

**UPLIFTER LIMITED  
SOFTWARE AS A SERVICE (“SAAS”) AGREEMENT**

THIS SAAS AGREEMENT (THE “AGREEMENT”) IS MADE BETWEEN UPLIFTER LIMITED, A COMPANY INCORPORATED AND REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 11522243 WHOSE REGISTERED OFFICE IS AT 26-28 UNDERWOOD STREET, LONDON, ENGLAND, N1 7JQ (THE “PROVIDER”), AND YOU (THE “CUSTOMER”). EACH A “PARTY” AND TOGETHER THE “PARTIES”.

BY CLICKING THE "I ACCEPT" BUTTON ONCE YOU HAVE PLACED YOUR ORDER ON [WWW.UPLIFTER.TECH](http://WWW.UPLIFTER.TECH) (THE “WEBSITE”) YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT GOVERNING YOUR USE OF THE SERVICES. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT PROCEED AND MAY NOT USE THE SERVICE.

**1. Definitions and construction**

1.1. In this Agreement the following expressions shall apply (save where the context otherwise requires):

“Affiliate”	means each and any Subsidiary or Holding Company of a party and each and any Subsidiary of a Holding Company of a party.
“Commencement Date”	means the date on which the Customer accepts this Agreement by clicking the “I Accept” button when subscribing to the Services.
“Conduct Legislation”	means the Modern Slavery Act 2015 and the Bribery Act 2010 and all replacement and modifying legislation and regulations pertaining thereto.
“Customer Data”	means all data processed by Provider or otherwise provided to Provider pursuant hereto including, but not limited to, any Personal Data.
“Customer Equipment”	means such hardware and software as may be specified on the Website which the Customer is required to have in use in order to use and enable the Services to be provided in accordance with this Agreement.
“Data Protection Legislation”	means, for such time as they are in force in England and Wales, the DPA, the GDPR and all related legislation which may supplement, amend, implement or replace them and which relates to the protection of individual’s rights in their personal data and the protection of their privacy.
“Data Protection Schedule”	means Schedule 1 to this Agreement.
“DPA”	means the Data Protection Act 2018.
“Downtime”	means a period during Service Hours during which there is total loss of the Services.
“Extension Period”	means a period of one calendar month or one calendar year (dependant on the Initial Period selected during purchase of a Subscription by the Customer) commencing at the end of the Initial Period or at the end of the previous Extension Period.
“GDPR”	means Regulation (EU) 2016/679 and/or such legislation as may give effect to its terms in England and Wales.
“Initial Period”	means the period of either one calendar month or one calendar year (as selected by the Customer during purchase of a Subscription) commencing on the Commencement Date.
“Intellectual Property Rights”	means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
“Month”	means a calendar month and “monthly” shall be construed accordingly.
“Outage”	means an instance of Downtime.
“Personal Data”	has the meaning set out in Article 4(1) of the GDPR, and for the purposes of this Agreement means Personal Data provided by one party to this Agreement to the other.
“Payment Terms”	means the payment terms as set out on available on the Website from time to time.
“Representative”	the person appointed by a party to represent its interests hereunder in respect of the management and provision of the Services.
“Seat”	means a unique user account that shall be allocated to an individual User and which shall enable that User to access the Services.
“Session”	an individual live session in which a User accesses the Service using the unique access credentials specific to their allocated Seat.
“Service Hours”	means the hours 08.00 – 18.00 GMT Monday to Friday.
“Service Interruption”	means a period during Service Hours during which there is partial loss of the Services.
“Service Levels”	means the levels of performance to which the Services are to be provided to the Customer by Provider as set out in Schedule 2.
“Services”	means the services provided by the Provider to the Customer under this Agreement via the Website or any other website notified to the Customer by the Provider from time to time, as more particular described on the Website.

“Software”	means the software used by Provider to provide the Services which is either Provider’s proprietary software or third party software in respect of which Provider has a licence.
“Subscription”	means an order placed for the Services by the Customer via the Website and accepted by the Supplier.
“System Management Regulations”	means regulations introduced by Provider from time to time for the better management of the Services and which may include (but are not limited to):
	(i) Defining minimum specifications for equipment used by the Customer to interface with the Services (including, but not limited to, routers, firewalls and PCs);
	(ii) regulations to ensure that the network through which the Services are provided is not overloaded and that the security and integrity of the network is maintained and including regulations which arise from the need to comply with regulations of any data centre facility engaged by Provider in connection with the Services; and
(iii) regulations to ensure that any database or other applications which form part of the Services are used to the best effect and within their capacities.	
“Tier”	means the grade of Service selected by the Customer during the order of a Subscription;
“Term”	means the effective term of this Agreement (which shall include the Initial Period and all subsequent Extension Periods).
“User”	means an individual user who accesses the Services with a unique log in name and password.
“Website”	<a href="http://www.uplifter.tech">http://www.uplifter.tech</a>

