

Ada Mode – Provision of Services for G-Cloud 14: Terms and Conditions

Commercial Summary

This Agreement outlines the terms and conditions associated with delivery of services, products and/or software for customers contracting or licensing Ada Mode services, software or products through the G-Cloud 14 Framework.

"Parties"	
Ada Mode	Customer
Network Eagle Lab, Portland Terrace, Southampton, England, SO14 7SJ Company number: 12351326 ("Ada Mode")	[INSERT COMPANY NAME] [INSERT ADDRESS] Company number: [INSERT COMPANY NUMBER/IDENTIFICATION DETAILS] (the "Customer")

Execution	
By signing the below, each Party agrees to this Commercial Summary and attached Terms and Conditions.	
Signed for and on behalf of Ada Mode Limited acting by a director: Sign:..... Print name: Date:.....	Signed for and on behalf of Customer acting by a director: Sign:..... Print name: Date:.....

1. Interpretation and definitions

"Account(s)" means an account enabling Authorised Users to access and use the Hosted Services and the Platform;

"Ada Mode" means Ada Mode Limited whose details are listed in the Commercial Summary;

"Ada Mode IP" means Intellectual Property Rights owned by, or licensed to, Ada Mode and made available by Ada Mode to the Customer as part of the Services;

"Agreement" means the Commercial Summary, these Terms and any amendments to this Agreement from time to time;

"Authorised Users" means those employees, agents and sub-contractors of the Customer who are authorised by the Customer to use the Hosted Services and the Documentation pursuant to clause 3 of these Terms;

"Business Day" means a day other than a Saturday, Sunday or public holiday in England;

"Business Hours" means 09:00 to 17:00 UK time on any Business Day;

"Charges" means the charges set out in the Commercial Summary payable by the Customer to Ada Mode in accordance with these Terms and such other amounts as may be agreed in writing by the parties from time to time;

"Commencement Date" means the date the Services will commence as set out in the Commercial Summary;

"Commercial Summary" means the document marked "Part A: Commercial Summary" attached to these Terms;

"Confidential Information" means all confidential information (however recorded or preserved) disclosed by either Party, its employees, workers, assistants, consultants, contractors, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services or that Party's representatives in connection with this Agreement concerning the business, affairs, customers, clients, know-how, trade secrets, technology, project, methodologies, criteria or consultants of the Party or of any member of the group of companies to which the Party belongs. For the avoidance of doubt the contents of this Agreement, the Charges and Customer Data are classified as Confidential Information;

"Consultancy Services" means application development services to be provided by Ada Mode in respect of the Platform or the Hosted Services such as hardware and software installation and configuration services, bespoke development, data migration, project management, engineering / data science consultancy and other similar services related to the implementation and use of the Hosted Services as detailed in the Commercial Summary (where applicable) or as may be agreed between the parties from time to time in writing;

"Customer Data" means all data, works and materials inputted or uploaded to the Platform by the Customer, Authorised Users, or by Ada Mode on the Customer's behalf or generated by the Platform as a result of the use of the Hosted Services by the Customer. Analytics data relating to the use of the Platform and server log files shall not be classed as Customer Data;

“Customer Personal Data” means any Personal Data that is processed by Ada Mode on behalf of the Customer in relation to this Agreement;

“Data Protection Laws” means all applicable data protection legislation in force from time to time in the UK including the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Data Protection Act 2018 and the UK-GDPR each as applied or varied by the Data Protection, Privacy and Electronic Communications;

“Documentation” means the documentation for the Hosted Services produced by Ada Mode and delivered or made available by Ada Mode to the Customer;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any utility service or transport or public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, strikes, lock-outs (whether involving the workforce of Ada Mode or any other party), changes to the law or governmental order, rule, regulation or direction, disasters, explosions, fires, floods, storms, riots, terrorist attacks and wars);

“Hosted Services” means the hosted bespoke services as described in the Hosted Services Specification, which will be made available by Ada Mode to the Customer as a service via the internet in accordance with this Agreement;

“Hosted Services Specification” means the specification for the Platform and Hosted Services set out in Schedule 1 - Hosted Services Specification;

