

## ZIYNX™ End User License Agreement

Last revised: June 14, 2021

This End User License Agreement describes and governs the relationship between Next Act Group LLC (“ZIYNX”) and the company executing a purchase order form that references this document (“**Company**”) as of the date of Company’s signature to such purchase order form (the “**Effective Date**”). This End User License Agreement (or, if applicable, Company’s written agreement with ZIYNX), the ZIYNX Privacy Policy, the ZIYNX Terms of Service, and any invoices together form a binding agreement (the “**Agreement**”) between Company and ZIYNX. Capitalized terms used but not defined in this End User License Agreement have the same meanings as provided in the Privacy Policy or Terms of Service.

### **1. Key Definitions.**

“**Application**” – means the software program provided by ZIYNX and accessed by Company and Company Authorized Users on personal devices such as a computer, a cell phone, or a digital tablet.

“**Company Authorized User**” - means an employee, consultant, or independent contractor who has been identified by the Company as such and who i) creates an account on the Application and registers a personal user account which includes name, email, and password and ii) has accepted and agreed to the terms of this Agreement.

“**Subscription**” - means the license described in the purchase order form that permits one or more Company Authorized Users to access the Application and any particular Services.

“**Services**” – means the Application and other services included in Company’s Subscription, as identified in the purchase order form between the parties.

“**Term**” - means the duration of this Agreement as set forth in Section 8.

“**User Content**” means content (including, but not limited to, videos, photographs, images, artwork, graphics, audio clips, comments, data, text, software, scripts, campaigns, other material and information, and associated trademarks and copyrightable works) that may be contributed, added, created, submitted, distributed, collected, posted, or otherwise made accessible through submission to the Application by Company Authorized Users in order to use the Application or Services.

### **2. License.**

#### **License to Company**

ZIYNX grants to Company during the Term a limited, revocable, nonexclusive, non-transferable, non-sublicensable license to access and use the Application and Services strictly for the benefit of Company’s business operations. The Company’s license to use the Application and Services is subject to the terms and conditions of this Agreement, including any usage or other limitations set forth herein or in the applicable purchase order form. Company shall undertake reasonable efforts to ensure all Company Authorized Users are aware of the provisions of this Agreement that are applicable to their use of the Application and Services and shall cause them to comply with such provisions.

#### **License to ZIYNX**

To enable ZIYNX to provide the Application and Services, Company grants to ZIYNX during the Term a nonexclusive, royalty-free, irrevocable, sub-licensable and transferable (in whole or in part) worldwide license to use, modify, publicly display, reproduce, and distribute User Content on and through the Application in connection with ZIYNX provision of the Services, including in connection with the

development, production, distribution and/or exploitation (including marketing and promotion) of ZIYNX generally, unless otherwise prohibited by law.

### **Limited Trademark License**

The parties are the owners of their own trademarks, trade names and logos used in connection with their respective products and services. Neither party shall acquire any ownership interest in any trademarks, trade names or logos of the other party by virtue of this Agreement, its activities under it, or any relationship with the other party. During the Term, each party grants to the other party a limited, non-exclusive, royalty-free, non-transferable license to display approved trademarks and logos for the limited purposes of performing its obligations under this Agreement or recognizing the other party as a service provider or customer of the Services (as applicable), and all such use shall be in accordance with the owning party's relevant usage guidelines. Upon termination of this Agreement, each party shall immediately discontinue all use of the other party's names or trademarks or any other combination of words, designs, trademarks or trade names that would reasonably indicate a relationship between the parties.

