
- 11.4. All Support Plan offered by Phygrid and the validity of any Service Level Agreement (and any support provided by Phygrid thereunder) is subject to the Customer running the Service on a Certified Device.

12. DATA COLLECTION AND MANAGEMENT

- 12.1. In connection with providing the Service, Phygrid, its Affiliates, and/or Approved Partners will collect, store, and process Customer Data, where such collection, storage and processing is necessary to provide, develop or improve the Service, or to allow Phygrid and/or its Affiliates to fulfil its obligations under this Agreement. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data, as well as its compliance with this Agreement and the Acceptable Use Policy and warrants that it has all rights, consents and approvals necessary to submit any Customer Data for the aforementioned purposes. Any and all Customer Data, which, in OmboriGrid's sole discretion, infringes applicable laws, this Agreement, or the Applicable Use Policy, may be deleted by Phygrid without prior notice.
- 12.2. The Customer shall indemnify and hold Phygrid harmless from and against any damages, claims, losses and costs resulting from offensive, unlawful or objectionable Customer Data and shall indemnify and hold Phygrid harmless and defend or settle any claim suit or proceeding brought against Phygrid that is based upon a claim that any part of the Customer Data infringes any third-party intellectual property rights.
- 12.3. The Customer agrees and acknowledges that Phygrid, its Affiliates and Approved Partners have the right to create, obtain, collect, store, process and use Derived Data. All rights, title and interest in relation to Derived Data will be exclusively retained by Phygrid, its Affiliates and Approved Partners may freely use, amend or share any Derived Data for their business purposes as they deem fit, including, but not limited to, for the purpose of developing and improving the Service. Derived Data will not contain any Personal Data and Phygrid will not use the Derived Data in a way, which identifies the Customer or any User. The Customer acknowledges and agrees that Phygrid will not provide any copies of or information about Derived Data to the Customer, and that Phygrid may retain Derived Data upon termination of an Account, the Service, this Agreement, or otherwise.

13. FEEDBACK

- 13.1. The Customer acknowledges and agrees that any submission of any Feedback by the Customer or a User is provided at the Customer's or any User's own risk and that Phygrid has no obligations (including, without limitation, any obligations of confidentiality) with respect to Feedback. The Customer agrees that Phygrid, its Affiliates, and Approved Partners may, and are granted an unlimited, worldwide, perpetual, irrevocable and royalty-free license to, freely use, display, distribute, adapt, modify and otherwise commercially or non-commercially exploit any Feedback for their business purposes as they deem fit, including, but not limited to, for the purpose of developing and improving the Service.
- 13.2. The Customer is solely liable for any Feedback and shall ensure that all Feedback submitted by the Customer or by any User complies with applicable laws, this Agreement and the Acceptable Use Policy. Any and all Feedback, which, in OmboriGrid's sole discretion, infringes applicable laws, this Agreement, or the Applicable Use Policy, may be deleted by Phygrid without prior notice.
- 13.3. Phygrid SHALL NOT BE RESPONSIBLE OR LIABLE FOR, AND HEREBY EXPLICITLY DISCLAIMS, ANY AND ALL LIABILITY FOR ANY FEEDBACK AND ANY OFFENSIVE, UNLAWFUL OR OBJECTIONABLE CONTENT THAT MAY BE ENCOUNTERED ON OR THROUGH THE SERVICE AND THE CUSTOMER SHALL INDEMNIFY Phygrid, ITS AFFILIATES AND ANY

APPROVED PARTNER, AGAINST ANY DAMAGES, CLAIMS, LOSSES AND COSTS RESULTING FROM THE FEEDBACK.

14. PERSONAL DATA PROCESSING

- 14.1. If and to the extent that Customer Data contains Personal Data, Phygrid will in the provision of the Service process Personal Data on behalf of the Customer. The Customer will be the data controller for such processing of Personal Data and Phygrid will be engaged by Customer as a data processor pursuant to the GDPR. The parties have for this purpose entered into the Data Processing Addendum.
- 14.2. Phygrid may also collect and process Personal Data as a data controller, as specified in the Privacy Policy from time to time. Phygrid will only process Personal Data in accordance with the GDPR. The Customer shall take appropriate actions to ensure that Users and other data subjects whose Personal Data is included in Customer Data are made aware of the Privacy Policy.