“Initial Subscription Term” means the initial term of this Agreement as set out in the Commercial Summary;

“Intellectual Property Rights” means rights to inventions, copyright and related rights, moral rights, trade 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 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 which subsist or will subsist now or in the future in any part of the world;

“Maintenance Services” means the general maintenance of the Platform and Hosted Services which includes the application of Updates and Upgrades as Ada Mode deems necessary;

“Notice Period” means any notice period the Customer must comply with to terminate the Agreement in accordance with these Terms as set out in the Commercial Summary where applicable;

“Parties” means the parties to this Agreement as set out in the Commercial Summary, each being a **“Party”**;

“Personal Data” has the meaning given to it in the Data Protection Laws;

“Point of Contact” means the respective appointed Point of Contact for each Party, as specified in the Commercial Summary;

“Platform” means the Atlas platform, or **“Atlas”**, managed by Ada Mode and used by Ada Mode to provide the Hosted Services which provides a dashboard for Customers to use and which may enable downloads of reports and other information, including the application and database software for the Hosted Services and the system and server software used to provide the Hosted Services;

“Schedule” means any schedule attached to the main body of this Agreement;

“Services” means any services that Ada Mode provides to the Customer, or has an obligation to provide to the Customer, under this Agreement including the Hosting Services, Support Services, Maintenance Services and Consultancy Services (where applicable) as further detailed in the Commercial Summary and in any Schedules to this Agreement;

“Support Services” means support in relation to the use of the Hosted Services, including identifying and resolving errors in the Platform but shall not include the provision of any bespoke development to make changes to the Platform or training for which additional charges may apply;

“Supported Web Browser” means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that Ada Mode agrees in writing shall be supported;

“Term” means the term of this Agreement as set out in clause 2;

“Terms” means the terms and conditions set out in this Part B.

“Update” means a hotfix, patch or minor version update to any Platform software; and

“Upgrade” means a major version upgrade of any Platform software.

2. Term

- 2.1 This Agreement shall come into force upon the Commencement Date and shall continue for the Initial Subscription Term.
- 2.2 Where the Commercial Summary states that the Initial Subscription Term is for a fixed term only this Agreement shall automatically terminate at the end of the Initial Subscription Term and the Customer must cease using the Platform and Hosted Services after expiry of the Initial Subscription Term.
- 2.3 Where the Commercial Summary states that the Initial Subscription Term is for an initial fixed term then rolling, this Agreement will continue for the Initial Subscription Term and then at the expiry of the Initial Subscription Term it will continue to roll for successive periods of 1 calendar month in duration until terminated by either:
- a) The Customer by giving notice to Ada Mode in accordance with the Notice Period in which case the Agreement will terminate on expiry of the written notice; or
 - b) Ada Mode on providing one month’s written notice to the Customer
- unless otherwise terminated in accordance with these Terms.

2.4 Where the Commercial Summary states that the Initial Subscription Term is for a rolling term (1 calendar month duration) then this Agreement will run from the Commencement Date for successive periods of 1 calendar month in duration until terminated by either:

- a) The Customer by giving notice to Ada Mode in accordance with the Notice Period in which case the Agreement will terminate on expiry of the written notice; or
- b) Ada Mode on providing one month's written notice to the Customer

unless otherwise terminated in accordance with these Terms.

3. Hosted Services

3.1 Subject to the Customer complying with these Terms, Ada Mode hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit its Authorised Users to use the Hosted Services, Platform, and the Documentation during the Term solely for the internal business operations of the Customer.

3.2 The license granted by Ada Mode to the Customer under Clause 3.1 is subject to the following limitations:

- a) the Hosted Services may only be used by Authorised Users who must be officers, employees, agents, or subcontractors of the Customer;
- b) the Hosted Services must not be used at any point in time by more than the number of concurrent users set out in the Commercial Summary (**Number of Authorised Users**).

