



Unique Voice CIC
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Mental Health Toolkit Agreement General

Terms and Conditions

1. Interpretation and Definitions

1.1. The following definitions and rules of interpretation apply in this Agreement.

Acceptable Use Policy	the Supplier's policy on acceptable use of the Services available at www.uniquevoice.org and as updated by the Supplier from time to time.
Additional Product Charges	the fees for the Additional Products as detailed in the OrderDetails.
Additional Products	the Supplier's teaching and educational materials and other products purchased separately to the Subscribed Services, as set out in Order Details.
Agreement	these General Terms and Conditions and the Order Details.
Authorised User	the Customer's employees, agents, independent contractors or other individuals authorised by the Customer to access and use the Services.
Charges	the fees for the Services and Products as detailed in the Order Details or a Renewal Charges Variation Notice, including the Subscription Charges and the Additional Product Charges.
Commencement Date	the date on which the Supplier receives full payment for the Subscribed Services from the Customer, or the date when the Platform is available for use by the Customer, whichever is earlier.
Confidential Information	all confidential information (however recorded, preserved or disclosed) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including the terms of this Agreement, any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party and any information or analysis derived from Confidential Information. Confidential Information shall exclude information which is: (a) generally available to the public (other than as a result of breach of confidentiality obligations); (b) available or which comes available to the receiving party on a non-confidential basis



	before disclosure; or (c) independently developed without access to such Confidential Information.
Controller	as defined in the applicable Data Protection Laws.
Customer Marks	logos (or other brand identity), trademarks or trade names provided by or used by the Customer.
Customer Materials	any materials, data, text, graphics, videos, photos, designs, domain names, documentation, processes and procedures, information, programmes or any other content supplied by (or on behalf of) the Customer or Authorised Users to the Supplier in connection with this Agreement.
Data Protection Laws	as applicable and binding on the parties or Services: (a) in the United Kingdom: (i) the Data Protection Act 2018 or (ii) the UK General Data Protection Regulation (Retained Regulation 2016/679) and the Privacy and Electronic Communication Directive (Directive 2002/58/EC) and national legislation replacing, implementing or supplementing such legislation in the United Kingdom; (b) in member states of the European Union: the General Data Protection Regulation (Regulation 2016/679) and all relevant member state laws or regulations giving effect to or corresponding with any of them.
Data Subject	as defined in the applicable Data Protection Laws.
Disclosing Party	a party to this Agreement which discloses or makes available directly or indirectly Confidential Information.
Force Majeure Event	any event outside the reasonable control of either party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, disaster or any action taken by a third party in relation to any third-party software.
Included Products	the Supplier's teaching and educational materials and other products included with the Subscribed Services, as set out in the Order Details.
Initial Term	the initial subscription duration set out in the Order Details, commencing on the Commencement Date, unless terminated earlier in accordance with this Agreement.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright (including source code) and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect



	<p>the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist now or in the future in any part of the world.</p>
Losses	<p>all losses, liabilities, costs, expenses and damages.</p>
Order Details	<p>the order details listed on the purchase page of the Site or Platform, or agreed with the company and then summarised in an order confirmation document emailed by the Supplier to the Customer.</p>
Personal Data	<p>as defined in the applicable Data Protection Laws.</p>
Personal Data Breach	<p>as defined in the applicable Data Protection Laws.</p>
Platform	<p>the Supplier's proprietary cloud-hosted educational platform at www.uniquevoice.org and any associated webpage made available to the Customer in accordance with the terms of this Agreement.</p>
Processor	<p>as defined in the applicable Data Protection Laws.</p>
Products	<p>the Included Products and Additional Products as detailed in the Order Details.</p>
Protected Data	<p>Personal Data received from or on behalf of the Customer in relation to the Supplier's performance of the Services under this Agreement.</p>
Public Networks	<p>a public communications network established and operated by a telecommunications provider, including the internet, wireless and mobile technologies.</p>
Renewal Charges Variation Notice	<p>has the meaning set out in Clause 10.8</p>
Renewal Term	<p>has the meaning set out in Clause 20.2.</p>
Representatives	<p>employees, workers, agents, officers, advisers and other representatives of that party including in the case of the Customer, the Authorised Users.</p>
Services	<p>the Subscribed Services and Support Services as detailed in the Order Details.</p>
Site	<p>the Supplier's website available at www.uniquevoice.org</p>
Sub-Processor	<p>another Processor engaged by the Supplier for carrying out processing activities in respect of the Personal Data processed in relation to this Agreement on behalf of the Customer. The latest version of the list of Sub-Processors can be obtained from theoffice@uniquevoice.org.</p>