- 1.2. The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.
- 1.3. Unless the context otherwise so requires:
  - 1.3.1. references to Provider and the Customer include their permitted successors and assigns;
  - 1.3.2. references to statutory provisions include those statutory provisions as amended or re-enacted;
  - 1.3.3. references to any gender include all genders;
  - 1.3.4. words in the singular include the plural and in the plural include the singular.
- 1.4. In the event of any conflict between the terms and conditions of this Agreement and any provision of any schedule, the terms and conditions of this Agreement shall prevail.
- 1.5. **Holding company** shall be construed in accordance with section 1159 of the Companies Act 2006.
- 1.6. **Subsidiary** shall be construed in accordance with section 1159 of the Companies Act 2006.

## 2. Provision of Services and Licences

- 2.1. Provider agrees with effect from the Commencement Date in consideration of the timely payment of the Fee by the Customer to supply the Services on a non-exclusive basis and licence the Software upon the terms and conditions of this Agreement.
- 2.2. Receipt of the Services will require the use by the Customer of the Software on a SaaS basis, accordingly the Customer’s licence to use the Software is subject to the following conditions:
  - 2.2.1. **Non-Exclusivity:** the licence is non-exclusive and the Provider shall remain entitled to grant similar or identical licences to use the Software to third parties without restriction;
  - 2.2.2. **Transferability:** the licence is non-transferable or sub-licensable, and the Customer shall not permit or purport to transfer the licence to any third party (nor offer the Software on a bureau basis) without first obtaining explicit written permission from the Provider to do so;
  - 2.2.3. **Purpose:** the Software may only be used by the Customer in order to conduct analysis of its own websites in connection with the Customer’s own business purposes;
  - 2.2.4. **Duration:** the licence shall endure for the full Term of this Agreement.
- 2.3. The Customer acknowledges that Provider may at any time, and without notice, incorporate licence management software into the Software for the purposes of ensuring that licence rights are not exceeded.
- 2.4. The Customer accepts that it shall in no circumstances be permitted to:
  - 2.4.1. reproduce, edit, create derivative works of, sell or in any way commercially exploit any part or aspect of the Software;
  - 2.4.2. outsource the Services or Software provided under this Agreement to third parties;
  - 2.4.3. attempt to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the Software (including any underlying software or any part of it) that is used to provide the Services, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988; and
  - 2.4.4. to observe, study or test the functioning of the Software (including any underlying software or any part of it) that is used to provide the Services, except and only to the extent that such restriction is prohibited pursuant to section 50BA of the Copyright, Designs and Patents Act 1988.

## 3. Seats

- 3.1. The Customer acknowledges that each Seat will be allocated to an individual User. In order for Users to access the Services the Customer must purchase the appropriate number of Seats required. The sharing of Seats is expressly prohibited.
- 3.2. The Customer may, from time to time during the Term of this Agreement allocate a Seat to a new User or transfer a Seat from one User to another (“Allocation”). If the Customer wishes to allocate a Seat to a new User or transfer a Seat from one User to another, the Customer shall notify the Provider in writing. The Provider shall evaluate such request and respond to the Customer with approval or rejection of the request. Where the Provider approves the request, the Supplier shall allocate the Seat to the new User within 30 days of its approval of the Customer’s request.
- 3.3. If the Provider approves the Customer’s request for Allocation, the Customer shall, within 30 days of the date of the Provider’s invoice, pay to the Provider the relevant fees for such Allocation as set out on the Providers pricing page available on the Website from time to time. If such Allocation is purchased by the Customer part way through the Initial Period or any Extension Period (as applicable), such fees shall be pro-rated from the date of activation by the Provider for the remainder of the Initial Period or then current Extension Period (as applicable).

#### **4. Duration**

- 4.1. This Agreement shall commence on the Commencement Date and shall continue for the Initial Period and thereafter for any Extension Periods invoked pursuant to Clause 4.2 unless and until terminated by either party in accordance with Clause 13 below.
- 4.2. This Agreement shall automatically be extended for an Extension Period at the conclusion of the Initial Period and at the conclusion of each subsequent Extension Period thereafter until terminated in accordance with Clause 13.