3.3 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by Ada Mode to the Customer under Clause 3.1 is subject to the following prohibitions:

- a) the Customer must not sub-license its right to access and use the Hosted Services or the Platform;
- b) the Customer must not permit any unauthorised person to access or use the Hosted Services or the Platform;
- c) the Customer must not use the Hosted Services or the Platform to provide services to third parties unless otherwise specified in Schedule 1;
- d) the Customer must not republish or redistribute any content or material from the Hosted Services or Platform without permission from Ada Mode;
- e) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of Ada Mode.

3.4 In relation to the Authorised Users, the Customer undertakes that:

- a) it will not allow or suffer any log-ins to be used by more than one individual Authorised User;

- b) each Authorised User will keep a secure password for their use of the Hosted Services and Documentation, that such password will be changed frequently and that each Authorised User shall keep their password confidential;
- c) it will maintain a written, up to date list of current Authorised Users and provide such list to Ada Mode within 5 Business Days of Ada Mode's written request at any time or times;
- d) Ada Mode may conduct an audit of the Customer's Authorised Users to ensure the Customer has complied with the terms of this clause 3.4;
- e) if any of the audits referred to in clause 3.4 d) reveal that any access has been provided to any individual user who is not entitled to receive access to the Hosting Services, then without prejudice to Ada Mode's other rights, Ada Mode may disable such Accounts and/or that Customer's access to the Hosted Services; and
- f) if any of the audits referred to in clause 3.4 d) reveal that the Customer has underpaid Charges to Ada Mode, then without prejudice to Ada Mode's other rights, the Customer shall pay to Ada Mode an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.

3.5 The Customer will not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Hosted Services that:

- a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- b) facilitates illegal activity;
- c) depicts sexually explicit images;
- d) promotes unlawful violence;
- e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- f) is otherwise illegal or causes damage or injury to any person or property;

and Ada Mode reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause and to disable any Accounts.

3.6 The Customer will not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

- a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Hosted Services or the Platform and/or the Documentation (as applicable) in any form or media or by any means; or
- b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hosted Services or the Platform; or

- c) access all or any part of the Hosted Services, Platform and Documentation in order to build a product or service which competes with the Hosted Services and/or the Documentation; or
 - d) use the Hosted Services and/or Platform and/or Documentation to provide services to third parties; or
 - e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Hosted Services and/or Platform and/or Documentation available to any third party except the Authorised Users, or
 - f) attempt to obtain, or assist third parties in obtaining, access to the Hosted Services and/or Platform and/or Documentation, other than as provided under this clause 3.
- 3.7 The Customer will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Ada Mode.
- 3.8 The rights provided under this clause 3 are granted to the Customer only and are not considered granted to any subsidiary or holding company of the Customer.
- 3.9 Ada Mode shall create Accounts for the Customer's Authorised Users and shall provide to the Customer login details for those Accounts within 5 Business Days of the Commencement Date.
- 3.10 If the Customer wishes to purchase Accounts for additional Authorised Users over and above the Number of Authorised Users specified in the Commercial Summary, the Customer shall notify Ada Mode in writing. Ada Mode shall evaluate such request for additional Accounts and respond to the Customer with approval or rejection of the request. Where Ada Mode approves the request, Ada Mode shall issue an order form to the Customer for their acceptance. Where the Customer accepts the order form and associated Charges, Ada Mode shall issue an invoice to the Customer for the additional Accounts.
- 3.11 The Customer shall use reasonable endeavours, including reasonable security measures relating to account access details, to ensure that no unauthorised person may gain access to the Hosted Services.
- 3.12 Ada Mode shall use reasonable endeavours to maintain the availability of the Hosted Services to the Customer but does not guarantee 100% availability.
- 3.13 Ada Mode shall provide the Hosted Services with reasonable skill and care and substantially in accordance with any Documentation. This warranty does not apply to the extent of any non-conformance which is caused by use of the Hosted Services and/or the Platform contrary to Ada Mode's instructions, or modification or alteration of the Hosted Services and/or the Platform by any party other than Ada Mode or Ada Mode's duly authorised contractors or agents. If the Hosted Services and/or Platform do not conform, Ada Mode will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of this clause 3.13. Notwithstanding the foregoing, Ada Mode:

- a) does not warrant that the Customer's use of the Hosted Services and/or the Platform will be uninterrupted or error-free; or that the Hosted Services, Platform, Documentation and/or the information obtained by the Customer through the Hosted Services will meet the Customer's requirements; and
 - b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Hosted Services, Platform and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 3.14 This Agreement shall not prevent Ada Mode from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 3.15 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Customer's computer systems or networks;
 - (d) any breach by the Customer of this Agreement; or
 - (e) scheduled maintenance carried out in accordance with this Agreement; or
 - (f) cloud services provider downtime.
- 3.16 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.17 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.18 The Customer must ensure that all persons using the Hosted Services with the authority of the Customer comply with the restrictions in this clause 3 at all times.
- 3.19 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4. Maintenance Services

- 4.1 Ada Mode shall provide the Maintenance Services to the Customer during the Term.
- 4.2 Ada Mode shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or the Platform or are likely to have a material negative impact upon the Hosted Services and/or the Platform.
- 4.3 Where an Update or Upgrade may impact on service continuity, Ada Mode shall give to the Customer written notice of the application of any security Updates or Upgrades to the Platform and at least 10 Business Days' prior written notice of the application of any non-security Updates or Upgrades to the Platform.
- 4.4 Ada Mode shall provide the Maintenance Services with reasonable skill and care.

5. Support Services

- 5.1 Ada Mode shall provide the Support Services to the Customer during the Term by providing a helpdesk in accordance with the provisions of this Agreement.
- 5.2 Ada Mode shall provide the Support Services with reasonable skill and care.
- 5.3 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services which shall include the provision of support and limited guidance to Authorised Users having difficulties using the Hosted Services and/or the Platform and correcting any errors or defects in the Platform but will not include the provision of any changes the Customer may require to the Hosted Service or the Platform, correcting defects caused by the Customer's misuse of the Hosted Services / Platform, or the provision of training which must be requested separately and for which additional charges will apply. The Customer must not use the helpdesk for any other purpose.
- 5.4 Ada Mode shall respond to all requests for Support Services made by the Customer through the helpdesk during Ada Mode Business Hours and within 1 Business Day. Ada Mode aims to correct any defects with the Hosted Services and/or Platform within 28 calendar days of being notified by the Customer of a defect (excluding any defects caused by the Customer's misuse of the Hosted Services / Platform). No Support Services will be provided outside of Business Hours.

6. Consultancy Services

- 6.1 Ada Mode may from time to time provide Consultancy Services to the Customer during the Term. Any Consultancy Services envisaged as at the Commencement Date are set out in the Commercial Summary and additional Consultancy Services may be agreed between the parties in writing.
- 6.2 Consultancy Services will be charged for based on day rates which differ depending on the grade of staff carrying out the Consultancy Services. The relevant day rates are set out in the Commercial Summary. No Consultancy Services will be carried out without prior written approval from the Customer (either by inclusion within the Commercial Summary or otherwise agreed).

6.3 If the dates scheduled for delivery of the Consultancy Services are postponed or cancelled by the Customer, Ada Mode may revise any scheduled date for completion of any part of the Consultancy Services and/or by giving [seven] days written notice suspend the Consultancy Services.

6.4 Ada Mode shall provide the Consultancy Services with reasonable skill and care.

7. Customer's obligations

7.1 The Customer will:

7.1.1 provide Ada Mode with all necessary:

- a) co-operation in relation to this Agreement; and
- b) access to such information and facilities as may be required by Ada Mode;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

7.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

7.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Ada Mode may adjust any agreed timetable or delivery schedule as reasonably necessary;

7.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and any end-user licence agreement Ada Mode put in place. The Customer is responsible for any Authorised User's breach of this Agreement and/or any end-user licence agreement;

7.1.5 obtain and maintain all necessary licences, consents, and permissions necessary for Ada Mode, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

7.1.6 ensure that its network and systems comply with the relevant specifications provided by Ada Mode from time to time; and

7.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Ada Mode's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8. Intellectual Property Rights and Customer Data

8.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from Ada Mode to the Customer, or from the Customer to Ada Mode.