Subscribed Services	the Customer's subscription to use the Supplier's Platform and Teaching Materials during the Term, as described in the OrderDetails.
Subscription Charges	the fees for the Subscribed Services, Support Services and Included Products as detailed in the Order Details or a RenewalCharges Variation Notice.
Supplier	Unique Voice CIC (registered in England and Wales with company number 07618182 and whose registered address is C/O Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, England BS32 4JY).
Supplier Materials	any Teaching Materials, materials, designs, logos (or other brand identity), domain names, documentation, processes and procedures, information, programs, software and codes suppliedby the Supplier to the Customer through the delivery of the Services and Products or otherwise.
Support Services	as set out in the Order Details.
Teaching Materials	the teaching and educational materials (or, where relevant, any part of them) provided by the Supplier to the Customer as part of the Subscribed Services in accordance with the terms of this Agreement.
Term	the Initial Term together with any further Renewal Term(s).
VAT	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover,sales or purchase tax or duty levied in any other jurisdiction.
Working Days	a day other than a Saturday or Sunday or bank or public holiday in England.



- 1.2. Unless the context otherwise expressly requires, references to:
 - 1.2.1. **"including"** or **"includes"** shall be deemed to have the words "without limitation" inserted after them;
 - 1.2.2. **"writing"** or **"written"** includes e-mail;
 - 1.2.3. references to any applicable laws and to terms defined in such applicable laws shall be replaced with or incorporate (as the case may be) references to any applicable laws replacing, amending, extending, re-enacting or consolidating such applicable law and the equivalent terms defined in such applicable laws, once in force and applicable; and a reference to a law includes all subordinate legislation made under that law; and
 - 1.2.4. a time shall be GMT or BST (as applicable).

1.3. Clause and Schedule headings do not affect the interpretation of this Agreement. The Agreement

2. Entering into this Agreement

- 2.1. By signing this document to accept these General Terms and Conditions you accept our Agreement on behalf of the Customer indicated in the Order Details as a legally binding contract with the Supplier.
- 2.2. You represent and warrant that you have all necessary capacity and authority to enter into our Agreement on behalf of the Customer as a legally binding contract with the Supplier in all applicable jurisdictions. If you do not have such capacity or authority or do not wish to accept this Agreement on behalf of the Customer please do not proceed to request the provision of Services or Products.

The Services

3. Rights of Use

- 3.1. Subject to the terms of this Agreement, the Supplier hereby grants to the Customer and its Authorised Users a non-exclusive, non-transferable and revocable licence to use the Platform and the Teaching Materials during the Term for the sole purpose of delivering tuition to the Customer's pupils on personal, social, health and economic education, provided that:
 - 3.1.1. the Customer complies with the terms of this Agreement and procures that Authorised Users shall comply with the terms of this Agreement and the Acceptable Use Policy;
 - 3.1.2. the Customer shall be liable for all acts and omissions of any Authorised User and shall indemnify the Supplier against all Losses incurred or suffered by the Supplier, or for which the Supplier may become liable, arising out of any act or omission of any Authorised User;
 - 3.1.3. all Charges are paid on or before the due date for such Charges;
 - 3.1.4. access to the Services is only in accordance with the agreed access detailed in the Order Details; and
 - 3.1.5. the Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform (whether or not by an Authorised User) and notify the Supplier promptly of any such unauthorised access or use.

4. Provisions of the Services

- 4.1. The Supplier shall:



- 4.1.1. provide the Services with reasonable care and skill; and
- 4.1.2. use its reasonable endeavours to make the Platform available in accordance with the terms of this Agreement in all material aspects.
- 4.2. If there is a breach of Clause 4.1, the Supplier shall use reasonable endeavours to rectify the impacted Services within a reasonable time period. To the maximum extent permitted by law, this Clause 4.2 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of Clause 4.1.
- 4.3. The Customer acknowledges that the Platform may be unavailable as a result of scheduled or emergency maintenance being undertaken at any time to preserve the security and reliable operation of the Platform. The Supplier shall not be liable for the Platform being unavailable as a result of the circumstances under this Clause 4.3.
- 4.4. In addition to making any changes to the Platform which may be necessary to provide the Platform to the full benefit of the Customer (as the Supplier may deem necessary in its sole discretion), the Supplier shall be entitled to:
 - 4.4.1. make changes to the Platform from time to time for the purpose of maintaining the security or performance or availability of the Platform; or
 - 4.4.2. make changes to the Platform and the Services in order to comply with all applicable laws, statute, regulation, order, regulatory policy, guidance or industry code in any jurisdiction.
- 4.5. Any changes to the Services requested by the Customer must be agreed in writing between the parties, and may be subject to additional Charges.

