

## Terms and Conditions for testing of NIVY WATCH Evaluation Kit

Please carefully read the following terms and conditions. This is a legally binding document. If you order an Evaluation Kit for testing, you will accept these general terms and conditions. Do not proceed with an order unless: (1) you are authorized to accept and agree to the terms of this document on behalf of your company; and (2) you intend to enter into and to be bound by the terms of this legally binding general terms and conditions on behalf of your company.

### 1. DEFINITIONS

- 1.1. “Application” any code developed by Developer communicating with the Evaluation Kit that adds or supplements new and independent functionality to Evaluation Kit, but does not constitute the actions as defined in section 5.5. hereof.
- 1.2. “Cloud Terms of Service” means the RESCO Customer Terms of Service governing the rights and obligations between RESCO and Customer in the provision of Subscription Service and relevant licenses. Cloud Terms of Service are placed at [A.2 B.2 RESCO Customer Terms of Service ver 2020\\_09.pdf](#) and they are binding for the Developer from the day of acceptance of these GTCs.
- 1.3. “Commercial Code” means the Act no. 513/1991 Coll. Commercial Code as amended.
- 1.4. “Confidential Information” means all information which RESCO or Developer protect against unrestricted disclosure to others, or that are deemed confidential according to the circumstances of their disclosure or their content. In any case, the following information is considered to be Confidential Information of RESCO: the software, programs, tools, data and other material, that RESCO provides to Developer before or on the basis of these GTCs.
- 1.5. “Developer” means the company obtaining the Evaluation Kit for the purposes and under the conditions stated in these GTCs.
- 1.6. “Documentation” means RESCO’s technical or functional documentation pertaining to the Evaluation Kit which is delivered or made available to Developer.
- 1.7. “End Customer” means the customer of the Developer.
- 1.8. “Evaluation Kit” means hardware and software components and associated documentation provided by RESCO to the Developer for the purposes and under the conditions stated in these GTCs. Evaluation Kit is specified at <https://nivy.watch/>.
- 1.9. “GTCs” means these general terms and conditions.
- 1.10. “IP Rights” (Intellectual Property Rights) means without limitation any patents and other rights to inventions, copyrights,

trademarks, trade names, design patents and service marks and any other intangible property rights and all related rights of use or commercialization.

- 1.11. “NIVY WATCH” means the designation of the future final RESCO product after the testing and development process is finished.
- 1.12. “Price list” means always up to date document constituting part of these GTCs, placed at [Resco Fee List 2020\\_09.pdf](#) containing the information about the Evaluation hardware and software components and its prices.
- 1.13. “RESCO” means the company RESCO spol. s r.o., with the registered seat at Mlynské nivy 5, 821 09 Bratislava - mestská časť Ružinov, Slovak Republic, company ID: 35 768 916, registered in the Commercial Register of District Court Bratislava I., Section: Sro, File nr.: 19281/B.
- 1.14. Unless otherwise specified herein the capitalized terms used in these GTCs have the meaning assigned to them in the Cloud Terms of Service. For avoidance of doubts the Customer as specified in the Cloud Terms of Service shall be deemed as the Developer as specified herein.
- 1.15. In case of conflict between these GTCs and Cloud Terms of Service, these GTCs shall prevail.

### 2. SUBJECT MATTER OF THE GTCs

- 2.1. The subject matter of these GTCs is (i) a commitment of RESCO to provide the Developer with the Evaluation Kit and (ii) granting of the right to use the Evaluation Kit solely for the purpose stated in Subclause 2.2. hereof. The Developer expressly agrees to use the Evaluation Kit solely in accordance with Subclause 2.2. hereof.
- 2.2. **Purpose and scope of use.**  
Based on these GTCs RESCO commits to provide the Evaluation Kit and to grant the usage rights to Developer for the purpose of
  - testing - examining usability of the Evaluation Kit for its future using by the Developer or End Customer,
  - providing feedback to the RESCO in order to improve the final product NIVY WATCH by RESCO,
  - development of the Developer’s applications dedicated for the usage with NIVY WATCH,
  - examination of the business potential for the Developer, deployment in pilot projects.Based on above, Developer may use the Evaluation Kit solely for the purposes of evaluating its business potential, improving, developing and testing products.  
Developer agrees that it will not offer for sale or lease, sell or lease, transfer or distribute the Evaluation Kit to any third party

(including, without limitation, any End Customer, other developers, resellers or distributors).

