

Software as a Service (SaaS)

Terms and Conditions

Please read these terms and conditions carefully, as they set out our and your legal rights and obligations in relation our SOPRA platform and services.

1. Definitions and interpretation

1.1 In the Agreement:

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

"Agreement" means the agreement between the Provider and the Customer for the provision of the Platform as a service, incorporating these terms and conditions (including the Schedules) and the Statement of Services, and any amendments to the Agreement from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:00 GMT on a Business Day;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to the Agreement (as set out in Schedule 2);

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

"Customer" means the customer specified in the Statement of Services;

"Customer Confidential Information" means

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;
- (b) the financial terms and conditions of the Agreement; and
- (c) the Customer Materials;

"Customer Materials" all works and materials:

- (a) uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- (b) otherwise provided by the Customer to the Provider in connection with the Agreement;

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

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or
- (b) an incompatibility between the Platform and any other system, application, program or software not specified as compatible in the Statement of

Services;

"Documentation" means the documentation produced by the Provider and made available on the Platform to the Customer specifying how the Platform should be used;

"Effective Date" means the date that the Agreement comes into force as specified in Clause 2;

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

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

"Minimum Term" means the period specified as such in the Statement of Services;

"Permitted Purpose" means the use of the Platform by the Customer to manage its product inventory (and CRM data if required);

"Personal Data" has the meaning given to it in the Data Protection Act 1998; **"Platform"** means the software platform known as SOPRA (Surespark Inventory Management System) that is owned and operated by the Provider, and that will be made available to the Customer as a service via the internet under the Agreement;

"Provider" means Surespark Limited, a company incorporated in England and Wales (registration number 09195333) having its registered office at 27 Old Gloucester Street, London, WC1N 3AX;

"Schedule" means a schedule attached to the Agreement;

"Services" means all the services provided or to be provided by the Provider to the Customer under the Agreement, including the Support Services;

"Statement of Services" means the document made available by the Provider to the Customer during the order process that specifies the identity of the Customer, and other matters relating to the Agreement;

"Support Services" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with Schedule 1;

"Term" means the term of the Agreement; and

"Upgrades" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

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

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

1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement.

2. Agreement and Term

2.1 The advertising of the Platform and the Services on the Provider's website constitutes an "invitation to treat"; and the Customer's order for the Platform and the Services constitutes a contractual offer. No contract will come into force between the Provider and the Customer unless and until the Provider accepts the Customer's order in accordance with the procedure detailed in this Clause 2.

2.2 In order to enter into the Agreement, the Customer must take the following steps: (i) the Customer must decide which Plan (and Extras if required) to select from the Pricing menu; (ii) the Customer must then place its order with the Provider; (iii) the Provider will then draw up a Surespark sales order which gives details of the services to be provided and the amounts payable by the Customer; (iv) the Customer will then confirm its acceptance of the Surespark sales order including its terms and conditions; (v) the Customer will then submit its bank account details and the Provider will set up a direct debit and take an initial payment; and (vi) once the payment has been received by the Provider the Customer will be given access to the Platform (at which point the Agreement will come into force).

2.3 Once in force, the Agreement will continue in force for the Minimum Term and indefinitely thereafter, unless terminated earlier in accordance with Clause 13.

3. The Platform

3.1 The Provider will make available the Platform to the Customer by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account as soon as practicable following the Effective Date.

3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, the Provider hereby grants to the Customer a non-exclusive licence to use the Platform for the Permitted Purpose via any standard web browser in accordance with the Documentation during the Term.

