



Hosting & Cloud Services Agreement

Document Information

Important Notice

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Change History

Version	Date	Author	Notes
1.0	13/08/2021	Kyle Bradburn	Initial Draft
2.0	13/08/2021	Art Malinowski	Marketing and branding updates
2.1	24/03/2022	Mollie Moran	Updated layout
3.0	14/06/2022	Kyle Bradburn	Updated Document Information, images and reformatted to meet ISO
4.0	06/01/2026	Martin Bradburn	Legal Updates
	23/03/2023	John Doe	Updated Client Information

(1) Pea Soup Hosting Limited

(2) ACME

THIS AGREEMENT is made the day of ,

BETWEEN:

1. Pea Soup Hosting Limited a company registered in England and Wales under registration number 08971725 whose registered office is at Suite B, Unit 1 Links Business Centre, Old Woking Road, Woking, GU22 8BF (" the Service Provider") and
2. ACME a company registered in England and Wales under number whose registered office is at ("the Client")

WHEREAS:

1. The Service Provider is engaged in the business of providing Hosting Services to clients and has reasonable skill, knowledge, qualifications and experience in that field.
2. The Client wishes to acquire the Hosting Services provided by the Service Provider as detailed in Clause 6 and Schedule 1, subject to, and in accordance with, the terms and conditions of this Agreement.
3. The Service Provider wishes to provide the Hosting Services to the Client subject to, and in accordance with, the terms and conditions of this Agreement.

IT IS AGREED as follows:

1 Definitions and Interpretations

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business day"	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
"Commencement Date"	Means the date on which this Agreement comes into force pursuant to Clause 2;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement or otherwise (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked or may be interpreted as such);
"Customer Data"	means all data, content and information uploaded to, stored in, transmitted via or processed using the Services.
"Customer Systems"	means the Customer's own systems, devices, software, credentials and networks used to access the Services.
"Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored, or otherwise processed;
"Data Controller"	has the meaning given to 'Data Controller' or 'Controller', as appropriate, in the Data Protection Legislations and is the Client;
"Data Processor"	has the meaning given to Data Processor or Processor, as appropriate, in the Data Protection Legislation and is the Service Provider;
"Data Protection Legislation"	means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
"Downtime"	means the non-availability of one or more parts of the Hosting Services as defined in Clause 7;
"Fees"	means the fees payable by the Client to the Service Provider in accordance with Clause 5 and Schedule 1;
"Hosting Package"	Schedule means a document setting out the particulars of the hosting services to be provided by the Service Provider Host to the Client, attached in Part 1 of Schedule 1;
"Hosting Services"	means the hosting services provided by the Service Provider as set out in Clause 6;
"Intellectual Property Rights"	means any and all patents, rights in inventions, rights in designs, trade marks, trade and business names and all associated goodwill, rights to sue for passing-off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term;
"Performance Monitor"	means the PeaSoup Chief Technical Officer appointed by the Service Provider to monitor the provision of the Hosting Services in accordance with the Service Levels under Clause 9;

"Personal Data"	has the meaning given in the Data Protection Legislation;
"Platform"	means the Service Provider's cloud infrastructure, systems, software, networks, storage platforms and facilities used to deliver the Services.
"Services"	means the cloud services provided by the Service Provider including, without limitation, IaaS, DRaaS, Veeam Cloud Connect services, and S3-compatible object storage, as described in the applicable Service Schedule.
"Service Provider"	means the company providing the services, PeaSoup;
"Scheduled Service Downtime"	means Downtime which is pre-planned by the Service Provider for maintenance, upgrades and similar activities in accordance with Clause 8;
"Service Levels"	means the agreed levels to which the Service Provider's performance in providing the Hosting Services must adhere as set out in Clause 7;
"Support Ticket"	means a message sent to the Service Provider via the Service Provider's online support system;
"Term"	means the term of this Agreement as set out in Clause 2; and
"Uptime"	means the normal, fully functional availability of the Hosting Services and all components thereof.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- (a) "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- (b) a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- (c) "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- (d) a Schedule is a schedule to this Agreement; and
- (e) a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
- (f) a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

