



## UpTime Labs Master Services Agreement

### INTRODUCTION AND PARTIES

[REDACTED] (CRN: [REDACTED]) ('Customer') has agreed to sign these Terms and Conditions for the purpose of regulating the terms that shall apply to all Subscription Services provided by UpTime Labs Ltd (CRN: 13748573) ('UpTime Labs') to the Customer from time to time.

### DEFINITIONS AND INTERPRETATION

The following definitions apply to these Terms and Conditions and any Order Form unless the context requires otherwise:

**"Affiliate"** means in relation to any party (or other person), any subsidiary or holding company of that party (that person) and any subsidiary of any such holding company, in each case from time to time

**"Applicable Law"** means any applicable law, rule, regulation, regulatory requirement; any form of secondary legislation, or case law; and any determination that a party (or its relevant Affiliate) is bound to have regard to in connection with these Terms and Conditions;

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

**"Confidential Information"** means any information disclosed by the Disclosing Party (or its Affiliate) to the Receiving Party, or which is received by the Receiving Party under or in connection with an Assignment and which relates to the Disclosing Party (or its Affiliate), and that is marked confidential, that the Receiving Party knows or reasonably ought to know is confidential, or which is of its nature confidential, including:

(a) all Customer Data and all business logic, methods, algorithms, concepts and ideas of the Customer or its Affiliates which are disclosed to or received by UpTime Labs, all of which is the Confidential Information of the Customer; and

(b) these Terms and Conditions

but excluding any information that:

(a) is or becomes generally available to the public other than as a result of its disclosure by the Receiving Party or its agents, officers or employees in breach of these Terms and Conditions (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);

(b) was lawfully in the possession of the Receiving Party before the information was disclosed to it by the Disclosing Party;

(c) the parties agree in writing is not confidential or may be disclosed; or

(d) is developed by or for the Receiving Party independently of the information disclosed by the Disclosing Party;

**“Customer Data”** means all information in any form which UpTime Labs receives from the Customer or a Customer Affiliate in connection with an Assignment, including any information it accesses on the Customer’s or its Affiliates’ IT systems in the course of the relevant Assignment;

**“Data Protection Legislation”** means the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR); the UK Data Protection Act 2018; the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003, any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either party in connection with these Terms and Conditions and any laws that replace, extend, re enact, consolidate or amend any of the foregoing or laws that are analogous to any of them;

**“Disclosing Party”** means a party to these Terms and Conditions which (or whose Affiliate) discloses or makes available, directly or indirectly, Confidential Information;

**“Fees”** means the amounts payable by the Customer to UpTime Labs under an Order Form;

**“Force Majeure Event”** means an event occurring or a set of circumstances arising after the date of entering into these Terms and Conditions which is beyond the reasonable control of the Affected Party; and include but are not limited to government intervention, pandemic, epidemic, strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of service providers or subcontractors.

**“Index”** means the percentage increase in average gross weekly earnings in the Information and Communication industry over an annual period published by the Office for National Statistics (for the time being available at <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/grossweeklyearningsbyindustryen07>), or if that index ceases to be measure then the closest analogous index published by ONS (or a successor body to it).

**“Intellectual Property”** means patents, trade marks, rights in respect of logos and get up, trade names, designs, domain names, copyright, database rights, semiconductor topography rights, utility models, other intellectual or industrial property rights and any rights therein, in each case whether registered or unregistered and including applications or rights to apply for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world including any such rights which may now or in the future subsist and “Intellectual Property Rights or IPR” shall be interpreted accordingly;

**“Malware”** means, but is not limited to, computer viruses, logic bombs, Trojan horses, worms, harmful components, or other malicious software

**“Order Form”** means any order for Subscription Services or any other document (which may be in the form as set out in Schedule 1) which outlines the detailed activities, timetable, dependencies and sequence of events which UpTime Labs shall perform, or procure the performance of, when delivering the Subscription Services.

