

## **CONTENT WORKFLOW TERMS OF SERVICE**

These terms of service (“Terms”) for *Content Workflow Standalone* apply to Customer’s use of the “Content Workflow Standalone” subscription service (“Product”) provided by the Bynder group entity identified on the Order Form executed by Customer (“Bynder”).

### **1. Product Access Terms**

1.1 Customer’s subscription to the Product grants Customer access to and use of the subscription as described in the Order Form.

1.2 These Terms govern the access to and use of the Product by Customer and any individual who accesses and/or uses the Product through Customer’s account (“User”).

1.3 Each User is assigned unique login credentials that grant the User access to the Product. Customer and Users are expressly forbidden from allowing another individual to access the Product using the same login credentials. Each User account must correspond solely to one individual person.

1.4 Access to and use of the Product is granted to Customer subject to its Users abiding by the terms of these Terms, expressly including the API Documentation.

1.5 Customer may provide User accounts to any individual, including, without limitation, to Customer employees, freelancers, employees of Customer affiliates and Customer’s own clients. Customer is responsible for Customer’s and its Users’ access to and use of the Product, and Customer Data, as defined in Section 4.1.

1.6 Users may access the Product only if Customer has paid in full any applicable Subscription Fee.

1.7 The Product is solely designed and intended to collect, organise, manage and collaborate on content for a specific project or projects.

1.8 Customer may access the Product and use any content in the Product for Customer’s business purposes in accordance with these Terms.

1.9 In case of violation of the Product Access Terms in this Section by Customer, Bynder may, at its sole discretion, after a fair and reasonable remedy period depending on the severity of the violation, either suspend or terminate access to the Product.

1.10 These Terms apply to all offers and contracts pursuant to which Bynder provides to Customer the Product. Customer agrees that purchases made by Customer through a User are valid purchase orders accepted by Bynder. Bynder will invoice Customer for the purchase beginning from the date that the purchase is made available to Customer.

### **2. Accounts**

2.1 These Terms shall apply to Customer during the trial period, if applicable, with the exception of Sections 12 and 13.

2.2 Standard Accounts. Customer may create an online account (“Account”) with Bynder for the use of the Product. The initial term of Customer’s subscription for the use of the Product (“Initial Term”) begins upon the date indicated on the Order Form.

2.3 The subscription will run on an annual or multi-year subscription basis as set out on the order form, unless you have registered on a free trial basis, in which case this Agreement shall be effective for the fixed period of the trial.

2.4 Customer may upgrade the subscription package at any time by discussing with their Customer Success Manager. This includes the ability to change from a basic, to advanced or custom package. Any change in price will be invoiced in accordance with this Agreement.

2.5 Customer may downgrade the subscription package at the point of renewal. Any change to the subscription package shall take effect at the end of the Initial Term or current renewal period. Any change in price shall be reflected on Customer’s renewal invoice.

### **3. Ownership of Intellectual Property Rights**

3.1 Customer retains all of its rights to any Customer Data that Customer uploads, submits, posts or displays on or through the Product and Customer is responsible for protecting those rights. Customer grants to Bynder the right to access, use, or modify such Customer Data only as necessary to provide the Product and carry out its obligations under these Terms.

3.2 Bynder retains all right, title, and interest in and to the Product and any documentation available in the Product. The source code is at all times owned by Bynder. Bynder grants to Customer all rights required for Customer to use the Product in accordance with these Terms.

3.3 Except as expressly stated in these Terms, no rights are granted by either Party to the other with respect to its intellectual property rights, and nothing in these Terms shall be construed to grant to either Party any right, title, or other interest. There are no implied rights granted under these Terms.

#### **4. Customer Data**

4.1 "Customer Data" means electronic data, text, documents, pictures, videos, or other materials uploaded to, generated and/or stored within the Product by Customer and Users.

4.2 All Customer Data is the sole responsibility of Customer. Any use of or reliance on any Customer Data or materials posted via the Product or obtained by Customer through the Product is at Customer's own risk. Bynder takes no responsibility and assumes no liability for Customer Data that Customer or any third party uploads, submits, posts or displays in or through the Product.