2 Terms of Agreement

2.1 Basis of Contract (Orders and acceptance)

- 2.1.1 These Terms constitute a master services agreement and apply to all Orders. An "Order" means an order form, quotation, statement of work, online order, portal checkout, or written confirmation (including email) describing the Services.
- 2.1.2 A Contract is formed when the Service Provider accepts the Order in writing, activates/provisions the Services, or otherwise begins providing the Services.
- 2.1.3 Any Customer purchase order terms or other terms the Customer seeks to impose are excluded unless expressly agreed in writing by the Service Provider.

2.2 This Agreement will come into force on the Commencement Date of the date of the last signature date and shall continue in force for an initial Term of Option 1 from that date, subject to the provisions of Clauses 7 and 12.

2.3 Following the end of the initial Term, the Term of this Agreement may be renewed for further periods of Option 1 (which shall thereafter be defined as part of the Term).

3 Service Provider's Obligations

- 3.1 The Service Provider shall provide the Services with reasonable skill and care in accordance with generally accepted industry standards for cloud service providers in the United Kingdom, and in accordance with the applicable Service Levels set out in Clause 7 and the relevant Service Schedule.
- 3.2 The Service Provider shall provide the Client with such information and advice in connection with the Hosting Services and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Hosting Services.
- 3.3 The Service Provider shall use reasonable endeavours to keep the Client informed of any special requirements (including, but not limited to, legislative requirements) applicable to the provision of the Hosting Services. To the extent necessary and appropriate, the Service Provider shall promptly take steps to comply with any such requirements. These steps shall not otherwise alter this Agreement in any way.
- 3.4 The Service Provider shall scale resources up or down as per request of the Client provided the resource is in accordance with the minimum requirement specified in the latest iteration of the pricing document provided.
- 3.5 The Services are provided on a shared-infrastructure basis and are not guaranteed to be uninterrupted or error-free

4 Client's Obligations

- 4.1 The Client shall provide the Service Provider with such information in connection with the Hosting Services and the provision thereof as the Service Provider may, from time to time, reasonably require both before and during the provision of the Hosting Services.
- 4.2 The Client shall comply with any and all terms and conditions which the Service Provider may apply to the Hosting Services.
- 4.3 The Customer is responsible for:
- 4.3.1 configuration, security and maintenance of Customer Systems
 - 4.3.2 access credentials, API keys and authentication
 - 4.3.3 operating systems, applications and data uploaded to the Services
 - 4.3.4 compliance with applicable laws relating to its use of the Services
 - 4.3.5 maintaining independent backups of Customer Data unless backup services are expressly included in an Order

5 Fees and Payment

- 5.1 The Client shall pay the Fees to the Service Provider on a basis in accordance with the pricing structure of the Hosting Package as consideration for the Hosting Services provided by the Service Provider in accordance with the terms and conditions of this Agreement.
- 5.2 All payments required to be made pursuant to this Agreement by the Client shall be made at intervals by bank transfer to such bank in England as the Service Provider may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as the Client is required to deduct or withhold by law.
- 5.3 Where any payment pursuant to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.
- 5.4 The Service Provider may suspend Services on written notice for overdue invoices.
- 5.5 If either Party fails to pay on the due date any amount which is payable to the other pursuant to this Agreement then, without prejudice to and notwithstanding sub-Clause 12.2, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at a rate of 8 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Provision of the Hosting Services

- 6.1 The Service Provider shall, throughout the term of this Agreement, provide the Hosting Services to the Client in accordance with the terms and conditions of this Agreement, the provisions of the Hosting Package and the Service Levels.