**“Outage Party”** means a one-time event with a User playing one scenario, supported by UpTime Labs Personnel

**“Personal Data”** means all information in any form which UpTime Labs receives from the Customer or a Customer Affiliate in connection with the Subscription Services, including any information it accesses on the Customer’s or its Affiliates’ IT systems in the course of the relevant Subscription Services;

**“Plan”** means a predetermined set of Subscription Services with predetermined Fees, detailed in an Order Form;

**“Professional Advisers”** means, in respect of the Receiving Party, its lawyers, accountants, bankers, auditors and any other professional advisers who are subject to fiduciary duties of confidence and loyalty;

**“Receiving Party”** means any party to these Terms and Conditions which (or whose Affiliate) receives or obtains, directly or indirectly, Confidential Information;

**“Subscription Services”** means the Subscription Services supplied to the Customer by UpTime Labs as set out in the Order Form;

**“Subscription Term”** means the period during which UpTime Labs is engaged to render Subscription Services to the Customer;

**“Terms and Conditions”** means the terms agreed between UpTime Labs and the Customer for the provision of Subscription Services incorporating these Terms and Conditions and the Order Form;

**“Trial”** means the delivery of Subscription Services detailed on an Order Form to be delivered at a discounted, or free, Fees, for a predetermined Subscription Term;

**“UpTime Labs Personnel”** means any employees, officers, staff, other workers, contractors, agents and consultants of UpTime Labs, its Affiliates and any of their subcontractors who are engaged in the performance of any Subscription Services from time to time;

**“User”** means any employees or independent contractors of Customer or its affiliates who will access and use the Subscription Services

## **1. ORDER DETAILS**

1.1. Customer orders a subscription to the Subscription Services by entering into an Order Form (as may be amended or modified from time to time) between Customer and UpTime Labs (an “Order Form”). An Order Form will be any order for Subscription Services or any other document (which may be in the form as set out in Schedule 1).

1.2. The Order Form will also designate the length of the Subscription Term. If the Order Form contains terms that conflict with or are in addition to the terms of this Terms and Conditions the terms of the Order Form will control. Capitalised terms used in this Terms and Conditions and/or the Order Form will have the same meaning within each.

## **2. USERS.**

2.1 Customer's Order Form will designate the number of Customer's authorised Users of the Subscription Services. Customer may designate only the following individuals as Users: employees or independent contractors of Customer or its affiliates who will access and use the Subscription Services by or through Customer and solely for the benefit of Customer or its affiliates. Only Users permitted under these Terms and Conditions may use the Subscription Services.

2.2 Each User corresponds to a single User licence. Customer will ensure that only one person accesses the Subscription Services per each User licence. If Customer exceeds the usage authorised by the Order Form (for example, by exceeding the number of authorised Users or exceeding the Subscription Term), then UpTime Labs reserves the right to charge and invoice Customer the pro-rata Fees corresponding to such overage.

2.3 Customer may add additional users to Customer's subscription during any Subscription Term (“Additional Users”). UpTime Labs will notify Customer in advance of any pro-rata additional Fees associated with the Additional Users. Customer may be required to modify its existing Order Form or enter into a new Order Form to add Additional Users. If there is a delay in executing an Order Form for Additional Users, then UpTime Labs reserves the right to, rather than extend the Subscription Term, reduce the Fees for those Additional Users on a pro-rata basis commensurate with the reduction in length of the Additional Users' Subscription Term — this is to ensure that the expiration dates of Customer's original Order Form and its Additional User Order Form are coterminous.

2.5 Account Admin. Customer's UpTime Labs account will be administered by an employee of Customer (or an affiliate) designated by Customer (“Admin.”). The Admin will have the right to manage Customer's account and its Users in accordance with these Terms and Conditions and will act as an authorised representative of Customer in dealings with UpTime Labs related to Customer's account and use of the Subscription Subscription Services.

## **3. SUBSCRIPTION SERVICES**

3.1. Subject to the Customer's compliance with the terms of these Terms and Conditions, during the Subscription Term, UpTime Labs will provide and maintain the Subscription Services ordered by Customer, together with all content, works, and materials incorporated into the Subscription Services (the "Subscription Content"), for access and use by the Customer in accordance with the terms of these Terms and Conditions. Certain features of the Subscription Services may be provided or maintained by an affiliate of UpTime Labs with UpTime Labs remaining responsible for the performance of its obligations under these Terms and Conditions.

3.2. UpTime Labs may offer different Plan options each with different prices and features, for Customer to choose from when ordering the Subscription Services. Customer may "upgrade" to a higher-tiered Plan at any time during the Subscription Term by executing an Order Form for the upgrade. Upgrades will become effective, and any additional Fees associated with an upgrade will be due, as provided for in the upgrade Order Form. Customer may not "downgrade" to a lower-tiered Plan during its then-current Subscription Term. If Customer downgrades at the end of its Subscription Term, Customer will no longer have access to any features or Subscription Content that is only available through the higher-tiered Plan.