15. CONFIDENTIALITY

- 15.1. Except as otherwise set forth in this Agreement, each Party (the "**Receiving Party**") undertakes to treat Confidential Information shared by the other Party (the "**Disclosing Party**") as confidential and not to disclose any Confidential Information to any third party or use such Confidential Information for any other purpose than for the due performance of this Agreement. This Section shall not extend to any Confidential Information which (i) was rightfully in the possession of the Receiving Party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Agreement); (ii) was or is independently developed by the Receiving Party or its representatives as proven by its written records; (iii) was disclosed to the Receiving Party or its representatives by a third party not under any obligation to keep such Confidential Information confidential, provided that the Receiving Party shall not corroborate Confidential Information disclosed to it by a third party or otherwise further disseminate such Confidential Information; or (iv) must be revealed due to law or by order of a judicial or governmental authority or by any applicable stock exchange regulations or the regulations of any other recognized market place, provided that the Receiving Party notifies the Disclosing Party of the demand for disclosure promptly and as far in advance of the date of disclosure as circumstances reasonably allow (provided such notice is legally permitted) as to allow the Disclosing Party to seek protective order or other appropriate remedy.
- 15.2. The Receiving Party shall not without the prior written consent of the Disclosing Party divulge or make available any part of the Confidential Information to any person except to (i) the Receiving Party's employees and third-party consultants on a strict need to know basis; (ii) the Receiving Party's auditors and any other persons or bodies having a right, duty or obligation to know the business of the Receiving Party and then only in pursuance of such right, duty or obligation; (iii) as regards Phygrid, any person who is from time to time appointed by Phygrid to provide, develop, design, configure, support, maintain or otherwise use the Service, and then only to the extent necessary to perform such task, or to any Approved Partner to the extent necessary to provide the Service or to fulfil its obligations in relation to the Customer. Each Party undertakes to ensure that the persons and bodies mentioned in this Section are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the other Party in accordance with this Agreement. Each Party shall be responsible for the acts and omissions of such persons and bodies to whom such Party divulges such information, with respect to any access, use, protection or disclosure of such information, as if such Party had engaged in such acts and omissions.

16. PUBLICITY AND PRESS RELEASES

- 16.1. Phygrid shall have the right to use and Customer hereby grants to Phygrid the right to use, the Customer's name and trademarks and brands belonging to the Customer for press releases, public statements and public disclosures. Phygrid shall be entitled to publicly identify the Customer as a customer of Phygrid. Unless the Parties agree otherwise, the rights granted to Phygrid in this Section 16.1 will apply only for as long as the Customer is a Customer of Phygrid, or for as long as the Customer or any User is Using the Service or any parts thereof, but not thereafter.
- 16.2. Notwithstanding anything to the contrary herein, Phygrid shall have the right to use the Customer's name, trademarks, brands or other distinguishing marks in any promotional material, which Phygrid has created together with the Customer (including, without limitation, any case videos, case studies, event videos, event materials and all other documents, media and materials) produced by Phygrid and the Customer on a case-by-case basis in perpetuity. Furthermore, Phygrid shall have the right to use the Customer's name, trademarks or brands which make up part of any press releases, public statements and public disclosures made by Phygrid in accordance with Section 16.1 in perpetuity.

17. DISCLAIMER AND NO WARRANTY

- 17.1. THE SERVICE IS PROVIDED "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS". TO THE FULLEST EXTENT PERMISSIBLE BY LAW, Phygrid DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE SERVICE; (B) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO Phygrid; (C) COMPATIBILITY OR INTEROPERABILITY WITH ANY MACHINE, THIRD-PARTY PRODUCT, SOFTWARE, SERVICE, PLATFORM OR SYSTEM; OR (D) THIRD-PARTY CONTENT, DEVICES, AND/OR OTHER ASSOCIATED SERVICES PROVIDED OR MADE AVAILABLE AS PART OF OR TOGETHER WITH THE SERVICE. IN ADDITION, Phygrid HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CUSTOM, TRADE, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS OR MALWARE.

