

**Meta Broadcast Limited**  
**General Terms and Conditions**

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the SaaS Services and related services shall be governed by these Terms and Conditions, and the Provider will ask for the Customer's express written acceptance of these Terms and Conditions before providing any such services to the Customer.

**1. Definitions**

1.1 In these Terms and Conditions, except to the extent expressly provided otherwise:

**"Acceptance Criteria"** means:

- (a) the Platform and SaaS Services conforming in all material respects with the SaaS Services Specification; and
- (b) the SaaS Services being free from SaaS Services Defects;

**"Acceptance Period"** means a period of 10 Business Days following the making available of the SaaS Services to the Customer for the purposes of testing in accordance with Clause 4 or any repeated making available of the SaaS Services to the Customer for the purposes of testing in accordance with Clause 4, or such other period or periods as the parties may agree in writing;

**"Acceptance Tests"** means a set of tests designed to establish whether the SaaS Services meet the Acceptance Criteria, providing that the exact form of the tests shall be agreed and documented by the parties acting reasonably in advance of the first Acceptance Period;

**"Access Credentials"** means the usernames, passwords and other credentials enabling access to the SaaS Services, including both access credentials for the User Interface and access credentials for the API;

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**"Agreement"** means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

**"Anti-Corruption Laws"** means all applicable anti-bribery and anti-corruption laws (including the Bribery Act 2010);

**"API"** means the application programming interface for the SaaS Services defined by the Provider and made available by the Provider to the Customer;

**"Business Day"** means any weekday other than a bank or public holiday in England;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"CCN"** means a change control notice issued in accordance with Clause 14;

**"CCN Consideration Period"** means the period of 10 Business Days following the receipt by a party of the relevant CCN from the other party;

**"Change"** means any change to the scope of the Services;

**"Charges"** means the following amounts:

- (a) the amounts specified in Section 6 of the Services Order Form; and
- (b) such amounts as may be agreed in writing by the parties from time to time;

**"Confidential Information"** means the Provider Confidential Information and the Customer Confidential Information;

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" should be construed accordingly);

**"Customer"** means the person or entity that is a recipient or user of any solutions or services offered by the Provider.

**"Customer Confidential Information"** means:

- (a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked or described as "confidential"; or
  - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the SaaS Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

**"Customer Indemnity Event"** has the meaning given to it in Clause 22.3;

**"Customer Personal Data"** means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

**"Customer Representatives"** means the person or persons identified as such in Section 5 of the Services Order Form, and any additional or replacement persons

that may be appointed by the Customer giving to the Provider written notice of the appointment;

**"Customer Systems"** means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the SaaS Services;

**"Data Protection Laws"** means all applicable laws relating to the processing of Personal Data including, while they are in force and applicable, the United Kingdom's Data Protection Act 2018 and the General Data Protection Regulation (Regulation (EU) 2016/679);

**"Documentation"** means the documentation for the SaaS Services produced by the Provider and delivered or made available by the Provider to the Customer;

**"Effective Date"** means the date on which the last of the Parties signed this Agreement.;

**"Expenses"** means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under the Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"SaaS Services"** means Atlas SaaS Platform which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

**"SaaS Services Defect"** means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the SaaS Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or SaaS Services;
- (b) any use of the Platform or SaaS Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
- (d) an incompatibility between the Platform or SaaS Services and any other system, network, application, program, hardware or software not specified as compatible in the SaaS Services Specification;

**"SaaS Services Specification"** means the specification for the Platform and SaaS Services set out in Section 3 of the Services Order Form and in the Documentation;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Personal Data"** has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

**"Platform"** means the platform managed by the Provider and used by the Provider to provide the SaaS Services;

**"Provider"** means Meta Broadcast Limited, a company incorporated in England and Wales (registration number. 06412297) having its registered office at 86-90 Paul Street, London, England, EC2A 4N, United Kingdom;

"Provider Confidential Information" means:

- (a) any information disclosed by or on behalf of the Provider to the Customer at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (b) the terms of the Agreement;

**"Provider Indemnity Event"** has the meaning given to it in Clause 22.1;

**"Provider Representatives"** means the person or persons identified as such in Section 7 of the Services Order Form, and any additional or replacement persons that may be appointed by the Provider giving to the Customer written notice of the appointment;

**"Remedy Period"** means a period of 20 Business Days following the Customer giving to the Provider a notice that the SaaS Services have failed the Acceptance Tests, or such other period as the parties may agree in writing;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

**"Services Order Form"** means an online order form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or

otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

**"Set Up Services"** means the configuration, implementation and integration of the SaaS Services in accordance with Section 3 of the Services Order Form;

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the SaaS Services, but shall not include the provision of training services;

**"Term"** means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Terms and Conditions"** means all the documentation containing the provisions of the Agreement, namely the Services Order Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

**"Third Party Services"** means any SaaS, cloud or software-based services provided by any third party that are or may be integrated with the SaaS Services by the Provider from time to time in circumstances where the Customer must, in order to activate the integration, have an account with the relevant services provider or obtain activation or access credentials from the relevant services provider; and

**"User Interface"** means the interface for the SaaS Services designed to allow individual human users to access and use the SaaS Services.