3.3. UpTime Labs may, at its sole discretion, offer the Customer free or discounted Trials or pilots. All Trials and Order Forms applicable thereto will be subject to these Terms and Conditions. UpTime Labs may cancel or modify the terms of a free Trial at any time, without prior notice and without liability. At the end of the designated Trial period Customer will be required to subscribe to the Subscription Services at UpTime Labs's then-current prices in order to continue using the Subscription Services.

3.4. UpTime Labs reserves the right to modify (including changing, adding to, removing, or replacing) the Subscription Services or components thereof and/or the Subscription Content, as well as their features and functionality, at any time with or without notice, provided that no such modification will materially diminish the features or functionality of the Subscription Services provided to Customer as of the effective date of Customer's then-current Order Form. Nothing in these Terms and Conditions will prevent UpTime Labs from updating or removing from time-to-time Subscription Content that UpTime Labs, at its sole discretion, deems out-dated.

3.5. The Subscription Services may contain products, Subscription Services, platforms, and/or Subscription Content owned by third parties and integrated into the Subscription Services ("Third-Party Subscription Services"). Use of any Third-Party Subscription Services is subject to any terms or conditions provided to Customer that govern the respective Third-Party Subscription Services.

3.6. UpTime Labs will use commercially reasonable efforts to make the Subscription Services available on a consistent basis, excluding any planned downtime (including for updates and maintenance). While UpTime Labs expects planned downtime to be minimal, during any planned downtime, the Subscription Services may not be accessible. UpTime Labs or its contractors will provide the Customer with reasonable technical support as may be necessary to assist the Customer in accessing and using the Subscription Services.

#### **4. PAYMENT TERMS**

4.1 Unless otherwise stated in an Order Form, UpTime Labs will invoice the Customer for the Fees in the amounts specified in, and subject to any conditions specified in, the relevant Order Form.

4.2 All Fees are exclusive of VAT. Where VAT is payable on Fees, UpTime Labs will add VAT to its invoice for those Fees at the appropriate rate, and the Customer will pay such VAT with the relevant Fees.

4.3 The Customer will pay the amount of any invoice issued to it by UpTime Labs in accordance with these Terms and Conditions, directly or via Direct Debit, to UpTime Labs' nominated UK bank account within 14 days of receipt.

4.4 UpTime Labs may increase any fixed Fee or charges in an Order Form by the Index provided that UpTime Labs shall not be entitled to increase the Fees under this clause more than once in any twelve (12) month period and must give the Customer thirty (30) days' advanced notice the price increase.

4.5 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date, UpTime Labs may, without prejudice to any other right or remedy it has under Applicable Law or under these Terms and Conditions:

4.5.1 charge interest on such sums at 4% a year above the base rate of the Bank of England from time to time in force, and such interest shall accrue on a daily basis and apply from the due date for payment until such amount has been paid in full, whether before or after judgement; and

4.5.2 suspend provision of any or all Subscription Services until such sums have been paid in full.

4.8 The Customer shall pay all sums that it owes to the other party under these Terms and Conditions without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

#### **5. CUSTOMER RIGHTS AND OBLIGATIONS**

5.1. The Customer will use the Subscription Services only for Customer's internal business purposes and in accordance with all laws, regulations, and UpTime Labs usage instructions applicable to the Subscription Services. Customer will ensure that its Users comply with the terms of these Terms and Conditions.. Any action taken by a User with respect to the Subscription Services will be deemed an action taken by Customer; as such, a breach of these Terms and Conditions by a User will be deemed a breach by Customer. UpTime Labs has the right, but not the obligation, to monitor the Customer's use of the Subscription Services to ensure compliance with these Terms and Conditions. Any

monitoring by UpTime Labs is not an assumption of liability by UpTime Labs, nor will it discharge the Customer of its obligations under these Terms and Conditions.