#### **5. Fee**

- 5.1. The Customer undertakes to pay the Fee for the Services and any additional fees to Provider for any other services provided by Provider pursuant to the terms of this Agreement, such additional charges to be based on Provider's then current charging rates, or if agreed otherwise the Provider's quote at the time of the Customer's enquiry.
- 5.2. The Fee covers the number of Seats and Sessions for the Tier selected by the Customer in its Subscription, if the Customer wishes to increase the number of Seats or Sessions it will be required to upgrade to another Tier ("**Upgrade**").
- 5.3. The Customer shall pay the Fee in accordance with the Payment Terms.
- 5.4. Provider shall be entitled to charge the Customer interest in respect of the late payment of any sums due under this Agreement (as well after as before judgement) on a daily basis at the rate of 8 per cent per annum above the base rate from time to time of Barclays Bank plc or at the maximum rate permitted by statute from the due date therefor until payment.
- 5.5. If this Agreement is extended further to Clause 4.2 then in consideration for the continued provision of the Services the Fee, including any increase in the same further to Clauses 5.2 and 5.6, shall be payable in advance.
- 5.6. Provider shall be entitled to increase the Fee with effect from each anniversary of the Commencement Date by giving at least 60 days' prior written notice to the Customer. Such increase measured as a percentage of the then current Fee shall not exceed 10 percent.
- 5.7. All sums due under this Agreement are expressed exclusive of VAT but will be subject to VAT where applicable which will be payable by the Customer.
- 5.8. From time to time, the Provider may offer a Tier without payment on a free usage basis (each a "**Free Service Tier**"). Customers using the Free Service Tier will not be eligible to receive any customer support or technical support pursuant to the terms of clause 6 or Schedule 2.
- 5.9. Provider may withdraw or modify each Free Service Tier at any time without prior notice and without liability, to the extent permitted under applicable law.
- 5.10. Provider reserves the right to suspend or terminate a Customer's use of a Free Service Tier at any time without notice and without liability.

#### **6. Service Levels**

Provider will use its reasonable endeavours to deliver the Services and each component thereof, subject to Clauses 11.5 and 15, to the levels of performance specified in the Service Levels save where otherwise expressly provided for by this Agreement.

#### **7. Outages, Service Interruptions and Changes to Services**

- 7.1. Outages or Service Interruptions may be made by Provider when in its reasonable opinion they are necessary to facilitate improvements to, or maintenance of the Services. Provider will use reasonable endeavours to minimise the duration of Outages or Service Interruptions that it deems necessary.
- 7.2. If Outages or Service Interruptions are required pursuant to Clause 7.1, Provider will endeavour to schedule them so as to minimise impact on the Services and to notify the Customer as far in advance as is practicable of the anticipated commencement time and estimated duration of the relevant Outage or Service Interruption.
- 7.3. Customer requested interruptions (including, but not limited to, request for an application server to be re-booted) will be fulfilled at Provider's discretion but will not be considered a break in service, and will not be a factor when considering the Service Levels for any purpose or give rise to any liability on the part of Provider. The Customer is required to request such interruptions via the customer support number listed in Schedule 2.

#### **8. Provider Warranties**

- 8.1. Provider warrants to and undertakes with the Customer that:
  - 8.1.1. it will use its reasonable efforts to provide the Services and to exercise reasonable care and skill and in accordance with the terms of this Agreement;
  - 8.1.2. it has full right power and authority to provide the Services to the Customer in accordance with the terms of this Agreement;
  - 8.1.3. it has all requisite registrations under Data Protection Legislation and will maintain such registrations throughout the Term; and
  - 8.1.4. it will at all times comply with Data Protection Legislation, the terms relevant to the Data Protection Legislation set out in Schedule 1 and with Conduct Legislation.
- 8.2. Except for the express warranties set forth in this Clause 8, the Services are provided on an "as is" basis, and the Customer's use of the Services is at its own risk. Provider does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice. Provider does not warrant that the Services will be uninterrupted, error-free, or completely secure.
- 8.3. Provider does not and cannot control the flow of data to or from its network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the Internet (or portions thereof). Although Provider will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Provider cannot guarantee that such events will not occur. Accordingly, Provider disclaims any and all liability resulting from or related to such events.

#### **9. Customer Obligations and Warranties**

- 9.1. The Customer is required at all times during the term to maintain the Customer Equipment in good order and working

condition and to provide prior written notification to Provider of any changes it makes in respect thereof. At no time during the Term shall the Customer permit the Customer Equipment to fall below the specifications as detailed on the Website from time to time.