3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:

- (a) the Platform may only be used by the named users identified in the Statement of Services, providing that the Customer may change, add or remove a designated named user in accordance with the procedure set out therein;
- (b) the Platform must not be used at any point in time by more than the number of concurrent users specified in the Statement of Services, providing that the Customer may add or remove concurrent user licences in accordance with the procedure set out therein;
- (c) the Platform may only be used by the employees, agents and sub-contractors of the Customer and:

- (i) where the Customer is a company, the Customer's officers;
 - (ii) where the Customer is a partnership, the Customer's partners; and
 - (iii) where the Customer is a limited liability partnership, the Customer's members;
 - (d) the Customer must comply at all times with the terms of the acceptable use policy set out in Schedule 3, and must ensure that all users of the Platform agree to and comply with the terms of that acceptable use policy;
- 3.4 Except to the extent mandated by applicable law or expressly permitted in the Agreement, the licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform;
 - (b) the Customer must not frame or otherwise re-publish or re-distribute the Platform; and
 - (c) the Customer must not alter or adapt or edit the Platform save as expressly permitted by the Documentation.
- 3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term.
- 3.6 All Intellectual Property Rights in the Platform shall, as between the parties, be the exclusive property of the Provider.
- 3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.
- 3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.
- 3.9 The Customer must not use the Platform:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4. Support Services and Upgrades**
- 4.1 During the Term the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 1.
- 4.2 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.
- 5. Customer Materials**
- 5.1 The Customer grants to the Provider during the Term a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Platform for the purposes of operating the Platform, providing the Services, fulfilling its other obligations under the Agreement, and exercising its rights under the Agreement.
- 5.2 Subject to Clause 5.1, all Intellectual Property Rights in the Customer Materials

will remain, as between the parties, the property of the Customer.

- 5.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of the Agreement, will not:
- (a) breach any laws, statutes, regulations or legally-binding codes;
 - (b) infringe any person's Intellectual Property Rights or other legal rights; or
 - (c) give rise to any cause of action against the Provider or the Customer or any third party,
- in each case in England and Wales and under English law.
- 5.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 5, the Provider may:
- (a) delete or amend the relevant Customer Materials; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to the Platform while it investigates the matter.
- 5.5 Any breach by the Customer of this Clause 5 will be deemed to be a material breach of the Agreement for the purposes of Clause 13.
- 5.6 The Provider shall ensure that the Customer Materials stored and processed by the Platform are stored separately from, and are not co-mingled with, the materials of other customers of the Provider.

6. Platform Trial

The Provider may, in special circumstances, set up a Platform Trial. The Customer may access the Platform Trial for an agreed period, during which time all of the provisions of this Agreement shall apply, save as follows:

- (a) the Customer shall have no obligation to pay any Charges in respect of the Platform Trial;

7. Charges

- 7.1 The Provider will issue invoices for the Charges to the Customer in accordance with the provisions of Schedule 2.
- 7.2 The Customer will pay the Charges to the Provider within 30 days of the date of issue of an invoice issued in accordance with Clause 7.1.
- 7.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT will be payable by the Customer to the Provider in addition to the principal amounts.
- 7.4 All Charges must be paid by direct debit, unless agreed otherwise.
- 7.5 If the Customer does not pay any amount properly due to the Provider under or in connection with the Agreement, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of NatWest Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Customer pursuant to

the Late Payment of Commercial Debts (Interest) Act 1998.

- 7.6 The Provider may vary the Charges on and from any anniversary of the Effective Date by giving to the Customer not less than 30 days' written notice of the variation.
- 7.7 The Provider may suspend access to the Platform and the provision of the Services if any amounts due to be paid by the Customer to the Provider under the Agreement are overdue by more than 21 days.

8. Warranties

- 8.1 The Customer warrants and represents to the Provider that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 8.2 The Provider warrants and represents to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;
 - (b) that it will perform its obligations under the Agreement with reasonable care and skill;
 - (c) that the Platform will operate without Defects and will perform substantially in accordance with the Documentation (subject to any Upgrades);
 - (d) that the Platform will be hosted in accordance with the requirements set out in the Statement of Services, and will be available to the Customer in accordance with the uptime commitments given in Schedule 1;
 - (e) the Platform (excluding for the avoidance of doubt the Customer Materials) will not:
 - (i) breach any laws, statutes, regulations or legally-binding codes;
 - (ii) infringe any person's Intellectual Property Rights or other legal rights; or
 - (iii) give rise to any cause of action against the Provider or the Customer or any third party, in each case in England and Wales and under English law; and
 - (f) the Platform is and will remain free from viruses and other malicious software programs.
- 8.3 The Customer acknowledges that:
- (a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;
 - (b) the Provider does not warrant or represent that the Platform will be compatible with any application, program or software not specifically identified as compatible in the Statement of Services; and
 - (c) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under the Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

- 8.4 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement.