5.2. The Customer will not (nor allow any third party) to do any of the following (the “Usage Restrictions”):

5.2.1 access or use the Subscription Services: (i) in any manner that infringes upon or violates third-party Intellectual Property Rights or rights of privacy or publicity, (ii) in a way intended to avoid incurring fees or exceed usage limits (including allowing multiple persons to use a single User licence), (iii) to access or use the personal or confidential information of any third party without their permission, (iv) for purposes of competitive analysis or the development or provision of a competing service or product, (v) in violation of any law, rule, or regulation applicable to the Subscription Services, including any Data Protection Legislation, as applicable, (vi) to engage in any unauthorised or unlawful receipt, processing, transmission or storage of any Personal Data of the UpTime Labs Group or any third parties, or (vii) any manner that is reasonably likely to damage, disable, overload, or impair the Subscription Services, interfere with any third party’s use and enjoyment of the Subscription Services, or in any manner that UpTime Labs deems excessive or abusive;

5.2.2 circumvent, or attempt to circumvent, any security feature or access restriction of the Subscription Services or any part thereof;

5.2.3 modify, decompile, reverse engineer, recreate, disassemble, or otherwise make any changes to the Subscription Services or the Subscription Content;

5.2.4 falsify or delete any attribution, authorship or ownership, legal, or proprietary notices, labels, or designations of the Subscription Content or other components of the Subscription Services;

5.2.5 (i) copy, disclose, reproduce, broadcast, sell or re-sell, lease, redistribute, publish, distribute, prepare derivative works of, perform, publicly display, modify, combine with other products or Subscription Services, or otherwise exploit the Subscription Services or Subscription Content, (ii) download Subscription Content that is not made available for download by UpTime Labs, (iii) permit any non-User third party to view, access, or use the Subscription Services or Subscription Content;

5.2.6 input, upload, transmit, access, or otherwise provide to or through the Subscription Services, any information or materials that are unlawful or injurious, or contain, transmit or activate any Malware.

5.2.7 impersonate any person or entity, including UpTime Labs or any UpTime Labs employee, or falsely state or otherwise misrepresent an affiliation with any person or entity; or

5.2.8 if using a feature that permits Users to post user-generated content, materials, or works to the Subscription Services or to interact with other users (collectively, “User Content”), publish any User Content that contains any material that: (i) is threatening, defamatory, obscene, indecent, seditious, offensive, harassing, annoying, pornographic,

abusive, intended to incite hatred of any person or group, discriminatory, in breach of any of the Customer's confidentiality obligations, (ii) is known to be false, misleading, or inaccurate, (iii) constitutes or encourages conduct that would be considered a criminal offense, give rise to civil liability, or otherwise be in violation of the law, (iv) infringes on or violates the Intellectual Property Rights or right of privacy or publicity (for example, by using the name or likeness of an identifiable person without their consent) of any third party, (v) contains any unsolicited or unauthorized advertising or promotional materials with respect to products or Subscription Services, "junk mail", "spam", "chain letters", "pyramid schemes", or any other form of solicitation, (vi) UpTime Labs, in its reasonable discretion, believe restricts or inhibits anyone else from using or enjoying the Subscription Services.

5.3. The Customer will maintain the confidentiality and security of their passwords and account information and will not provide that to any other person or entity. The Customer is responsible for restricting access to their computers and mobile devices as necessary to ensure the confidentiality and security of such information. Customer will promptly notify UpTime Labs if Customer suspects a User account information or password has been compromised.

## **6. DATA PROTECTION**

6.1 This clause 6 shall be read together with our Privacy Policy which is available on our website.

6.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

6.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and UpTime Labs is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The parties further acknowledge that there are exceptions where UpTime Labs are the data controller and will not act on Customer instructions but in accordance with UpTime Labs's own legal and professional obligations. This usually applies to data UpTime Labs hold and process about the Customer in relation to AML, Terrorist Financing, Transfer of Fund (Information on the Payer) Regulations 2017 and our obligation to report malpractice to the authorities.

6.4 Without prejudice to the generality of clause 6.1, the Customer will ensure that all necessary appropriate consents and notices are in place to enable lawful transfer of the Personal Data to us for the duration and purposes of the contract.

6.5 Without prejudice to the generality of clause 6.1, UpTime Labs shall, in relation to any Personal Data processed in connection with UpTime Labs's delivery of the Subscription Services under these Terms and Conditions:

6.5.1 ensure that UpTime Labs have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to,



Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of UpTime Labs systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by UpTime Labs);

6.5.2 ensure that all UpTime Labs Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

6.5.3 not transfer any Personal Data outside of the European Economic Area unless the Customer's prior written consent has been obtained and the following conditions are fulfilled:

6.5.3.1 UpTime Labs have provided appropriate safeguards in relation to the transfer;

6.5.3.2 the data subject has enforceable rights and effective legal remedies;

6.5.3.3 UpTime Labs comply with UpTime Labs's obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

6.5.3.4 UpTime Labs comply with reasonable instructions notified to them by the Customer in advance with respect to the processing of the Personal Data; and

6.5.3.5 for the avoidance of doubt, signing and returning these Terms and Conditions constitutes the provision of prior written consent in relation to such transfers.

