

Jenji Enterprise Subscription Agreement

Version: 15 September 2020

THIS JENJI ENTERPRISE SUBSCRIPTION AGREEMENT ("AGREEMENT") FORMS A BINDING AGREEMENT BETWEEN YOU INDIVIDUALLY OR THE BUSINESS ENTITY OR PUBLIC AGENCY ON WHOSE BEHALF YOU ARE ACCEPTING THIS AGREEMENT ("CUSTOMER") AND GLEETR SAS ("JENJI").

THIS AGREEMENT IS ACCEPTED BY: (1) INDICATING ACCEPTANCE OF THESE TERMS BY CLICKING "SUBMIT," "ACCEPT" OR A SIMILAR BUTTON WHEN THIS AGREEMENT IS REFERENCED IN THE JENJI ENTERPRISE OR ON A WEB PAGE TO ACCESS THE JENJI ENTERPRISE, OR SIGNING AN ORDER FORM OR OTHER ORDERING DOCUMENT REFERENCING THIS AGREEMENT FOR A NEW OR RENEWAL SUBSCRIPTION; OR (2) ACCESSING OR USING ANY PORTION OF THE JENJI ENTERPRISE. THE INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS AND WARRANTS THAT HE OR SHE: (A) IS AN EMPLOYEE, CONTRACTOR, OR AGENT OF, AND HAS THE AUTHORITY TO REPRESENT, CUSTOMER; AND (B) HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS AGREEMENT. IF CUSTOMER DOES NOT WISH TO ACCEPT THIS AGREEMENT, OR THE INDIVIDUAL ACCEPTING THE AGREEMENT DOES NOT HAVE AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT, THEN DO NOT CLICK OR SIGN TO ACCEPT THIS AGREEMENT OR ACCESS OR USE JENJI ENTERPRISE.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF JENJI ENTERPRISE, THE EVALUATION ACCESS PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

This Agreement incorporates by this reference all the numbered sections below ("Main Body") as well as the terms and conditions of all applicable Order Forms. In the event of any conflict between terms in this Agreement, the following order of precedence will apply: (1) any Order Form (solely with respect to that Order) and any Service Description therein; (2) the Main Body; and (3) any other incorporated document.

1. Definitions

1. **"Affiliate"** means, with respect to a party, any legal entity (such as a corporation, partnership, or other legal entity) that controls, is controlled by, or is under common control with such party. For purposes of this definition, "control" means the legal power to direct or cause direction of the general management of the corporation, partnership, or other legal entity. Affiliates of Customer are "Customer Affiliates" and Affiliates of Jenji are "Jenji Affiliates."
2. **"Authorized User"** means one individual who was provided access credentials by Customer to access and use Jenji Enterprise.
3. **"Confidential Information"** means: (a) Customer Data (which will be deemed Customer's Confidential information); (b) Jenji Enterprise, its pricing, and any non-public technical documentation about Jenji Enterprise (which will be deemed Jenji's Confidential Information); (c) any information of a party that is disclosed in writing or orally and designated confidential at the time of disclosure (and, for oral disclosures, summarized in writing within 30 days of initial disclosure and delivered in written summary form to the Recipient, as defined below), or that, due to the nature of the information or circumstances of disclosure, the Recipient should reasonably understand to be the Discloser's (as defined below) confidential information; and (d) any Order Form and any amendment to this Agreement or an Order Form (which will be deemed Confidential Information of both parties). Confidential Information will not include information that the Recipient can demonstrate was: (i) generally known to the public at time of disclosure or becomes generally known through no wrongful act or omission of the Recipient; (ii) rightfully in the Recipient's possession, or otherwise rightfully known by the Recipient, at time of disclosure by the Discloser and not subject to a confidentiality obligation; or (iii) independently developed by employees and contractors of the Recipient who had no access to the Confidential Information.