## **2. Term**

- 2.1 The Agreement shall come into force upon the Effective Date for Twelve (12) months and it will automatically renew for a subsequent 12 months with an RPI+5% increase unless terminated by the Customer three months in advance of the renewal date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 25 or any other provision of these Terms and Conditions.
- 2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

### **3. Set Up Services**

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 23.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
- 3.3 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

### **4. Acceptance procedure**

- 4.1 During each Acceptance Period, the Customer shall carry out the Acceptance Tests.
- 4.2 The Provider shall provide to the Customer at the Customer's cost and expense all such assistance and co-operation in relation to the carrying out of the Acceptance Tests as the Customer may reasonably request.
- 4.3 Before the end of each Acceptance Period, the Customer shall give to the Provider a written notice specifying whether the SaaS Services have passed or failed the Acceptance Tests.
- 4.4 If the Customer fails to give to the Provider a written notice in accordance with Clause 4.3, then the SaaS Services shall be deemed to have passed the Acceptance Tests.
- 4.5 If the Customer notifies the Provider that the SaaS Services have failed the Acceptance Tests, then the Customer must provide to the Provider, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.
- 4.6 If the Customer notifies the Provider that the SaaS Services have failed the Acceptance Tests:
  - (a) if the Provider acting reasonably agrees with the Customer that the SaaS Services do not comply with the Acceptance Criteria, then the Provider must correct the issue and make available the corrected SaaS Services to the Customer before the end of the Remedy Period for a further round of Acceptance Tests; or
  - (b) otherwise, then the parties must meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the SaaS Services do not comply with the Acceptance Criteria,

and if appropriate a plan of action reasonably satisfactory to both parties, and they must record any agreement reached in writing.

- 4.7 Notwithstanding the other provisions of this Clause 4, but subject to any written agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 4 shall be 3, and if the Acceptance Criteria have not been met by the end of the final round of Acceptance Tests, the Provider shall be deemed to be in material breach of the Agreement.
- 4.8 If the Customer notifies the Provider that the SaaS Services have passed, or are deemed to have passed, the Acceptance Tests under this Clause 4, then subject to Clause 23.1 the Customer will have no right to make any claim under or otherwise rely upon any warranty given by the Provider to the Customer in the Agreement in relation to the specification and performance of the SaaS Services, unless the Customer could not reasonably have been expected to have identified the breach of that warranty during the testing process.

## **5. SaaS Services**

- 5.1 The Provider shall provide, or shall ensure that the Platform will provide, to the Customer upon the completion of the Set Up Services the Access Credentials necessary to enable the Customer to access and use the SaaS Services.
- 5.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the SaaS Services during the Term.
- 5.3 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 5.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the SaaS Services;
  - (b) the Customer must not permit any unauthorised person or application to access or use the SaaS Services;
  - (c) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
  - (d) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or SaaS Services without the prior written consent of the Provider.
- 5.4 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the SaaS Services by means of the Access Credentials.

- 5.5 The Customer must not use the SaaS Services in any way that causes, or may cause, damage to the SaaS Services or Platform or impairment of the availability or accessibility of the SaaS Services.
- 5.6 The Customer must not use the SaaS Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 5.7 The Customer must not use the SaaS Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 5.8 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

## **6. Support Services**

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.
- 6.2 The Provider shall provide the Support Services with reasonable skill and care.
- 6.3 The Provider shall provide the Support Services in accordance with Schedule 6 (Support SLA).
- 6.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

## **7. Customer obligations**

- 7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
- (a) co-operation, support and advice; and
  - (b) information and documentation,
- as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

## **8. Customer Systems**



8.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements of Section 3 of the Services Order Form in all material respects, subject to any changes agreed in writing by the Provider.

## **9. Customer Data**

9.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.

9.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

9.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the SaaS Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.

9.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 9.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## **10. Integrations with Third Party Services**

10.1 The SaaS Services are integrated with certain Third Party Services; and the Provider may integrate the SaaS Services with additional Third Party Services at any time.