6.5.4 assist the Customer at the Customer cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

6.5.5 notify the Customer without undue delay on becoming aware of a Personal Data breach; and at the Customer's written request, delete or return Personal Data and copies thereof to the Customer on termination of the Terms and Conditions unless required by Applicable Data Processing Law to store the Personal Data.

## **7. CONFIDENTIALITY**

7.1 The Receiving Party shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party or where authorised in a particular Schedule, shall:

7.1.1 not use or exploit the Confidential Information in any way except for the purpose of exercising its rights and performing its obligations under an Order Form;

7.1.2 not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by these Terms and Conditions; and

7.1.3 apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information (and which will in any event be no less stringent than the measures and care which it is reasonable to expect of a person operating in the same sector in the same circumstances).

7.2 The Receiving Party may disclose the Disclosing Party's Confidential Information to those of its agents, sub-contractors, officers, employees, (in the case of UpTime Labs) the UpTime Labs Personnel and Professional Advisers who need to know it in connection with these Terms and Conditions, provided that:

7.2.1 it informs each such person of the confidential nature of the Confidential Information before disclosure; and

7.2.2 it procures that each such person will be bound by obligations of confidence no less restrictive than this clause, and it will be liable for the failure of any such person to comply with this clause.

7.3 The Receiving Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any regulator or any other governmental or other regulatory authority with jurisdiction over the Receiving Party, or by a court of competent jurisdiction, or under the rules of a relevant securities exchange, provided in each case that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of such disclosure as possible and it takes into account the reasonable requests of the Disclosing Party in relation to the content of that disclosure.

## **8. INTELLECTUAL PROPERTY**

8.1. UpTime Labs and its licensors own their respective rights in the Subscription Services, Subscription Content, and Third-Party Subscription Services, including all related Intellectual Property Rights therein. All rights in the Subscription Services, Subscription Content, and Third-Party Subscription Services that are not expressly granted to Customer by these Terms and Conditions are reserved by their respective owners.

8.2. If Users submit any User Content to a publicly-available (by other users of the Subscription Services), then: (a) such User Content will be deemed non-confidential and

non-proprietary; (b) UpTime Labs will have the non-exclusive, royalty-free, sublicensable right to use, publish, reproduce, modify, perform, display, distribute, and otherwise exploit the User Content (in whole or in part), throughout the world and in any media now known or hereafter devised; and (c) UpTime Labs reserves the right to, at its sole discretion, remove, block, refuse to post, or take other action with respect to User Content as UpTime Labs deems appropriate, including where UpTime Labs believes that User Content in violation of these Terms and Conditions.

8.3. If the Customer provides UpTime Labs with any suggestions, comments, and/or feedback regarding the Subscription Services (collectively, "Feedback"), Customer grants UpTime Labs a perpetual, irrevocable, royalty-free, and fully paid-up licence to use and exploit all Feedback in connection with UpTime Labs's business purposes, including the testing, development, maintenance, and improvement of the Subscription Services.

## **9. INSURANCE**

9.1 At all times during the Subscription Term, UpTime Labs will carry such types and amounts of insurance as are customarily carried by providers of Subscription Services. UpTime Labs will provide Customer with proof of such insurance coverage upon Customer's request and will require UpTime Labs's insurance providers to give Customer at least thirty (30) days notice of cancellation or termination of such insurance.

## **10. REPRESENTATIONS, WARRANTIES, DISCLAIMERS**

10.1. UpTime Labs and Customer each represent that: (a) it has full legal and corporate right and authority to enter into these Terms and Conditions and to perform all its obligation and grant all rights granted by it under these Terms and Conditions; (b) the individual entering into these Terms and Conditions on behalf of that party has full right and authority to do so and to bind the respective party to the terms of these Terms and Conditions; (c) it will comply with all laws and regulations applicable to that party in connection with the Subscription Services; and (d) its entry into and performance under these Terms and Conditions will not violate any third-party agreements or obligations to which it is bound.