- 9.2. In the event that the Customer is in breach of any of its obligations (including, for the avoidance of doubt, payment of the Fee) under this Agreement, then:-
- 9.2.1. Provider cannot be held responsible should the Services fail to perform and comply with the Service Levels as a result (directly or indirectly) of such Customer breach;
  - 9.2.2. Provider shall be entitled to charge the Customer for staff time engaged on rectifying any resulting problems at Provider's then current standard charging rates; and
  - 9.2.3. Provider may without any liability terminate or suspend the Services without prejudice to any other pre-existing rights and obligations of either party.
- 9.3. The Customer represents, warrants and undertakes that:
- 9.3.1. it has and shall during the Term have the legal right and authority to use and have used the Customer Equipment as contemplated under this Agreement;
  - 9.3.2. it will use the Services only for lawful purposes and in accordance with this Agreement;
  - 9.3.3. it will at all times comply with Data Protection Legislation, the terms relevant to the Data Protection Legislation set out in the Data Protection Schedule and with Conduct Legislation;
  - 9.3.4. any Personal Data will only be provided to Provider in accordance with Data Protection Legislation;
  - 9.3.5. it will be solely responsible for the accuracy and submission of Customer Data when using the Services and the Provider will not be liable for failing to ensure the accuracy of any Customer Data; and
  - 9.3.6. any software, data, equipment or other materials provided by the Customer to Provider or employed by the Customer in its use of or receipt of the Services shall not infringe any Intellectual Property Rights, privacy or Personal Data interests of any third party and shall not be obscene or defamatory of any person and shall not violate the laws or regulations of any state which may have jurisdiction over such activity.
- 9.4. In the event of any breach of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Provider will have the right to suspend immediately any related Services if deemed reasonably necessary by Provider to protect the proper interests of Provider or its other customers. If practicable and depending on the nature of the breach, Provider may (in its absolute discretion) give the Customer an opportunity to cure such breach. In such case once the Customer has cured the breach, Provider will promptly restore the Services.

## **10. Security**

- 10.1. Each party recognises that it is impossible to maintain flawless security but (where relevant) Provider shall take all reasonable steps to prevent security breaches in its servers' interaction with the Customer and security breaches in any interaction with resources or users outside of any firewall that may be built into Provider's servers.
- 10.2. The Customer is responsible for maintaining the confidentiality of any passwords which are required to access the Software and the Services and is solely responsible for any damage caused by any such unauthorised access which arises from its failure to do so.

## **11. Limitation of Liability**

- 11.1. Except as expressly stated in Clause 11.2:
- 11.1.1. Provider shall not be liable for any indirect or consequential loss or damage suffered by the Customer, irrespective of how such loss or damage may arise and no matter which theory of liability gives rise to any cause of action by Customer.
  - 11.1.2. Provider shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
    - 11.1.2.1. special damage, even though Provider was aware of the circumstances in which such special damage could arise;
    - 11.1.2.2. loss of profits;
    - 11.1.2.3. loss of anticipated savings;
    - 11.1.2.4. loss of business opportunity;
    - 11.1.2.5. loss of goodwill; or
    - 11.1.2.6. loss of or damage to data.
  - 11.1.3. to the extent that not excluded by Clauses 11.1.2, 11.3, 11.4, 11.5 or otherwise, the total aggregate liability of Provider, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee actually paid by the Customer during the Initial Period or, where the Initial Period has elapsed, during the 12 month period immediately prior to the first event which gave rise to the Customer's right to bring a claim against Provider.
  - 11.1.4. the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Provider shall have no liability otherwise than pursuant to the express terms of this Agreement;
- 11.2. The exclusions in Clause 11.1 shall apply to the fullest extent permissible at law but Provider does not exclude liability for:
- 11.2.1. death or personal injury caused by the negligence of Provider, its officers, employees, contractors or agents;
  - 11.2.2. fraud or fraudulent misrepresentation; or
  - 11.2.3. any other liability which cannot be excluded by law.
- 11.3. Provider shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Customer or arising from any cause beyond Provider's reasonable control.
- 11.4. The Customer accepts that Provider is in no way liable for any virus or other contaminants which enter the Customer's email system or computer network via email or for any loss, damage, interruption to the Services or Outages caused by the failure