The Evaluation Kit or other material included in its package may not be sold by Developer or used for any other purpose than those specified herein.

- 2.3. The specific subject matter of these GTCs is a commitment of RESCO to provide the Developer the Subscription Service and relevant licenses together with the Evaluation Kit.
- 2.4. RESCO provides the Developer with the Evaluation Kit and Subscription Service under these GTCs free of charge.

### 3. DOCUMENTATION AND DELIVERY

- 3.1. RESCO will deliver the Evaluation Kit on the basis of its ordering by the Developer through the website <https://nivy.watch/>. The delivery address shall be notified by Developer per e-mail.
- 3.2. The following delivery terms shall apply for Evaluation Kit shipped to Developer’s ship-to address: (i) to European Union ship-to addresses: DDP (Incoterms 2010) and (ii) to non-European Union ship-to addresses: DAP (Incoterms 2010). Developer shall be responsible for customs clearance and payment of all applicable import duties, taxes and fees. Simultaneously with the Evaluation Kit delivery, the Documentation will be also delivered.

### 4. CONDITIONS OF EVALUATION KIT USAGE

- 4.1. The Developer shall be entitled to only use the Evaluation Kit as specified in Clause 2. hereof.
- 4.2. The Developer agrees to properly take care of the Evaluation Kit working environment (e.g. hardware, operating system and network) in accordance with the Documentation. The Developer acknowledges that the Evaluation Kit is not a final product which means that the Developer must take higher attention in the process of its using. The Developer is fully responsible for the adoption of all measures in the field of safety and protection at work taking into account the nature and technical parameters of the Evaluation Kit.
- 4.3. The Developer shall only be entitled to make such enhancements of the Evaluation Kit that are permitted under the provisions of the GTCs, Documentation, as well as under the legal regulations in force in the Slovak Republic, European law and local regulation applicable to the Developer.
- 4.4. In the case of use of the Evaluation Kit exceeding the scope under these GTCs, RESCO shall be entitled to require the Developer to stop using the Evaluation Kit

and/or its return and to pay the contractual penalty corresponding to any and all penalties imposed to RESCO by the public authorities. For the payment of such contractual penalties RESCO will issue for the Developer an invoice, which the Developer shall pay within no more than thirty (30) days from the invoice date. Application of the contractual penalty shall not affect any claim for damages.

4.5. RESCO declares that the Evaluation Kit provided to the Developer under these GTCs has functional properties specified in the Documentation or at <https://nivy.watch/>; RESCO will not provide any other functional properties of the Evaluation Kit. The absence of such functional property, which is not explicitly mentioned in Documentation or at the corresponding web is not considered as a defect. Moreover, due to the fact that the Evaluation Kit is still product under development, RESCO shall not be responsible for any kind of defect or shortage.

4.6. The Developer is not entitled to use the Evaluation Kit in a productive way, including but not limited to the use of the Evaluation Kit to perform its own business processes or business processes of third parties.

4.7. **Evaluation Kit Features and Capabilities.**  
The Evaluation Kit may include pre-release features, capabilities or errata which may not be available or accessible in RESCO's commercial versions of the hardware or software contained in the Evaluation Kit. Pre-release features and capabilities in the Evaluation Kit may include features or capabilities that are not required in order to meet the RESCO data sheet specifications for the commercial versions of the hardware or software contained in the Evaluation Kit. Inclusion of such features or capabilities, or development or support of a commercial version of any of the pre-release feature or capability, is at RESCO's sole discretion.