### **3. Company Security & Infrastructure Obligations.**

#### **Company Authorized Users**

The Company Authorized Users of the Company's account with the roles of "Owner" or "Administrator" shall be responsible for i) identifying and inviting company personnel or team members to join as authorized users of the Company's account and ii) designating and assigning the roles and rights of each Company Authorized User. Company will be responsible for maintaining the confidentiality and security of such passwords and login IDs and all activities that occur under these IDs, regardless of whether such passwords and login IDs are generated and managed by Company or by ZIYNX. Company will ensure that each login ID and password issued to a Company Authorized User will be used only by that authorized user. Company agrees to notify ZIYNX promptly of any actual or suspected unauthorized use of any account, login ID or passwords, or any other breach or suspected breach of these security requirements. ZIYNX reserves the right to terminate any login ID which ZIYNX reasonably believes may have been used by an unauthorized third party or by any user or individual other than the Company Authorized User to whom such login ID and password was rightfully assigned. Company is also responsible for maintaining the required hardware, software, Internet connections and other resources necessary for Company and Company Authorized Users to access the Services through the Application.

### **4. User Restrictions.**

Company agrees to use the Application and Services per the total number of licensed seats as may be specified in the purchase order form. Company is solely responsible for any actions taken by the Company Authorized Users. Company agrees that it and its Company Authorized Users will not do or permit any of the following: (i) use the Application or Services for any illegal, defamatory, deceptive, obscene, offensive, fraudulent purpose or otherwise inappropriate purpose; (ii) use the Application or Services for competitive analysis, development of a competing product or any other purpose to ZIYNX's commercial disadvantage; (iii) use the Application or Services in violation of the rights of any other party, including, but not limited to, intellectual property rights; (iv) attempt to gain unauthorized access to any features of the Application or Services; (v) directly or indirectly reverse engineer or otherwise disassemble any aspect of the Application; (vi) directly or indirectly modify, translate, or otherwise create derivative works of any part of the Application or Services; (vii) directly or indirectly license, copy, sell,

rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder or commercially exploit the Services; (viii) directly or indirectly take any action that constitutes unsolicited or unauthorized messaging on the Application; (ix) directly or indirectly distribute viruses, worms, defects, Trojan horses, corrupted files, hoaxes, or any other items of a destructive or deceptive nature or otherwise attempt to interfere with the proper working of the Application or Services; or (x) monitor, crawl, cache, or scrape the Application or Services.

Company's access to the Application or Services may be suspended or terminated immediately upon written notice if ZIYNX, in its commercially reasonable business judgment, believes Company or any Company Authorized Users have breached these conduct obligations.

## 5. Intellectual Property.

### **ZIYNX Intellectual Property**

ZIYNX owns or is an authorized licensee for all intellectual property used for purposes of providing the Application and Services under this Agreement, whether developed prior to the commencement of this Agreement or anytime thereafter ("**ZIYNX Properties**"). All right, title and interest (including, without limitation, all copyright, patent, trade secret, trademark and other intellectual property rights) in and to the ZIYNX Properties (including the Application) and any corrections, updates, adaptations, enhancements or copies of the foregoing shall remain or vest exclusively with ZIYNX.

### **Company Intellectual Property**

Company owns or is an authorized licensee for all intellectual property used for purposes of providing the User Content under this Agreement. All right, title and interest (including, without limitation, all copyright, patent, trade secret, trademark and other intellectual property rights) in and to the User Content shall be owned exclusively by Company, provided that Company grants to ZIYNX a non-exclusive, worldwide license to copy, transmit, modify and use the User Content solely for purposes of providing the Services.

## 6. Confidentiality.

For the purposes of this Agreement, "**Confidential Information**" means information or documentation of a party identified as "confidential" or "proprietary" or marked with similar designation or which the other party knows, has reason to know or should have known under the circumstances should be treated as confidential or proprietary, relating to such party's business, services or products, which information may include, but is not limited to, software, services, financial information, sales information, product plans and roadmaps, trade secrets (whether or not currently in use), techniques, inventions, know-how, and business processes. Without limiting the foregoing, the Application, Services, and the terms and conditions of this Agreement shall be considered Confidential Information. Notwithstanding the foregoing, "Confidential Information" shall not include information that: (1) is or becomes generally known or available through no fault of the Recipient (as defined below); (2) is known and has been reduced to tangible form by Recipient before the time of disclosure by Discloser and is not subject to restriction; (3) is lawfully obtained from a third party who has the right to make such disclosure; or (4) is released for publication in writing by Discloser. Each party as "**Recipient**" ensures that it and its employees, agents, contractors, consultants and representatives (collectively "**Representatives**") will not disseminate, or in any way disclose, any Confidential Information of the other party as "**Discloser**" to any person, firm or business, except as necessary to perform and enforce obligations under this Agreement