10.2. UpTime Labs further represents and warrants that the Subscription Services will: (a) substantially conform to the specifications set forth in the Order Form and these Terms and Conditions; and (b) be performed diligently, with all reasonable skill and care by appropriately trained and experienced personnel, in a professional manner at least to industry standards. For any uncured breach by UpTime Labs of the foregoing warranties, Customer's exclusive remedy will be to terminate these Terms and Conditions for cause, as provided for herein.

10.3. Customer further represents and warrants that Customer has full right and authority to determine the purpose and means of processing Personal Data of the Customer and to authorise UpTime Labs to process Personal Data of the Customer in accordance with these Terms and Conditions.

10.4. The UpTime Labs Site and certain features of the Subscription Services may provide links to external Internet sites. UpTime Labs will not be liable for the use, content,

operation, Personal Data or other data or information processing of internet sites that link to the UpTime Labs site or which are linked-to from it. UpTime Labs does not represent that it endorses any external sites or the content thereon or that it believes the operation of any external site will be accurate, useful, or non-harmful. UpTime Labs's Privacy Policy does not apply to any collection and processing of the Customer's Personal Data on or through such external sites. The Customer is responsible for taking precautions to protect themselves and their computer systems in connection with the use of external sites.

10.5. Except as may be expressly provided for in these terms and conditions:

10.5.1 the Subscription Services and Subscription Content are provided on an "as-is" and "as-available" basis without any warranties of any kind, and Uptime Labs expressly disclaims any additional express warranties and all implied warranties, including implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement; and

10.5.2 Customer acknowledges that UpTime Labs does not warrant that the Subscription Services will meet Customer's needs, result in any specific outcome for Customer or Users, or be uninterrupted, up-to-date, timely, secure, free from Malware, or error-free. Certain jurisdictions do not allow the exclusion of implied warranties in certain circumstances, so the exclusions set forth above may not apply to Customer.

## **11. INDEMNIFICATION**

11.1. UpTime Labs will indemnify, defend, and hold harmless Customer and its parents, subsidiaries, and affiliates, and their respective officers, directors, shareholders, employees, and agents from and against any third-party claims, actions, suits, together with all liabilities, losses, damages, costs, and expenses (including reasonable legal fees) arising therefrom (collectively, "Claims"), arising from or related to: (a) allegations that use of the Subscription Services as permitted under these Terms and Conditions infringes on or violates a third party's Intellectual Property Rights or rights of privacy or publicity (the "IP Indemnification"); or (b) UpTime Labs's violation of Data Protection Legislation or of its obligations hereunder with respect to Personal Data of the CustomerGroup; provided however, that UpTime Labs's indemnity obligations will not apply if and to the extent a Claim is subject to Customer's indemnification obligations hereunder.

11.2. Customer will indemnify, defend, and hold harmless UpTime Labs and its parents, subsidiaries, and affiliates and their respective officers, directors, shareholders, employees, and agents (collectively, the "UpTime Labs Group"), from and against any third-party Claims arising from or related to Customer's: (a) breach of any of the Usage Restrictions or Feature Terms; or (b) use of the Subscription Services in a manner not authorised by these Terms and Conditions.

11.3. The party seeking indemnity or defence ("Indemnified Party") will provide written notice to the party from which indemnity is sought ("Indemnifying Party") of the existence of any Claim as soon as practicable after becoming aware of the Claim; provided, however, that the Indemnified Party's failure to give timely notice of such Claim will not relieve the Indemnifying Party of its indemnification obligations unless such failure actually



prejudiced the Indemnifying Party. At the Indemnifying Party's sole expense, the Indemnifying Party will be entitled to assume and control the defence of the Claim and the Indemnified Party will reasonably cooperate with the Indemnifying Party in the defence of the Claim. The Indemnifying Party will have the right to settle such Claim at its sole discretion, provided that, without the Indemnified Party's prior written consent (not to be unreasonably withheld or delayed), the settlement is purely monetary, does not require the Indemnified Party to make a monetary payment, and provides an unconditional release of the Indemnified Party with respect to such Claim.

11.4. If, due to a Claim of infringement, the Subscription Services (or any portion thereof) are held by a court or adjudicator of competent jurisdiction to be, or are believed by UpTime Labs to be, infringing on the Intellectual Property Rights of a third party, UpTime Labs may, at its option and expense: (a) replace or modify the Subscription Services to be non-infringing, provided that such modification or replacement contains substantially similar features and functionality; (b) obtain for Customer a licence to continue using the Subscription Services; or (c) if neither of the foregoing is commercially practicable, terminate or suspend all or the affected portion of the Subscription Services and issue Customer a pro-rata refund of any Fees commensurate with the unused Subscription Services.