5. Customer Obligations

- 5.1. The Customer shall:
 - 5.1.1. promptly provide the Supplier with all necessary co-operation and access to such information, documentation and data as may reasonably be required by the Supplier in order to provide the Services;
 - 5.1.2. be responsible for the necessary arrangements to enable its Authorised Users to access the Platform and use the Services;
 - 5.1.3. ensure that each Authorised User has read the Acceptable Use Policy prior to accessing the Platform or Services;
 - 5.1.4. ensure that its Authorised Users shall comply with (i) the terms of this Agreement; (ii) the Acceptable Use Policy; and (iii) any other policies that the Supplier may implement from time to time (as published on the Platform or otherwise communicated to the Customer by the Supplier);
 - 5.1.5. be responsible for complying with all applicable laws and regulations (as updated and amended from time to time) and for obtaining and maintaining any necessary licences (including import licences), permits, notifications, authorisations, consents or certifications required in connection with this Agreement and its use of the Services. The Customer shall be responsible for any customs duties, clearance charges, taxes and other amounts payable;



- 5.1.6. carry out all other Customer responsibilities and perform all its obligations set out in this Agreement in a timely and efficient manner. The Supplier shall not be liable for any delay in the delivery of the Services which is caused by the Customer's failure to comply with its obligations under this Agreement;
- 5.1.7. make the headteacher of the Customer available to serve as primary contact for the Supplier and inform the Supplier of a change to the headteacher of the Customer; and
- 5.1.8. If the Customer becomes aware that an Authorised User's use of the Platform, Supplier Materials or the Services breaches the terms of this Agreement, the Acceptable Use Policy or the Supplier's other policies, the Customer shall:
 - 5.1.8.1. notify Supplier in writing as soon as it becomes aware of the Authorised User's breach; and
 - 5.1.8.2. suspend the relevant Authorised User's access to the Platform and the Services for so long as the relevant breach remains unremedied, without prior notice to the relevant Authorised User.
- 5.2. The Customer warrants and undertakes that it shall, and procure that each Authorised User shall:
 - 5.2.1. keep the Customer's log in details secure and confidential and only use the log in details for the purpose of accessing the Platform and using the Supplier Materials and Services in accordance with the terms of this Agreement;
 - 5.2.2. not share the Customer's log in details with any third parties including associated entities, schools or organisations or any other entities, schools or organisations within the Customer's group;
 - 5.2.3. not use the Platform, Supplier Materials or the Services:
 - 5.2.3.1. for any purpose that is unlawful under any applicable law or prohibited by this Agreement;
 - 5.2.3.2. to commit any act of fraud;
 - 5.2.3.3. to distribute any virus, trojan, malwares or any similar malicious codes;
 - 5.2.3.4. for purposes of promoting unsolicited advertising or sending spam;
 - 5.2.3.5. to simulate communications from the Supplier or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');
 - 5.2.3.6. in any manner that disrupts the operations, business, equipment, websites or systems of the Supplier or any other person or entity (including any denial of service and similar attacks);
 - 5.2.3.7. in any manner that harms or may endanger minors or any other person;
 - 5.2.3.8. in connection with any service, use or purpose where the failure of the Services (or any part) may endanger the health or life of any person or cause damage or loss to any tangible property or the environment;
 - 5.2.3.9. to promote any unlawful activity;
 - 5.2.3.10. to represent or suggest that the Supplier endorses any other business, product or service unless the Supplier has separately agreed to do so in writing;



- 5.2.3.11. to gain unauthorised access to or use of any computers, data, systems, accounts or networks of any person;
 - 5.2.3.12. in any manner which may impair any other person's use of the Platform, Supplier Materials, the Services or use of any other services provided by the Supplier to any other person;
 - 5.2.3.13. to attempt to circumvent any security controls or mechanisms;
 - 5.2.3.14. to attempt to circumvent any password or user authentication methods of any person;
 - 5.2.3.15. in any manner inconsistent with this Agreement or other policies provided by the Supplier from time to time; or
 - 5.2.3.16. in any manner which does not comply with the provisions relating to Intellectual Property Rights contained in this Agreement;
- 5.2.4. ensure that any Customer Materials shall at all times be:
- 5.2.4.1. submitted lawfully and without infringement of any Intellectual Property Rights of any person;
 - 5.2.4.2. free of virus, trojan, malwares or any similar malicious codes;
 - 5.2.4.3. factually accurate;
 - 5.2.4.4. provided with the necessary consent of any third party;
 - 5.2.4.5. not defamatory or likely to give rise to an allegation of defamation;
 - 5.2.4.6. not obscene, seditious, vulgar, pornographic, sexually explicit, discriminatory or deceptive;
 - 5.2.4.7. not abusive, threatening, offensive, harassing or invasive of privacy;
 - 5.2.4.8. not racist, sexist or xenophobic;
 - 5.2.4.9. not liable to offend religious sentiments or deeply held beliefs; and
 - 5.2.4.10. unlikely to cause offence, embarrassment or annoyance to any person.
- 5.3. The Supplier shall not be held liable for any breach of this Agreement to the extent that such breach is caused by the Customer's breach of this Clause 5.