9. Indemnities

- 9.1 The Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 5.3.
- 9.2 The Provider will indemnify and will keep indemnified the Customer against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Customer and arising as a result of any breach by the Provider of Clause 8.2(e).

10. Limitations and exclusions of liability

- 10.1 Nothing in the Agreement will:

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

- 10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Agreement:

- (a) are subject to Clause 10.1;
- (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

- 10.3 The Provider will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 10.4 The Provider will not be liable for any loss of business, contracts or commercial opportunities.
- 10.5 The Provider will not be liable for any loss of or damage to goodwill or reputation.
- 10.6 The Provider will not be liable in respect of any loss or corruption of any data, database or software.
- 10.7 The Provider will not be liable in respect of any special, indirect or consequential loss or damage.

- 10.8 Neither party will be liable for any losses arising out of a Force Majeure Event.
- 10.9 The Provider's liability in relation to any event or series of related events will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement during the 12 month period immediately preceding the event or events giving rise to the claim.

11. Data protection

- 11.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.
- 11.2 The Provider warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

12. Confidentiality

- 12.1 The Provider will:
- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 12;
 - (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and
- 12.2 Customer Confidential Information may be disclosed by the Provider to its officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Customer Confidential Information disclosed.
- 12.3 The obligations set out in this Clause 12 shall not apply to:
- (a) Customer Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
 - (b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer;
 - (c) Customer Confidential Information that is received by the Provider from an independent third party who has a right to disclose the relevant Confidential Information; or
 - (d) Customer Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the Provider must where permitted by law give to the Customer prompt written notice of the disclosure requirement.

13. Termination

- 13.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any term of the Agreement, and: (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
- (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).

13.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

13.3 Either party may terminate the Agreement by giving at least 30 days' written notice of termination to the other party, expiring at any time after the end of the Minimum Term.

13.4 If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate the Agreement by giving at least 30 days' written notice of termination to the Customer.

13.5 The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.

14. Effects of termination

14.1 Upon termination of the Agreement, all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7.5, 9, 10, 12, 14 and 17.

14.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

- 14.3 Subject to Clause 14.4, within 30 days following the termination of the Agreement, the Provider will:
- (a) irrevocably delete from the Platform all Customer Confidential Information; and
 - (b) irrevocably delete from its other computer systems all Customer Confidential Information, and return to the Customer or dispose of as the Customer may instruct all documents and materials containing Customer Confidential Information.
- 14.4 The Provider may retain any document (including any electronic document) containing the Customer Confidential Information after the termination of the Agreement if:
- (a) the Provider is obliged to retain such document by any law or regulation or other rule enforceable against the Provider; or
 - (b) the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the Provider.

15. Notices

- 15.1 Any notice given under the Agreement must be in writing (whether or not described as “written notice” in the Agreement) and must be delivered personally, sent by recorded signed-for post, or sent by fax or email, for the attention of the relevant person, and to the relevant address or fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Provider:

Surespark Limited, 27 Old Gloucester Street, London, WC1N 3AX, e-mail contact@sopra.io / info@surespark.org.uk

The Customer:

The addressee, address, email and fax set out in the Statement of Services.

- 15.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by recorded signed-for post, 48 hours after posting; and
 - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

16. Force Majeure Event

- 16.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.
- 16.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:

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

16.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

17. General

- 17.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 17.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 17.3 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 17.4 Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under the Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.
- 17.5 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 17.6 Subject to Clause 10.1:
 - (a) the Agreement and the acceptable use policy referred to in herein constitutes the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
 - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.
- 17.7 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

Schedule 1

Service Level Agreement

1. Introduction

- 1.1 In this Schedule:

"New Functionality" means new functionality that is introduced to the Platform by an Upgrade; and

- 1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Helpdesk

- 2.1 The Provider will make available, during Business Hours, a telephone and email helpdesk facility for the purposes of:
- (a) assisting the Customer with the configuration of the Platform and the integration of the Platform with the Customer's other systems;
 - (b) assisting the Customer with the proper use of the Platform; and/or
 - (c) determining the causes of errors and fixing errors in the Platform.
- 2.2 Subject to Paragraph 2.3, the Customer must make all requests for Support Services through the helpdesk, and all such requests must include sufficient information to allow the Provider to give the Customer a satisfactory resolution to its request.
- 2.3 The Provider will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside Business Hours in the case of an emergency.