- 6.2 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Hosting Services.
- 6.3 The Service Provider may alter, improve or otherwise modify the Hosting Package provided that any such change will not significantly alter the provision of the Hosting Services or result in the removal of any features or services that form part of the Hosting Package. The Client will be notified no later than 15 Business Days in advance of any planned changes and will receive full documentation of any action required on their part. No alterations under this sub-Clause 6.3 shall affect the Fees payable by the Client.
- 6.4 The Service Provider shall use all due and proper care to ensure that the manner in which it provides the Hosting Services does not have any adverse effect on the name, reputation, image or business of the Client.
- 6.5 The Client must at all times conform its use of and comply with all applicable regulations, UK or International governing laws.
- 6.6 The Client agrees not to:
- 6.6.1 Transmit, or otherwise permit any unsolicited or unauthorised advertising or promotional material or any other form of similar marketing material, also known as SPAM or Unsolicited Commercial Email (UCE);
 - 6.6.2 Publish or otherwise distribute Warez, copy written or other illegal material.
 - 6.6.3 Undertake any of the following actions which are either strictly prohibited or are considered unacceptable whether they be committed wilfully, inadvertently or innocently;
 - 6.6.3.1 *Any attempt to crash the service or network;*
 - 6.6.3.2 *Any attack including "denial of service" attacks, "mail bombing" attacks or "flooding" attacks against the service or network;*
 - 6.6.3.3 *Any attempt to circumvent the user authentication or security of the service or network;*
 - 6.6.3.4 *Activities such as IP scanning, spoofing or vulnerability assessments within the Service or wider environment, unless agreed in advance for the purpose of vulnerability assessments;*
 - 6.6.3.5 *Leverage of optimisation or performance tools that could adversely impact the service;*
 - 6.6.3.6 *The creation, transmission, storage, or publication of any kind of virus or corrupting program or corrupted data;*
 - 6.6.3.7 *Any other action that may adversely affect the service or its operation.*
- 6.7 Material published to or transmitted through the Hosting Services must not:
- 6.7.1 Be defamatory of any person;
 - 6.7.2 Be obscene, offensive or inflammatory;
 - 6.7.3 Display any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means depicting child pornography as defined in the United Nations Convention on the Rights of the Child;
 - 6.7.4 Infringe any copyright or trade mark or other intellectual property rights of whatsoever nature;
 - 6.7.5 Be likely to deceive any person;
 - 6.7.6 Be threatening, abusive or invade another's privacy, or cause annoyance, inconvenience or needless anxiety;
 - 6.7.7 Be used to misrepresent your identity or affiliation with any person or organisation.
- 6.8 In the event of failures to comply with sub clauses 6.6 and 6.7 the Service Provider reserves the right to:
- 6.8.1 Immediately, temporarily or permanently suspend Services;
 - 6.8.2 Issue a warning to the Client;
 - 6.8.3 Disclose such information to law enforcement authorities as reasonably necessary.

7 Security and Legal Suspension

- 7.1 The Service Provider may suspend all or part of the Services immediately where the Customer's use of the Services:
- 7.1.1 poses a security or operational risk to the Platform or other customers; or
 - 7.1.2 is required to be suspended to comply with applicable law, regulation, or a lawful request from a competent authority.
- 7.2 Any suspension under this clause shall not constitute termination of the Agreement and Fees shall continue to accrue during any period of suspension.