- 17.2. Phygrid DOES NOT REPRESENT OR WARRANT THAT ANY PART OF THE SERVICE, OR THIRD-PARTY CONTENT, OR DEVICES WILL BE AVAILABLE, ERROR-FREE OR UNINTERRUPTED; THAT INCIDENTS OR DEFECTS WILL BE CORRECTED; OR FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES OR MALWARE. Phygrid DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT Phygrid CONTENT OR THE INFORMATION, DATA OR RECOMMENDATIONS FROM THE SERVICE ARE ACCURATE, COMPLETE, OR USEFUL.
- 17.3. THE CUSTOMER AGREES THAT FROM TIME TO TIME Phygrid MAY REMOVE THE SERVICE FOR INDEFINITE PERIODS OF TIME, CANCEL THE SERVICE AT ANY TIME, OR OTHERWISE LIMIT OR DISABLE THE CUSTOMER'S OR ANY USER'S ACCESS TO THE SERVICE WITHOUT NOTICE.
- 17.4. THE CUSTOMER ACKNOWLEDGES THAT ITS USE OF THE SERVICE, FEEDBACK, AND THIRD-PARTY CONTENT OR DEVICES IS AT ITS SOLE RISK. Phygrid DOES NOT WARRANT THAT THE CUSTOMER'S USE OF THE SERVICE, THIRD-PARTY CONTENT, OR DEVICES OR OTHER RESULT FROM THE SERVICE, IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND Phygrid SPECIFICALLY DISCLAIMS SUCH WARRANTIES. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE CUSTOMER TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO THE CUSTOMER AND THESE TERMS.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1. Phygrid, its Affiliates and/or their respective licensors (including, without limitation, owners of any Third-Party Content or Devices) retain full ownership of all intellectual property rights in and to the Service, including any copies, improvements, enhancements, derivative works and modifications thereof, and any Phygrid Content submitted to or made available on the Platform or the Marketplace. Unless expressly stated otherwise in this Agreement, any intellectual property rights created by, or arising as a result of, the Customer's use of the Service or Phygrid Content shall vest with Phygrid.
- 18.2. Unless the parties agree otherwise, the intellectual rights to any Customer Apps created by the Customer or by Phygrid on behalf of the Customer shall vest with the Customer. The foregoing will only apply to the extent that such intellectual property rights do not include any parts of the Platform, the Marketplace or any Phygrid Content. The Customer agrees, accepts and acknowledges that by making Customer Apps available in the Service (either directly or indirectly through Phygrid or any third party), the Customer grants Phygrid a non-exclusive, transferable, sublicensable and unlimited license and right to use, market, distribute and sell the Customer Apps.
- 18.3. Any and all use by the Customer of OmboriGrid's trademarks, trade names, service marks, logos, icons, designs, symbols, graphics, trade dress, images shall be subject to the Trademark Guidelines.
- 18.4. The Customer's right to access the Service (including any Phygrid Content) are limited to those expressly granted by this Agreement. No other rights with respect to any part of the Service or any related intellectual property rights are granted or implied.
- 18.5. Notwithstanding anything to the contrary herein, the Customer will not, by means of this Agreement or otherwise, acquire any rights whatsoever to the Platform, the Marketplace or any Phygrid Content or any third-party software, nor shall the Customer have the right to access the source code of the Platform, the Marketplace or any Phygrid Content or the source code of any third-party software.

19. INFRINGEMENT INDEMNITY

- 19.1. Phygrid shall defend the Customer against any third-party claim that the Customer's permitted Use of the Service in accordance with this Agreement (including Phygrid Content), infringes any copyright, trademark or patent of a third party within the EU, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims subject to the limitations in this Section 19 and Section 20, provided that (i) Phygrid is given prompt notice of any such claim; (ii) the Customer provides reasonable co-operation to Phygrid in the defense and settlement of such claim; and (iii) Phygrid is given sole authority to defend or settle the claim.
- 19.2. In the defense or settlement of any claim, Phygrid may procure the right for the Customer to continue using the Service, replace or modify the Service so that infringing parts of the Service become non-infringing or, if such remedies are not reasonably available, in OmboriGrid's sole discretion, terminate this Agreement with immediate effect. The Customer shall in case of such termination by Phygrid be obliged to stop using the Service and the Customer will, as full and final compensation, obtain a refund equal to any prepaid Fee pro rata to any remaining period of time for which Customer is licensed to use the Service after the date of termination.
- 19.3. In no event shall Phygrid, its Affiliates, employees, agents and/or sub-contractors be liable to the Customer to the extent that the alleged infringement is based on or results from (i) a modification of the Service (or any part thereof) by anyone other than Phygrid; (ii) the Customer's use of the Service (or any part thereof) in breach of this Agreement, the Acceptable Use Policy, or in a manner contrary to the instructions given to the Customer by Phygrid; (iii) any Customer Data or Feedback; or (iv) the Customer's Use of the Service (or any part thereof) after notice of the alleged or actual infringement from Phygrid or any appropriate authority.
- 19.4. OmboriGrid's liability under this Section will be reduced proportionately to the extent the liability was caused or contributed to by an act or omission of Customer, any of its Affiliates, or any User.
- 19.5. The foregoing state the Customer's sole and exclusive rights and remedies, and OmboriGrid's (including OmboriGrid's Affiliates, employees', agents' and sub-contractors') entire obligations and liability, for any alleged or proven infringement of any intellectual property rights.