4. **"Consulting Services"** means user assistance, consulting, and training services provided by or on behalf of Jenji pursuant to a Service Description.
5. **"Customer Data"** means electronic data uploaded by or for Customer or Authorized Users, and processed in Jenji Enterprise for expense management.
6. **"Documentation"** means the then-current service operating and interface instructions (including API documentation) published for each version for use of Jenji Enterprise published by Jenji at <https://support.jenji.io/> and <https://developer.jenji.io/api/enterprise/>.
7. **"Effective Date"** means the earlier date that: (a) Customer signs an Order Form; or (b) Customer accepts this Agreement as described above.
8. **"Intellectual Property Rights"** or "IPR" means all intellectual property or other proprietary rights worldwide, including patent, trademark, service mark, copyright, trade secret, know-how, moral right, and any other intellectual and intangible property rights, including all continuations, continuations in part, applications, renewals, and extensions of any of the foregoing, whether registered or unregistered.
9. **"Law"** means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, and requirements of any government authority (federal, state, local, or international) having jurisdiction.
10. **"Order Form"** means an ordering document signed by the authorized representatives of Customer and Jenji that specifies: (a) Jenji Enterprise subscriptions purchased, its pricing, and the Subscription Term; and (b) the scope and price of Consulting Services purchased (if any).
11. **"Service Description"** means a written description of Consulting Services attached to or referenced in an Order Form.
12. **"Subscription Term"** means the period of authorized access to Jenji Enterprise as set forth in an Order Form.
13. **"Support"** means technical support and maintenance for Jenji Enterprise.
14. **"Jenji Enterprise"** means the Jenji software-as-a-service offering ordered by Customer under an Order Form or via a registration portal, sample data or data uploaded by Jenji therein (excepting Customer Data), any updates and upgrades thereto, and any modifications, enhancements, or improvements, of any of the foregoing.

2. Purchasing

1. **Orders.** Customer may purchase Jenji Enterprise access or Consulting Services as identified in an Order Form pursuant to the terms of this Agreement. Upon execution by the parties, each Order Form is non-cancellable and, except as otherwise provided in this Agreement, non-refundable. Prices stated in each Order Form are final. Each Subscription Term is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on a purchase of the entire Subscription Term. Jenji Enterprise includes Support as set forth in the Order Form.

2. **Invoices and Payment.** Jenji will issue to Customer the initial invoice corresponding with each Order Form upon the provision of administrative credentials for use of Jenji Enterprise by email. Consulting Services are offered on a fixed-fee basis invoiced upon signature of the corresponding Order Form. Customer will pay each invoice in full, within 45 days after the date of the electronic invoice to the email address provided by Customer. Late payments will accrue interest at a rate of 1.5% per month or the legal maximum, whichever is lower. Customer will make payments free of any currency controls or other restrictions, by check or wire transfer, to the address or bank account designated by Jenji. Customer may not reduce any amount payable to Jenji under this Agreement due to any counterclaim, set-off, adjustment, or other claim Customer might have against Jenji, any other party, or otherwise. Jenji may verify Customer's use is in compliance with the purchased use limitations herein, and if Jenji determines that Customer has exceeded its permitted use rights, Jenji will notify Customer and within 30 days thereafter Customer shall either: (a) reduce its use to match permissions; or (b) purchase subscription rights commensurate with its actual use.
3. **Taxes.** Amounts payable under this Agreement are stated exclusive of all taxes, duties, levies, imposts, fines, or similar governmental assessments of any nature, including, for example, sales, use, GST, withholding, value-added, or similar taxes, imposed by any jurisdiction, and the interest and penalties on any of these (collectively, "Taxes"). Customer will pay all Taxes associated with the transactions, access, and use, contemplated by this Agreement except Taxes based on Jenji's net income, property, or employees. If Jenji has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Jenji will invoice Customer and Customer will pay that amount unless Customer provides Jenji with a valid tax exemption certificate authorized by the appropriate taxing authority prior to execution of the applicable Order Form. Taxes will not be deducted from payments to Jenji, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, Jenji receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon Jenji's request, Customer will provide to Jenji its proof of withholding tax remittance to the respective tax authority.