8 Service Levels

- 8.1 The Service Provider shall use reasonable endeavours to ensure an Uptime rate of 99.95%.
- 8.2 The Service Provider shall implement such organisational, technological and other measures as are reasonably required to ensure the Uptime rate set out in sub-Clause 8.1.
- 8.3 For the purposes of this Agreement, Downtime refers to one or more whole periods of 30 minutes commencing upon the submission by the Client of a Support Ticket informing the Service Provider of the non-availability of the Hosting Services.
- 8.4 The Service Provider shall issue a service credit by way of a discount of 5% of the monthly Fees payable for each whole 30 minute period of Downtime. Such discounts shall be applied to the Fee payment due immediately following the Downtime. Discounts shall be made up to a maximum of 100% of the Fees payable for a given month.
- 8.5 In the event that the Hosting Services are unavailable for a period exceeding 10 hours per month for 3 consecutive months, the Client shall have the right to terminate this Agreement in accordance with sub-Clause 13.3.
- 8.6 Sub-Clauses 8.4 and 8.5 shall not apply to any Downtime which results from any of the following:
- 8.6.1 Failure of the Client's own computer systems, network or software;
 - 8.6.2 Failure by the Client, its employees, subcontractors, agents or other similar third parties to comply with any reasonable instructions issued by the Service Provider;
 - 8.6.3 Breach by the Client of any terms or restrictions of the Hosting Package;
 - 8.6.4 Problems which are beyond the reasonable control of the Service Provider including, but not limited to, internet service provider failure and other matters arising under Clause 16;
 - 8.6.5 Denial of Service attack, hacker activity, or other malicious event or code targeted against the Service Provider or the Client.
- 8.7 The discounts set out in Clause 8.4 shall be the Client's sole and exclusive remedy for any failure to meet the Service Levels set out in this Clause 8, except for the termination right expressly set out in Clause 8.5.

9 Scheduled Service Downtime

- 9.1 The Service Provider may, from time to time, require Scheduled Service Downtime in order to perform maintenance and upgrades on its computer systems, network and infrastructure.
- 9.2 The Service Provider shall use reasonable endeavours to ensure that any period of Scheduled Service Downtime causes minimal disruption to the Hosting Services and is as brief as is reasonably possible. Nothing in this sub-Clause 8.2 shall constitute a guarantee of the same.
- 9.3 The Service Provider shall notify the Client of Scheduled Service Downtime no later than 48 hours prior to the start of the same. Such notice shall include an outline summary of the work to be performed during, and the estimated duration of, the Scheduled Service Downtime.
- 9.4 Whenever possible, the Service Provider shall use reasonable endeavours to perform maintenance and upgrades without incurring any Scheduled Service Downtime.

10 Service and Performance Monitoring

- 10.1 The Service Provider shall appoint the Performance Monitor to ensure that the Hosting Services are provided in accordance with the Service Levels and the terms and conditions of this Agreement and in particular to deal with respond accordingly to any and all Support Tickets informing the Service Provider of the non-availability of the Hosting Services.
- 10.2 In the event that the Service Levels fall below the requirements set out in Clause 8, the provisions of sub-Clauses 8.4 and 8.5 shall apply.

11 Confidentiality

- 11.1 Each Party undertakes that, except as provided by sub-Clause 10.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 6 months after its termination:
- 11.1.1 keep confidential all Confidential Information;
 - 11.1.2 not disclose any Confidential Information to any other party;
 - 11.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement;
 - 11.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-clauses 10.1.1 to 10.1.4 above.
- 11.2 Either Party may:
- 11.2.1 disclose any Confidential Information to:
 - 11.2.1.1 any sub-contractor or supplier of that Party;
 - 11.2.1.2 any governmental or other authority or regulatory body; or

- 11.2.1.3 *any employee or officer of that Party or of any of the aforementioned persons, parties or bodies: to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 10.2.1 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 10, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made;*
- 11.2.1.4 *and use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.*
- 11.3 The provisions of this Clause 10 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

12 Intellectual Property and Customer Data

- 12.1 All Intellectual Property Rights in Customer Data remain with the Customer.
- 12.2 The Customer grants the Service Provider a limited, non-exclusive, royalty-free licence to host, process, transmit and copy Customer Data solely to the extent necessary to provide the Services during the term of this Agreement.
- Except as expressly stated in this Agreement, no Intellectual Property Rights are transferred between the parties.