8.2 The Customer acknowledges and agrees that Ada Mode and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated herein, this

Agreement does not grant the Customer any rights or licences to any Intellectual Property Rights, the Services, or the Documentation.

- 8.3 The Customer warrants that it owns all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy, and quality of all such Customer Data.
- 8.4 The Customer hereby grants to Ada Mode a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit, and translate the Customer Data to the extent reasonably required for the performance of Ada Mode's obligations and the exercise of Ada Mode's rights under this Agreement. The Customer also grants to Ada Mode the right to sub-license these rights to its hosting, connectivity, and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
- 8.5 The Customer warrants to Ada Mode that the Customer Data when used by Ada Mode in accordance with this Agreement will not infringe the Intellectual Property Rights of any person. The Customer shall defend, indemnify, and hold harmless Ada Mode against any claims, actions, proceedings, losses, damages, expenses, and costs (including court costs and reasonable legal fees) arising out of or in connection with any breach of any of the warranties in clause 8.1 or this clause 8.5 and for any breach by the Customer or its Authorised Users of any of the other provisions in this Agreement.
- 8.6 Ada Mode shall create a back-up copy of the Customer Data at an appropriate frequency and shall ensure that each back-up copy taken is sufficient to enable Ada Mode to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 8.7 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Ada Mode is for Ada Mode to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Ada Mode in accordance with clause 8.6. Ada Mode is not responsible for any loss or destruction of Customer Data. The Customer acknowledges and accepts that it is responsible for backing up its own Customer Data and should not use the Hosted Services as its primary method of data storage.
- 8.8 Within the period of 1 Business Day following receipt of a written request from the Customer, Ada Mode shall use reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by Ada Mode in accordance with Clause 8.6. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.
- 8.9 The Customer acknowledges and accepts that Ada Mode has the right from time to time to use Customer Data for the purposes of internal research and development activities and the licence granted to Ada Mode pursuant to clause 8.4 will apply in this regard. No Personal Data will be used pursuant to this clause 8.9. The Customer agrees that it shall have no right, title or interest in any Intellectual Property Rights arising from Ada Mode's analysis or use of Customer Data under this clause 8.9.

9. Charges

- 9.1 The Customer shall pay the Charges to Ada Mode in accordance with this Agreement.
- 9.2 All amounts payable under this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which shall be payable by the Customer in addition to the Charges.
- 9.3 Ada Mode may not make any changes to agreed Charges during the Initial Subscription Term as set out in the Commercial Summary.
- 9.4 Following completion of the Initial Subscription Term, in the absence of agreement between the Parties for a new fixed term, Ada Mode may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

10. Payments

- 10.1 Ada Mode shall issue invoices for the Charges to the Customer at the frequency set out in the Commercial Summary.
- 10.2 The Customer must pay the Charges to Ada Mode within 30 days following the issue of an invoice in accordance with this Clause 10.
- 10.3 The Customer must pay the Charges by bank transfer using such payment details set out in the Commercial Summary or as are notified by Ada Mode to the Customer on the associated invoice.
- 10.4 If the Customer does not pay Ada Mode any amount due under this Agreement within 30 days of Ada Mode issuing its invoice, Ada Mode may suspend the provision of the Services until the amount outstanding is paid in full and:
 - (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;

11. Confidentiality

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
 - (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.4 A party may disclose Confidential Information 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 of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5 The Customer acknowledges that details of the Services, and the Platform and Charges constitute Ada Mode's Confidential Information.
- 11.6 Ada Mode acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8 The above provisions of this **Error! Bookmark not defined.** shall survive termination of this Agreement, however arising.

12. Data Protection

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Laws.
- 12.2 Ada Mode will process minimal Customer Personal Data on behalf of the Customer in providing the Services and such processing will be limited to that Personal Data that is needed for Ada Mode to provide access to the Hosted Services and/or the Platform and for Ada Mode to contact the Customer and Authorised Users in order to fulfil its obligations under this

Agreement. Schedule 2 sets out the scope, nature, and purpose of processing by Ada Mode, the duration of the processing, the types of personal data and the categories of data subject.