4.3 By using Customer Data in or through the Product, Customer warrants that: (a) Customer owns the Customer Data and/or has the right to use it and the right to grant Bynder the rights as provided in these Terms; (b) the Customer Data and Customer's use of the Customer Data in or through the Product does not violate the privacy rights, publicity rights, copyrights, trade secret rights, contract rights or any other rights no of any individual or entity; (c) the Customer Data and Customer's use of the Customer Data does not violate any applicable laws and does not advocate or could not reasonably be expected to induce illegal activity; (d) Customer Data and Customer's use of Customer Data is not threatening, abusive, harassing, stalking, defamatory, deceptive, false, misleading or fraudulent. Bynder reserves the right to immediately suspend Customer's account and take appropriate measures if Bynder receives a notice alleging that Customer Data infringes on third party intellectual property rights.

4.4 Bynder shall only access Customer Data: (a) upon the express consent or request of Customer; (b) to the extent required by applicable law or regulation or judicial proceeding; (c) to the extent Bynder believes in good faith that access is reasonably necessary to protect the property or rights of Bynder, third parties; and (d) to the extent reasonably necessary to provide the Product and carry out its obligations under these Terms.

4.5 Customer's sole and exclusive remedy for loss or damage to Customer Data, shall be Bynder to use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest back-up under Bynder's archiving procedure.

#### **5. Acceptable Use**

5.1 Customer may not do any of the following while accessing or using the Product: (a) reverse engineer the Product or otherwise extract knowledge from or create derivative work of the Product; (b) test the vulnerability of any system or network or breach or circumvent any security or authentication measures, including without limitation, by scanning, penetration testing and/or submitting the Product to bug bounty programs; (c) access or search the Product by any means (automated or otherwise) other than through interfaces that are provided by Bynder, unless Customer has been specifically allowed to do so in a separate written and executed agreement with Bynder; (d) use the Product to send altered, deceptive or false source-identifying information; or (e) interfere with or create an undue burden on the Product, including without limitation, by sending a virus, overloading or denying service, spamming or by scripting.

#### **6. Bynder Responsibilities**

6.1 Except to the extent expressly set forth in these Terms, any measurements, specifications or other particulars provided in Bynder's drawings, images, catalogues, websites, offers, advertising material, standardization sheets, Product roadmap, etc. ("Specification Estimates") are estimates only, and Bynder shall not incur any liability, penalties, fines or other obligations if the Product fails to meet Specification Estimates for any reason.

6.2 Bynder shall use commercially reasonable endeavours to make the Product available 24 hours a day, seven days a week, except for planned or unplanned maintenance. Bynder shall take commercially reasonable efforts to ensure all maintenance is not carried out during office hours.

6.3 Bynder shall use commercially reasonable efforts to respond to all customer support queries within 48 hours. Customer may purchase enhanced support services separately at Bynder's then-current rates.

## **7. Customer Responsibilities**

7.1 Customer shall ensure that access to and usage of the Product are always in accordance with the Product Access Terms in Section 1.

7.2 Customer may not copy any documentation provided on the Product for anyone that is not an User.

## **8. Third Party Products & API**

8.1 A web browser and internet connection are required to access and use the Product. The Product may contain the application programming interface ("API") designed to interoperate with Third Party Products. No integration of any Third Party Product with the Product is required to use the Product. By integrating the Product with any Third Party Product, Customer acknowledges that Bynder does not warrant or support any such integration, whether or not a Third Party Product is designated by Bynder as "certified" or "recommended" or otherwise. Bynder will have no liability whatsoever for damages, losses, or claims that arise from these integrations.

8.2 If Customer elects to enable, access, or use a third party's products, including but not limited to third party AI features, applications, services, software, networks, systems, directories, websites, databases, or information (collectively "Third Party Products"), Customer's access to and use of such Third Party Product is subject to the terms, disclaimers and policies of that third party provider. Bynder does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Third Party Products. Bynder cannot guarantee the availability (or continued availability) of any Third Party Product. Bynder shall not be liable for any damage or loss actually or allegedly caused by or in connection with Customer's enablement, access, or use of any such Third Party Products, or Customer's reliance on the privacy practices, data security processes, or other policies of such Third Party Products. Customer irrevocably waives any claim against Bynder with respect to such Third Party Products.

## **9. Data Protection and Processing of Personal Data**

9.1 In providing the Product, Bynder will comply with Bynder's Global Privacy Policy, in effect from time to time and available at <https://www.bynder.com/en/legal/privacy-policy/>. Bynder bases the processing of the Personal Data of Users on legitimate interest under applicable data protection law, to provide Customer with the necessary functionality required during the use of the Product and to develop and improve the Product(s).