10.2 Notwithstanding the presence of any Third Party Services integration, particular Third Party Services shall only be activated with respect to the SaaS Services account of the Customer by:

(a) the Customer; or

(b) the Provider with the prior written agreement of the Customer.

10.3 The Provider shall use reasonable endeavours to maintain any integration with Third Party Services that has been activated with respect to the SaaS Services account of the Customer. Subject to this, the Provider may remove, suspend, deactivate or limit any Third Party Services integration at any time in its sole discretion.

10.4 The supply of Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. The Provider does not contract to supply the Third Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third Party Services.

10.5 The Customer acknowledges and agrees that:

- (a) the activation of Third Party Services with respect to the SaaS Services account of the Customer may result in the transfer of Customer Data and/or Customer Personal Data from the SaaS Services to the relevant Third Party Services and vice versa;
- (b) the Provider has no control over, or responsibility for, any disclosure, modification, deletion or other use of Customer Data and/or Customer Personal Data by any provider of Third Party Services;
- (c) the Customer must ensure that it has in place the necessary contractual safeguards to ensure that the transfer of Customer Personal Data to, and use of Customer Personal Data by, a provider of Third Party Services is lawful; and
- (d) the Customer shall ensure that the transfer of Customer Data to a provider of Third Party Services does not infringe any person's Intellectual Property Rights or other legal rights and will not put the Provider in breach of any applicable laws.

10.6 Additional Charges may be payable by the Customer to the Provider in respect of the activation and/or use of a Third Party Services integration.

10.7 Subject to Clause 23.1:

- (a) the Provider gives no guarantees, warranties or representations in respect of any Third Party Services; and
- (b) the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by Third Party Services or any provider of Third Party Services.

## **11. Intellectual Property Rights**

11.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

11.2 It is agreed and acknowledged that nothing in Clause 11.1 shall operate to assign to the Customer any Intellectual Property Rights in the Service Provider's existing systems, or other systems or software used by the Service Provider for the provision of Services to multiple customers.

## **12. Representatives**

12.1 The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in the Agreement will be given by a Provider Representative to a Customer Representative, and the Customer:

- (a) may treat all such instructions as the fully authorised instructions of the Provider; and
- (b) may decline to comply with any other instructions in relation to that subject matter.

12.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in the Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
- (b) may decline to comply with any other instructions in relation to that subject matter.

## **13. NOT APPLICABLE**

## **14. Change control**

14.1 The provisions of this Clause 14 apply to each Change requested by a party.

14.2 Either party may request a Change at any time.

14.3 A party requesting a Change shall provide to the other party a completed CCN in the form specified in Schedule 5 (Form of CCN).

14.4 A party in receipt of a CCN may:

- (a) accept the CCN, in which case that party must countersign the CCN and return it to the other party before the end of the CCN Consideration Period;
- (b) reject the CCN, in which case that party must inform the other party of this rejection before the end of the CCN Consideration Period; or
- (c) issue an amended CCN to the other party before the end of the CCN Consideration Period, in which case this Clause 14 will reapply with respect to the amended CCN.

14.5 A proposed Change will not take effect until such time as a CCN recording the Change has been signed by or on behalf of each party.

## **15. Charges**

- 15.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions (or anything outlined in any quotes sent to the Customer).
- 15.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 15.2.
- 15.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 15.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of the Agreement

## **16. Expenses**

- 16.1 The Customer shall reimburse the Provider in respect of any Expenses, providing that the Provider must obtain the prior written authorisation of the Customer before incurring any Expenses.
- 16.2 The Provider must collect and collate evidence of all Expenses, and must retain such evidence during the Term and for a period of 90 days following the end of the Term.
- 16.3 Within 10 Business Days following receipt of a written request from the Customer to do so, the Provider must supply to the Customer such copies of the evidence for the Expenses in the possession or control of the Provider as the Customer may specify in that written request.

## **17. Payments**

- 17.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term.
- 17.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 17.
- 17.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).
- 17.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may charge the Customer interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month). The Provider acknowledges and agrees that it shall have no right to claim interest or statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998, and that its contractual rights under this Clause 17.4 constitute a substantial remedy within the meaning of that Act.

## **18. Confidentiality obligations**

- 18.1 The Provider must:
  - (a) keep the Customer Confidential Information strictly confidential;
  - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
  - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care; and

- (d) act in good faith at all times in relation to the Customer Confidential Information.

18.2 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent, and then only under conditions of confidentiality;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) act in good faith at all times in relation to the Provider Confidential Information.