- 12.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Ada Mode for the duration and purposes of this Agreement so that Ada Mode may lawfully use, process and transfer the Customer Personal Data in accordance with this Agreement on the Customer's behalf.
- 12.4 The Customer warrants to Ada Mode that it has the legal right to disclose all Customer Personal Data that it does in fact disclose to Ada Mode under or in connection with this Agreement and that all Customer Personal Data transferred to Ada Mode is compliant with the Data Protection Laws and that such transfer does not put Ada Mode in breach of the Data Protection Laws.
- 12.5 Ada Mode shall promptly inform the Customer if, in the opinion of Ada Mode, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 12.6 Notwithstanding any other provision of this Agreement, Ada Mode may process the Customer Personal Data if and to the extent that Ada Mode is required to do so under the Data Protection Laws.
- 12.7 Ada Mode shall ensure that persons authorised to process Customer Personal Data are under an appropriate obligation of confidentiality.
- 12.8 Ada Mode and the Customer shall each implement appropriate technical and organizational measures to ensure an appropriate level of security for the Customer Personal Data, including any measures specified in Schedule 2 - Data processing information.
- 12.9 The Customer consents to Ada Mode appointing a third-party processor of Customer Personal Data under this Agreement, where Ada Mode deems such appointment necessary. Ada Mode confirms that it has or will enter into a written agreement with any third-party processor to reflect the requirements of the Data Protection Laws. Ada Mode remains fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 12. As at the Commencement Date, Ada Mode is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Schedule 2 - Data processing information.
- 12.10 Ada Mode shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 12.11 Ada Mode shall assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Laws

with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

- 12.12 Ada Mode shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 24 hours following Ada Mode becoming aware of the breach.
- 12.13 Ada Mode shall make available to the Customer information necessary to demonstrate the compliance of Ada Mode with its obligations under this Clause 12.
- 12.14 Ada Mode shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after termination of this Agreement, and shall delete existing copies unless required by any applicable law to store the relevant Personal Data.
- 12.15 Ada Mode shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of Ada Mode's processing of Customer Personal Data under this Clause 12.
- 12.16 Ada Mode may charge the Customer at its standard time-based charging rates for any work performed by Ada Mode at the request of the Customer pursuant to this Clause 12.
- 12.17 Ada Mode will not transfer any Customer Personal Data outside of the UK unless, in accordance with the Data Protection Laws, it ensures that (i) the transfer is to a country approved as providing an adequate level of protection for Personal Data; or (ii) there are appropriate safeguards in place for the transfer of Personal Data; or (iii) binding corporate rules are in place; or (iv) one of the derogations for specific situations applies to the transfer;
- 12.18 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Customer Personal Data carried out under this Agreement, then the parties shall use their reasonable endeavours to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

13. Warranties

- 13.1 Ada Mode warrants to the Customer that:
 - (a) it will use reasonable endeavours to ensure that the Platform and Hosted Services conform substantially with the Hosted Services Specification;
 - (b) it will use reasonable endeavours to ensure that the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
 - (c) the Platform will incorporate security features reflecting the requirements of good industry practice.

- 13.2 Ada Mode warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person.
- 13.3 If Ada Mode reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, Ada Mode may at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 13.4 The Customer warrants to Ada Mode that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 13.5 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

14. Warranty Limitations

- 14.1 The Customer acknowledges and accepts that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Ada Mode gives no warranty or representation that the Hosted Services or the Platform will be wholly free from defects, errors and bugs.
- 14.2 The Customer acknowledges and accepts that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, Ada Mode gives no warranty or representation that the Hosted Services will be entirely secure.
- 14.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification and Ada Mode does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 14.4 The Customer assumes sole responsibility for results obtained from the use of the Hosted Services and/or the Platform by the Customer, and for conclusions drawn from such use including without limitation decisions made whether or not to replace equipment or take or refrain from taking certain actions. Ada Mode shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Ada Mode by the Customer in connection with the Services, or any actions taken by Ada Mode at the Customer's direction or for any reliance on results obtained from the Hosted Service/Platform by the Customer. The Hosted Services and the Platform are merely intended as an advisory tool which should not be used in isolation and should not be used as a replacement for the Customer's and its technician's own skill and judgment in making such decisions.