The Products

6. The Products

- 6.1. The Products are described on the company website. Any matter, or advertising produced by the Supplier and any descriptions or illustrations contained on the Site are produced for the sole purpose of giving an approximate idea of the Products described in them and are for illustrative purposes only. They shall not form part of the Agreement. Products supplied may vary from those descriptive matter, advertising, descriptions and/or illustrations.
- 6.2. The Supplier warrants that the Products shall:
- 6.2.1. conform in all material respects to the Order Details;
 - 6.2.2. be free from material defects in design, material and workmanship; and
 - 6.2.3. be of satisfactory quality.



6.3. As the Customer's sole and exclusive remedy, the Supplier shall, at its option, repair or replace the Products, or in the case of the Additional Products refund the Additional Product Charges paid for the Additional Products, that do not comply with Clause 6.2.

6.4. Except as set out in this Clause 6 the Supplier:

6.4.1. gives no warranties and makes no representations in relation to the Products; and

6.4.2. shall have no liability for failure of the Products to comply with the warranty in Clause 6.2,

and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

7. Delivery

7.1. The Products shall be delivered to the school address provided by the Customer in the Order Details, during the Supplier's usual business hours. Delivery of the Products shall be complete on its arrival at such address ("**Delivery**").

7.2. Any dates quoted by the Supplier for delivery are approximate only, and the time of delivery is not of the essence.

7.3. If the Supplier fails to deliver the Products within a reasonable time, to the fullest extent permitted by law, its liability shall be limited to issuing a refund to the Customer in respect of the Products that were not delivered within a reasonable time. The Supplier shall have no liability for any non-delivery to the extent that such delay or failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

8. Title and risk

8.1. The risk in the Products shall pass to the Customer on Delivery.

8.2. Title to the Products shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Products.

8.3. Until title to the Products has passed to the Customer, the Customer shall hold the Materials as the Supplier's bailee, and shall notify the immediately if it becomes subject to any of the events listed in Clause 21.

8.4. The Supplier may at any time before title to the Products passes to the Customer:

8.4.1. require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and

8.4.2. if the Customer fails to do so promptly, enter any premises (including locked premises) of the Customer or of any third party where the Products are stored in order to recover them.

9. Return of Products

9.1. If the Customer wishes to return any Additional Products it must inform the Supplier within fourteen (14) days of receiving the Additional Products. The customer then has a further fourteen (14) days to return the goods undamaged. The Supplier will then refund the Additional Product Charges paid for the Additional Products within fourteen (14) days.

General Provisions



10. Charging and invoicing

- 10.1. The Customer shall pay the Charges to the Supplier in accordance with the Order Details and this Clause 10, without entitlement to set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to the Supplier. The Customer agrees that the payment for the Charges is non-refundable unless otherwise stated in this Agreement.
- 10.2. If purchasing Programmes, Products or Services via the Supplier's online shop or the Platform, at the Customer's choice:
 - 10.2.1. a credit card or debit card will be charged for the Charges with agreement for direct debit payments annually in advance for subscription payments; or
 - 10.2.2. a direct debit agreement will be entered into for immediate payment of the initial term and annual payment for subsequent renewals
- 10.3. If purchasing Programmes, Products or Services via other means such as telephone or email, at the Customer's choice:
 - 10.3.1. a credit card or debit card will be charged for the Charges with agreement for direct debit payments annually in advance for subscription payments; or
 - 10.3.2. a direct debit agreement will be entered into for immediate payment of the initial term and annual payment for subsequent renewals
- 10.4. If purchasing Additional Products or Services via other means such as telephone or email, the Supplier shall invoice the Customer:
 - 10.4.1. at any time following receipt of an order for Additional Products for the Additional Product Charges;
 - 10.4.1.1. payment to be made in advance of order dispatch by credit card, debit card or BACS payment for customers not having a credit account with the company
 - 10.4.1.2. Payment to be made in accordance with 10.5 for credit account customers
- 10.5. The Customer shall make payment to the Supplier of each invoice within fourteen (14) days of the date of the invoice.
- 10.6. All fees, charges and other payments to be made by the Customer are exclusive of VAT and all other relevant taxes, for which the Customer shall be responsible. Unless stated otherwise in the Order Details, all Charges shall be paid in pound sterling (£/GBP).
- 10.7. If any sum is not paid on or before the due date under this Agreement, without prejudice to any other remedies that the Supplier may have under this Agreement, the Customer shall pay the Supplier interest on the outstanding amount until payment is received in full and cleared funds at a rate equal to 8% above the Bank of England base rate from time to time in force, until the date actual payment is received. Such interest shall be compounded monthly.
- 10.8. The Supplier may vary the Subscription Charges from the start of each Renewal Term by giving to the Customer not less than six (6) weeks' written notice of such variation (a Renewal Charges Variation Notice) prior to the start of the relevant Renewal Term.

11. Intellectual property rights

- 11.1. Each party owns all Intellectual Property Rights owned or controlled by it or licensed to it prior to or outside of this Agreement but required for the purposes of this Agreement.