13 Termination

- 13.1 Either Party may terminate this Agreement by giving to the other not less than one Month's written notice, to expire on or at any time after the initial Term of the Agreement.
- 13.2 Either Party may forthwith terminate this Agreement by giving written notice to the other Party if:
- 13.2.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 30 days of the due date for payment;
- 13.2.2 the other Party commits any other material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 13.2.3 an encumbrance takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 13.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 2000);
- 13.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);
- 13.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 13.2.7 the other Party ceases, or threatens to cease, to carry on business; or control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 12, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

- 13.3 The Client shall have the right to forthwith terminate this Agreement by giving written notice to the Service Provider in the event that the Service Provider fails to provide the Hosting Services in compliance with the Service Levels for the period set out in sub-Clause 7.5.
- 13.4 The right to terminate this Agreement given by this Clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

14 Post-Termination Provisions

Upon the termination of this Agreement for any reason:

- 14.1 Any sum owing by either Party to the other Party under any of the provisions of this Agreement shall become immediately due and payable;
- 14.2 Any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect where they are expressly stated to survive such termination;
- 14.3 Termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which either Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 14.4 Subject as provided in this Clause 14, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other;
- 14.5 The Service Provider shall forthwith remove any and all information belonging to and pertaining to the Client from its computer systems; and
- 14.6 Each Party shall (except to the extent referred to in Clause 10) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information.

15 Liability

15.1 Nothing in this Agreement shall limit or exclude either Party's liability for:

- 15.1.1 death or personal injury caused by negligence;
- 15.1.2 fraud or fraudulent misrepresentation; or
- 15.1.3 any liability which cannot be limited or excluded by applicable law.

15.2 Subject to Clause 15.1, neither Party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for:

- 15.2.1 any loss of revenue, business, contracts, profits or anticipated savings;
- 15.2.2 any loss, corruption or deletion of data or software, or any costs associated with the restoration or recovery of data or software; or
- 15.2.3 any indirect or consequential loss.

15.3 Subject to Clauses 15.1 and 15.2, the Service Provider's total aggregate liability arising out of or in connection with this Agreement whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed an amount equal to the Fees paid by the Client in the one (1) month immediately preceding the event giving rise to the claim.

15.4 Any service credits, discounts or similar remedies provided under this Agreement shall count towards and not be in addition to the liability cap set out in Clause 15.3.

15.5 The Client acknowledges that the Services are not intended to replace the Client's own insurance arrangements and that the Client is responsible for maintaining appropriate insurance in respect of its data, systems and business operations.

16 Force Majeure

16.1 Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

17 Nature of the Agreement

17.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) [or sub-license] any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other Party, such consent not to be unreasonably withheld.

17.2 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

- 17.3 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 17.4 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 17.5 At any time after the Commencement Date each of the Parties shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the provisions of this Agreement.

18 Severance

- 18.1 The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

19 Relationship of the Parties

- 19.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other party for any purpose.
- 19.2 Subject to any express provisions to the contrary in this Agreement, the Service Provider shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Client or bind the Client in any way.

20 Notices

- 20.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 20.2 Notices shall be deemed to have been duly given:
- 20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth business day following mailing, if mailed by airmail, postage prepaid.
 - 20.2.4 in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

21 Law and Jurisdiction

- 21.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 21.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

22 Data Protection

- 22.1 Both parties warrant that they have complied with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation
- 22.2 The parties acknowledge that for the purposes of the Data Protection Legislation the Client is the Data Controller and the Service Provider is the Data Processor. The Service Provider is contracted to provide the services to the Client that are set out in the Agreement and the processing of Personal Data enables the Service Provider to carry out the services that are set out in the Agreement on behalf of the Client.
- 22.3 The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this agreement and confirm the ground upon which the Personal Data is being processed.
- 22.4 The Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement:
- 22.4.1 process that Personal Data only on the written instructions of the Client, and in accordance with those instructions, unless the Service Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Service Provider to process Personal Data (Applicable Laws). Where the Service Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Service Provider shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the Client;
- 22.4.2 ensure that it has 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, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 it);
- 22.4.3 not engage any sub-processor without the prior specific or general written authorisation of the Client (and in the case of general written authorisation; the Service Provider shall inform the Client of any intended changes concerning the addition or replacement of other processors and the Client shall have the right to object to such changes);