15. Limitations and exclusions of liability

15.1 Nothing in this Agreement will:

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

15.2 The limitations and exclusions of liability set out in this Clause 15 and elsewhere in this Agreement:

- (a) are subject to Clause 15.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

15.3 Ada Mode shall not be liable to the Customer in respect of:

- (a) any losses arising out of a Force Majeure Event; or
- (b) Ada any loss of profits or anticipated savings; or
- (c) any loss of revenue or income;
- (d) any loss of use or production;
- (e) any loss of business, contracts, or opportunities;
- (f) any loss or corruption of any data, database, or software;
- (g) any special, indirect, or consequential loss or damage.

15.4 The liability of Ada Mode to the Customer under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to Ada Mode under this Agreement in the 12 month period preceding the commencement of the event or events.

16. Force Majeure Event

Ada Mode shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, due to a Force Majeure Event provided that the Customer is notified of such an event and its expected duration.

17. Termination

17.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- 17.1.1 the other party:

- 17.1.1.1 commits a material breach of any term of this agreement and fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
- 17.1.1.2 repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to this agreement;
- 17.1.1.3 suspends payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- 17.1.1.4 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 17.1.2 an order is made for:
 - 17.1.2.1 the winding up of the other party;
 - 17.1.2.2 the appointment of an administrator, or a notice of intention to appoint an administrator is given, over the other;
- 17.1.3 the holder of a qualifying floating charge over the other's assets has appointed an administrative receiver;
- 17.1.4 a receiver is appointed over all or any of the other's assets;
- 17.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other's assets and such attachment or process is not discharged within 14 days;
- 17.1.6 any event occurs, or proceeding is taken, with respect to the other in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1.1.3 – 17.1.5;
- 17.1.7 the other suspends or ceases carrying on all or a substantial part of its business.

18 Effects of Termination

- 18.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect: Clauses 1, 8, 9, 10, 11, 15, 17, 18, 27.
- 18.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

18.3 On termination of this Agreement for any reason the Customer must:

- a) immediately cease use of the Hosted Services and the Platform and ensure its Authorised Users do the same; and
- b) pay any outstanding payments due under this Agreement; and
- c) pay any Charges in full for any remaining period of the Initial Subscription Term as at the date of termination.

19 Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20 Severance

- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 Entire agreement and variation

- 21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. This Agreement does not supersede or replace any agreement or contract between the parties for the initial development of the Platform.
- 21.2 Each party agrees that it has no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) is for breach of contract.
- 21.3 No variation of this Agreement is effective unless it is in writing and signed by each of the parties (or their authorised representatives).

22 No waiver

- 22.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law does not constitute a waiver of that or any other right or remedy, nor does it preclude or restrict any further exercise of that or any other right or remedy.
- 22.2 No single or partial exercise of any right or remedy provided under this Agreement or by law precludes or restricts the further exercise of that or any other right or remedy.

23 Assignment

Except as otherwise provided in this Agreement, no party may assign, sub-contract or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it.

24 Notices

24.1 A notice given to a party under or in connection with this Agreement must be in writing and sent to the party at the address given in this Agreement or as otherwise notified in writing to the other party.

24.2 The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

24.3

Delivery method	Deemed delivery date and time
Delivery by hand or courier to the registered office of a party.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid recorded delivery by first class post or other next working day delivery service providing proof of postage to the registered office of a party.	Midday on the second Business Day after posting or at the time recorded by the delivery service – whichever is earlier.
Email to the Point of Contact email address in the Commercial Summary.	At the time of transmission if on a Business Day, otherwise at 10:00 on the next Business Day after transmission.

24.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25 No partnership

Nothing in this Agreement is intended to, or be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

26 Third party rights

A person who is not a party to this Agreement has no rights under or in connection with it.

27 Governing law and Jurisdiction

The validity, construction and performance of the Agreement is governed by English law and is subject to the exclusive jurisdiction of the English courts, to which the Parties irrevocably submit.