#### 4.8. **Regulatory Compliance and Instructions.**

Developer understands that the Evaluation Kit or portions thereof may not have received all regulatory approvals required by governmental authorities and standards organizations for finished products as the Evaluation Kit is being provided solely for development and evaluation purposes.

Developer is responsible for ascertaining and complying with all applicable governmental regulations for the use of the Evaluation Kit in the appropriate jurisdiction. Developer is responsible for the compliance with local law when using the Evaluation Kit (e.g. in case of the use of the Evaluation Kit in the USA the Developer is obliged to adhere federal as well as local laws, bylaws and regulations).

To the extent RESCO provides notice to the Developer of additional instructions

regarding labeling or use of the Evaluation Kit, Developer will strictly comply with all such instructions.

## 5. **OWNERSHIP AND LICENSE**

### 5.1. **Ownership to IP Rights.**

RESCO or its suppliers retain all right, title and interest in all RESCO IP rights of the Evaluation Kit.

### 5.2. **Ownership to hardware.**

RESCO maintain the ownership to the hardware and material object of Evaluation Kit and transfer of such ownership is not a subject of these GTCs.

### 5.3. **Licenses.**

#### 5.3.1. **License granted by RESCO**

RESCO grants Developer a non-exclusive, non-transferable, time limited, territorially unrestricted license for the use of the RESCO's software included in the Evaluation Kit to the extent and for the purpose specified in Clause 2. hereof.

The license for the use of the Evaluation Kit is time-limited to the term of the usage rights stated in Subclause 1.9.1. hereof.

RESCO grants above stated license without the right to sublicense and with the right to reproduce software solely for the purposes of evaluating RESCO's Evaluation Kit and developing products incorporating one or more RESCO products.

#### 5.3.2. **Third party's license**

The Evaluation Kit uses also third party's software, which license conditions <https://source.android.com/legal> are binding for the Developer.

5.4. Developer is not permitted to rent, sell or distribute the software. Developer may make one back-up copy of software.

5.5. Developer shall not perform, nor allow, authorize or assist others in modification, reverse engineering, decompilation, disassembly, photographic or video reproduction, or the like upon the Evaluation Kit to attempt to learn information about the internal architecture, design, operation, manufacture, features, or functionality, beyond that information provided to Developer.

### 5.6. **Development and ownership to Applications.**

5.6.1. Provided that the provisions in this Subclause 5.6.1. are fulfilled and Developer gives the covenant required in Subclause 5.6.2., RESCO grants to Developer the right to make and use the Applications to the Evaluation Kit.

- Applications must not enable the bypassing or circumventing of any of the restrictions set forth in the GTCs.

- Applications must not impair, degrade, or reduce the performance or security of Evaluation Kit.
- Application must not render or provide any information concerning RESCO software license terms, software included in Evaluation Kit, or any other information related to RESCO products.
- Applications must be used only together with the Evaluation Kit or NIVY WATCH and only in accordance with the license to use Evaluation Kit or NIVY WATCH software.
- Developer is not entitled to make any modifications to the Evaluation Kit software and also hardware without prior written consent of RESCO).

5.6.2. The right in the foregoing Subclause 5.6.1. to make and use Applications is conditional on Developer's having given a covenant not to assert against RESCO any IP right towards Evaluation Kit, NIVY WATCH or its components (including RESCO software). Notably, RESCO is entitled at any time to develop, use, or market applications with functions that are in any part identical with Applications developed by Developer, but RESCO is not entitled to copy Developer's software code.

5.6.3. Developer shall not become co-author of the Evaluation Kit or NIVY WATCH or its components by making Applications or extensions to the RESCO software.