## **12. LIMITATION OF LIABILITY**

12.1. Neither Customer or UpTime Labs will be liable for any indirect, special, incidental, punitive, or consequential damages, including lost profits, lost time, lost data, lost use, or damages to goodwill, whether in contract, tort (including negligence), strict liability, or otherwise, regardless of whether such party was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable.

12.2. The maximum aggregate liability of Customer or UpTime Labs, as applicable, under these Terms and Conditions or in connection with the Subscription Services, regardless of the form of action, will not exceed the amount paid or payable to UpTime Labs, as applicable, for the specific Subscription Services giving rise to such claim during the twelve (12) months immediately preceding the claim.

12.3. The limitations set forth in this section will not apply to claims of fraud, willful misconduct, or gross negligence or to Customer's indemnification obligations, or UpTime Labs's IP indemnification obligations. In all other cases, the limitations set forth in this section will apply to the fullest extent permitted by Applicable Law and regardless of whether any remedy fails its essential purpose. certain jurisdictions do not permit the limitation of certain liabilities, so some or all of the limitations set forth in this section may not apply to Customer.

## **13. SUSPENSION OF SUBSCRIPTION SERVICES**

13.1. UpTime Labs reserves the right to suspend the Subscription Services, without notice, for a reasonable period of time as may be necessary for UpTime Labs to resolve any actual or threatened risks that, at UpTime Labs's sole discretion, pose a credible risk of harm to the Subscription Services or the security or integrity thereof. UpTime Labs will use commercially reasonable efforts to limit the suspension to address the risk at issue.

13.2. UpTime Labs may immediately suspend, disable, or deny access to the Subscription Services by any individual User who violates any of the Usage Restrictions.

13.3. If any Fees are not paid when due, UpTime Labs may suspend its provision of the Subscription Services unless and until all Fees and other sums due are paid in full.

## **14. TERMINATION**

14.1 Either party may terminate these Terms and Conditions without incurring any additional liability by giving the other party not less than sixty (60) days' written notice.

14.2 Where, upon expiry of a notice given under clause 14.1, one or more Order Form(s) remain in effect, these Terms and Conditions shall continue until the Order Form is terminated.

14.3 Either party may terminate an Order Form by giving written notice to the other if the other party commits:

14.3.1 material breach of that Order Form which is capable of remedy and it fails to remedy the breach within thirty (30) days of receiving written notice of such breach; or

14.3.2 a material breach of that Order Form which is not capable of being remedied, and a breach of these Terms and Conditions in relation to an Order Form will be deemed a breach of that Order Form.

14.4 Any breach of these Terms and Conditions will be deemed to be a material breach for the purpose of this clause 14.

14.5 UpTime Labs may terminate these Terms and Conditions immediately by giving the Customer notice if:

14.5.1 the Customer passes a resolution for its winding up or a court makes an order for its winding up or dissolution (other than for the purpose of any bona fide amalgamation, merger or reconstruction);

14.5.2 an application for an administration order is made in relation to the Customer that has not been set aside within seven days after the order has been made, or if a receiver is appointed over, or an encumbrancer takes possession of or sells, any material part of the assets or undertaking of the other party;

14.5.3 the Customer makes an arrangement or composition with its creditors generally or makes an application to a court for protection from its creditors generally;

14.5.4 the Customer disposes of all its assets or a substantial part of its assets (other than for the purpose of any bona fide amalgamation, reconstruction or merger);

14.5.5 the Customer commences or has commenced against it any insolvency, reorganisation, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings, and, if such case or proceeding is commenced against it, such case or proceeding is not dismissed within seven days thereafter;

14.5.6 the Customer becomes insolvent or generally fails to pay or admits in writing its inability to pay, its debts as they become due; or

14.5.7 the Customer is subject to any equivalent process or proceedings in any jurisdiction anywhere in the world.

## **15. SUBSCRIPTION RENEWALS**

15.1. If Customer renews its subscription to the Subscription Services, the renewed subscription will be governed by the Terms and Conditions in effect as of the Renewal Notice Date, as applicable, unless otherwise agreed upon by the parties.