18.3 Notwithstanding Clauses 18.1 and 18.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

18.4 No obligations are imposed by this Clause 18 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

18.5 The restrictions in this Clause 18 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

18.6 Upon the termination of the Agreement, each party must immediately cease to use the other party's Confidential Information.

18.7 The provisions of this Clause 18 shall continue in force for a period of 2 years following the termination of the Agreement, at the end of which period they will cease to have effect.

**19. Data protection**

19.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

19.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

19.3 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 19.

19.4 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the United Kingdom).

19.5 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

19.6 Notwithstanding any other provision of the Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

19.7 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

19.8 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.

19.9 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Provider must not implement the changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 19.

- 19.10 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 19.11 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 19.14.
- 19.12 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 36 hours after the Provider becomes aware of the breach.
- 19.13 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 19 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 19.16, providing that no such charges shall be levied with respect to the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.
- 19.14 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 19.15 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 19. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 19.18, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of the Agreement or any security breach affecting the systems of the Provider.
- 19.16 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.



## **20. Warranties**

20.1 The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

20.2 The Provider warrants to the Customer that the SaaS Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

20.3 The Provider warrants to the Customer that the SaaS Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

20.4 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

20.5 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

21. Acknowledgements and warranty limitations

21.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the SaaS Services will be wholly free from defects, errors and bugs.

21.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the SaaS Services will be entirely secure.

21.3 The Customer acknowledges that the SaaS Services are designed to be compatible only with that software and those systems specified as compatible in the SaaS Services Specification; and the Provider does not warrant or represent that the SaaS Services will be compatible with any other software or systems.

21.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the SaaS Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the SaaS Services or the use of the SaaS Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

## **22. Indemnities**

22.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions (a "Provider Indemnity Event").

22.2 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 22.1 shall not apply unless the Customer complies with the requirements of this Clause 22.2.

22.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "Customer Indemnity Event").

22.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;

- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 22.3 shall not apply unless the Provider complies with the requirements of this Clause 22.4.

### **23. Limitations and exclusions of liability**

23.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

23.2 The limitations and exclusions of liability set out in this Clause 23 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 23.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

23.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

23.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

23.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.

23.6 Neither party shall be liable to the other party in respect of any loss of use or production.

23.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

23.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this Clause 23.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 9.3 and Clause 9.4.

23.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

23.10 The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the greater of:

- (a) £5,000; and
- (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.

23.11 The aggregate liability of each party to the other party under the Agreement shall not exceed the greater of:

- (a) £5,000; and
- (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.

## **24. Force Majeure Event**

24.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

24.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

24.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **25. Termination**

25.1 After the minimum Term, either party may terminate the Agreement by giving to the other party not less than 90 days' written notice of termination.

- 25.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of the Agreement, and the breach is not remediable; or
  - (b) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 25.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement).
- 25.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:
- (a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
  - (b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 25.4.
- 25.5 The rights of termination set out in the Agreement shall not exclude any rights of termination available at law.

## **26. Effects of termination**

- 26.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.8, 5.10, 10.7, 16.2, 16.3, 17.2, 17.4, 18, 19, 22, 23, 26, 27, 28.1, 28.2, 28.4, 28.8, 28.9, 30, 31, 32, 33, 34, 35, 36 and 37.
- 26.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.
- 26.3 Within 30 days following the termination of the Agreement for any reason:
- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
  - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,
- without prejudice to the parties' other legal rights.

## **27. Non-solicitation of personnel**

- 27.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Agreement.
- 27.2 The Provider must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of the Agreement.

## **28. Anti-corruption**

- 28.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Corruption Laws in relation to the Agreement.
- 28.2 Save to the extent that applicable law requires otherwise, each party must promptly notify the other if it becomes aware of any events or circumstances relating to the Agreement that will or may constitute a breach of the Anti-Corruption Laws (irrespective of the identity of the person in breach).
- 28.3 The Provider shall use all reasonable endeavours to ensure that all persons that:
- (a) provide services to the Provider (including employees, agents and subsidiaries of the Provider); and

(b) are involved in the performance of the obligations of the Provider under the Agreement,

will comply with the Anti-Corruption Laws.