4. **Evaluation Access.** Jenji may occasionally offer to Customer evaluation, trial, or other free access to Jenji Enterprise (an "Evaluation Subscription"). Customer may use an Evaluation Subscription exclusively to determine whether to purchase a subscription to Jenji Enterprise. In addition, Customer must use an Evaluation Subscription labeled "test" or "beta" solely with non-production, non-confidential data. Customer may not use Evaluation Access for any production, professional, or for-profit purpose. Evaluation Subscriptions may be offered by Jenji without a corresponding Order Form, in which case the Subscription Term will be 30 days and are limited to up to ten users and up to 1,000 expenses (as that term is described in the Documentation) made available to Jenji Enterprise for processing, unless otherwise additional rights are expressly specified in an Order Form or the Documentation. FOR ANY EVALUATION SUBSCRIPTION, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN: (A) JENJI ENTERPRISE IS PROVIDED "AS-IS" WITHOUT WARRANTY OR SUPPORT OF ANY KIND, EXPRESS OR IMPLIED; (B) JENJI MAY TERMINATE CUSTOMER'S ACCESS AT ANY TIME, FOR ANY REASON AND WITHOUT LIABILITY OF ANY KIND; AND (C) JENJI WILL HAVE NO INDEMNITY OBLIGATION HEREUNDER, AND JENJI'S TOTAL LIABILITY WITH RESPECT TO THE EVALUATION SUBSCRIPTION WILL NOT EXCEED EUR 500 (FIVE HUNDRED EUROS). This Section 2.4 will supersede any conflicting terms in this Agreement with respect to any Evaluation Subscription.

3. Permissions and Limitations

1. **Access.** Subject to the terms and conditions of this Agreement and payment of all fees due, Jenji authorizes Authorized Users to access and use Jenji Enterprise during the Subscription Term and to the extent expressly specified (including regarding expense limits or other pricing metric) in the applicable Order Form, solely for its internal business purposes in accordance with the Documentation. Notwithstanding the foregoing, Jenji Enterprise subscriptions designated in an Order Form as non-production may be used solely for use case development, testing, user training, and similar non-production purposes.
2. **Authorized Users.** Authorized Users will receive unique username and password credentials to access Jenji Enterprise. User credentials may not be shared between Authorized Users and Customer must ensure that all Authorized Users keep user credentials strictly confidential. Customer may permit third-party contractors who are not competitors of Jenji and Affiliates to access Jenji Enterprise as Authorized Users in accordance with this Agreement, provided that Customer will be wholly responsible for compliance with this Agreement as if such third parties were Customer.

3. **Support.** Jenji will provide Support for Jenji Enterprise during the Subscription Term.
4. **Restrictions.** Customer will not (and has no right to): (a) use Jenji Enterprise or Documentation except as permitted in this Agreement; (b) disassemble, decompile, port, reverse compile, reverse engineer, translate, or otherwise attempt to separate any of the components of the Jenji Enterprise or reconstruct any Jenji Enterprise, or attempt to derive or obtain any source code, structure, algorithms, processes, techniques, technologies, know-how, or ideas embodied by, underlying, or contained in the Jenji Enterprise; (c) sell, license, sublicense, rent, lease, encumber, lend, distribute, transfer, or provide a third party with access to the Jenji Enterprise, for time sharing, as a managed service provider, or otherwise (except as expressly set forth in an Order Form); (d) alter, modify, or create derivative works of the Jenji Enterprise (including any source code) in any way, including through customization, translation, or localization; (e) remove or alter any trademark, logo, copyright, or other proprietary notices, legends, symbols, or labels in Jenji Enterprise or Documentation, including in generated expense reports; (f) circumvent or remove by any means any click-accept or copy protection used by Jenji in connection with Jenji Enterprise, or use user credentials not supplied by Jenji; (g) use the Jenji Enterprise or Documentation to conduct competitive research, to develop a product that is competitive with any Jenji product offering, or otherwise access it if Customer is a competitor to Jenji, or to assert, authorize, assist, or encourage a third-party to assert, against Jenji or any of its affiliates, customers, vendors, business partners, or licensors, any patent or other IPR claim regarding Jenji products or services; (h) publicly disseminate any performance or security vulnerability test (including a penetration test) results or analysis related to or derived from the Jenji Enterprise; (i) use Jenji Enterprise or Documentation to create a product that converts Jenji Enterprise file formats for use with expense management software that is not the property of Jenji; (j) automate processes, including API calls, user interface process automations, or visualizations, if such automation or integration has a detrimental impact on Jenji's ability to provide Jenji Enterprise to its other customers; (k) use Jenji Enterprise to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or otherwise engage in a malicious act or disrupt its security, integrity, or operation; or (l) access or disable any Jenji or third-party data, software, or network (other than Customer's own instance). Before Customer engages in any of the foregoing acts that it believes it may be entitled to, it will provide Jenji with 30 days' prior notice to legal@jenji.io, and provide reasonably requested information to allow Jenji to assess Customer's claim. Jenji may, in its discretion, provide alternatives that reduce adverse impacts to Jenji's IPR or other rights.