and then only under a written confidentiality agreement or other binding confidentiality obligation no less restrictive than this section. Each party is responsible for any breach of its confidentiality obligations by its respective Representatives. Recipient further ensures that it and its Representatives will use Discloser's Confidential Information only for the purposes contemplated by this Agreement. The obligations with respect to Confidential Information will continue until such time it ceases to be considered confidential pursuant to this Section 6. Notwithstanding the foregoing, nothing herein shall restrict a party from disclosing the other party's Confidential Information to the extent required by any court order or law or regulation; provided that the party required to make such a disclosure uses reasonable efforts to give the other party reasonable advance notice of such required disclosure in order to enable the other party to prevent or limit such disclosure. In the event the terms of this Agreement conflict or are otherwise inconsistent with terms of any non-disclosure agreement the Parties entered into prior to the Effective Date concerning Confidential Information disclosed during the course of performance under this Agreement, the terms of this Agreement shall control.

## **7. Payment.**

### **Paid Subscription**

If the Company purchases a paid Subscription, Company agrees to pay the applicable fees and taxes specific to the paid Services as set forth in the applicable purchase order form. To pay for such services, Company must provide ZIYNX with the required information to process such purchase order, including but not limited to, Company name, billing address, and payment method. Prices for Subscriptions may be subject to change, however ZIYNX will provide advance written notice to Company of any applicable price changes.

### **Third-Party Payment Processor**

ZIYNX may use third-party electronic payment processors ("**Payment Processors**") to process payments for services or products. The information that ZIYNX provides to and receives from these Payment Processors and the manner in which such information is used and disclosed is described in further detail in the ZIYNX Privacy Policy. Company authorizes ZIYNX, as necessary, to instruct such Payment Processors to handle payments and Company irrevocably agrees that ZIYNX may give such instructions on Company's behalf in accordance with its requests as submitted through the Application. You agree to be bound by the terms and conditions of each applicable Payment Processor. You further agree that ZIYNX is not liable for any loss caused by any unauthorized use of Company's method of payment by a third party, except as a result of ZIYNX gross negligence.

## **8. Term and Termination.**

### **Term**

This Agreement shall commence on the Effective Date and continue for the initial term set forth in the purchase order form (the "**Initial Term**") unless and until terminated in accordance with this Section 8. Thereafter, this Agreement will continue for additional one-year renewal terms (each a "**Renewal Term**") unless and until either party has given written notice of its intent not to renew this Agreement within thirty (30) days prior to the end of the Initial term or any Renewal term (the Initial Term and all Renewal Terms are collectively the "**Term**").

### **Termination for Breach; Suspension of Services**

Either party may terminate this Agreement if the other party: (i) materially breaches this Agreement and

such breach is incapable of cure, or with respect to a breach capable of cure, the other party does not cure such breach within thirty (30) days after receipt of written notice of such breach or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

#### **Effect of Termination or Expiration**

Upon termination of this Agreement, all licenses granted to either party hereunder with respect to the Application and Services shall automatically terminate and each party shall immediately discontinue its use thereof. Any and all unpaid fees and expenses incurred in connection with the Company's use of the Application or Services prior to termination shall become immediately due and payable. Each party shall work together in good faith to address any and all post-termination issues concerning this Agreement, including but not limited to the retrieval or destruction of Company data and Confidential Information. This subsection and Sections 1, 4-6, and 10-13 shall survive any termination or expiration of this Agreement.