- of the Customer Equipment.
- 11.5. Provider shall not be liable for any interruptions to the Services or Outages arising directly or indirectly from:-
    - 11.5.1. interruptions to the flow of data to or from the Internet;
    - 11.5.2. changes, updates or repairs to the network or the Software subject to Provider striving to minimise the interruptions / Outages that may be caused by such change;
    - 11.5.3. the effects of the failure or interruption of services provided by third parties;
    - 11.5.4. any of the factors set out in Clause 15;
    - 11.5.5. any actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations set out in this Agreement) or any third parties;
    - 11.5.6. problems with the Customer Equipment, any other equipment owned by the Customer and/or any third party equipment;
    - 11.5.7. interruptions to the Services requested by the Customer.
  - 11.6. The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Fee has been calculated on the basis of the limitations and exclusions in this Clause 11 and that the Customer will effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 11.
  - 11.7. Notwithstanding the foregoing and except as expressly stated in Clause 11.2, in no event shall the Provider be liable to the Customer for any claims or costs sustained by the Customer in relation to the Free Service Tier, for consequential, special, direct or indirect losses or damages sustained by it or any third parties, irrespective of whether under contract, tort or otherwise (including, without limitation, loss of profits, loss of revenues, loss of customers or damage to reputation or goodwill).

## 12. Intellectual Property Rights

- 12.1. Without prejudice to the Customer's rights in its own materials, the parties hereby agree that the Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the Software, documentation and other materials used by Provider in connection with or related to the provision of the Services hereunder.
- 12.2. Provider warrants that it has all necessary right, title and interest to enable the Customer to benefit from the Services in accordance with this Agreement.
- 12.3. The Customer hereby grant to Provider:
  - 12.3.1. A non-exclusive, royalty-free, world-wide licence during the Term to use, copy, reproduce, and manipulate data provided by the Customer or resulting from the Services for the purposes of using the data for the provision of the Services; and
  - 12.3.2. A non-exclusive, royalty-free, world-wide licence during the Term to use, reproduce and display the Customer's trade marks for the purposes of using the data for the provision of the Services.
- 12.4. Subject to any contrary provision in this Agreement, Provider undertakes only to use the Customer's trade marks for the purpose of providing the Services and for marketing purposes.

## 13. Termination

- 13.1. For the purposes of this Clause 13, the following events shall be deemed "**acts of default**":
  - 13.1.1. if the Customer fails to pay any moneys due pursuant hereto within 7 days of the due date therefor;
  - 13.1.2. if a party commits any material breach of any term of this Agreement (other than one falling under Clause 13.1.1 above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 30 days of a written request by the other party to remedy the same;
  - 13.1.3. if a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 13.2. If the Customer commits an act of default then Provider may forthwith suspend the provision of the Services hereunder (or any of them or any part of them) and no such suspension shall be deemed a breach of any term or provision of this Agreement.
- 13.3. If either party commits an act of default, the other party may terminate this Agreement by notice in writing forthwith.
- 13.4. Provider shall be entitled to terminate this Agreement by giving 30 days' written notice.
- 13.5. Customer shall be entitled to terminate this Agreement by giving 30 days' written notice.
- 13.6. Provider shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by notice to the Customer:
  - 13.6.1. if the Customer undergoes a change of control which does not result in control passing to a company that, immediately prior to the change in question, was an Affiliate of the Customer;
  - 13.6.2. if the Customer sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity;
  - 13.6.3. if the Provider ceases to offer the Services; or
  - 13.6.4. if the Customer disputes the ownership or validity of Provider's Intellectual Property Rights.
- 13.7. Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.8. In the event of termination of this Agreement:-
  - 13.8.1. the Customer agrees promptly to pay to Provider all outstanding payments;
  - 13.8.2. Provider's entitlement to use the Customer's trademarks ceases immediately except as necessary for the provision of any post- termination services;
  - 13.8.3. Provider may in its sole discretion agree to provide any assistance reasonably requested by the Customer in connection with the hand- over to a third party of any services provided by Provider hereunder, and the Customer shall pay Provider in accordance with Provider's then current standard rates for any such assistance;
  - 13.8.4. the Customer's right to receive the Services shall cease automatically;

- 13.8.5. each party shall immediately return to the other all property and materials containing Confidential Information (as defined in Clause 14) belonging to the other.
- 13.9. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

#### **14. Confidentiality and Ownership of Customer Data**

- 14.1. Subject to Clause 14.3, each party receiving information pursuant to this Agreement ("**Receiving Party**") shall, during the term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other party ("**Disclosing Party**") disclose to any third party, any and all information of a confidential nature (including trade secrets and information of commercial value) that may become known to the Receiving Party and which relate to the Disclosing Party or any of its Affiliates ("**Confidential Information**").
- 14.2. Provider hereby undertakes not to, without the Customer's written consent, disclose the Customer Data in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the provision of the Services and who have, and to the extent that they have, a need to know the same.
- 14.3. The provisions of Clause 14.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it is:
- 14.3.1. trivial or obvious;
  - 14.3.2. already in the Receiving Party's possession without duty of confidentiality on the date of its disclosure to it by the Disclosing Party;
  - 14.3.3. in the public domain other than as a result of a breach of this Clause; or
  - 14.3.4. to the extent that disclosure of such information may be required by any governmental agency or by operation of law and, in either such case, the Receiving Party required to make such disclosure shall, unless legally precluded from doing so, use reasonable endeavours to notify the Disclosing Party of such requirement prior to making the disclosure.
- 14.4. Each of Provider and the Customer hereby undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this Clause 14.
- 14.5. Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 14.6. For the avoidance of doubt, all Customer Data shall remain at all times the exclusive property of the Customer and may only be used by Provider in order to fulfil its obligations pursuant hereto.
- 14.7. Provider reserves the right to use all or part of any program, services or materials produced for or acquired on behalf of the Customer for demonstrating its expertise to potential clients, subject always to the provisions of this Clause 14.
- 14.8. The provisions of Clause 14 shall remain in full force and effect notwithstanding any termination of this Agreement.

#### **15. Force majeure**

- 15.1. Neither party hereto shall be liable for any breach of its obligations hereunder, except in respect of payment, resulting from causes beyond the reasonable control of the party in default (or its sub-contractors) including but not limited to acts of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute (except involving a party's own employees), illness, flood, fire or tempest (an "**Event of Force Majeure**"). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.
- 15.2. Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 15.3. If a default due to an Event of Force Majeure shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre-existing rights or obligations of either party.

#### **16. Non-solicitation**

- 16.1. Neither party shall (except with the written consent of the other) directly or indirectly solicit or entice away from the employment of the other (or attempt to do so) any person employed or engaged by such other party in the performance of this Agreement at any time during the term of this Agreement or for a period of 6 months after the termination or expiry of this Agreement.
- 16.2. If a party breaches the Clause 16.1, it will pay to the other party as compensation an amount equal to 12 months' salary of the relevant employee or contractor (as the case may be), and the parties acknowledge that this represents a genuine pre-estimate of the loss and costs likely to be suffered by the injured party through breach of this Clause.
- 16.3. If the periods above are held by a court or tribunal of competent jurisdiction to be void or unenforceable, such provisions will apply with such modification to the relevant wording and/or reduction in the length of the period as required to make them valid and enforceable.

#### **17. Waiver**

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

#### **18. Notices**

- 18.1. To Provider: any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class recorded post to the Provider's registered office address or email (such email notice to be confirmed by delivery or read receipt).
- 18.2. To Customer: any notice, request, instruction or other document to be given hereunder shall be delivered or sent by email (such email notice to be confirmed by delivery or read receipt) to the Customer's email address used as login to the subscribed services.

## **19. Publicity**

- 19.1. The Provider is permitted to make announcements or information concerning this Agreement available in any advertising publicity promotional or other marketing activities without the prior written consent of the Customer. For the avoidance of doubt, the Provider is permitted to use the Customer's name, logo and any feedback it provides to the Company. The Customer may request the Provider to remove its name, logo and any feedback displayed in the Provider's marketing materials. The Provider will consider such a request within 30 days from the date the request was received by the Provider from the Customer.
- 19.2. The Customer shall not make an announcement or information concerning this Agreement or any ancillary matter shall be made or released or authorised to be made or released in any advertising publicity promotional or other marketing activities without the prior written consent of the Provider.

## **20. Costs**

Except for the payments specifically agreed in this Agreement, each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.

## **21. Invalidity and severability**

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## **22. Entire agreement**

- 22.1. Subject to Clause 22.2, this written Agreement (including any Subscription or Schedules) constitutes the entire agreement between the parties hereto relating to the subject matter hereof. Nothing in this Clause 22.1 or Clause 11.1.4 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or Third Party appointed under Clause 27 may allow reliance on the same as being fair and reasonable.
- 22.2. No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

## **23. Relationship**

The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

## **24. Successors**

This Agreement shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

## **25. Assignment**

- 25.1. The Customer shall not be entitled to assign this Agreement nor all or any of its rights and obligations hereunder without the Provider's prior written consent, such consent not to be unreasonably withheld.
- 25.2. The Provider shall be entitled to assign this Agreement or all or any of its rights and obligations hereunder.