- 11.2. All Intellectual Property Rights in the Platform, the Services, Supplier Materials, Products and all other Intellectual Property Rights arising out of the performance of the Supplier's obligations under this Agreement ("**Supplier IPRs**") are, and shall remain, the property of the Supplier or its licensors. The Customer acquires no rights in or to such Supplier IPRs other than those rights expressly granted by this Agreement. To the extent that the Customer or any Authorised User generates any derivative works from Supplier IPRs or otherwise acquires any Intellectual Property Rights in the Platform, Supplier Materials, any other part of the Services or the Products, the Customer shall assign, or procure the assignment of, such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier or such third party as the Supplier may elect. The Customer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this Clause 11.2.
- 11.3. The Customer shall promptly report to the Supplier any infringement of the Supplier IPRs that comes to its attention. Without prejudice to the generality of the foregoing, the Customer shall ensure that each Authorised User, prior to use of the Platform, the Services and the Supplier Materials, is made aware that Platform, the Services, the Supplier Materials and the Products are proprietary to the Supplier.
- 11.4. Save where expressly agreed in writing by the parties, the Customer acknowledges and accepts that nothing in this Agreement shall prevent or restrict the Supplier from exploiting or licensing any of the Supplier IPRs to any third party.
- 11.5. The Supplier may use any feedback and suggestions provided by the Customer or any Authorised User for improvement relating to its services, including the Services, without charge or limitation ("**Feedback**"). The Customer hereby assigns (or shall procure the assignment) of all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment or future Intellectual Property Rights) to the Supplier at the time such Feedback is first provided to the Supplier.
- 11.6. The Customer hereby waives (and shall ensure all relevant third parties, including Authorised Users, have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to the Supplier under this Agreement.

12. Licence to use Customer Marks and Customer Materials

- 12.1. The Customer hereby grants the Supplier with a non-exclusive, worldwide, royalty free, perpetual and sub-licensable licence to use:
 - 12.1.1. Customer Materials and Customer Marks to the extent necessary to provide the Services and Products or perform its obligations under this Agreement; and
 - 12.1.2. Customer Marks and Customer's name, the fact that the Supplier works with the Customer and what Services and Products it provides to the Customer, in its marketing and promotional material (whether digital or paper format). Any additional information including case studies or press releases must have the Customer's prior written consent, which shall not be unreasonably withheld or delayed.

13. Data protection

- 13.1. The parties agree that in respect of the Services, the Customer shall be the Controller and the Supplier shall be the Processor.
- 13.2. Each party shall:



- 13.2.1. at all times during the Term, comply with the applicable Data Protection Laws; and
 - 13.2.2. to the extent applicable under the Data Protection Laws, obtain and maintain all appropriate registrations required in order to allow it to perform its obligations under this Agreement.
- 13.3. Processing of the Protected Data by the Supplier under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Clause 13.3. The Supplier will host the Platform used by the Customer to assist with the Customer's teaching and educational activities. Third party applications/sub-processors may be used in the hosting of the platform (a full list of sub-processors can be obtained from theoffice@uniquevoice.org). The purpose of the processing is to allow Customers' Authorised Users to access the Teaching Materials on the Platform in accordance with the terms of this Agreement and the Acceptable Use Policy. The nature of the processing is granting of Platform access. The types of Personal Data processed are (i) identification information: name, job title and email address. Such types of Personal Data relate to the Customer's Authorised Users.
- 13.4. In relation to the Protected Data, to the extent that the Supplier is the processor of such Personal Data, the Supplier shall:
- 13.4.1. unless required to do otherwise by applicable laws, only process the Protected Data in accordance with the Customer's documented instructions and in accordance with Clause 13.3 of this Agreement;
 - 13.4.2. taking into account the nature of the processing, implement appropriate technical and organisational measures to protect the Protected Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 13.4.3. not, without the prior written consent of the Customer, transfer any Protected Data to a country or territory outside both the United Kingdom and European Economic Area unless adequate contractual or other assurances have first been put in place such as will enable each party to comply with the requirements of the Data Protection Laws;
 - 13.4.4. take reasonable steps to ensure the reliability of its personnel who have access to any Protected Data and ensure that Protected Data shall only be accessible by its personnel to the extent they need to know or require access for the purpose of properly performing their duties in relation to this Agreement and who, are contractually bound to maintain its confidentiality;
 - 13.4.5. prior to any Sub-Processor authorised in accordance with Clause 13.5 carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under Clause 13 that is enforceable by the Supplier;
 - 13.4.6. notify the Customer without undue delay of any Personal Data Breach that it becomes aware of and provide reasonable assistance to the Customer in respect of any such Personal Data Breach;
 - 13.4.7. at the end of the Term, on the written instructions of the Customer, delete or return all Protected Data processed in relation to this Agreement, unless the Supplier is the Controller of that Protected Data;