20. LIMITATION OF LIABILITY

- 20.1. NOTHING IN THIS AGREEMENT EXCLUDES THE LIABILITY OF EITHER PARTY (I) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; OR (II) FOR DEATH OR PERSONAL INJURY CAUSED BY GROSS NEGLIGENCE OR WILFUL MISCONDUCT.
- 20.2. SUBJECT TO SECTION 20.1: IN NO EVENT WILL Phygrid BE LIABLE FOR THE FOLLOWING, REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICE OR OTHERWISE, EVEN IF Phygrid HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (A) INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES; (B) LOSS OR CORRUPTION OF DATA/INFORMATION OR INTERRUPTED OR LOSS OF BUSINESS; OR (C) LOSS OF REVENUE, PROFITS, GOODWILL OR ANTICIPATED SALES OR SAVINGS. FURTHER, Phygrid AND ITS LICENSORS WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHETHER TO PERSONS, OR TANGIBLE OR INTANGIBLE PROPERTY OR ANY MONETARY LOSS OR DAMAGE, THAT COULD HAVE BEEN AVOIDED BY THE USER'S COMPLIANCE WITH THE ACCEPTABLE USE POLICY AND PROPER AND NORMAL USE OF THE SERVICE.
- 20.3. SUBJECT TO SECTION 20.1: OMBORIGRID'S TOTAL LIABILITY IN CONTRACT (INCLUDING IN RESPECT OF THE INDEMNITY IN SECTION 19.1), TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE SERVICE TO WHICH THE CLAIM RELATES DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE.
- 20.4. Phygrid SHALL USE REASONABLE EFFORTS TO PROTECT INFORMATION SUBMITTED BY THE CUSTOMER OR A USER IN CONNECTION WITH THE SERVICE, BUT THE CUSTOMER AGREES THAT THE SUBMISSION OF ANY SUCH INFORMATION IS AT THE CUSTOMER'S SOLE RISK, AND THE CUSTOMER HEREBY RELEASES Phygrid FROM ANY AND ALL LIABILITY FOR ANY LOSS OR LIABILITY RELATING TO SUCH INFORMATION IN ANY WAY.
- 20.5. Phygrid DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICES WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND THE CUSTOMER HEREBY RELEASES Phygrid FROM ANY LIABILITY RELATING THERETO.

21. TERMINATION

- 21.1. Either Party may terminate this Agreement if the other Party: (i) fails to cure any material breach (including, but not limited to, late payment by Customer) of this Agreement within 30 days after receipt of written notice of such breach from the non-breaching Party; (ii) ceases operation without a successor; or (iii) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such Party (and not dismissed within 30 days thereafter).
- 21.2. Phygrid may terminate this Agreement for convenience by giving at least 30 days' prior notice to the Customer and will refund a prorated portion of any prepaid Fees (excluding, however, any minimum Committed Consumption amount) for the period after the date of termination.
- 21.3. Upon expiration or termination of this Agreement, regardless of cause, the Customer shall cease any and all use of the Service, and, if requested by Phygrid, destroy or return all copies of Phygrid Content and certify so to Phygrid in writing.
- 21.4. Upon expiration or termination of this Agreement, regardless of cause, Phygrid may immediately suspend and revoke the Customer's and any and all Users' right to access and Use the Service. Phygrid will remove Customer Data and Accounts after a period of 180 days from the date of expiration or termination ("**Retention Period**"). During the Retention Period, Phygrid will free of charge make the Customer Data available to the Customer for download upon written request thereof by the Customer.
- 21.5. Upon expiry of the Retention Period, Phygrid has no obligation to maintain or make available any Customer Data to the Customer and has the right but not the obligation to (i) permanently delete all Customer Data in all Customer's Accounts; and (ii) maintain Customer Data that Customer or any of its individual Users has not deleted from its Account, subject to the terms and conditions of this Agreement.
- 21.6. Any provision that by the very nature of which should survive, shall survive any termination or expiration of this Agreement.