4. Customer Data

1. **License.** Subject to the terms of this Agreement, Customer hereby grants to Jenji a nonexclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide Jenji Enterprise to Customer or as required by Law. The parties hereby accept and will comply with the Jenji Enterprise Subscription Guide available at <https://www.jenji.io/legal>, which is incorporated herein by this reference.

2. **Accuracy and Backup.** Customer is solely responsible for the accuracy and content of all Customer Data. Customer represents to Jenji that: (a) Customer has sufficient rights in the Customer Data to authorize Jenji to process, distribute and display the Customer Data as contemplated by this Agreement and the Documentation; and (b) Customer's use of Jenji Enterprise and all Customer Data is at all times compliant with Customer's privacy policies and all applicable local, state, federal and international laws, regulations and conventions, including without limitation those related to data privacy, international communications and the exportation and transfer of technical or personal data. Jenji Enterprise does not replace the need for Customer to maintain regular data backups or redundant data archives. JENJI HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.
3. **Protected Health Information.** Customer shall not upload to Jenji Enterprise or publish thereon any patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("HIPAA"), or any similar federal or state laws, rules or regulations ("Health Information") and acknowledges that Jenji is not a Business Associate as that term is defined in HIPAA. Jenji will have no liability under this Agreement for Health Information, notwithstanding anything to the contrary herein.

5. Warranties

1. **Jenji Enterprise.** Jenji warrants that during the Subscription Term Jenji Enterprise will, under normal use, substantially conform to the specifications in the Documentation. To submit a warranty claim, Customer must request Support and reference this Section 5.1. Jenji will use commercially reasonable efforts to cause Jenji Enterprise to conform to the specifications in the Documentation at no charge to Customer, or if Jenji determines such remedy to be impracticable, either party may terminate this Agreement and the applicable Order Form for material breach. This warranty will not apply to: (a) use of Jenji Enterprise other than as described in the Documentation; (b) modification or use of an unsupported version of Jenji Enterprise by anyone but Jenji; or (c) failure caused by a product or integration not provided or expressly approved by Jenji or its agents. This Section 5.1 sets forth Customer's exclusive rights and remedies (and Jenji's entire liability) in relation to the warranty in this Section 5.1.