- 13.4.8. subject to the Customer paying the Supplier's reasonable costs (unless prohibited by applicable law), provide such cooperation and assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) in ensuring compliance with:
 - 13.4.8.1. the Customer's obligations to respond to any complaint or request from any applicable data protection authority or Data Subjects seeking to exercise their rights under any Data Protection Laws, including by notifying the Customer of each subject access request the Supplier receives;
- 13.4.9. the Customer's obligations set out under Articles 32 – 36 of the GDPR to:
 - 13.4.9.1. ensure the security of the processing;
 - 13.4.9.2. notify the relevant supervisory authority and any DataSubjects, where relevant, of any Protected Data Breach;
 - 13.4.9.3. carry out any data protection impact assessments("DPIA") on the impact of the processing on the protectionof Protected Data; and
 - 13.4.9.4. consult the relevant supervisory authority prior to anyprocessing where a DPIA indicates that the processing would result in a high risk in the absence of measures taken by the Customer to mitigate the risk;
- 13.4.10. make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on itunder this Clause 13 and to demonstrate compliance with the obligations on each partyimposed by Article 28 of the UK GDPR (and under any equivalent Data Protection Lawsequivalent to that Article 28), and allow for audits at the Customer's costs, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one (1) audit request in any twelve (12) month periodunder this Clause 13.4.10).
- 13.5. The Customer authorises the appointment of each of the Sub-Processors identified on the list ofSub-Processors at the Commencement Date. The Supplier shall give the Customer thirty (30) days' prior written notice of any change to the list of Sub-Processors. In the event the Customer reasonably believes that any such change materially impacts it negatively in any manner it may by notice elect to terminate this Agreement in respect of all impacted Services provided it exercises such right within fourteen (14) days of receipt of the change notification and notifies theSupplier in writing at the time of exercising such right of the negative impact which has caused itto exercise this right.
- 13.6. The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to process the Protected Data (for the avoidance of doubtthis includes ensuring appropriate privacy notices are in place and ensuring that Protected Data is processed accordingly). Consequently, the Supplier will not be liable for any claim brought by a Data Subject or a relevant regulatory authority and the Customer shall indemnify and keep indemnified the Supplier against all Losses arising out of or in connection with any such claim whatsoever by a Data Subject or relevant regulatory authority.
- 13.7. The Customer warrants, represents and undertakes, that all:



- 13.7.1. Protected Data provided by the Customer to the Supplier for use in conjunction with the Services shall comply in all respects, including in terms of its collection, storage and processing, with Data Protection Laws; and
 - 13.7.2. instructions given by it to the Supplier in respect of Protected Data shall at all times be in accordance with Data Protection Laws.
- 13.8. The Supplier shall inform the Customer without undue delay if the Supplier believes that a processing instruction infringes Data Protection Laws, provided that to the maximum extent permitted by mandatory law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any Losses arising from or in connection with any processing in accordance with the Customer's unlawful processing instructions.

14. Confidentiality

- 14.1. Each party shall keep the other party's Confidential Information confidential for the duration of this Agreement and, subject to Clause 14.3 below, for a period of twelve (12) months following its expiry or termination, and shall not:
- 14.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement ("**Permitted Purpose**"); or
 - 14.1.2. disclose such Confidential Information (in whole or in part) to any third party, except to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that (to the extent it is legally permitted to do so), it gives the other party as much notice, along with details of the Confidential Information which is the subject, of such disclosure as possible.
- 14.2. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 14.2.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 14.2.2. procures such Representatives' compliance with the confidentiality obligations set out in this Clause.
- 14.3. On termination (or expiry) of this Agreement, each party shall be entitled to retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by applicable laws or applicable governmental or regulatory authority.
- 14.4. Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

15. Warranties

- 15.1. Subject to the remainder of this Clause 15, the Supplier warrants and represents to the Customer that:
- 15.1.1. it owns or has obtained all necessary rights or licences (as applicable) in and to the Platform and Supplier Materials as necessary to grant the Customer access to the Platform to receive the Services as set out in this Agreement; and
 - 15.1.2. the Customer's use of the Platform in accordance with this Agreement does not infringe the copyright of any third party.



- 15.2. The warranties under Clause 15.1 shall not apply to the extent that any error in the Services arises as a result of:
- 15.2.1. incorrect operation or use of the Platform or the Services by the Customer or any Authorised User;
 - 15.2.2. use of any of the Services other than for the purposes for which it is intended;
 - 15.2.3. use of the Platform with other software or services or on equipment with which it is incompatible;
 - 15.2.4. in respect of the Platform, any act by any third party (including hacking or the introduction of any virus or malicious code);
 - 15.2.5. any modification of the Platform or Services (other than that undertaken by the Supplier or at its direction); or
 - 15.2.6. any breach of this Agreement by the Customer (or by any of its Representatives).
- 15.3. The Customer's sole remedies for breach of the warranties in Clause 15.1 are set out in Clause 18.
- 15.4. The Customer warrants and represents to the Supplier that:
- 15.4.1. it owns or has obtained all necessary rights or licenses (as applicable) in and to the Customer Materials and Customer Marks necessary to perform its obligations and grant the licences set out in this Agreement and the Supplier's use of the Customer Materials and Customer Marks in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party;
 - 15.4.2. it is not, and during the Term it will not be, receiving the Services or Products as a (non-business) consumer; and
 - 15.4.3. it will use the Platform, Services, Supplier Materials and Products only in accordance with this Agreement.
- 15.5. Each party warrants that it has full capacity and authority to enter into this Agreement and that those signing this Agreement are duly authorised to bind the party for whom they sign.

16. Use of the Platform

- 16.1. The Platform may be subject to delays, interruptions, errors or other problems resulting from use of the Public Networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that the Supplier shall have no liability for any such delays, interruptions, errors or other problems.
- 16.2. Save for the express warranties set out in Clause 15.1 all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded. Without limitation, the Supplier specifically denies any implied or express representation that the Services may be used or provided:
- 16.2.1. in conjunction with any hardware items, software (including operating systems), any third party services; or
 - 16.2.2. uninterrupted or error-free.

17. Anti-Bribery



- 17.1. Both parties shall:
- 17.1.1. comply with all applicable laws, statutes relating to anti-bribery and anti-corruption, including the Bribery Act 2010; and
 - 17.1.2. not engage in any activity, practice or conduct that would breach applicable law or constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

18. Indemnities

- 18.1. The Customer shall indemnify and keep indemnified the Supplier against all Losses suffered or incurred by the Supplier arising out of or in connection with:
- 18.1.1. any claim made against the Supplier alleging infringement of a third party's Intellectual Property Rights arising out of the Supplier's use of Customer Materials or Customer Marks save to the extent that such infringement is a result of the Supplier's use of the Customer Materials not in accordance with this Agreement; and
 - 18.1.2. the Customer's (or its Authorised Users') use of the Platform, Services or Products not in accordance with this Agreement.
- 18.2. Subject to Clause 18.3, the Supplier agrees to indemnify the Customer against all Losses suffered or incurred by the Customer directly arising out of or in connection with any third party claim that Customer's use of the Services or Platform in accordance with this Agreement directly infringes a third party's Intellectual Property Rights save to the extent that such infringement is a result of the Customer's use of the Services or Platform not in accordance with this Agreement.
- 18.3. If any third party makes a claim, or notifies an intention to make a claim against the Customer, which may reasonably be considered likely to give rise to a liability under Clause 18.2 ("**Indemnity Claim**"), the Customer shall:
- 18.3.1. immediately give written notice of the Indemnity Claim to the Supplier, specifying the nature of the Indemnity Claim in reasonable detail;
 - 18.3.2. not make any admission of liability, agreement or compromise in relation to the Indemnity Claim without the Supplier's prior written consent; and
 - 18.3.3. allow the Supplier to conduct all negotiations and proceedings and provide the Supplier with such reasonable assistance, documents, records and information as required by the Supplier regarding the Indemnity Claim.
- 18.4. If an Indemnity Claim is made (or the Supplier reasonably anticipates an Indemnity Claim is reasonably likely to be made) the Supplier may, if applicable, either:
- 18.4.1. procure for the Customer the right to continue using the relevant item which is subject to the Indemnity Claim; or
 - 18.4.2. replace or modify the relevant item with non-infringing substitutes.
- 18.5. Nothing in this Clause shall restrict or limit either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this Clause 18.

19. Limitation of liability



- 19.1. This Clause 19 sets out the entire liability of the Supplier (including any liability for the acts or omissions of its Representatives and including any settlements) to the Customer and its Authorised Users in respect of any breach of this Agreement, any representation, statement or tortious act or omissions (including negligence) arising under or in connection with this Agreement or any other liability to the Customer and its Authorised Users whatsoever.
- 19.2. Nothing in this Agreement limits or excludes the liability of either party for:
 - 19.2.1. death or personal injury resulting from negligence;
 - 19.2.2. any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; or
 - 19.2.3. any other liability which is incapable of being excluded or limited by law.
- 19.3. Subject to Clause 19.2, the Supplier's total aggregate liability of all other Losses whether arising from contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (including all non-contractual liability) shall in no event exceed the amount of 150% of the Charges paid by the Customer to the Supplier in the twelve-month period immediately preceding the first incident giving rise to any claim under this Agreement.
- 19.4. Subject to Clause 19.2, the Supplier shall not have any liability to the Customer whether arising from contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (including all non-contractual liability) for any:
 - 19.4.1. loss of use;
 - 19.4.2. loss of profits;
 - 19.4.3. loss of or anticipated savings;
 - 19.4.4. loss of revenue;
 - 19.4.5. loss or damage to reputation or goodwill;
 - 19.4.6. loss of opportunity;
 - 19.4.7. any Losses arising from or in connection with any processing by the Supplier or Sub- Processor pursuant to any unlawful processing instruction given by the Customer that infringes Data Protection Laws;
 - 19.4.8. any loss or corruption of data or information,
and in each case whether direct, indirect, special or consequential loss or damage; or
 - 19.4.9. for any other indirect, special or consequential loss or damage.