## **26. Sub-contracting**

Provider shall be entitled to sub-contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Services itself.

## **27. Disputes**

- 27.1. All disputes or differences which shall at any time hereafter arise between Provider and the Customer in respect of the construction or effect of this Agreement or the rights duties and liabilities of the parties hereunder or any matter or event connected with or arising out of this Agreement (a "**Relevant Event**") shall be referred to such independent third party (the "**Third Party**") as Provider and the Customer shall jointly nominate.
- 27.2. If Provider and the Customer shall fail to nominate a Third Party within 14 days of the date of occurrence of the Relevant Event then the Third Party shall be nominated at the request of either Provider or the Customer by CEDR.
- 27.3. The Third Party shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon Provider and the Customer.

## **28. Counterparts**

- 28.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 28.2. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If this method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter.
- 28.3. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

## **29. Governing Law & Jurisdiction**

- 29.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 29.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non- contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

29.3. The parties irrevocably agree that the courts of England and Wales are the most appropriate and convenient courts to settle any dispute or claim, and accordingly, no party will argue to the contrary.

### 30. Third Party Rights

No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement.

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## Schedule 1 DATA PROTECTION SCHEDULE Part 1

### 1. Definitions

1.1. For the purpose of this Schedule, in addition to the definitions set out in the main body of this Agreement, the following terms shall have the following meanings:

- 1.1.1. **Data Controller:** shall have the meaning of 'data controller' set out in Article 4(7) of the GDPR.
- 1.1.2. **Data Processor:** shall have the meaning of 'data processor' set out in Article 4(8) of the GDPR.
- 1.1.3. **Data Subject:** an individual who is the subject of Personal Data.
- 1.1.4. **EEA:** means the European Economic Area and also includes the United Kingdom.
- 1.1.5. **Processing and Process:** have the meaning set out in Article 4(2) of the GDPR and clause 3(4) of the DPA.

### 2. Data Protection

2.1. The Provider and the Customer agree that for the purposes of Data Protection Legislation that the Customer shall be the Data Controller and the Provider shall be the Data Processor in respect of any Personal Data which is transferred from the Customer to the Provider in accordance with this Agreement.

2.2. Part 2 of this Schedule sets out:

- 2.2.1. the subject matter and duration of the Processing;
- 2.2.2. the nature and purpose of the Processing; and
- 2.2.3. the type of Personal Data and categories of Data Subject

in respect of any Personal Data which is transferred from the Customer to the Provider in accordance with this Agreement.

2.3. As a Data Processor the Provider shall Process the Personal Data only to the extent necessary to perform its obligations pursuant to this Agreement and/or in accordance with the Customer's instructions from time to time, and shall not Process the Personal Data for any other purpose other than enabling it to fulfil its obligations pursuant to this Agreement or to perform any other activity which may be authorised by the Customer from time to time.

2.4. Where a party is a Data Processor pursuant to this Agreement it shall take steps to ensure that its employees, contractors or any permitted agents are informed of its obligations in relation to Personal Data and that they hold, and shall Process such information in accordance with the Data Processor's obligations and in accordance with all relevant Data Protection Legislation.

2.5. The Customer consents to the Provider appointing third party processors to Process the Personal Data under this Agreement. Where the Provider appoints a third party to Process Personal Data it shall only use third party processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that Processing meets the requirements of the GDPR and ensures the protection of the rights of Data Subjects.

2.6. The parties acknowledge that to the extent that a party is a Data Processor pursuant to this Agreement it will be reliant on the other, the Data Controller, for direction as to the extent to which the Data Controller will be entitled to use and Process the relevant Personal Data. Consequently, the Data Processor will not be liable to the Data Controller for any loss or damage which arises from any claim brought by a Data Subject or any fine levied by any relevant regulatory authority which results from any action or omission by the Data Processor, to the extent that such action or omission resulted directly from the Data Controller's instructions.

2.7. The Data Processor acknowledges and agrees that the Data Controller is permitted to delete any Personal Data which it receives other than in compliance with the terms of this Agreement.

### 3. Data Protection Warranties

3.1. Each party warrants to the other that it will Process the Personal Data in compliance with all applicable Data Protection Legislation.

3.2. The Customer warrants that it will not share any Personal Data regarding its customers with the Provider under this Agreement.