2. **Consulting Services.** Jenji warrants that it will perform Consulting Services in a professional manner using reasonable care and skill in accordance with industry standards. Customer will notify Jenji of any material breach within 30 days after performance of the non-conforming Consulting Services. On receipt of such notice, Jenji will use commercially reasonable efforts to re-perform the Consulting Services in substantial conformance with these warranty requirements, and if Jenji is unable to correct the reported non-conformity after two attempts, either party may terminate the applicable Order Form for Consulting Services and Customer will receive a refund of any pre-paid unused fees for the Consulting Services purchased thereunder. This Section 5.2 sets forth Customer's exclusive rights and remedies (and Jenji's entire liability) in relation to the warranty in this Section 5.2.
3. **Disclaimers.** EXCEPT FOR THE LIMITED WARRANTIES UNDER SECTIONS 5.1 (JENJI ENTERPRISE) AND 5.2 (CONSULTING SERVICES) AND TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, JENJI (ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS) AND JENJI AFFILIATES: (A) DO NOT MAKE, AND EXPRESSLY DISCLAIM, ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE JENJI ENTERPRISE, SUPPORT AND CONSULTING SERVICES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF JENJI KNOWS OR SHOULD HAVE KNOWN SUCH PURPOSE), TITLE, AND NON-INFRINGEMENT; (B) PROVIDE THE JENJI ENTERPRISE, SUPPORT, AND CONSULTING SERVICES "AS IS" AND "AS AVAILABLE"; AND (C) WITHOUT LIMITING THE FOREGOING CLAUSES (A) AND (B), MAKE NO (AND EXPRESSLY DISCLAIM) ANY WARRANTY THAT THE JENJI ENTERPRISE AND ANY USE THEREOF, WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, COMPATIBLE WITH ANY PARTICULAR ENVIRONMENT, OR FREE FROM DEFECTS, VIRUS, OR ERRORS (OR THAT ANY ERRORS WILL BE CORRECTED).

6. Proprietary Rights

1. **Confidentiality.** For the term of this Agreement, and surviving expiration or termination of this Agreement for up to three (3) years after disclosure of the Confidential Information, the party receiving Confidential Information (the “Recipient”) from the other party (the “Discloser”) will use it solely to perform the rights and obligations provided under this Agreement, and not for any other purpose without the Discloser’s prior written consent. The Recipient will hold in confidence, and not disclose to any third party, any of the Discloser’s Confidential Information. The Recipient will use at least the same degree of care in handling the Discloser’s Confidential Information as it uses to protect its own Confidential Information, but no less than reasonable care. The Recipient will notify the Discloser immediately on becoming aware of any unauthorized use or release of the Discloser’s Confidential Information. The Recipient may disclose the Discloser’s Confidential Information to those of its Affiliates, directors, advisors, employees, or contractors (collectively, “Representatives”) who have a need to know such Confidential Information to perform under or in relation to this Agreement, but only if such Representatives are subject to a binding, written agreement no less protective of the Discloser than the confidentiality terms of this Agreement. The Recipient will, at the Discloser’s request or on termination of this Agreement, return all originals, copies, and summaries of Confidential Information and other tangible materials and devices provided to the Recipient as Confidential Information, or at the Discloser’s option, certify destruction of same (although nothing in this sentence may be construed to require Jenji to purge archived backup media). Nothing under this Agreement or trade secret Law may be construed to restrict or limit Jenji’s right to perform (or assign any personnel to perform) Consulting Services for any other party or to use any information incidentally retained in the unaided memories of its personnel providing Consulting Services. The Recipient’s obligations under this Section 6.1 will not apply to Confidential Information that is required be disclosed by the Recipient to comply with a court order or Law, but only if the Recipient promptly notifies the Discloser to enable the Discloser to seek a protective order or other appropriate remedy, and takes commercially reasonable and lawful actions to avoid or minimize the extent of, and to obtain confidential treatment for, any such disclosure.
2. **Ownership.** As between the parties, Customer and its licensors will retain all right, title, and interest in and to all IPR in and to Customer Data. As between the parties, Jenji, Jenji Affiliates, and its and their suppliers and licensors own all right, title, and interest in and to all IPR in (and in all copies of) Jenji Enterprise and Documentation, regardless of the form or media in or on which the original or other copies may subsequently exist. Except for the limited licenses expressly granted in this Agreement, Jenji reserves all, and does not grant any other, rights (express, implied, by estoppel, through exhaustion, or otherwise).
3. **Feedback.** Jenji encourages Customer to provide suggestions, proposals, ideas, recommendations, or other input regarding Jenji Enterprise (collectively, “Feedback”). To the extent that Customer provides such voluntary Feedback to Jenji, Jenji may use it for any purpose without obligation of any kind.