22. FORCE MAJEURE

- 22.1. If a Party is prevented from fulfilling its non-monetary obligations (i.e. obligations other than the payment of Fees or other compensation) under this Agreement due to a Force Majeure Event, performance by that Party of its non-monetary obligations under this Agreement shall be extended by any period of delay caused by the Force Majeure Event.
- 22.2. A Party affected by a Force Majeure Event shall immediately inform the other Party in writing of such occurrence. If a Force Majeure Event persists for a period of more than three consecutive months or more, each Party shall be entitled to terminate this Agreement with immediate effect by giving the other Party written notice thereof.

23. GENERAL

- 23.1. Neither this Agreement nor any rights or obligations of the Customer hereunder shall be assignable or transferable by the Customer. Any purported assignment or transfer in violation of the foregoing shall be null and void.

Phygrid may assign this Agreement in whole or in part in its sole discretion. Furthermore, Phygrid may freely assign the right to collect payment in accordance with the Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

- 23.2. Notwithstanding the use of any Approved Partner, Phygrid retains all rights to act against the Customer in order to protect OmboriGrid's interests. The obligations on the part of the Customer and the rights and limitations of liability on the part of Phygrid contained in this Agreement shall, *mutatis mutandis*, apply, operate and take effect also for the benefit of, and shall be enforceable by, OmboriGrid's Affiliates and/or Approved Partners, their successors and assigns, jointly and severally.
- 23.3. In no event shall any failure, delay or omission by Phygrid to enforce, exercise, or pursue any right or provision in this Agreement constitute a waiver of such or any other provision, nor shall any single or partial exercise by Phygrid of any right or provision prevent any further or other exercise or the exercise of any other right or provision in this Agreement. Phygrid will not be responsible for failures, delays or omissions to fulfill any obligations due to causes beyond its control.
- 23.4. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
- 23.5. This Agreement may be supplemented, modified or amended unilaterally by Phygrid at any time (provided that such amendments will not apply retroactively) by way of applicable Phygrid online terms or Phygrid website terms accepted by the Customer from time to time (including shrink-wrap, click-wrap, click-through, click-accept or by continuing to Use the Service after due notification). If the Customer does not agree to the supplemented, modified or amended Agreement, the Customer must immediately stop Using the Service.
- 23.6. The original of this Agreement has been written in English. Customer waives any rights it may have under the law of its country to have this Agreement written in the language of that country. This Agreement shall be equally and fairly construed without reference to the identity of the Party preparing this document as the Parties have agreed that each participated equally in negotiating and preparing this Agreement, or have had equal opportunity to do so. The Parties waive the benefit of any statute, law or rule providing that in cases of uncertainty, contract language should be interpreted most strongly against the Party who caused the uncertainty to exist.
- 23.7. The headings and titles to the articles and sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision hereof.
- 23.8. The relationship between Phygrid and the Customer is that of independent contractors and each Party's obligations to the other Party are exclusively contractual in nature. Nothing in this Agreement, or in connection with the performance of the Service, expressly or by implication, shall create a partnership, joint venture, corporation, employer-employee, fiduciary or agency relationship between the parties, or any responsibility by one Party for the actions of the other Party.
- 23.9. The rights and remedies available to Phygrid under this Agreement are not exclusive, and may be exercised alternatively or cumulatively with any other rights and remedies available to Phygrid under this Agreement, by law, or otherwise.
- 23.10. This Agreement, including the Acceptable Use Policy and the Privacy Policy, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

24. GOVERNING LAW AND ARBITRATION

- 24.1. The Agreement shall be governed by, and construed and enforced in accordance with the substantive laws of Sweden without regard to its conflict of laws principles.
- 24.2. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce ("**SCC**"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.
- 24.3. All arbitral proceedings conducted under this Agreement shall be kept strictly confidential, and all information, documentation or material in whatever form disclosed in the course of such arbitral proceeding shall be used solely for the purpose of those proceedings.