3. Response and resolution times

- 3.1 The Provider will:
- (a) use all reasonable endeavours to respond to requests for Support Services made through the helpdesk; and
 - (b) use all reasonable endeavours to resolve issues raised by the Customer,
- 3.2 The Provider will determine, acting reasonably, in to which severity category an issue raised through the Support Services falls.
- 3.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

4. Limits on Support Services

- 4.1 Where the total person-hours spent by the Provider performing the Support Services under Paragraphs 2 and 3 during any calendar month exceed 10 hours, then:
- (a) the Provider will cease to have an obligation to provide those Support Services to the Customer during that period; providing that
 - (b) the Provider may agree to provide additional such Support Services to the Customer during that period, but the provision of such services will be subject to payment by the Customer of additional Charges at the Provider's standard hourly rates from time to time.
- 4.2 The Provider shall have no obligation under the Agreement to provide Support Services in respect of any fault or error caused by:
- (a) the improper use of the Platform; or
 - (b) the use of the Platform otherwise than in accordance with the Documentation.

5. Upgrades

- 5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may, subject to Paragraph 5.2, result in changes the appearance and/or functionality of the Platform.
- 5.2 No Upgrade shall disable, delete or significantly impair the Protected Functionality.
- 5.3 The Provider will give to the Customer reasonable prior written notice of the application of any significant Upgrade to the Platform. Such notice shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.
- 5.4 The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:
- (a) the Upgrade introduces New Functionality to the Platform;
 - (b) that New Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;
 - (c) access to or use of the New Functionality is chargeable to the customers of the Provider using the Platform generally; and
 - (d) any decision by the Customer not to pay the Charges for the New Functionality will not prejudice the Customer's access to and use of the rest of the Platform.

6. Uptime commitment

- 6.1 The Provider shall use all reasonable endeavours to ensure that the Platform is available 99.9% of the time during each calendar month, subject to Paragraph 8.

7. Back-up and restoration

- 7.1 Subject to Paragraph 7.2, the Provider will:
- (a) make back-ups of the Customer Materials stored on the Platform on a daily basis, and will retain such back-ups for at least 10 days ; and
 - (b) at least once every day, the Provider will arrange for the off-site storage of a current back-up of the Customer Materials stored on the Platform (which will be over-written on the following off-site back-up date).
- 7.3 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use all reasonable endeavours] promptly to restore the Customer Materials from the most recent available back- up copy.

8. Scheduled maintenance

- 8.1 The Provider may suspend access to the Platform in order to carry out scheduled

maintenance, such maintenance to be carried out and such suspension to be for not more than 4 hours in each calendar month.

- 8.2 The Provider must give to the Customer at least 14 days' written notice of schedule maintenance, including full details of the expected Platform downtime.
- 8.3 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this Paragraph 8 shall not be counted as downtime for the purposes of Paragraph 6.

Schedule 2

Charges

1. Introduction

- 1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.
- 1.2 The Charges under the Agreement will consist of the following elements: (a)
monthly Charges, in respect of access to and use of the Platform;
(b) annual Charges, in respect of access to and use of the Platform; and
(c) other Charges.

2. Monthly Charges

- 2.1 The Charges in respect of access to and use of the Platform shall be on a monthly basis, if the Customer chooses this option.
- 2.2 The Charge will be as stated on the Surespark sales order plus VAT per calendar month, which shall be invoiced by the Provider at any time following the commencement of the calendar month in respect of which the licence Charges are incurred.
- 2.3 If the Customer adds features and/or extras (or features and/or extras are removed) the monthly Charge will be revised at the commencement of the month following the addition (or removal) of those features and/or extras.
- 2.4 No refund of charges will be made if the Agreement is terminated prior to the end of the Minimum Term.