- 28.4 Each party shall create and maintain proper books and records of all payments and other material benefits given by one party to the other, and each party shall promptly, following receipt of a written request from the other party, supply copies of the relevant parts of those books and records to the other party.
- 28.5 The Provider must comply with the supply chain anti-corruption and anti-bribery policy of the Customer supplied or made available by the Customer to the Provider before the Effective Date, as it may be reasonably updated by the Provider from time to time.
- 28.6 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Corruption Laws; and the Provider undertakes to:
- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
  - (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.
- 28.7 Each party shall provide reasonable co-operation to the other party, at the other's expense, in relation to any due diligence exercises, risk assessments, monitoring programmes and reviews conducted by the other party for the purpose of ensuring or promoting compliance with the Anti-Corruption Laws.
- 28.8 Nothing in these Terms and Conditions shall prevent either party from reporting a breach of the Anti-Corruption Laws to the relevant governmental authorities.
- 28.9 Any breach of this Clause 28 shall be deemed to constitute a material breach of the Agreement.

## **29. Notices**

- 29.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.
- 29.2 Any notice given by one party to the other party under these Terms and Conditions must be:
- (a) delivered personally;
  - (b) sent by courier;
  - (c) sent by recorded signed-for post;

- (d) sent by email; or
- (e) submitted using recipient party's online contractual notification facility, using the relevant contact details set out in Section 7 of the Services Order Form.

29.3 The addressee and contact details set out in Section 1, 2 and 7 of the Services Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 29.

29.4 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

29.5 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

- (a) in the case of notices delivered personally, upon delivery;
- (b) in the case of notices sent by courier, upon delivery;
- (c) in the case of notices sent by post, 48 hours after posting;
- (d) in the case of notices sent by fax, at the time of the transmission of the fax (providing the sending party retains written evidence of the transmission);
- (e) in the case of notices sent by email, at the time of the sending of an acknowledgement of receipt by the receiving party; and
- (f) in the case of notices submitted using an online contractual notification facility, upon the submission of the notice form.

### **30. Assignment**

30.1 Neither party may assign, novate, subcontract or otherwise dispose of this Agreement or any part of it without the prior consent in writing of the other party, such consent not to be unreasonably withheld (other than in respect of any subcontracting where for the avoidance of doubt such consent may be unreasonably withheld).

### **31. No waivers**

31.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

31.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.



## **32. Severability**

- 32.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 32.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## **33. Third party rights**

- 33.1 The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.
- 33.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

## **34. Variation**

- 34.1 The Agreement may not be varied except by means of a written document signed by or on behalf of each party, without prejudice to the requirements of Clause 14.

## **35. Entire agreement**

- 35.1 The Services Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 35.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 35.3 The provisions of this Clause 35 are subject to Clause 23.1.

## **36. Law and jurisdiction**

- 36.1 These Terms and Conditions shall be governed by and construed in accordance with English law.
- 36.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

## **37. Interpretation**

- 37.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

37.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

37.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

37.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

## **Support and SLA**

### **1. Introduction**

1.1 This Schedule sets out the service levels applicable to the Support Services.

### **2. Helpdesk**

2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule.

2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3 The Provider shall ensure that the helpdesk is accessible by email and using the Provider's web-based ticketing system.

2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.

2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

### **3. Response and resolution**

3.1 Issues raised through the Support Services shall be categorised as follows:

- (a) critical: the SaaS Services are inoperable or a core function of the SaaS Services is unavailable;
- (b) serious: a core function of the SaaS Services is significantly impaired;
- (c) moderate: a core function of the SaaS Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the SaaS Services is significantly impaired; and
- (d) minor: any impairment of the SaaS Services not falling into the above categories; and any cosmetic issue affecting the SaaS Services.

3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.

3.3 The Provider shall use reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:

- (a) critical: 1 hour;
- (b) serious: 1 business day;
- (c) moderate: 1 business day.

- 3.4 The Provider shall ensure that its response to a request for Support Services shall eventually include, in order of precedence, the following information (to the extent such information is relevant to the request):
- (1) an automated acknowledgement of the receipt of the request;
  - (2) an initial diagnosis in relation to any reported error;
  - (3) if applicable, clarification on the cause of the reported error;
  - (4) a timetable for the actions to be taken in relation to the request, and their expected outcomes;
  - (5) acknowledgement of the outcomes of any actions taken in relation to the request;
- 3.5 The Provider shall use reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:
- (a) critical: 2 Business Hours;
  - (b) serious: 8 Business Hours;
  - (c) moderate: 5 Business Days; and
  - (d) minor: 10 Business Days.

#### **4. Provision of Support Services**

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

#### **5. Limitations on Support Services**

- 5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed 40 then:
- (a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
  - (b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.
- 5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:
- (a) the improper use of the SaaS Services by the Customer; or

- (b) any alteration to the SaaS Services made without the prior consent of the Provider.