#### **9. Changes in Services or Application.**

ZIYNX reserves the right to modify, suspend or discontinue all or any aspect of the Application or Services. ZIYNX may modify the Application or Services from time to time, with the intent to (i) improve or clarify existing commitments; (ii) maintain alignment to current adopted standards and applicable laws or regulations; or (iii) provide additional features and functionality. Modifications will not degrade the security, data protection features, or functionality of the Application or Services.

#### **10. Warranty and Disclaimer.**

**THE APPLICATION AND SERVICES AND ALL INFORMATION CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS, ZIYNX, ITS AFFILIATED COMPANIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND OTHER REPRESENTATIVES, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND PERTAINING TO THE SERVICES AND THE MATERIALS HEREIN, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, SECURITY, ACCURACY, AVAILABILITY, USE REASONABLE CARE AND SKILL, AND NON-INFRINGEMENT, AS WELL AS WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING, AND COURSE OF PERFORMANCE. ZIYNX MAKES NO WARRANTY THAT (I) THE SERVICES WILL MEET COMPANY'S REQUIREMENTS, (II) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR FREE OF VIRUSES OR BUGS, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, AND (IV) ANY ERRORS IN OR ON THE SERVICES WILL BE CORRECTED. ANY MATERIAL, CONTENT, OR INFORMATION DOWNLOADED OR OTHERWISE OBTAINED AND/OR USED THROUGH THE SERVICES IS DONE AT COMPANY'S OWN DISCRETION AND RISK AND COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL, CONTENT OR INFORMATION. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY COMPANY FROM ZIYNX ON OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF SERVICE. COMPANY AGREES THAT USE OF THE SERVICES IS AT ITS OWN RISK

AND THAT ZIYNX ASSUMES NO RESPONSIBILITY OR LIABILITY FOR THE TRUTHFULNESS, ACCURACY, TIMELINESS OR COMPLETION OF THE CONTENT OR FAILURE BY THE SERVICES.

#### **11. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR BREACHES OF SECTIONS 4 OR 6, IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICE (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), OR (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGINATION).

EACH PARTY'S LIABILITY FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED IN THE AGGREGATE OF THE AMOUNT OF FEES PAID AND OWED BY COMPANY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

#### **12. Indemnification.**

##### **Indemnification by ZIYNX**

ZIYNX agrees to defend, indemnify, and hold Company harmless from and against any loss, damage, or liability from any claim, suit or proceeding (collectively, a "**Claim**") to the extent arising out of, or related to, the use by Company of the Application or Services in strict accordance with this Agreement and alleging infringement of the intellectual property rights of a third party; provided that Company: (i) promptly notifies ZIYNX of such Claim; (ii) provides ZIYNX with full control of the defense and settlement of each such Claim; (iii) cooperates with ZIYNX in such defense and settlement, and (iv) does not settle any such Claim or suit without ZIYNX' prior written consent. Company may participate in the defense and settlement of any Claim with counsel of its choice at its own expense provided that ZIYNX shall continue to have sole control of such defense or settlement. If any portion of the Application becomes, or in ZIYNX's opinion is likely to become, the subject of a claim of infringement, ZIYNX may, at its option: (a) procure for Company the right to continue using the Application; (b) replace the Application with non-infringing services which do not materially impair the functionality of the Application; (c) modify the Application so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused fees actually paid by Company to ZIYNX for the remainder of the term then in effect, and upon such termination, Company will immediately cease all use of the Application. Notwithstanding the foregoing, ZIYNX shall have no obligation under this section or otherwise with respect to any infringement claim based upon (I) any use of the Application not in accordance with this Agreement or not as specified in the documentation; (II) any use of the Application in combination with other products, equipment, software or data not supplied by ZIYNX if the Application without such combination does not infringe; or (III) any modification of the Application by any person other than ZIYNX or its authorized agents. This Section 12 states the sole and exclusive remedy of Company and the entire liability of ZIYNX with respect to infringement claims and actions.