7. Third-Party Claims

1. **Jenji.** Jenji will defend Customer from and against any claim or demand made by an unaffiliated third party alleging that the Jenji Enterprise, when used as authorized in this Agreement and unmodified by Customer, infringes IPR owned by such third party and will indemnify Customer from and against any damages and costs awarded against Customer or agreed in settlement by Jenji (including reasonable attorneys' fees) resulting from such claim or demand. If Customer's use of the Jenji Enterprise is (or in Jenji's opinion is likely to be) enjoined, if required by settlement or if Jenji determines such actions are reasonably necessary to avoid material liability, Jenji may, in its sole discretion: (a) substitute products of substantially similar functionality; (b) procure for Customer the right to continue using the Jenji Enterprise; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement and refund to Customer the fees paid by Customer for the remaining portion of the Subscription Term. Jenji will have no obligation in this Section 7.1 for any claim or demand to the extent arising from use of Jenji Enterprise combined or integrated with other products, processes, or materials (including Customer Data) where the infringement would not have arisen but for such combination or integration.
2. **Customer.** Customer will defend Jenji from and against any claim or demand by a third party arising from or relating to any Customer Data or any product or service offered by Customer in connection with or related to the Jenji Enterprise, and will indemnify Jenji from and against any damages and costs awarded against Jenji or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim or demand.
3. **Process.** The parties' indemnification obligations are expressly conditioned on the indemnified party: (a) providing prompt notification of any actual or threatened claim or demand; (b) giving the indemnifying party sole control of the defense and any related settlement negotiations; and (c) providing all necessary cooperation with the defense at the indemnifying party's reasonable request and expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Section 7 will not relieve the indemnifying party of its obligations therein; however the indemnifying party will not be liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying party in accordance with this Section. The indemnifying party will not stipulate, acknowledge, or admit fault or liability on the indemnified party's behalf, or publicize any settlement, without the indemnified party's prior written consent (which will not be unreasonably withheld, conditioned, or delayed). Any indemnification obligation in this Section 7 will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent. This Section 7 (Third-Party Claims) states the indemnifying party's entire liability and the indemnified party's exclusive remedy for third-party claims and third-party actions.

8. Limitations of Liability

1. **Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL, CUMULATIVE LIABILITY ARISING IN ANY WAY OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, WILL BE LIMITED TO DIRECT DAMAGES INCURRED IN REASONABLE RELIANCE IN AN AMOUNT NOT EXCEEDING: (A) FOR ANY GIVEN CLAIM, THE AMOUNTS PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR JENJI ENTERPRISE SUBSCRIPTIONS AND CONSULTING SERVICES GIVING RISE TO THE CLAIM DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE MOST RECENT EVENT GIVING RISE TO THE LIABILITY; AND (B) FOR ALL SUCH CLAIMS IN THE AGGREGATE, EUR 100,000 (ONE HUNDRED THOUSAND EUROS).
2. **Exclusions.** TO THE EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR JENJI WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, MULTIPLE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER INDIRECT DAMAGES, OR FOR DAMAGES RELATING TO: (A) LOSS OR INACCURACY OF, OR DAMAGE TO, CUSTOMER DATA; (B) LOST REVENUE OR PROFITS; (C) LOSS OF BUSINESS; (D) DAMAGE TO GOODWILL; (E) WORK STOPPAGE; (F) IMPAIRMENT OF OTHER ASSETS; OR (G) INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED AND WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH THEY ARE SOUGHT, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION, FORESEEABLE OR NOT, AND WITHOUT REGARD TO WHETHER A PARTY HAS BEEN ADVISED SUCH DAMAGES ARE POSSIBLE.
3. **Applicability.** The provisions of Sections 8.1 (Limitation of Liability) and 8.2 (Exclusions) do not apply to: (a) infringement, misappropriation, or other violation by a party of the other party's IPR; (b) breach by a party of its obligations under Section 6.1 (Confidentiality) (but excluding claims or liability related to Customer Data); (c) payments to a third party arising from obligations under Section 9 (Third-Party Claims); or (d) tort actions (separate and distinct from a cause of action for a breach of this Agreement) for a party's gross negligence or willful misconduct. The parties, and not their Affiliates, suppliers, or licensors, are wholly responsible for any liabilities hereunder.