- 22.4.4 ensure that all each of the Service Provider's employees, agents, consultants, subcontractors and sub-processors are made aware of the Service Provider's obligations under this agreement and enter into binding obligations with the Service Provider to maintain the levels of security and protection required under this agreement. The Service Provider shall ensure that the terms of this agreement are incorporated into each agreement with any sub-processor, subcontractor, agent or consultant to the effect that the sub-processor, subcontractor, agent or consultant shall be obligated to act at all times in accordance with duties and obligations of the Service Provider under this agreement. The Service Provider shall at all times be and remain liable to the Client for any failure of any employee, agent, consultant, subcontractor or sub-processor to act in accordance with the duties and obligations of the Service Provider under this Schedule;
- 22.4.5 ensure personnel, who have access to and/or process Personal Data are obliged to keep the Personal Data confidential and receive training to ensure compliance with the Data Protection Legislation;
- 22.4.6 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - 22.4.7 the Client or the Service Provider has provided appropriate safeguards in relation to the transfer;
 - 22.4.7.1 *the Data Subject has enforceable rights and effective legal remedies;*
 - 22.4.7.2 *the Service Provider complies with its obligations under the Data Protection Legislation by*
 - 22.4.7.3 *providing an adequate level of protection to any Personal Data that is transferred;*
 - 22.4.7.4 *the Service Provider complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;*
- 22.4.8 assist the Client within 48 hours 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;
- 22.4.9 notify the Client within 24 hours of any:
 - 22.4.9.1 *attempted or suspected Data Breach;*
 - 22.4.9.2 *any request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited);*
 - 22.4.9.3 *any access request or complaint received directly from a Data Subject (without responding other than to acknowledge receipt);*
- 22.4.10 within thirty (30) days of expiry or termination of this Agreement, the Service Provider shall, on request, make the Personal Data available to the Client for download in a reasonable and commonly used electronic format. After the expiry of the thirty (30) day period, the Service Provider shall, unless required otherwise by Applicable Law, delete the Personal Data in its systems or otherwise in its possession or control.;
- 22.4.11 maintain complete and accurate records to demonstrate compliance with this Clause 22.4 and Article 28 of the UK GDPR, and, upon reasonable request, make available to the Client information necessary to demonstrate such compliance.
- 22.4.12 Any audit rights shall be limited to documentary audits or independent third-party certifications or reports, shall not unreasonably interfere with the Service Provider's business or compromise the security of the Platform or the data of other customers, and shall be subject to reasonable confidentiality and security requirements.

22.5 Data Export and Deletion (Non-Personal Data)

- 22.5.1 Upon termination or expiry of this Agreement for any reason, the Client may request a copy of its Customer Data within thirty (30) days of termination.
- 22.5.2 Following the expiry of this thirty (30) day period, the Service Provider may permanently delete Customer Data from the Platform, including any backups or replicas, unless retention is required by applicable law.
- 22.5.3 Any data export, extended retention or assistance requested by the Client under this Clause 22.5 may be subject to reasonable charges at the Service Provider's then-current rates.

23 SCHEDULE 1

23.1 Hosting Packages

Infrastructure as a Service
Zerto Disaster recovery as a service
Veeam Cloud Connect Replication
Veeam Cloud Connect Backup
Veeam Office365 Backup

23.2 Fees

All prices exclude VAT and will be invoiced in advance on a basis, the first invoice will include and outstanding fees from unbilled usage.

24 Acceptance

Authorised on behalf of :

Name
Job Tittle

Signature

Date

Authorised on behalf of : Pea Soup Hosting Limited

Name
Job Tittle

Signature

Date