ZIYNX indemnification obligations do not extend to any Claims arising out of Company's or Company Authorized Users' gross negligence or willful misconduct.

### **Indemnification by Company**

Company, at its expense, shall defend, indemnify, and hold ZIYNX harmless to the extent any Claims relate to or arise from: (i) Company's material breach of this Agreement; (ii) any use of the Application other than as specified by ZIYNX or for any illegal purposes; or (iii) alleged infringement of the intellectual property rights of a third party; provided that ZIYNX: (1) promptly notifies Company of such Claim; (2) provides Company with full control of the defense and settlement of each such Claim; (3) cooperates with Company in such defense and settlement, and (4) does not settle any such Claim without Company's prior written consent. ZIYNX may participate in the defense and settlement of any Claim with counsel of its choice at its own expense provided that Company shall continue to have sole control of such defense or settlement. Company's indemnification obligations do not extend to any Claims arising out of ZIYNX's gross negligence or willful misconduct.

### **13. Miscellaneous.**

#### **Assignment**

Company may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of ZIYNX, which shall not be unreasonably withheld. This Agreement does not extend to Company's parent corporation, subsidiaries or affiliates unless such entities are explicitly designated in the purchase order form. Notwithstanding the foregoing, ZIYNX may freely assign, transfer, or delegate any of its rights and obligations hereunder.

#### **Entire Agreement**

This Agreement, including the purchase order form and any policies or terms incorporated by reference herein, constitutes the entire agreement between the parties related to its subject matter, and supersedes all prior or contemporaneous agreements, representations, warranties, and understandings (whether oral, written or electronic) between the parties hereto. In the event of any conflict between the terms of this Agreement and the terms of any purchase order form or policies or terms incorporated by reference therein, the terms of this Agreement shall prevail except as expressly provided otherwise in the applicable purchase order form.

#### **Force Majeure**

No failure, delay, or default in performance of any obligation of a party to this Agreement will constitute a default or breach to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, beyond the reasonable control of the party (including, but not limited to: action or inaction of governmental, civil or military authority; fire; strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; pandemic; epidemic, and the like), provided that the party has acted without negligence or willful misconduct and is otherwise not chargeable with willful failure, delay, or default. Neither party shall be liable for any loss, injury, delay or damages suffered or incurred by the other party due to the above causes.

**Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the United States, without giving effect to any principles of conflicts of law, and without application of the Uniform Computer Information Transaction Act or the United Nations Convention of Controls for International Sale of Goods. The exclusive venue for any dispute arising out of or relating to this Agreement shall be a court of competent jurisdiction located in New York City, New York.

**Notice**

Any notice required or permitted to be given under this Agreement shall be given in writing and shall be delivered in person, by nationally recognized overnight delivery service or U.S. mail, or by electronic mail to the electronic mail address provided for the Company account owner. Notices shall be sent to the respective party at the addresses set forth in the purchase order form, or such other address as either party may specify in writing. All notices shall be deemed to have been given immediately upon delivery by electronic mail; or, if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail as permitted above.

**Relationship of the Parties**

Nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties shall at all times be that of independent contractors. Neither party shall have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

**Severability**

The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected or impaired thereby and shall nevertheless be binding between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof shall be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law or applicable court decisions.

**Waiver**

A waiver of a breach of any term of this Agreement must be in a writing signed by the waiving party and shall not be construed as a waiver of any succeeding breach of that term or as a waiver of the term itself. No failure or delay by either party to enforce or take advantage of any provision or right under this Agreement shall constitute a subsequent waiver of that provision or right, nor shall it be a waiver of any of the other terms and conditions of this Agreement. The exercise of any right or remedy provided in this Agreement shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.