## 6. **FEEDBACK**

6.1. To assist RESCO in identifying problems with and making improvements to the Evaluation Kit, Developer will provide to RESCO suggestions, comments, or other feedback, including problems relating to any bugs, errors or other problems discovered during the course of Developer's evaluation or use of the Evaluation Kit. Developer will use reasonable efforts to help RESCO analyze problems or issues with the Evaluation Kit encountered by Developer. Developer grants to RESCO a non-exclusive, irrevocable, worldwide, royalty-free license to display, perform, copy, distribute, make, have made, make derivative works, use, sell, offer to sell, and import any result of feedback, without reference to the Developer as the source.

## 7. **CLOUD SERVICES**

7.1. As of the order and delivery of the Evaluation Kit and during the Subscription Term, RESCO will provide Developer together with the Evaluation Kit also the access to use the Subscription Service to the extent stated in these GTCs, in the Order Confirmation and under the conditions set in Cloud Terms of Service.

- 7.2. The Developer will be entitled for the Subscription Service with the following Account:
- One Super User Account with authorizations of Admin User.
- 7.3. The Subscription Term is time-limited to the term of the usage rights stated in Subclause 1.9.1. hereof.
- 7.4. The Subscription Service for the testing of the Evaluation Kit during the Subscription Term stated in Subclause 7.3. hereof is free of charge.
- 7.5. For avoidance of other conditions for the Subscription Service and related rights and obligations including licenses are fully governed by the Cloud Terms of Service.
- 7.6. RESCO provides the support in Tier 3 (as defined in the Annex D of this Agreement) solely to Customer's implementation team and solely for the current version of RESCO Product(s) or for the version up to one-year old from its release. RESCO accepts email and in-app support questions 24 hours per day and 7 days per week. Email and in-app responses are provided during business days only. RESCO attempts to respond to email and in-app support questions within two business days. RESCO does not promise or guarantee any specific response time. RESCO may limit or deny the Customer's access to support if RESCO determine, in its reasonable discretion that the Customer is acting, or have acted, in a way that results or has resulted in misuse of support or abuse of RESCO's representatives. Issues resulting from Customer's Applications are outside the scope of support. This Subclause replaces the point 3.4 of the Cloud Terms of Service.

## 8. EXCLUSION OF LIABILITY AND WARRANTY

- 8.1. The Evaluation Kit is provided "as is" and possibly with faults. RESCO is under no obligation to provide updates, upgrades, support, or maintenance of any kind.
- 8.2. RESCO disclaims any and all warranties and guarantees, express, implied or otherwise, arising with respect to the Evaluation Kit delivered hereunder, including but not limited to the warranty of merchantability, the warranty of fitness for a particular purpose, and any warranty of non-infringement of the RESCO intellectual property rights of any third party.
- 8.3. RESCO neither assumes nor authorizes any person to assume for it any other liability. Developer will use the Evaluation Kit at its own risk. RESCO will not be liable to Developer for any direct or indirect damages incurred in using the Evaluation Kit. In no event will RESCO be liable for loss of profits, loss of use, loss of data, business interruption, nor for punitive, incidental,

consequential, or special damages of any kind, even if advised of the possibility of such damages.

- 8.4. At any rate the total amount of damages caused by a possible breach of the obligations of RESCO, which the Parties anticipated at the conclusion of the GTCs as a result of breach of the obligations, shall be limited to the maximum amount corresponding to EUR 500,-.

## 9. DURATION AND TERMINATION

- 9.1. The usage rights to the Evaluation Kit (including the granting of license, granting of the right to use the Evaluation Kit as well as duration of the Subscription Term) are provided for a definite period of time, namely through for 3 months as of the order and delivery of the Evaluation Kit is executed and for the same time period RESCO provides the Developer with the right to use the Evaluation Kit. The definite 3 months time period can be prolonged for the additional 2 month subject to the 15 days prior written prolongation notice by the Developer and its confirmation by RESCO.
- 9.2. Both Developer and RESCO shall be entitled to early terminate the right of Developer to use the Evaluation Kit and to early terminate the licenses provided according to these GTCs without specification of any reason. Early termination shall take effect by its delivery to the other party.
- 9.3. After termination of the licenses and rights to use the Evaluation Kit as stated in this Clause, the Developer shall be obliged to immediately stop any use and development of the Evaluation Kit and the Subscription Service will be terminated. Consequently, the Developer shall be obliged to immediately (within three days) return the Evaluation Kit including Documentation to RESCO official registered address.
- 9.4. The following delivery terms shall apply for Evaluation Kit return to RESCO's address: DDP (Incoterms 2010). Developer shall be obliged to insure the shipment of the Evaluation Kit to the amount of EUR 1000,- for its loss or damage, otherwise Developer will be obliged to pay the liquidated damages corresponding to EUR 1000,- in case of its damage or loss.
- 9.5. Developer shall be obliged to pay to RESCO the liquidated damages corresponding to EUR 1000,- in case it will not return the Evaluation Kit within the 14 days after the right for its use was terminated as stated in this Clause.

## 10. CONFIDENTIALITY

- 10.1. Developer shall at all times maintain appropriate physical security of the

Evaluation Kit. By opening package and using the Evaluation Kit, Developer acknowledges that the Evaluation Kit and Developer's use or evaluation of the Evaluation Kit, including any problems encountered by Developer, are hereby also deemed as Confidential Information.

- 10.2. Developer agrees that knowledge of or information about pre-release features, capabilities or errata of the Evaluation Kit gained through Developer's use of the Evaluation Kit (including knowledge or information gained through the use of any test and measurement equipment) and Feedback is also Confidential Information. Information regarding Developer's design and development of Developer's programs or products is also deemed as Confidential Information.
- 10.3. Both parties undertake forever to treat as confidential all of the other party's Confidential Information acquired before and in connection with contract performance and to use such Confidential Information only in connection with contract performance. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of these GTCs. With respect to the Confidential Information of the other, each party: (a) shall take all reasonable steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its individuals whose access is necessary to enable it to perform the contract. As used herein "reasonable steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. On Developer's side, this includes the careful safeguarding of the Confidential Information and the prevention of infringement.
- 10.4. Subclause 10.3. above shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without a contractual breach by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.
- 10.5. The Developer and the RESCO may have entered or may enter into separate Non-Disclosure Agreement (NDA). In such a case the separate NDA applies or will apply to the extent not governed in this Clause 10. and shall prevail in the event of any dispute.

## 11. MISCELLANEOUS

### 11.1. Export.

Developer shall not, either directly or indirectly, export the Evaluation Kit, on a standalone basis or otherwise, without first obtaining any required license or other approval from the appropriate Governments or any other agency with appropriate authority.

### 11.2. Applicable Law.

Claims arising under these GTCs shall be governed by the laws of the Slovak Republic. The UN sales laws convention as

well as the rules of conflict of laws are excluded.

### 11.3. Assignment.

Neither this Agreement nor any rights or obligations hereunder may be assigned or delegated (whether by operation of law, in conjunction with a change of control or ownership, or otherwise) by Developer without RESCO's prior written consent. No one sided set off by Developer is allowed under these GTCs.

### 11.4. Audits.

Developer agrees to cooperate with RESCO during commercially reasonable audits to verify Developer's compliance with its obligations under these GTCs.

### 11.5. Notices.

RESCO will provide notice to the contact and address listed in the Developer's order for the Evaluation Kit. All required or permitted notices to RESCO under these GTCs will be in writing, make a reference to these GTCs, and be delivered by email to the address: [nivywatch@RESCO.net](mailto:nivywatch@RESCO.net).

11.6. No conditions that are conflicting with or amending the GTCs – notably Developer's general terms and conditions – form any part of the contract, even where RESCO has performed a contract without expressly rejecting such provisions.