20. Commencement and duration

- 20.1. This Agreement shall commence on the Commencement Date and continue for the Initial Term unless terminated earlier in accordance with Clauses 13.5 or 21.
- 20.2. On the expiry of the Initial Term, this Agreement shall automatically continue for further consecutive periods of equal duration to the Initial Term (each, a Renewal Term), unless either party has given the other party notice in accordance with Clause 20.3, or unless the Agreement is terminated sooner in accordance with Clauses 13.5 or 21.



20.3. This Agreement shall terminate at the end of the Initial Term or at the end of the then Renewal Term if either party has given the other party at least one (1) months' written notice to terminate the Agreement, such notice to expire either upon the end of the Initial Term or the end of the then Renewal Term (as the case may be).

21. Termination and suspension

21.1. Without prejudice to any rights or remedies that have accrued under this Agreement, either party may at any time terminate this Agreement (or any part thereof) with immediate effect by giving written notice to the other party if:

21.1.1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Working Days after being notified in writing to do so;

21.1.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

21.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

21.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

21.2. Without prejudice to any rights or remedies that have accrued under this Agreement, the Supplier may at any time terminate this Agreement or suspend the Customer's access to the Services, in whole or in part:

21.2.1. with immediate effect by giving written notice to the Customer if:

21.2.1.1. the Customer is in breach of any applicable law;

21.2.1.2. the Customer is in breach of its warranties under Clause 15.4;

21.2.1.3. any undisputed amount due under this Agreement is outstanding for thirty (30) days following the applicable due date to make such payment;

21.2.1.4. in the Supplier's reasonable opinion, the security or integrity of the Platform has been, or may be, compromised or is otherwise at risk; or

21.2.1.5. in the Supplier's reasonable opinion, there has been any misuse of the Platform or the Services or there has been a breach of this Agreement by the Customer or its Authorised Users, including breaches of Clause 5.2.

21.3. Termination of this Agreement or suspension of the Customer's access to the Services, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination or suspension.

21.4. The Charges shall remain payable during any period of suspension notwithstanding that the Customer or its Authorised Users may not have access to the Services. In relation to suspension under Clause 21.2.1.3, access to the Services will be restored promptly after the Supplier receives the relevant payment in full and cleared funds.



21.5. On termination of this Agreement for any reason, the Customer's access to the Platform and use of the Services shall be terminated and the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services or Products that it has supplied or work completed, but for which no invoice has been submitted, and the Customer shall pay these invoices in accordance with Clause 10.4.

21.6. Clauses 11 (*Intellectual Property Rights*), 12 (*Licence to use Customer Marks and Customer Materials*), 13 (*Data protection*), 14 (*Confidentiality*), 18 (*Indemnities*), 19 (*Limitation of liability*), 24 (*Entire agreement*), 26 (*Severance*), 27 (*Third party rights*), 29 (*Notices*) and 30 (*Governing law and jurisdiction*) shall survive expiry or termination of this Agreement.

22. Assignment and novation

22.1. The Customer shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier.

22.2. The Supplier may assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement.

23. Waiver

23.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

24. Entire agreement

24.1. This Agreement constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

24.2. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

25. Variation

25.1. Subject to the Supplier's right to vary this Agreement in accordance with Clause 4.4, no other variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

26. Severance

26.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

27. Third-party rights

27.1. No person other than a party to this Agreement shall have any rights (including any rights under the Contracts (Rights of Third Parties) Act 1999) to enforce any term of this Agreement.

28. Force majeure



28.1. To the maximum extent permitted by law, the Supplier shall not be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event.

29. Notices

29.1. Any notice required to be given pursuant to this Agreement shall be in writing and served on the other party using the details provided at the time of purchase, or any other address as either party notifies to the other in writing from time to time.

29.2. A notice shall be deemed to have been received:

29.2.1. if delivered personally, at the time of delivery; or

29.2.2. in the case of pre-paid first class post, three (3) Working Days (or five (5) Working Days if to an address outside the country of posting) from the date of posting; or

29.2.3. in the case of email (including in the case of any invoice sent by email by the Supplier), at the time the email entered the intended recipient's information systems

29.2.3.1. on the same Working Day if the email is sent between 09:00 – 17:00 on a Working Day; or

29.2.3.2. on the next Working Day if the email is sent outside the hours specified in Clause 29.2.3.1,

provided that no error message indicating failure to deliver has been received by the sender.

30. Governing law and jurisdiction

30.1. This Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.