3.3. Where a party to this Agreement becomes a Data Processor pursuant to it, it warrants that in relation to the Personal Data in respect of which it is a Data Processor that:

- 3.3.1. having regard to the reasonably available state of the art of technological development, the nature of the Processing in question, the cost of implementation, and the material risk to the rights of affected Data Subjects, the Data Processor will take appropriate technical and organisational measures to secure relevant Personal Data against the unauthorised or unlawful Processing and against accidental loss or destruction;
- 3.3.2. it will not transfer Personal Data outside the EEA without ensuring that appropriate safeguards are in place and that any transfer is lawful under all applicable Data Protection Legislation;
- 3.3.3. it will assist the Data Controller, insofar as reasonably possible, in responding to any requests made by any relevant Data Subject which concern the exercise of that Data Subject's rights under the GDPR, subject to the Data Controller reimbursing it for the cost of the same;
- 3.3.4. it will notify the Data Controller, insofar as reasonably possible, of any relevant requests for the disclosure of Personal Data which may be made to it and which it considers that it is legally obliged to respond to, subject to the Data Controller reimbursing it for the cost of the same;
- 3.3.5. it shall report to the Data Controller any suspected data breach concerning the Personal Data which comes to its attention and shall provide reasonable assistance to the Data Controller in informing the relevant regulator and/or affected Data Subjects, subject to the Data Controller reimbursing it for the cost of the same;

- 3.3.6. it shall, on request, take reasonable steps to demonstrate to the Data Controller, to the extent that is reasonable given the nature of the Processing in question, that it complies with Data Protection Legislation; and
- 3.3.7. at the written instruction of the Data Controller securely delete or return Personal Data and copies thereof to the Data Controller on termination of this Agreement unless Union or Member State law requires storage of the Personal Data.

## Part 2

1. The categories of Data Subject and duration of the Processing in respect of any Personal Data which is transferred from the Customer to the Provider in accordance with this Agreement:
    - a) users of the Services; and
    - b) staff of the Customer,minimum duration to be for the Term and 6 years after termination.
  2. The nature and purpose of the Processing in respect of any Personal Data which is transferred from the Customer to the Provider in accordance with this Agreement:
    - a) assist the Provider to successfully provide and maintain the Services;
    - b) prevent misuse of the Services;
    - c) enable the parties to fulfil their obligations under this Agreement; and / or
    - d) in accordance with the other party's reasonable, lawful instructions from time to time.
  3. The type of Personal Data in respect of any Personal Data which is transferred from the Customer to the Provider in accordance with this Agreement:
    - a) the names and gender of individuals of users of the Services;
    - b) the addresses and contact details relating to users of the Services
    - c) transaction data relating to users; and
    - d) job title and employer details of users of the Services.
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## Schedule 2 Service Level Agreement ("SLA")

1. **The Provider's Obligations**
  - 1.1 The Provider shall:
    - 1.1.1 render Technical Support Services to the Client.
    - 1.1.2 perform its obligations under this Agreement in a reasonable and timely manner.
    - 1.1.3 provide the Client with such information and advice in connection with the Technical Support Services and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Technical Support Services.
2. **Client's Obligations**
  - 2.1 The Client shall:
    - 2.1.1 provide the Provider with such information in connection with the Technical Support Services as the Provider may, from time to time, reasonably require.
    - 2.1.2 shall perform its obligations under this Agreement in a reasonable and timely manner in accordance with the provisions of this Agreement.
    - 2.1.3 shall act in accordance with any and all reasonable instructions issued by the Provider in relation to the Technical Support Services. The Provider shall not be liable for any failure to provide the Technical Support Services or any part thereof which arises out of the Client's failure to follow any such instructions.
3. **Provision of the Technical Support Services**

The Provider shall provide only the Technical Support Services and only during its Service Hours unless otherwise agreed in writing by the Parties.
4. **Service Levels and Response Times**
  - 4.1 The Provider shall use reasonable endeavours to respond to a Technical Support Service request received within its Service Hours within 48 hours.
  - 4.2 The Provider gives no guarantee as to the time any given issue may take to resolve save that it hereby undertakes to use reasonable endeavours to resolve issues as quickly as is reasonably possible.
5. **Scheduled and Unscheduled Maintenance**
  - 5.1 The Provider shall be entitled to perform scheduled and routine maintenance on the Services, provided that the Provider provides the Customer with prior written notice of such Scheduled Maintenance.
  - 5.2 The Provider shall also be entitled to perform unscheduled maintenance on the Service for emergency purposes only, provided that the Provider provides the Customer with written notification of the unscheduled maintenance.