9. Term and Termination

1. **Term and Termination.** This Agreement begins on the Effective Date and continues until terminated under its terms. Either party may terminate this Agreement in its entirety: (a) on 30 days' prior written notice, if there are no Order Forms then in effect; (b) immediately on written notice if the other becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within 60 days of its commencement or an assignment for the benefit of creditors; or (c) immediately on written notice if the other materially breaches this Agreement and has not cured the breach within 30 days after notice from the non-breaching party. Consulting Services are separately ordered from, and are not required for use of, Jenji Enterprise. A breach by a party of its obligations with respect to Consulting Services shall not alone constitute a breach by that party of its obligations with respect to the Jenji Enterprise even if purchased in the same Order Form.
2. **Effect.** On termination of this Agreement or expiration of Jenji Enterprise access for any reason: (a) all use rights and access granted by Jenji will automatically terminate; (b) the parties will destroy all copies of Confidential Information in their possession, custody, or control; and (c) if requested, either party will certify such return or destruction in writing. Within 30 days after the effective date of proper termination for Jenji's material breach, Jenji will refund any prepaid fees received by Jenji covering that part of the Subscription Term for the affected Jenji Enterprise subscription, if any, remaining after such effective date. If termination is for Customer's breach, all remaining amounts are accelerated and deemed due and payable as of the termination date.
3. **Survival.** Except as otherwise provided in this Agreement, the following will survive termination of this Agreement: Sections 1 (Definitions), 2.2 (Invoices and Payment), 2.3 (Taxes), 2.4 (Evaluation Access), 3.4 (Restrictions), 5.3 (Disclaimers), 6 (Proprietary Rights), 8 (Limitations of Liability), 7 (Third-Party Claims) (but only for one year following the Effective Date), 9 (Term and Termination), and 10 (General).
4. **Suspension.** In addition to other rights or remedies in this Agreement, Jenji reserves the right to suspend provision of Jenji Enterprise: (a) if Customer has a payment 30 or more days overdue; (b) if Jenji deems such suspension necessary as a result of Customer's breach of Sections 3.4 (Restrictions) or 4 (Customer Data); (c) if Jenji reasonably determines suspension is necessary to avoid material harm to Jenji or its other customers, including if Jenji Enterprise is receiving denial of service attacks, integration overuse, or other attacks or disruptions outside of Jenji's control; or (d) as required by Law or at the request of governmental authorities.