9.2 To the extent that Personal Data is processed using the Product, the Parties acknowledge that Bynder is a Processor and Customer is a Controller and each Party shall comply with their respective statutory and regulatory data protection obligations. In as far and to the extent the EU General Data Protection Regulation applies to any Processing of Personal Data by Bynder on behalf of the Customer in connection with these Terms, this Processing of Personal Data will be governed by Data Processing Agreement ("DPA") available at <https://www.bynder.com/en/legal/content-workflow-standalone-data-processing-agreement/>

## **10. Service Analyses**

10.1 Bynder endeavours to continually improve the Product(s). In doing so, Bynder may collect metrics and information regarding Customer's use of the Product, including evaluating how Users use the Product ("Usage Data"). Usage Data is used to develop new features or improve existing features. The processing of Usage Data is based on Bynder's legitimate interest to analyse trends in order to assess and improve the overall user experience in the Product(s) to the extent it is necessary for Bynder's legitimate interest under, and in accordance with applicable data protection law.

## **11. Availability of Service**

11.1 Bynder shall use commercially reasonable efforts to make the Services available 24 hours a day, seven days a week, except for planned or unplanned maintenance. Bynder shall use commercially reasonable efforts to (i) ensure maintenance is not carried out during office hours, (ii) respond to all Customer support queries within 48 hours. Customer may purchase enhanced support services separately at Bynder's then current rates.

## **12. Pricing, Payment Terms, and Refunds**

12.1 All prices are in the currency noted on the Order Form.

12.2 All prices are exclusive of value added tax (VAT) and other government taxes, banking fees, and regulatory fees that have been or are later imposed. Each Party agrees to pay any tax assessed to it by a competent tax authority. Customer shall remit payment in full to Bynder regardless of any taxes that are required to be deducted or withheld.

12.3 If Customer fails to timely satisfy its payment obligations, Customer shall owe two percent per month or the highest rate permitted by law, whichever is lower, on the outstanding and undisputed amount without the need for Bynder to issue a demand or notice of default.

12.4 Bynder reserves the right to refer any invoiced, overdue and undisputed payment obligations (or any portion thereof) for collection.

12.5 After five business days' written notice, Bynder may suspend access to the Product if Customer has failed to timely satisfy its payment obligations.

12.6 Except as expressly set forth herein, all payment obligations are non-cancellable and all amounts paid are non-refundable.

### **13. Payment Disputes.**

13.1 Any dispute of an invoice must be made by providing written notice to Bynder detailing the reasons for the dispute within 5 days of receipt of the invoice. Customer must timely pay in full any undisputed amount under the invoice.

13.2 In the event a dispute arises between the Parties related to (a) whether amounts were properly charged; or (b) whether the Product, deliverables or services were properly provided or performed, Section 20 shall apply.

### **14. Confidentiality**

14.1 "Confidential Information" means (a) information relating to the Terms that is not generally known to the public or that constitutes a trade secret; (b) information that is owned, developed or otherwise acquired by either Party, including the Party's financial data, business plans, customer information, software, programming, systems and use documentation, technical information, technology, designs, ideas, inventions, data, data formats and files, and all copies and tangible embodiments thereof; (c) software originating from Bynder, and (d) other information that would reasonably be considered confidential.

14.2 While performing its obligations under the Terms, either Party may deliver Confidential Information to the other. If a Party receives the Confidential Information of the other, such receiving Party shall (a) use such Confidential Information solely for the purpose of carrying out its obligations according to the Terms, (b) hold such Confidential Information in confidence and take reasonable precautions to protect such Confidential Information (including all precautions that such Party employs with respect to its own confidential materials), (c) not divulge any such Confidential Information or any information derived therefrom to any third party and (d) only divulge such Confidential Information to those of its employees, representatives, and affiliates who have a reasonable need to know such information and are subject to confidentiality obligations at least as stringent as those in this Section.

14.3 The provisions of this Section may not apply (a) to any Confidential Information that (i) is or becomes (through no improper action or inaction by the receiving Party or any of its employees, representatives, or affiliates) generally available to the public; (ii) was in possession of or known by the receiving Party prior to receiving it from the disclosing Party; (iii) was properly disclosed to the receiving Party without any obligation of confidentiality; or (iv) was discovered or created by the receiving Party without reliance on such Confidential Information (as shown by the records of receiving Party); or (b) to disclosures to the extent required by applicable law or court order, provided that the receiving Party (1) uses reasonable efforts to limit such disclosure and to obtain confidential treatment or a protective order with respect thereto, (2) has allowed the disclosing Party to participate in the proceedings related to such legal or court-ordered requirement (to the extent reasonably practical) and (3) cooperates reasonably with the efforts of the disclosing Party to contest or limit the scope of such required disclosure.

### **15. Publicity**

15.1 Each Party hereby gives its consent to publication of the other Party's name and logo for marketing purposes.

### **16. Warranties**

16.1 Bynder hereby warrants to Customer that, as of the Effective Date: (a) it has the full right, power and authority to enter into, and fully perform its obligations under these Terms; (b) it shall comply with all laws and regulations applicable to the performance of its obligations under these Terms and (c) it has not infringed upon the intellectual property rights of any third parties in granting Customer access to the Product for use in accordance with these Terms..

16.2 Customer hereby warrants to Bynder that, as of the Effective Date: (a) it has the full right, power, and authority to enter into and fully perform its obligations under these Terms;; (b) it shall comply with all laws and regulations applicable to the performance of its obligations under these Term; and (c) it and Users will use the Product in accordance with these Terms.

16.3 EXCEPT AS EXPLICITLY STATED IN THESE TERMS, THE PRODUCT IS PROVIDED BY BYNDER ON AN “AS-IS” BASIS. ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED OR CONTRACTUAL OR STATUTORY, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITATION, BYNDER DOES NOT WARRANT THAT (a) THE OPERATION AND/OR USE OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THE PRODUCT WILL PERFORM IN EVERY OPERATING ENVIRONMENT; (c) ALL DEFICIENCIES OR ERRORS IN THE PRODUCT ARE CAPABLE OF CORRECTION; OR (d) THE PRODUCT MEETS CUSTOMER’S REQUIREMENTS OR EXPECTATIONS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY DISCLAIMED.

## **17. Indemnifications**

17.1 To the extent not prohibited by law, Bynder agrees to indemnify and hold harmless Customer, its affiliates, and its and their officers, directors, employees, agents, and representatives from and against any and all liabilities, expenses, damages and costs, including but not limited to, reasonable attorneys’ fees, related to all third party claims, charges and investigations that the Product, as delivered by Bynder and used as permitted under the Terms, infringes on or misappropriates the intellectual property rights of a third party.

17.2 To the extent not prohibited by law, Customer expressly agrees to indemnify and hold harmless Bynder, its affiliates, and its and their officers, directors, employees, agents, and representatives (collectively, the “Bynder Entities”), from and against any and all liabilities, expenses, damages and costs, including but not limited to, reasonable attorneys’ fees, related to all third party claims, charges and investigations related to: (a) Customer’s failure to comply with these Terms or any applicable law or regulation, and (b) the use of the Product by Customer and Users that infringes on the intellectual property rights or data privacy rights of any third party.

17.3 In order to be entitled to an indemnity, the indemnified Party must: (a) provide the indemnifying Party with prompt written notice, in no event more than 30 calendar days after becoming aware of such a claim; (b) give the indemnifying Party sole control and authority over the defence and/or settlement of such claim; and (c) provide the indemnifying Party with proper and full information and reasonable assistance to defend and/or settle any such claim; and (d) take reasonable steps to mitigate its loss.

17.4 This Section provides the Parties’ exclusive remedy for claims for any indemnity.

## **18. Limitations of Liability**

18.1 EXCEPT FOR SECTION 18.3, NOTHING IN THESE TERMS SHALL LIMIT A PARTY’S (a) LIABILITY, OR WARRANTY OBLIGATIONS HEREUNDER WITH RESPECT TO CLAIMS OF (i) BODILY INJURY AND DEATH, OR (ii) GROSS NEGLIGENCE OR WILFUL MISCONDUCT; AND (b) INDEMNITY OBLIGATIONS AS PROVIDED IN SECTION 17.

18.2 LIMITATION ON AMOUNT OF LIABILITY. WITHOUT PREJUDICE TO SECTION 18.1, IN NO OTHER EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY EXCEED THE SUBSCRIPTION FEE PAYABLE BY CUSTOMER TO BYNDER IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

18.3 LIMITATION ON INDIRECT LIABILITY. NEITHER PARTY MAY BE HELD LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES OR PROFITS), OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING FROM ANY CLAIM RELATING DIRECTLY OR INDIRECTLY TO THE TERMS, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH PARTY WAS ADVISED OF OR OTHERWISE AWARE OF THE LIKELIHOOD OF SUCH DAMAGES.

18.4 If a third party seeks an injunction claiming that the Product infringes the intellectual property rights of a third party, and that injunction is not dismissed within 30 calendar days, or if a court of competent jurisdiction issues a judgment that the Product infringes upon the intellectual property rights of a third party, Bynder shall, at its sole discretion: (a) obtain for Customer the right to continue using the Product; (b) replace or modify the Product so that it does not infringe such proprietary rights and may be used by Customer; or (c) reimburse to Customer any prepaid fees that relate to the infringing Product.

18.5 The Bynder Entities shall have no liability whatsoever to Customer for any expenses, damages and costs related to the non-functioning of the Product (whether in part or in whole) due to unavailability of the internet or due to changes in legislation or technical restrictions that limit access to or functionality of the Product. In the event of a change in laws or regulations in any of the countries in which Customer has Users, including changes to laws and regulations on cloud computing services, data protection and privacy, or Software as a Service, which impact Bynder’s ability to offer the Product, Customer accepts that Bynder may limit the availability of the Product in a manner to be determined in Bynder’s sole discretion, and Customer hereby releases Bynder from any liability relating to such limitation. Bynder makes no warranties or guarantees whatsoever in relation to the availability of the Product in China. Neither the applicable service levels nor any other service agreement applicable to Customer’s use of a Bynder Product will apply to use of such Product by Users within China.

## **19. Term and Termination**

19.1 The Initial Term shall be as set forth in the Order Form. Upon expiration of the Initial Term, the Order Form and Customer's agreement to these Terms shall automatically renew for successive additional 12 month periods, unless either Party provides written notice of its intention not to renew no less than 60 days prior to the expiration of the current Term. For the avoidance of doubt, if Customer and/or Users continue to access and use the Product after the expiration of the Terms, the same Terms applicable immediately prior to expiration of the Term, including payment obligations, will continue to apply.

19.2 Either Party may terminate this Agreement, effective immediately upon written notice in the event of: (a) dissolution, liquidation, bankruptcy or insolvency of the other Party and a Material Breach of the Terms that has not been cured within 30 calendar days of receiving written notice of the breach (each of instances, termination "For Cause"). "Material Breach" means (i) failure to timely satisfy payment obligations, breach of confidentiality obligations, infringement on the intellectual property rights of a third party, and failure to remedy such breach in accordance with the Terms, (ii) breach of applicable laws, (iii) repeated non-material breaches cumulatively amounting to a material breach, and (iv) failure to keep current all billing information to the extent that it interferes with invoicing.

19.5 If the Agreement is terminated by Customer For Cause, Bynder will refund the pro-rata amount of any pre-paid fees from the date of the event constituting Cause.

19.6 If the Agreement is terminated by Bynder For Cause, Customer will not receive a refund on any prepaid amounts.

19.7 Upon termination or expiration of the Terms for any reason, Bynder shall immediately terminate Customer's access to the Product. All outstanding amounts owed to Bynder will immediately become due and payable. All payment obligations survive termination of the Agreement.

19.8 Within 90 calendar days of termination or expiration of the Terms, Customer may request in writing that Bynder return to Customer its Customer Data, in which case Bynder shall return Customer Data in a commonly accepted export format within 90 calendar days of the request. Customer will be invoiced on a time and material basis for work needed to return its Customer Data, unless Customer terminated the Terms For Cause, in which case, Bynder will be responsible for the cost of returning Customer Data.

19.9 If Bynder does not receive a request to return Customer Data pursuant to these Terms, all Customer Data will be destroyed after 180 calendar days of termination or expiration of the Terms, unless otherwise required by law, or on automatic back-ups. Upon written request, Bynder shall provide a certificate to Customer certifying that Customer Data has been destroyed.

19.10 Upon termination or expiration of the Terms the provisions of the Terms shall terminate except those sections a Party would expect to survive termination.

## **20. Governing Law and Jurisdiction**

20.1 The Terms will be governed by the laws of the jurisdiction where the Bynder entity identified on the Order Form is established (i.e., Bynder B.V.: the Netherlands; Bynder LLC: Delaware, USA; Bynder Limited: England and Wales; and Bynder Pty Ltd: Victoria, Australia), without regard to or application of its conflicts of law provisions.

20.2 The Parties agree that any dispute related to the Terms must first be submitted for at least one negotiation session and each Party shall use all reasonable endeavours to participate in the negotiation session in good faith to resolve the dispute before the dispute may be submitted for arbitration. If the dispute remains unresolved for more than 60 calendar days after the first negotiation session has begun, the dispute may proceed to arbitration.

20.3 The Parties agree that all disputes arising out of or in connection with these Terms, which have not been resolved under Section 20.2, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC") by one or more arbitrators appointed in accordance with the said Rules. The award may be confirmed and enforced in any court of competent jurisdiction in the local jurisdiction of the applicable Bynder entity (i.e., Bynder B.V.: Amsterdam, the Netherlands; Bynder LLC: Boston, MA, USA; Bynder Limited: London, England; and Bynder Pty Ltd: Melbourne, Victoria, Australia), and Customer expressly consents to personal jurisdiction in the applicable venue. Each Party waives any right it has to object to such proceeding being brought in those courts based on inconvenient forum.

20.4 Each Party acknowledges that the other Party is entitled to seek injunction and/or other equitable relief without proof of special damages, either to a court having jurisdiction in relation to such relief or order or under the ICC rules.

20.5 The Parties explicitly waive the right to claim consolidation of arbitral proceedings, excluding applicable cross-claims, and agree such a consolidation would be a deviation from the agreed arbitral proceedings.

## **21. General Provisions.**

21.1 Any notice required or permitted to be delivered to either of the Parties according to the Terms shall be (a) delivered according to such Party's Contact Information; and (b) deemed effective (i) upon receipt, when delivered personally or by courier; (ii) the day delivered, if delivered by a reputable overnight delivery service; or (iii) if delivered via email, the earlier of written confirmation receipt or one business day, unless the sender receives an automated message that the email delivery has failed. Each Party is responsible for apprising the other Party of any changes in Contact Information.

21.2 The Terms, including for the avoidance of doubt, the Global Privacy Policy and Data Processing Addendum, constitutes the entire agreement between the Parties as to the subject matter hereof and supersedes all prior documents, negotiations and drafts of such parties with respect to such subject matter, whether written or verbal. No provision of the Terms may be construed against either Party by reason of the drafting or preparation thereof.

21.3 Any term of the Terms may be amended, waived, terminated or discharged only with the written consent of both Parties. The failure of either Party to insist upon the performance of any of the terms or conditions contained in the Terms, and the failure of either Party to exercise any right hereunder, may not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such rights.

21.4 If any provision of the Terms is held to be unenforceable, the Parties shall renegotiate each such provision in good faith in order to reflect the original intent of the Parties. If the Parties cannot agree upon an enforceable replacement for such provision, then (a) such provision shall be excluded from the Terms, (b) the balance of the Terms shall be interpreted as if such provision were so excluded and (c) thereafter, the Terms shall be enforceable in accordance with its terms.

21.5 Neither these Terms nor any of the rights or obligations under these Terms, may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Party hereto, and any such assignment without such prior written consent shall be null and void; provided, however, that the Parties may assign all of their rights and obligations under these Terms to any one (1) of either their direct or indirect wholly-owned subsidiaries or affiliates following an acquisition, for reasons of corporate restructuring or internal reorganization, but only to the extent that such assignment would not result in an impairment of the other Party's rights under these Terms. Any attempt to assign the Terms other than in accordance with this Section shall be null and void and of no legal force or effect. The Terms shall be binding upon and shall inure to the benefit of the Parties permitted successors and assigns. Notwithstanding anything to the foregoing in this Section, Bynder may assign the right to receive money hereunder without the prior written consent of Customer.

21.6 Neither Party may be held liable for its failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including governmental requirements, inability to obtain required export licenses, work stoppages, fire, civil disobedience, embargo, war, terrorism, riots, rebellions, earthquakes, strikes, floods, water and the elements, inability to security equipment, raw materials or transport or similar occurrences. Either Party may terminate the Terms immediately upon written notice, if the other Party is unable to perform its obligations under the Terms due to causes stated in this Section for more than 30 calendar days.

21.7 Neither the Terms nor any provision contained herein may be construed as creating or constituting a partnership, joint venture, or agency relationship between the Parties. For the avoidance of doubt, neither Party has the power or authority to, and no Party may, assume or create any obligation or responsibility on behalf of the other.

21.8 These Terms are made for the benefit of the Parties and are not intended to benefit or be enforceable by any third party. The rights of the Parties to terminate, rescind, or amend the Terms, or to reach any settlement relating to the Terms, are not subject to the consent of any third party.