3. Annual Charges

- 3.1 The Charges in respect of access to and use of the Platform shall be on an annual basis, if the Customer chooses this option.
- 3.2 The Charge will be as stated on the Surespark sales order plus VAT per annum. which shall be invoiced by the Provider at any time following the commencement of the year in respect of which the licence Charges are incurred.
- 3.3 If the Customer adds features and/or extras (or features and/or extras are removed) the annual Charge will be revised at the commencement of the month following the addition (or removal) of those features and/or extras.
- 3.4 No refund of charges will be made if the Agreement is terminated prior to the end of the Minimum Term.

4. Other Charges

- 4.1 In addition to the Charges detailed in Paragraphs 2 and 3 above, the Provider will invoice in respect of, and the Customer shall pay to the Provider:

- (a) Charges payable under Paragraphs 4 and 5 of Schedule 1; and
- (b) all other Charges that are agreed between the parties in writing from time to time.

5. Payment

- 5.1 All charges will be paid by direct debit, which will be collected a minimum of 5 days after a Charge is made.

Schedule 3

Acceptable Use Policy

(1) This Policy

This Acceptable Use Policy (the “**Policy**”) sets out the rules governing the use of our web services (the “**Service**”) and any content that you may submit to the Service (“**Content**”).

By using the Service, you agree to the rules set out in this Policy.

(2) General restrictions

You must not use the Service in any way that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service, or any of the areas of, or services on, the Service.

You must not use the Service:

- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

(3) Reasonable Use

You agree to use the Service in a reasonable way. If we determine that your use of the Service is not reasonable or that your use is causing degraded performance of the Service for you and for other Customers, we may impose limits on your use of the Service. Where possible we will endeavour to give you at least 24 hours prior notice that your usage is reduced before imposing any limits.

Limits on your use of the Service may include, but are not limited to, the quantities and volumes of the following parameters:

- (a) storage required to host and backup your data; (b)

sales transactions per calendar month;

- (c) API (application programming interface) calls per 5 minute period;
- (d) bandwidth usage per 24 hour period;
- (e) locations and users.

(4) Unlawful and illegal material

You must not use the Service to store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case in any jurisdiction and under any applicable law).

Content (and its publication on the Service) must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights;
- (d) infringe any rights of confidence, rights of privacy, or rights under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement; (f)

constitute an incitement to commit a crime;

- (g) be in contempt of any court, or in breach of any court order;
- (h) be in breach of racial or religious hatred or discrimination legislation; (i) be blasphemous;
- (j) be in breach of official secrets legislation; or
- (k) be in breach of any contractual obligation owed to any person.

You must not submit any Content that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

(5) Data mining

You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Service without our express written consent.

(6) Harmful software

You must not use the Service to promote or distribute any viruses, Trojans, worms, root kits, spyware, adware or any other harmful software, programs, routines, applications or technologies.

You must not use the Service to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.

Statement of Services

Customer

The Customer and its designated users are as named on the Surespark sales order.

Customer notices

The address, fax number and email address of the Customer are as stated on the Surespark sales order.

Minimum Term

The Minimum Term shall be either,

- (a) the period of 12 calendar months following the receipt of the first payment by the Provider from the Customer, if the Customer chooses the option for monthly charges, or
- (b) the period of 12 calendar months following the receipt of the first payment by the Provider from the Customer, or the end of any subsequent 12 calendar month period, if the Customer chooses the option for annual charges.

Platform specification

Surespark SOPRA platform:

The Platform will be designed to interface with the following website platforms:

Internet Explorer, Edge, Chrome and Firefox. Other web browsers may work but have not been full tested.

Licensing

The features which are licensed to the Customer are as stated on the Surespark sales order

The Customer may add features and extras at any time by completing a supplementary Surespark sales order.