10. General

1. **Announcements.** Neither party will issue any press releases or announcements, or any marketing, advertising, or other promotional materials, related to this Agreement, or referencing the other party, nor use the other party's logo, trademarks and service marks, without the other party's prior written approval.
2. **Export Compliance.** Each party will comply with local and foreign export control Law, including **France** export control Law. In addition, Customer is responsible for complying with any local Law that may impact Customer's right to import, export, or use Jenji Enterprise.
3. **Waiver; Amendment.** No delay or failure by either party to exercise any right under this Agreement will waive that or any other right. A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party. Any amendment to this Agreement must be in writing and signed by authorized representatives of both parties.
4. **Assignment.** Neither party will assign, delegate, or otherwise transfer this Agreement, or any of its rights or duties under it, to a third party without the other's prior written consent, which will not be unreasonably withheld, conditioned, or delayed. Any purported transaction in breach of this Section 10.5 material and is void. Each party is, however, deemed to have consented to any such assignment, delegation, or transfer to: (a) an Affiliate; or (b) any entity that acquires all or substantially all of its capital stock or assets related to this Agreement through purchase, merger, consolidation, or otherwise, but only if such entity is not a direct competitor of the non-assigning party. Subject to the foregoing, this Agreement will bind and benefit the parties, their successors, and permitted assigns.
5. **Notices.** All notices and other communications under this Agreement will be: (a) in writing; (b) in English; and (c) deemed given when delivered (or the first business day after delivery with confirmation of receipt, for notices permitted by email). Notices under this Agreement will be sufficient only if: (i) personally delivered; (ii) delivered by a major commercial rapid delivery courier service with tracking capabilities; (iii) mailed by certified or registered mail, return receipt requested, to a party at the address stated in this Agreement (or at such address as the recipient has notified the other party of, before notice was sent); or (iv) sent via email, if the recipient's email address is provided in this Agreement (but email will not be sufficient for notices regarding a Claim or alleged breach). All notices except for ordinary business communications will be cc'd to the address stated in this Agreement.
6. **Dispute Resolution.** This Agreement and performance under it will be governed by the laws of **France**. The parties consent to exclusive jurisdiction and venue at the ordinary courts of **Nanterre, France**. In any such suit, action, or proceeding, the prevailing party may recover its reasonable attorneys' fees, costs, and other expenses, including those on appeal or in a bankruptcy action. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

7. **Force Majeure.** Neither party will be responsible for any delay or failure in its performance of any obligation under this Agreement (other than payment) due to causes beyond its reasonable control, but only if the party invoking this Section 10.8 promptly notifies the other party and resumes performance promptly when conditions allow it to do so.
8. **Relationship.** The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. There are no third-party beneficiaries to this Agreement.
9. **Severability.** If any part of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that part will be deemed reformed to effectuate the parties' intentions, and the rest of this Agreement will remain in full force and effect.
10. **Execution and Construction.** This Agreement is effective only when executed by electronic signature service, or in counterparts, which together will be deemed the entire agreement. Such execution requirement is, without limitation, a material term. Section headings are intended solely for convenience and will not affect the meaning of this Agreement. This Agreement will be interpreted according to its plain meaning without presuming it should favor either party. Unless stated or context requires otherwise: (a) all internal references are to this Agreement and its parties; (b) first-level section references (e.g., "as provided in Section 1") includes all subordinate subsections (e.g., 1.1, 1.2, etc.) within that section; (c) all monetary amounts are expressed and, if applicable, payable, in Euros; (d) "days" means calendar days; (e) "may" means that the applicable party has a right, but not a concomitant duty; (f) "notify" means to give notice under (and "notice" means a notice that complies with) Section 10.6 (Notices); (g) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured; (h) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; (i) lists of examples following "including", "e.g.", "such as", "excludes", "for example", or similar words are deemed to include "without limitation"; (j) the word "or" is deemed to be an inclusive "or"; and (k) a party's choices under this Agreement are in its sole discretion. Any translation of the English-language version of this Agreement is for convenience only, and the English-language version will govern. If Customer is domiciled in Canada, the parties expressly wish to execute this Agreement and any associated documentation in English.

11. Entire Agreement. This Agreement sets forth the complete and exclusive agreement between the parties relating to its subject matter and supersedes all prior oral and written agreements, understandings, and communications (including any requests for quote, requests for information, requests for proposal, or the like), click-through agreements and embedded end-user license agreements, regarding its subject matter. Purchase orders issued by Customer are for Customer's internal purposes only. Invoices issued by Jenji will be effective solely to specify the charges for the Jenji Enterprise subscription and Consulting Services. Purchase orders issued by Customer are for Customer's internal purposes only and Jenji rejects, and in the future is deemed to have rejected, any purchase order terms. All other terms and conditions printed or included on, or referenced in, such purchase orders, invoices, and other ordering documents or correspondence, that purport to add to or modify the terms of this Agreement are expressly rejected by Jenji and will be of no force or effect.