## **16. GOVERNING LAW AND JURISDICTION**

16.1 These Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or its subject matter or formation and any dispute or claim.

## **17. NOTICE**

17.1 A notice under or in connection with these Terms and Conditions must be in writing and must be sent by first class post pre paid recorded delivery (and airmail if overseas) to the party due to receive the Notice at the relevant address specified in clause 17.3 below; and if served via email, must be sent from the sending party's designated email address in clause 17.3 to the other party's designated email address in clause 17.3. (a "Notice")

17.2 A Notice will be deemed to be given if delivered personally, when left at the relevant address, if sent by post (other than air mail), two Business Days after posting it; if sent by air mail, six Business Days after posting it; if sent to the relevant email address specified in clause 17.3, at the time of receipt, unless received after 5.00pm on any day when it shall be deemed to have been served on the next Business Day; and/or if received by email from the relevant email address specified in 17.3 at the time of receipt, unless received after 5.00pm on any day when it shall be deemed to have been served on the next Business Day.

17.3 The address for Notices is:

17.3.1 in respect of the Customer:

Post: Addressed to: [person]

Address: [address]

Email: [email]; and

17.3.2 in respect of UpTime Labs:

Post: Addressed to: Hamed Silatani

Address: 55 Frogna, London, United Kingdom, NW3 6YA

Email: hamed@uptimelabs.io

17.4 Either party may change its address for Notices by Notice to the other.

17.5 The provision of this clause shall not apply to service of any legal proceedings.

## **18. MISCELLANEOUS**

18.1. As between UpTime Labs and Customer, any modification to this Terms and Conditions that takes effect during Customer's then-current Subscription Term requires the mutual consent of the parties.

18.2. Except as expressly stated in these Terms and Conditions, all rights and remedies available under these Terms and Conditions are cumulative and no single right or remedy will be exclusive of any others. The waiver or failure by a party to exercise any right or remedy provided for under these Terms and Conditions will not be deemed a waiver by that party of any further right or remedy under these Terms and Conditions.

18.3. Neither party will be in breach of these Terms and Conditions by reason of its failure to perform its obligations as a result of, whether directly or indirectly, a cause beyond that party's reasonable control, including local law or regulation, acts of God, Internet failures or delays, war or terrorism, civil disturbance or labor disputes, act of government, or other Force Majeure Event.

18.4. UpTime Labs may assign its rights or obligations under these Terms and Conditions at its discretion. Customer may not assign these Terms and Conditions or any of its rights or obligations hereunder, without UpTime Labs's prior written consent, except (a) in connection with a merger, acquisition, or sale of all or substantially all of Customer's assets or (b) to an affiliate of Customer.

18.5. UpTime Labs and Customer are acting solely as independent contractors of one another with respect to these Terms and Conditions and the Subscription Services. Nothing in these Terms and Conditions constitutes or will be construed as creating a partnership, joint venture, agency, or employer-employee relationship between the parties.



18.6. Unless this Terms and Conditions expressly provides otherwise, use of the term “including” within this Terms and Conditions is deemed to mean “including, but not limited to.”

18.7. These Terms and Conditions are solely for the benefit of the parties to these Terms and Conditions and their permitted successors and assigns. Nothing in these Terms and Conditions, express or implied, confers any third-party beneficiary rights or remedies to any person or entity by reason of these Terms and Conditions.

18.8. These Terms and Conditions (including all amendments, Order Forms, other agreements, and/or terms incorporated therein) contains the entire agreement and understanding between the parties relating to the subject matter of these Terms and Conditions and supersedes all prior agreements and understandings between the parties relating to the subject matter of these Terms and Conditions.

## SCHEDULE 1

This Order Form shall be subject to the Terms and Conditions agreed between UpTime Labs and the Customer on [REDACTED].

<b>Description of Subscription Services</b>	[REDACTED]
<b>Fees (Ex-VAT)</b>	[REDACTED]
<b>Customer Users</b>	[REDACTED]
<b>Subscription Start Date</b>	[REDACTED]
<b>Subscription End Date (if applicable)</b>	[REDACTED]
<b>Notice Period</b>	[REDACTED]
<b>Additional Provisions</b>	[REDACTED]

**AGREED as of [REDACTED]**

For and on behalf of the Customer

Signature:

Name:

Title:

For and on behalf of UpTime Labs

Signature:

Name:

Title: