



SaaS Terms and Conditions

2023

Contents

1	DEFINITIONS	4
2	INTERPRETATION	12
3	GRANT OF LICENCE	12
4	RESTRICTIONS OF LICENCE	13
5	DELIVERY	14
6	TESTING AND ACCEPTANCE	14
7	CONSULTANCY	15
8	SUPPORT AND MAINTENANCE	16
9	PAYMENT	16
10	ADDITIONAL SERVICES	17
11	TOPDESK WARRANTIES AND GUARANTEES	17
12	CUSTOMER WARRANTIES, ACKNOWLEDGEMENTS AND REQUIREMENTS	18
13	SECURITY AND CONTROL	21
14	COMPLIANCE AND AUDITS	21
15	INTELLECTUAL PROPERTY RIGHTS	23
16	LIABILITY, INDEMNITY AND INSURANCE	24
17	TERM AND TERMINATION	26
18	EFFECTS OF TERMINATION	28
19	FORCE MAJEURE	29
20	PRIVACY	29
21	CONFIDENTIALITY	30
22	PUBLICITY RIGHTS	30
23	ENTIRE AGREEMENT	31
24	OFFERS	31
25	REPRESENTATIVES	31
26	ASSIGNMENT AND SUB-CONTRACTING	32
27	RELATIONSHIP BETWEEN THE PARTIES	32
28	THIRD PARTIES	32

29	NO WAIVER	32
30	SEVERANCE	32
31	SET-OFF	32
32	COSTS AND EXPENSES	33
33	NOTICE	33
34	DISPUTE RESOLUTION	33
35	LANGUAGE	34
36	LAW AND JURISDICTION	34
37	SCHEDULE 1: MAINTENANCE AND SUPPORT	36
38	SCHEDULE 2: TOPDESK SAAS SERVICES	39
39	SCHEDULE 3: DATA PROCESSING	42
41	SCHEDULE 4: INVESTMENT PROPOSAL	47
42	SCHEDULE 5: FAIR USE SAAS POLICY	48
43	SCHEDULE 6: PRIVACY POLICY	50

This Agreement is made on [1January 2023]¹ (the “Effective Date”)

BETWEEN:

- (a) TOPdesk UK Limited, a company registered in England and Wales under company number 05396062 whose registered office is at 5 Elstree Gate, Elstree Way, Borehamwood, Hertfordshire, WD6 1JD (“TOPdesk”); and
- (b) [Customer Name]², a [company] registered in [England and Wales] under [company] number [Registration Number] whose registered office is at [Registered Address] (“the Customer”), each a “Party” and collectively the “Parties”.

WHEREAS:

- (a) TOPdesk has developed and owns or has licensed from Third Parties the Licensed Program Materials that shall support the Customer’s own internal service desk operations to be defined as “Permitted Purposes”; and
- (b) TOPdesk has agreed to grant to the Customer a non-exclusive Licence to Use the Licensed Program Materials in accordance with the provisions of this Agreement.

NOW THEREFORE the Parties agree as follows:

1 Definitions

- 1.1 Unless the context otherwise requires, the following expressions have the following meanings in this Agreement:

“Acceptance Date”	means either (whichever is earlier):
	(a) the date on which the Customer serves written notification to TOPdesk that the Licensed Programs accord with the Specification;
	(b) thirty (30) calendar days following the Delivery Date (or such other period agreed between the Parties); or
	(c) the date on which the Licensed Programs have been put into operational use.

¹ Green = to be completed by a representative of TOPdesk. Please delete brackets [], remove green highlighting and delete footnotes highlighted in yellow post-completion.

² Yellow = to be completed by a representative of the Customer. Please delete brackets [], remove yellow highlighting and delete footnotes highlighted in yellow post-completion.

"Affiliate"	means in relation to a Party any entity from time to time controlling, controlled by or under common control with that Party (where " control " has the meaning given in section 1124 of the Corporation Tax Act 2010);
"Best Endeavours"	means taking all reasonable steps that a prudent, determined and reasonable person, acting in its own business interests and enthusiastic to achieve a given result, could take;
"Bug"	means any errors in the source code of the Licensed Programs wherein functionality is present, but operates not as described in the Specification, subject to updates developed and released by TOPdesk from time to time at its sole discretion which may modify, change and/or add to the Licensed Programs;
"Business Day"	means any day (other than Saturday or Sunday or a public or bank holiday) on which ordinary banks are open for their full range of normal business in England;
"Confidential Information"	means, in relation to either Party, non-public, business-related information which is disclosed to that Party or its Affiliates by the other Party directly or indirectly pursuant to, or in connection with, this Agreement (whether orally or in writing or any other medium and whether or not the information is expressly stated to be confidential or marked as such), including information contained or embodied in the Licensed Program Materials and Specification;
"Consultancy"	means the Implementation and training in addition to other service management expertise provided by TOPdesk to the Customer if purchased;

"Data Controller"	means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data; where the purposes and means of such Processing are determined by Union or Member State law, the Controller or the specific criteria for its nomination may be provided for by Union or Member State law;
"Data Processor"	means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller;
"Data Protection Laws"	means the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 ("GDPR") and any other national law which implements the GDPR in the United Kingdom, including any applicable law or regulation which supersedes, replaces or implements any of the foregoing in the United Kingdom;
"Data Subject"	means a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
"Defect"	means any material difference between the actual performance and functionality of the Licensed Programs and that outlined in the Specification, subject to updates developed and released by TOPdesk from time to time at its sole discretion which may modify, change and/or add to the Licensed Programs;
"Correct the Defect"	means a change, modification or addition that, when made or added to the Licensed Programs, establishes material conformity of the Licensed Programs to the Specification (and "Correct Defects" , "Correct a Defect" and "Correction of the Defect" shall be construed accordingly);

"Cross-Border Processing"	means Processing of Personal Data which takes place in the context of the activities of establishments in more than one Member State of the Data Processor in the Union where the Data Processor is established in more than one Member State (and "Cross-Border Process" shall be construed accordingly);
"Delivery Date"	means the date agreed between the Parties on which TOPdesk first grants the Customer access to the Licensed Program Materials;
"Feature Request"	means a request for functionality not present in the Licensed Programs at the time of such request;
"Fees"	means the fees payable to TOPdesk by the Customer for the Services as specified in the applicable Investment Proposal and/or Tender Response;
"Implementation"	means the implementation and configuration (as applicable) of the Licensed Program Materials by a representative of TOPdesk (and "Implemented" shall be construed accordingly);
"Initial Term"	means [three (3)] calendar years commencing at 0:00 GMT on the Delivery Date;
"Instructions"	means the Controller's documented Processing instructions issued to the Processor in compliance with Schedule 3 and within the scope of the Services;

"Intellectual Property Rights"	means: (a) any and all rights in any copyrights, patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks, database rights, know-how, rights in designs and inventions whether or not registered or capable of registration and whether subsisting anywhere in the world; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;
"Investment Proposal"	means (if applicable) the quotation sent to the Customer by TOPdesk outlining the Services, as outlined in Schedule 4;
"Users"	means internal or external users, contact persons or service desk customers permitted by TOPdesk to Use the Licensed Program Materials for the Permitted Purposes (and "User" shall be construed accordingly);
"Licensed Program Materials"	means collectively the Licensed Programs and the Program Documentation;
"Licensed Programs"	means the computer software programs of TOPdesk specified in the applicable Investment Proposal and/or Tender Response, including all Releases and Versions thereof;
"Maintenance"	means the service provided by TOPdesk to the Customer to maintain and update the Licensed Programs over the Term, as outlined in Schedule 1 and, if applicable, Schedule 2;

"Module"	means a discrete component of the Licensed Programs (and "Additional Modules" shall be additional discrete components of the Licensed Programs);
"Operators"	means operators permitted by TOPdesk to Use the Licensed Program Materials for the Permitted Purposes to provide support and other services to the Users (and "Operator" shall be construed accordingly);
"Personal Data"	means any information relating to a Data Subject Processed on the Controller's behalf in connection with the Services provided under this Agreement;
"Personal 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 by the Processor under this Agreement;
"Personnel"	means any employee, director, officer or agent;
"Processing"	means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (and "Process" , "Processes" and "Processed" shall be construed accordingly);
"Program Documentation"	means the Operator basic training manual, user instructions, technical literature and all other related materials in eye-readable form (subject to change from time to time at TOPdesk's sole discretion) supplied to the Customer by TOPdesk for aiding the use and application of the Licensed Programs;

"Reaction Time"	means the time elapsed between TOPdesk becoming aware of an incident and TOPdesk's first response;
"Reasonable Endeavours"	means taking one of a number of reasonable steps that a prudent, determined and reasonable person, acting in its own business interests and enthusiastic to achieve a given result, could take;
"Release"	means minor feature additions/enhancements and includes feature and error corrections from the preceding level;
"Resolution Time"	means the time elapsed between TOPdesk receiving notification of an incident and TOPdesk's final resolution;
"Services"	means collectively the Licence, Consultancy and Maintenance and Support (where applicable) provided by TOPdesk to the Customer under this Agreement;
"Specification"	means the specification of the Licensed Programs describing the facilities and functions thereof outlined in the applicable Investment Proposal and/or Tender Response;
"Sub-Processor"	means any legal person or entity engaged by the Data Processor in the Processing of Personal Data (excluding Personnel);
"Supervisory Authority"	means an independent public authority which is established by a Member State pursuant to Article 51 of the GDPR;
"Support"	means the after-sales service provided to the Customer by TOPdesk in solving software conflicts and usability problems, and in supplying updates and patches for Bugs and security holes in the Licensed Programs;
"Tender Response"	means (if applicable) the latest TOPdesk response to the Customer's tender exercise, including any amendments, changes, additions and/or qualifications to the response made by TOPdesk and communicated to the Customer;

"Term"	means collectively the Initial Term and all renewal periods pursuant to Clause 17.1;
"Third Party"	means a person of any kind not a Party (and "Third Parties" shall be construed accordingly);
"Use the Licensed Program Materials"	means display, use and apply the Licensed Program Materials for the Permitted Purposes in accordance with the provisions of this Agreement (and "Using the Licensed Program Materials" shall be construed accordingly);
"Version"	means a Release that has gone through the full product development lifecycle and been made available to the Customer;
"Virus"	means any code or data designed or adapted to adversely limit the functionality of or adversely affect, impair or destroy the operation of the Licensed Programs and for which detection and antidote software is generally available (and "Viruses" shall be construed accordingly); and
"Workaround"	means a temporary solution to minimise the effect of a Bug or missing functionality in causing material non-conformity of the Licensed Programs with the Specification.

- 1.2 Capitalised terms not defined in Clause 1.1 have the meaning ascribed to them where used in this Agreement.

2 Interpretation

- 2.1 Unless the context otherwise requires, each reference in this Agreement to:
 - 2.1.1 **“writing”** and any cognate expression includes a reference to any communication affected by e-mail;
 - 2.1.2 a **“statute”** or a **“provision”** of a statute is a reference to that statute or provision as amended, modified, consolidated, extended or re-enacted at the relevant time;
 - 2.1.3 **“this Agreement”** is a reference to the body of this agreement (including the recitals) and all of the Schedules, subject to Clause 23.1;
 - 2.1.4 a **“Schedule”** is a reference to a schedule of this Agreement; and
 - 2.1.5 a **“Clause”**, **“Annex”** or **“paragraph”** is a reference to a clause of this Agreement (other than the Schedules), an annex of this Agreement or a paragraph of the relevant Schedule.
- 2.2 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 2.3 Words imparting the singular number shall include the plural and vice versa.
- 2.4 References to any gender shall include the feminine and neuter.
- 2.5 Words importing persons include firms, companies and corporations, and vice versa.
- 2.6 Words such as **“include”**, **“includes”** and **“including”** shall be deemed to be followed by the words “without limitation”.
- 2.7 Any inconsistency or conflict between this Agreement and any other terms and conditions relating to the Licence shall be resolved by giving precedence in the following order: (i) the provisions of this Agreement, subject to Clause 23.1; and (ii) the provisions and text outlined in the applicable Investment Proposal and/or the Tender Response.

3 Grant of Licence

- 3.1 TOPdesk hereby grants to the Customer a non-exclusive licence to Use the Licensed Program Materials in accordance with the provisions of this Agreement (**“Licence”**). The Licence shall terminate on the expiration or earlier termination of this Agreement for any reason.
- 3.2 Affiliates of the Customer may Use the Licensed Program Materials for the Permitted Purposes for the duration of the Licence in accordance with the provisions of this Agreement, subject to TOPdesk’s prior written consent. The Customer and its Affiliates shall be jointly and severally liable for the payment of any amounts due under any outstanding invoices. The Customer shall at all times be liable for its Affiliates’ compliance with the provisions of this Agreement. The Customer shall at all times be liable for the acts and omissions of any Affiliate of the Customer to the same extent as if the acts or omissions were performed by the Customer.

- 3.3 In the event that an Affiliate of the Customer wishes to assert a legal action, suit, claim or proceeding against TOPdesk (a **"Customer Affiliate Claim"**):
 - 3.3.1 the Customer must bring such Customer Affiliate Claim directly against TOPdesk on behalf of such Affiliate, unless applicable laws require that Affiliate be party to such Customer Affiliate Claim; and
 - 3.3.2 all Customer Affiliate Claims will be considered claims made by the Customer and are at all times subject to all exclusions and limitations of liability and indemnity set forth in this Agreement.
- 3.4 Except for the rights expressly granted to the Customer under this Agreement, all rights in and to the Licensed Program Materials are reserved and no implied licences are granted to the Customer by TOPdesk under this Agreement.

4 Restrictions of Licence

- 4.1 The Customer shall only Use the Licensed Program Materials for the Permitted Purposes, unless otherwise agreed in writing by TOPdesk.
- 4.2 The Customer acknowledges that it is licensed to Use the Licensed Program Materials only in accordance with the express provisions of this Agreement and not further or otherwise.
- 4.3 The Licence shall not be deemed to extend to any programs or materials of TOPdesk other than the Licensed Program Materials, unless otherwise agreed in writing by TOPdesk.
- 4.4 The Customer shall not allow the Licensed Program Materials to be used by Third Parties, unless otherwise agreed in writing by TOPdesk.
- 4.5 The Customer shall not use the Licensed Program Materials for competitive analysis or to build competitive products or services.
- 4.6 The Customer shall not sell, lease, licence, sub-license, rent, loan, resell for profit, distribute, time-share, allow or sell access to the Licensed Program Materials and shall not use the Licensed Program Materials for the benefit of any distributor, reseller, sub-licensor, aggregator, organisation (legal or non-legal), remarketer or any other Third Party, unless otherwise agreed in writing by TOPdesk.
- 4.7 The Customer shall not remove or change from any materials, software (including the Licensed Programs), websites, data files, equipment or other tangible or intangible objects received from TOPdesk any indication confirming their confidential nature or relating to copyright, trademarks, brands, trade names or other Intellectual Property Rights.
- 4.8 Subject to Clause 4.9, the Customer shall not translate, adapt, vary, modify, disassemble, decompile, reverse engineer or hack, or attempt to obtain or derive the source code, underlying ideas, algorithms, file formats, structure or sequence of, or create derivative works from, the Licensed Programs in any manner without TOPdesk's prior written consent.
- 4.9 Notwithstanding Clause 4.8, the Customer may decompile the Licensed Programs if:
 - 4.9.1 such decompilation is essential to achieving interoperability of the Licensed Programs with another software program or hardware; and

- 4.9.2 any and all information obtained by the Customer pursuant to such decompilation is thereby only used for the purposes described in Clause 4.9.1, not disclosed or communicated to any Third Party without TOPdesk's prior written consent and not used to create anything similar to the Licensed Program Materials; and
- 4.9.3 such decompilation has been agreed by TOPdesk in writing.
- 4.10 Notwithstanding Clause 4.9, the Customer shall first consult TOPdesk regarding any data the Customer requires in order to achieve interoperability or to deduce underlying ideas and principles. TOPdesk shall consider making the same available to the Customer (without the Customer having to rely on Clause 4.9) subject to the restrictions on disclosure outlined in Clause 4.9.2.

5 Delivery

- 5.1 TOPdesk shall grant the Customer access to the Licensed Program Materials on the Delivery Date.

6 Testing and Acceptance

- 6.1 If agreed in writing between the Parties, the Customer shall test whether the Licensed Programs accord with the Specification. The Customer shall not be entitled to reject the Licensed Programs, unless the Licensed Programs do not accord with the Specification.
- 6.2 The Implementation shall be deemed complete and the Licensed Programs shall be deemed accepted by the Customer on the Acceptance Date, unless the Customer serves written notification to TOPdesk detailing the failure(s) of the Licensed Programs to accord with the Specification within thirty (30) calendar days following the Delivery Date (or such other period agreed between the Parties).
- 6.3 In the event of TOPdesk's receipt of the Customer's written notification detailing the failure(s) of the Licensed Programs to accord with the Specification pursuant to Clause 6.2, TOPdesk shall at no additional cost to the Customer correct the relevant failure(s) within a reasonable time period following such receipt. TOPdesk shall then notify the Customer to re-test whether the Licensed Programs accord with the Specification. The Customer shall serve written notification to TOPdesk detailing whether the Licensed Programs accord with the Specification within five (5) Business Days of TOPdesk serving notification to the Customer pursuant to this Clause 6.3. The Licensed Programs shall be deemed accepted if the Customer fails to serve such written notification to TOPdesk within five (5) Business Days of TOPdesk serving notification to the Customer pursuant to this Clause 6.3.
- 6.4 In the event of TOPdesk's receipt of the Customer's written notification outlining the failure(s) of the Licensed Programs to accord with the Specification pursuant to Clause 6.3, the Customer shall be entitled to either forthwith terminate this Agreement or require TOPdesk to re-correct the relevant failure(s) by written notice to TOPdesk within five (5) Business Days of TOPdesk serving notification to the Customer to re-test whether the Licensed Programs accord with the Specification. Upon TOPdesk's receipt of such written notification, Clause 6.3 shall, mutatis mutandis, apply.

- 6.5 If this Agreement is terminated by the Customer pursuant to Clause 6.4 and the Licensed Programs are not Implemented in phases, the Customer may request a refund of all paid Licence Fees. If this Agreement is terminated by the Customer pursuant to Clause 6.4 and the Licensed Programs are Implemented in phases, the Customer may request a refund of paid Licence Fees associated with the failed phase and non-commenced phases, but not paid Licence Fees associated with accepted phases.
- 6.6 If the Licensed Programs are Implemented in phases, the test pursuant to Clause 6.1 shall be limited exclusively to the functionality delivered by TOPdesk as part of that phase and a failure of a phase to pass such test shall not prejudice prior acceptances of other Implemented phases.

7 Consultancy

- 7.1 TOPdesk shall provide Consultancy to the Customer if purchased by the Customer.
- 7.2 The Customer must provide TOPdesk with prior written notice to either book, cancel or re-schedule Consultancy. TOPdesk operates a five (5) Business Day cancellation policy for booked Consultancy. If the Customer cancels Consultancy less than five (5) Business Days before the booked date(s), the Customer shall pay TOPdesk fifty per cent (50%) of Consultancy Fees for the cancelled date(s). If the Customer cancels the Consultancy less than twenty-four (24) hours before the booked date(s), the Customer shall pay TOPdesk one-hundred per cent (100%) of Consultancy Fees for the cancelled date(s). The Customer shall be entitled to either cancel or re-schedule booked Consultancy up to five (5) Business Days before the booked date(s) upon prior written notice to TOPdesk.
- 7.3 TOPdesk's Personnel providing Consultancy shall work from 10:00–17:00 ("**Working Hours**") either at the Customer's premises, TOPdesk's premises or other premises agreed between both Parties. The Working Hours shall include a one-hour lunch break which TOPdesk's Personnel may, at their sole discretion, take at any time during the Working Hours.
- 7.4 Travel costs shall be paid by the Customer to TOPdesk and calculated at either £0.50 per mile from 22 Lavington Street, London, SE1 ONZ (subject to change) or, if the Customer is located in either London zones 1 to 6 or Greater Manchester area in England, £25 per day. For all on-site locations outside of England, Scotland and Wales, travel costs shall be charged based on the actual costs of travel and accommodation.
- 7.5 Half-day Consultancy can be purchased by the Customer, shall be delivered remotely and shall be three (3) hours in duration. Half-day Consultancy shall be invoiced to the Customer by TOPdesk at half of the Consultancy daily rate outlined in the applicable Investment Proposal and/or Tender Response.
- 7.6 Consultancy delivered on a Saturday shall be invoiced to the Customer by TOPdesk at double the Consultancy rate outlined in the applicable Investment Proposal and/or Tender Response.

7.7 If the Customer does not for whatever reason use the Consultancy within twelve (12) calendar months from the date on which the invoice for the pre-paid Consultancy is created, which shall be denoted on the invoice, the Consultancy shall automatically expire and TOPdesk shall automatically be released from any and all obligations in relation to the non-utilised Consultancy, including the delivery of the non-utilised Consultancy. The twelve (12) calendar months expiry period may be extended by written agreement between both Parties. A refund to the Customer for the non-utilised Consultancy shall not be due in case of an expiry of the twelve (12) calendar months period, unless otherwise agreed in writing between both Parties.

7.8 Charges arising from this Clause 7 shall be paid in line with Clause 9.

8 Support and Maintenance

8.1 TOPdesk shall provide to the Customer Support and Maintenance (to the extent applicable) during the Term.

9 Payment

9.1 Subject to Clauses 9.9 and 10, the applicable Investment Proposal and/or Tender Response details the total Fees payable by the Customer to TOPdesk in return for the Services.

9.2 TOPdesk shall send invoices to the Customer for any Licence Fees and one-off set-up fees annually from the first day of the month following the Delivery Date (unless otherwise agreed in writing between the Parties).

9.3 TOPdesk shall send invoices to the Customer for any Consultancy Fees monthly in arrears from the first calendar week of the month following the month in which the Consultancy day(s) are delivered (unless otherwise agreed in writing between the Parties).

9.4 Any Fees and other sums payable by the Customer under this Agreement shall be paid within thirty (30) calendar days after the Customer's receipt of TOPdesk's invoice therefor.

9.5 Any Fees and other sums payable by the Customer under this Agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Customer at the rate and in the manner prescribed by law against submission of a valid tax invoice.

9.6 The Customer shall have the right to, acting reasonably and in good faith, dispute any invoice provided by TOPdesk within thirty (30) calendar days after the Customer's receipt of such invoice, provided that the Customer serves a written notification to TOPdesk of the invoice dispute detailing the reasons for it. Upon TOPdesk's receipt of such notification:

9.6.1 the remaining time period for payment pursuant to Clause 9.4 shall freeze until resolution of the invoice dispute pursuant to Clauses 9.6.2 and 9.7, whereupon the remaining time period for payment pursuant to Clause 9.4 shall re-commence; and

9.6.2 TOPdesk and the Customer shall enter into discussions to resolve the invoice dispute within thirty (30) calendar days after TOPdesk's receipt of the Customer's written notification of the invoice dispute.

9.7 If the invoice dispute is not resolved within thirty (30) calendar days after TOPdesk's receipt of the Customer's written notification of the invoice dispute pursuant to Clause 9.6, the Parties shall seek to commence a dispute resolution procedure in line with Clause 35.

- 9.8 Subject to Clause 9.6, TOPdesk shall have the right to charge interest on any invoice for any Fees or other sums payable by the Customer not paid within thirty (30) calendar days after the Customer's receipt of such invoice at the rate of 4% per year above the Bank of England base rate, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- 9.9 TOPdesk may, at its sole discretion, increase the daily rate of non-pre-paid Consultancy Fees during the Term. TOPdesk may, at its sole discretion, increase any Fees and other sums payable by the Customer to TOPdesk after the Initial Term.

10 Additional Services

- 10.1 If the Customer requests from TOPdesk Consultancy, Modules and/or other services not detailed in the applicable Investment Proposal and/or Tender Response, TOPdesk shall, at TOPdesk's sole discretion, deliver such Consultancy, Modules and/or other services at either the rate agreed between both Parties or, if no rate has been agreed between both Parties, in accordance with TOPdesk's then-prevailing rates (which may be higher than the rates outlined in the applicable Investment Proposal and/or Tender Response).
- 10.2 If either the Customer uses any Consultancy, Modules and/or other services provided by TOPdesk not detailed in the applicable Investment Proposal and/or Tender Response without TOPdesk's prior written consent or the number of Users and/or Operators exceed the Users and Operators bracket detailed in the applicable Investment Proposal and/or Tender Response, TOPdesk, upon becoming aware thereof, may charge the Customer prospectively for the Consultancy, Modules and/or other services and increase in the number of Users and/or Operators in accordance with TOPdesk's then-prevailing rates.
- 10.3 Any Consultancy, Modules and other services provided by TOPdesk not detailed in the applicable Investment Proposal and/or Tender Response and used by the Customer shall be subject to the provisions of this Agreement (unless otherwise agreed in writing between the Parties).
- 10.4 The Parties may jointly agree to change the Licensed Programs from time to time to reflect changes in the Customer's requirements. TOPdesk shall provide to the Customer at no additional cost to the Customer indications of charges for such changes to the Licensed Programs.

11 TOPdesk Warranties and Guarantees

- 11.1 TOPdesk shall ensure that it, its Personnel and its sub-contractors take all reasonable precautions at no additional cost to the Customer to ensure that no known Viruses are coded or introduced into the Licensed Programs.
- 11.2 TOPdesk warrants that during the Term:
 - 11.2.1 it will attain the standards of reasonable care and skill commensurate with those currently prevailing in the software industry in fulfilling its obligations under this Agreement;
 - 11.2.2 all of its Personnel have qualifications and experience appropriate for the tasks to which they are allocated;
 - 11.2.3 it has full capacity and authority and all necessary licences, permits, permissions, powers and consents to enter into and to perform this Agreement;

- 11.2.4 it has a valid licence to the Intellectual Property Rights in the Licensed Programs;
and
- 11.2.5 it has and shall maintain an appropriate disaster recovery and business continuity plan.
- 11.3 When serving TOPdesk written notification of a Defect in the Licensed Programs, the Customer shall provide to TOPdesk all information reasonably required by TOPdesk to Correct the Defect and a documented example of the Defect. Upon TOPdesk's receipt of such information and documented example, TOPdesk shall, at no additional cost to the Customer, use its Best Endeavours to Correct the Defect in a reasonable time period and provide written notification to the Customer as to the Correction of the Defect. TOPdesk shall be permitted to install temporary solutions, program bypasses and/or problem avoiding limitations in the Licensed Programs to Correct the Defect. If TOPdesk does not Correct the Defect in a reasonable time period, the Customer shall be entitled to forthwith terminate this Agreement by written notice to TOPdesk.
- 11.4 Clause 11.3 shall not apply if the Defect is non-reproducible and/or arises out of or is exacerbated by:
 - 11.4.1 any incorrect use, operation or corruption of the Licensed Programs;
 - 11.4.2 any unauthorised development, modification, enhancement, alteration or change of the Licensed Programs; and/or
 - 11.4.3 use of the Licensed Program Materials with any software, equipment or programs not supplied or approved by TOPdesk.
- 11.5 In the circumstances outlined in Clauses 11.4.1 to 11.4.3, Clause 11.3 shall, mutatis mutandis, apply provided that TOPdesk reserves the right to charge the Customer for Correcting the Defect in accordance with TOPdesk's then-prevailing rates.
- 11.6 TOPdesk shall be relieved from its obligations under this Agreement to the extent that it is prevented from complying with any of its obligations due to any act, omission or default of the Customer and/or its Affiliates using the Licensed Program Materials.
- 11.7 TOPdesk neither warrants that the Licensed Programs are free of any minor defects, errors or Bugs nor that the Licensed Programs operate free of any disruption, outages or breakdowns nor that TOPdesk will review the Customer's data for accuracy nor that the Licensed Programs are fit for purpose or otherwise meet the Customer's expectations.
- 11.8 TOPdesk does not provide any warranty in relation to and disclaims all liability and responsibility for any Third Party products or services not provided by TOPdesk and for the acts or omissions of any provider of such Third Party products or services.
- 11.9 TOPdesk does not guarantee that our security procedures will be error-free or that transmissions of the Customer's data will always be secure or that unauthorised Third Parties will never be able to defeat TOPdesk's security measures or those of its sub-contractors.
- 11.10 TOPdesk does not guarantee the accuracy and completeness of the information provided or supplied by TOPdesk through whatever medium, including TOPdesk's website, portals, email and orally by or on behalf of TOPdesk directly or indirectly to the Customer.

12 Customer Warranties, Acknowledgements and Requirements

- 12.1 The Customer acknowledges and agrees that updates developed and released by TOPdesk from time to time at its sole discretion may modify, change and/or add to the Licensed Programs. Any modification, change and/or addition to the Licensed Programs resulting from any updates developed and released by TOPdesk from time to time shall be deemed neither a breach of this Agreement nor a default by TOPdesk in performing any of its obligations to provide the Licensed Programs in accordance with the Specification at any point prior to, during or following Implementation and acceptance testing pursuant to Clause 6.
- 12.2 The Customer acknowledges and agrees that the existence of any minor defects, errors or Bugs shall be deemed neither a breach of this Agreement nor a default by TOPdesk in performing any of its obligations to provide the Licensed Programs in accordance with the Specification at any point prior to, during or following Implementation and acceptance testing pursuant to Clause 6.
- 12.3 The Customer acknowledges and agrees that its sole remedy in respect of any Defect is that TOPdesk will Correct the Defect provided that, in TOPdesk's reasonable opinion, the Defect is not non-reproducible and that, if TOPdesk does not Correct the Defect in a reasonable time period, the Customer shall be entitled to forthwith terminate this Agreement by written notice to TOPdesk.
- 12.4 The Customer agrees and acknowledges that it is solely responsible for all information, materials, data, files, programs, ideas and opinions it uploads, posts, emails, transmits or otherwise disseminates using, or in connection with, the Licensed Programs ("**Content**") and that it will be solely responsible for any damage to any party resulting therefrom. As between TOPdesk and the Customer, the Customer shall continue to retain all ownership rights in any Content provided to TOPdesk.
- 12.5 The Customer shall ensure that all Users and Operators keep their user IDs and passwords for the Licensed Programs confidential and do not share such information with any unauthorised person. The Customer is responsible for any and all actions taken using User and Operator accounts and shall notify TOPdesk immediately in writing if the Customer becomes aware of any unauthorised use of the whole or any part of the Licensed Program Materials.
- 12.6 The Customer acknowledges and agrees that TOPdesk shall not be responsible for any access to or use of any Content by Third Party providers not engaged by TOPdesk or their products or services, or for the security or privacy practices of any Third Party provider not engaged by TOPdesk or its products or services. The Customer is solely responsible for its decision to permit any Third Party provider not engaged by TOPdesk or Third Party product or service to use any Content.
- 12.7 The Customer warrants that during the Term:
 - 12.7.1 it has full capacity and authority and all necessary licences, permits, permissions, powers and consents to submit all Content to the Licensed Programs and to enter into and perform this Agreement;
 - 12.7.2 it has an adequate security infrastructure to protect and secure the operation and use of the Licensed Program Materials and Confidential Information of TOPdesk;

- 12.7.3 all Content supplied to, entered in and/or stored on the Licensed Programs is secure and safe for processing and shall not be defective or a risk to the Licensed Programs or TOPdesk's or TOPdesk's sub-contractors' security framework, systems, infrastructure or operations;
 - 12.7.4 all Content supplied to, entered in and/or stored on the Licensed Programs and all equipment, software and other materials made available to TOPdesk shall not violate applicable laws or infringe any Third Party rights, including Intellectual Property Rights, proprietary rights, publicity rights and privacy rights;
 - 12.7.5 it shall not use the Licensed Program Materials for any unlawful purpose;
 - 12.7.6 its Personnel shall have the knowledge and experience reasonably required to facilitate Implementation; and
 - 12.7.7 it shall grant access to suitable and safe facilities (conforming with applicable health and safety regulations) reasonably required for the provision of the Services provided that such requirement is notified in writing to the Customer prior to Implementation.
- 12.8 The Customer shall cease using the Licensed Program Materials and TOPdesk shall be permitted to forthwith suspend or terminate this Agreement without advance notice and without incurring any costs or liabilities if, in TOPdesk's reasonable opinion, the Customer breaches any of the warranties outlined in Clauses 12.7.2 to 12.7.7. TOPdesk will commit its Best Endeavours to provide the Customer with advance written notice of such suspension or termination when practicable.
- 12.9 The Customer acknowledges the existence of and shall comply with TOPdesk's Fair Use SaaS Policy set out in Schedule 5 ("**SaaS Policy**") and all other usage policies of TOPdesk prevailing at any point during this Agreement. The SaaS Policy is based on TOPdesk's customers' average use of TOPdesk's technical and operational resources and seeks to ensure that TOPdesk's customers use a fair proportion of them. If the Customer exceeds the fair use proportion outlined in the SaaS Policy, TOPdesk may notify the Customer with suggestions to reduce the Customer's use. If the Customer exceeds the fair use proportion outlined in the SaaS Policy for more than thirty (30) calendar days following such notification, TOPdesk may impose additional charges on the Customer to reflect the Customer's unfair usage and shall be permitted to suspend or terminate this Agreement upon written notice to the Customer without incurring any costs or liabilities. TOPdesk reserves the right to amend and/or change any of its usage policies, including the SaaS Policy, at any time subject to prior written notification to the Customer.

12.10 TOPdesk and its sub-contractors reserve the right to remove from TOPdesk's or its sub-contractors' servers any Content that:

12.10.1 violates any applicable laws; and/or

12.10.2 infringes any Third Party rights, including Intellectual Property Rights, proprietary rights, publicity rights and privacy rights.

12.11 It is the Customer's responsibility to ensure that it has the facilities, including computers and internet connection, required to use the Licensed Programs during the Term.

13 Security and Control

13.1 The Customer shall during the Term:

13.1.1 commit its Best Endeavours to effect and maintain adequate security measures to safeguard the Licensed Program Materials from access or use by any unauthorised person; and

13.1.2 commit its Best Endeavours to retain the Licensed Program Materials and all copies thereof under the Customer's effective control.

13.2 TOPdesk may, at its sole discretion, undertake such technical or non-technical measures or activities as TOPdesk reasonably deems appropriate to:

13.2.1 Correct a Defect;

13.2.2 deliver Maintenance and Support;

13.2.3 repair, improve and/or protect the security and safety of TOPdesk's equipment, data files, websites, software (including the Licensed Programs) or other materials; or

13.2.4 identify use of TOPdesk's technical and organisational resources.

14 Compliance and Audits

14.1 TOPdesk shall comply with (and shall ensure that it does not negligently do or omit to do anything in breach of) the Bribery Act 2010 and the Modern Slavery Act 2015.

14.2 The Customer shall have the right to audit at the Customer's own expense TOPdesk's compliance with any applicable laws, regulations and codes of England and Wales in respect of the Services no more than once in one (1) calendar year, unless there are serious and reasonable doubts in relation to TOPdesk's compliance with any applicable laws, regulations and codes of England and Wales in respect of the Services. TOPdesk shall permit the Customer or its authorised independent, reputable and accredited representative, having given prior written notice, to access during normal business hours at a time and date agreed between the Parties any premises, facilities and records reasonably required to audit TOPdesk's compliance with any applicable laws, regulations and codes of England and Wales in respect of the Services. TOPdesk shall cooperate to the extent reasonably requested by the Customer with any audit at no additional cost to the Customer.

- 14.3 Audits of any premises, facilities and records used in the performance of TOPdesk's obligations under this Agreement that are sub-contracted to a data centre shall be at the Customer's own expense and permitted only insofar as necessary and no more than once in one (1) calendar year, unless there are serious and reasonable doubts in relation to the safety and security of TOPdesk's data centre. The Customer shall notify TOPdesk in writing of its intent to audit TOPdesk's data centre. Following the receipt of such intent, TOPdesk shall notify its data centre of such intent. The Parties shall appoint an independent, reputable and accredited auditor. TOPdesk shall cooperate to the extent reasonably requested by the Customer with any audit at no additional cost to the Customer.
- 14.4 TOPdesk reserves the right to refuse to provide the Customer (or its authorised representatives) and any auditor with any information:
 - 14.4.1 of another TOPdesk customer;
 - 14.4.2 relating to any TOPdesk internal accounting or financial information;
 - 14.4.3 relating to any TOPdesk trade secret;
 - 14.4.4 which would pose a security risk to TOPdesk and/or its customers and/or its subcontractors;
 - 14.4.5 sought other than in good faith; and/or
 - 14.4.6 which TOPdesk is prohibited to provide or disclose under applicable laws or contractual obligations.
- 14.5 TOPdesk reserves the rights to (acting reasonably and in good faith) impose additional safety and security stipulations on any auditor and/or reject any auditor for reasons including safety concerns, security concerns, reputation of the auditor and/or unsuitability of the auditor. If TOPdesk rejects an auditor, the Customer shall have the right to re-appoint an independent, reputable and accredited auditor.
- 14.6 TOPdesk may, at its sole discretion, consistent with industry standards and practices, make commercially reasonable efforts to implement the Customer's suggested improvements noted in the audit to improve TOPdesk's technical and organisational security measures.
- 14.7 All audits under this Agreement and the results derived therefrom are Confidential Information of TOPdesk.

15 Intellectual Property Rights

- 15.1 All Intellectual Property Rights belonging or licensed to a Party, sub-contractor or Third Party prior to the Effective Date, or created in or other than in connection with the Services ("**Pre-existing IPR**") shall remain with, and vested in, that Party, sub-contractor or Third Party (as applicable) and shall not be assigned hereunder. All Intellectual Property Rights in all enhancements and modifications to, or derivative works of, any Pre-existing IPR made by either Party shall be with, and vest in, the owner of the relevant Pre-existing IPR. Any use of either Party's Intellectual Property Rights other than as expressly described in this Agreement requires prior written approval from the owning Party.
- 15.2 TOPdesk hereby grants the Customer a revocable, royalty-free licence to use (excluding copy) any information relating to the Use of the Licensed Programs provided by TOPdesk to the Customer under or in connection with this Agreement for the Permitted Purposes in accordance with this Agreement. This licence shall terminate on the expiration or earlier termination of this Agreement for any reason.
- 15.3 TOPdesk shall defend at its own expense any claim brought against the Customer for actual or alleged infringement of the Intellectual Property Rights of a Third Party directly arising out of the Customer's Use of the Licensed Program Materials ("**IPR Claim**") and TOPdesk shall pay all costs and damages awarded on an IPR Claim by a court of competent jurisdiction or agreed to in settlement of an IPR Claim executed by TOPdesk provided that:
- 15.3.1 the Customer furnishes TOPdesk with prompt written notice of the IPR Claim;
 - 15.3.2 the Customer provides TOPdesk with reasonable assistance and all materials in the defence and investigation of the IPR Claim, including providing TOPdesk a copy of the IPR Claim, all relevant evidence in the Customer's possession, custody or control, and cooperation with evidentiary discovery, litigation and trial, including making witnesses within the Customer's employment or control available for testimony;
 - 15.3.3 the Customer does not agree or admit to any claims or allegations made by a Third Party;
 - 15.3.4 the Customer gives TOPdesk the exclusive right to control and direct the investigation, defence and settlement (if applicable) the IPR Claim; and
 - 15.3.5 the IPR Claim is brought against the Customer prior to the expiration or earlier termination of this Agreement for any reason.
- 15.4 If the use of the Licensed Program Materials is (or, in TOPdesk's reasonable opinion, is likely to become) the subject of an IPR Claim, whether by court order or by settlement, or TOPdesk determines such actions are necessary to avoid material liability (acting reasonably and in good faith), TOPdesk shall either:
- 15.4.1 obtain for the Customer the right to continue Using the Licensed Program Materials in accordance with the provisions of this Agreement which are the subject of the IPR Claim; or
 - 15.4.2 replace or, with the written consent of the Customer, modify the Licensed Program Materials which are the subject of the IPR Claim to become non-infringing.

- 15.5 If, in TOPdesk's reasonable opinion, the remedies outlined in Clause 15.4 are unavailable, the Customer shall cease use of the Licensed Program Materials which are the subject of the IPR Claim and may forthwith terminate this Agreement upon written notice to TOPdesk.
- 15.6 TOPdesk's liability and indemnity obligations in relation to IPR Claims shall not apply to the extent that the IPR Claim is the result of or is exacerbated by:
 - 15.6.1 the Customer's removal or change from any materials, software (including the Licensed Programs), websites, data files, equipment or other tangible or intangible objects received from TOPdesk any indication confirming their confidential nature or relating to copyright, trademarks, brands, trade names or other Intellectual Property Rights;
 - 15.6.2 any incorrect use, operation or corruption of the Licensed Program Materials;
 - 15.6.3 any unauthorised development, modification, enhancement, alteration or change of the Licensed Program Materials; and/or
 - 15.6.4 the use of the Licensed Program Materials with any software, equipment or programs not supplied or not approved by TOPdesk or with which the Licensed Program Materials are intended to interoperate according to TOPdesk's user or technical materials.
- 15.7 This Clause 15 states TOPdesk's sole liability and the Customer's exclusive remedy for any infringement of Intellectual Property Rights under and in connection with this Agreement.

16 Liability, Indemnity and Insurance

- 16.1 Nothing in this Agreement shall exclude or limit the liability of either Party:
 - 16.1.1 for death or personal injury caused by the negligence of either Party or their Personnel in connection with the performance of their duties under this Agreement;
 - 16.1.2 for fraud or fraudulent misrepresentation made to the other Party in the course of the Parties' dealings under this Agreement; or
 - 16.1.3 in any circumstances where such liability may not be excluded or limited under applicable laws.
- 16.2 TOPdesk shall be liable to the Customer for losses, liabilities, damages, costs and expenses incurred by the Customer directly arising out of TOPdesk's material breach of this Agreement.
- 16.3 A Party (the "**Defaulting Party**") shall be liable to the other Party for:
 - 16.3.1 any monetary penalties or fines levied against the other Party by a Supervisory Authority; and
 - 16.3.2 any losses, liabilities, damages, costs and expenses incurred by the other Party directly arising out of a claim made by a Data Subject against the other Party, in each case to the extent directly arising out of the Defaulting Party's negligent breach of the Data Protection Laws.

- 16.4 The Customer shall be liable for and indemnify TOPdesk against any and all damages, losses, liabilities, costs, expenses (including loss of profit, loss of reputation, loss of goodwill, loss arising from business interruption and legal and other professional charges and expenses), Third Party claims (including Third Party claims from TOPdesk's employees) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands, or howsoever otherwise arising under or in connection with the breach of the warranties, guarantees or representations made by an act, omission, negligence, default and/or any other action of the Customer in this Agreement.
- 16.5 Except as provided in Clauses 16.1 and 16.3, TOPdesk's aggregate cumulative liability and indemnity obligations under and in connection with this Agreement shall in no event exceed the amount of twelve (12) calendar months' worth of the Fees.
- 16.6 In no event shall TOPdesk be liable under or in connection with this Agreement for:
- 16.6.1 any losses or damages of any kind arising out of the Customer's failure to follow any reasonable instructions provided by TOPdesk within the scope of the Services;
 - 16.6.2 any losses or damages of any kind arising out of the expiration or earlier termination of this Agreement for any reason; or
 - 16.6.3 any indirect, consequential, incidental, reliance or special loss or damages of any kind arising out of loss of or damage to data, inaccurate data, loss of use of data, loss of profit, income or revenue, business interruption, loss of anticipated savings or loss of business, business opportunity, business reputation or goodwill or damages, costs, expenses or other claims that are an indirect or secondary consequence of any act or omission of TOPdesk,
- whether or not the same were reasonably foreseeable or actually foreseen.
- 16.7 All losses, damages, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, in contract or at common law, or in connection with judgments, proceedings, internal costs or demands or howsoever otherwise arising (including from Third Parties) under or in connection with this Agreement that are not expressly assumed in this Agreement are excluded from this Agreement.
- 16.8 Each Party shall take all reasonable steps to mitigate any loss for which that Party is entitled to bring a claim against the other Party pursuant to this Agreement.
- 16.9 The Parties acknowledge and agree that the limitations and exclusions of liability and indemnity outlined in this Clause 16 are reasonable considering the circumstances and shall apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action.
- 16.10 No provision of this Agreement shall be construed to provide an indemnity or other recovery for any costs, damages or other amounts for which the damaged party has been fully compensated under or in connection with this Agreement or under any other agreement or action at law or equity.

- 16.11 The provisions of this Agreement, and the rights of the Parties under this Agreement, are cumulative and in addition to any rights which a Party may have at law or in equity. No exercise by a Party of any one right under this Agreement or at law or in equity shall (save to the extent, if any, provided expressly in this Agreement, or at law or in equity) operate so as to hinder or prevent the exercise by it by any other right. In this Clause 16.10, right includes any power, privilege, remedy or proprietary or security interest.
- 16.12 TOPdesk shall ensure that it has in place during the Term valid insurance that shall include employer's liability, professional indemnity, public liability, products liability, cyber liability and privacy liability insurance. TOPdesk shall on request supply copies of the relevant certificates of insurance to the Customer as evidence that such policies remain in force. TOPdesk undertakes to use Reasonable Endeavours to pursue claims under such insurance policies.

17 Term and Termination

- 17.1 This Agreement shall commence on the Effective Date and shall continue until the end of the Initial Term, unless terminated earlier as provided in this Agreement. Any discounts agreed between the Parties in the applicable Investment Proposal and/or Tender Response will be removed at the end of the Initial Term. This Agreement shall automatically renew thereafter for additional successive one (1) calendar-year periods, unless at least ninety (90) calendar-days prior to the end of the Initial Term or the then-current renewal period (as applicable), either Party notifies in writing their counterparty that it elects not to have this Agreement renewed.
- 17.2 Either Party may forthwith terminate this Agreement by giving written notice to the other Party if:
- 17.2.1 that other Party commits any breach of any material term of this Agreement and (in the case of a breach capable of being remedied) fails to remedy the breach within thirty (30) calendar days after the receipt of a request in writing from the other Party to do so;
 - 17.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other Party;
 - 17.2.3 that other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 17.2.4 that other Party has a bankruptcy order made against it or goes into liquidation (except for the purposes of 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 that other party under this Agreement);
 - 17.2.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party;
 - 17.2.6 that other Party ceases, or threatens to cease, to carry on business; and/or
 - 17.2.7 control (legal or effective) of that other Party is acquired by any person or persons not having control of that other Party on the Effective Date.

- 17.3 For the purposes of Clause 17.2.1, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 17.4 Subject to Clause 9.6, TOPdesk may forthwith suspend or terminate this Agreement upon written notice to the Customer if any undisputed sum owing by the Customer to TOPdesk under this Agreement is not paid within ninety (90) calendar days of the due date for payment.

18 Effects of Termination

- 18.1 Upon expiration or earlier termination of this Agreement for any reason, TOPdesk shall provide to the Customer any assistance reasonably required by the Customer. TOPdesk reserves the right to invoice the Customer for any costs incurred by TOPdesk arising from such assistance.
- 18.2 Upon expiration or earlier termination of this Agreement for any reason, the Customer shall forthwith terminate any and all use of the Licensed Program Materials and return to TOPdesk the Licensed Program Materials and all copies of the whole or any part thereof, unless TOPdesk notifies the Customer in writing to destroy the same.
- 18.3 If TOPdesk notifies the Customer in writing to destroy the Licensed Program Materials and all copies of the whole or any part thereof pursuant to Clause 18.2, such destruction shall include the uninstallation and removal of the same from the Customer's computer systems (and, if applicable, any other system onto which the Licensed Programs have been installed) and the erasing or destruction, as appropriate, of all storage media containing the Licensed Program Materials.
- 18.4 Notwithstanding Clause 18.2, an authorised representative of the Customer may extract and store from the Licensed Programs any data belonging to the Customer and store the same on separate media for continuity purposes within thirty (30) calendar days of the date of expiration or earlier termination of this Agreement for any reason. TOPdesk shall have no obligation to maintain any data stored in the Customer's account or to forward any data to the Customer following thirty (30) calendar days of the date of expiration or earlier termination of this Agreement for any reason, unless otherwise required by applicable laws.
- 18.5 Upon the expiration or earlier termination of this Agreement for any reason:
 - 18.5.1 any sum owing by the Customer to TOPdesk under any of the provisions of this Agreement shall forthwith become due and payable in full, subject to Clause 9.6;
 - 18.5.2 it shall not affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such expiration or earlier termination, including (for the avoidance of doubt) Clauses 1, 2, 3.2, 3.3, 9, 12.4, 12.7.3, 12.7.4, 12.10, 13, 16.4 16.6, 16.7, 16.8, 16.10, 18, 21, 22, 23, 26, 28, 34, 35 and 36;
 - 18.5.3 except as provided in this Agreement and in respect of any accrued rights or liabilities of either Party, neither Party shall be under any further obligation to the other; and
 - 18.5.4 termination shall not affect or prejudice any accrued rights or liabilities of either Party nor the coming into force or the continuance in force of any Clause which is expressly or by implication intended to come into or continue in force on or after such termination.
- 18.6 Subject to Clause 18.7, any sum paid by the Customer to TOPdesk prior to the expiration or earlier termination of this Agreement for any reason shall be non-refundable.

- 18.7 If this Agreement is terminated pursuant to Clauses 6.4, 11.3 or 15.5 or Clause 6.3 of Schedule 3, the Customer shall be entitled to a pro rata refund of Fees paid to TOPdesk by the Customer for any non-delivered Services.

19 Force Majeure

- 19.1 Neither Party shall be liable for any failure or delay in performing its obligations in whole or in part under this Agreement where such failure or delay arises from any event(s) beyond the reasonable control of that Party provided that in such circumstances the affected Party has taken all reasonable steps to continue to perform its obligations under this Agreement. Such events shall include power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, explosion, subsidence, transport system failures, earthquakes, acts of terrorism, war or military operations, acts or omissions of government, national or local emergency, acts or omissions of persons or bodies for whom the affected Party is not responsible and any other event that is beyond the reasonable control of the Party in question (a **"Force Majeure Event"**).
- 19.2 The affected Party shall forthwith notify the other Party of the estimated extent and duration of such inability to perform its obligations arising from a Force Majeure Event upon becoming aware of the same (a **"Force Majeure Notification"**). Upon cessation of the delay or failure arising from the Force Majeure Event, the affected Party shall notify the other Party of such cessation and any outstanding obligation shall be fulfilled by the affected Party as soon as reasonably practicable, save to the extent that such fulfilment is no longer possible or is not required by the other Party.
- 19.3 If a Force Majeure Event continues for a continuous period of more than sixty (60) calendar days from the date of the Force Majeure Notification and notice of cessation has not been given pursuant to Clause 19.2, either Party may terminate this Agreement by giving not less than thirty (30) calendar days written notice to the other Party on the expiry of the said sixty (60) calendar days period. If this Agreement is not terminated in accordance with this Clause 19.3, then any outstanding obligations shall be fulfilled by the affected Party as soon as reasonably practicable after the Force Majeure Event has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

20 Privacy

- 20.1 The Customer agrees and acknowledges that TOPdesk shall, in accordance with Schedule 3 and TOPdesk's Privacy Policy set out in Schedule 6, collect and use data about the Customer in connection with the Customer's and its Affiliates' use of the Licensed Program Materials and/or otherwise in connection with this Agreement.
- 20.2 The Customer agrees and acknowledges that TOPdesk may modify its Privacy Policy during the Term in order to respond to changes in the Services, TOPdesk's business or applicable laws. In this case, unless required by applicable laws, TOPdesk agrees not to make modifications to its Privacy Policy that, considered as a whole, would substantially diminish TOPdesk's obligations to the Customer. Modifications will take effect automatically as of the effective date specified for the updated Privacy Policy.

21 Confidentiality

- 21.1 Except as provided by Clause 21.2 or as authorised in writing by the other Party, both Parties undertake that they shall at all times during the Term and for three (3) calendar years after its expiration or earlier termination of this Agreement for any reason:
- 21.1.1 keep confidential all Confidential Information;
 - 21.1.2 not disclose any Confidential Information to a Third Party;
 - 21.1.3 not use any Confidential Information for any purpose other than as contemplated by this Agreement (and in particular not use any Confidential Information to obtain a commercial, trading or any other advantage);
 - 21.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 21.1.5 ensure that (as applicable) none of its Personnel or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause 21.
- 21.2 Subject to Clause 21.3, either Party may disclose any Confidential Information to:
- 21.2.1 any of their sub-contractors, substitutes and/or suppliers;
 - 21.2.2 any of the Customer's Affiliates authorised in writing by TOPdesk to Use the Licensed Program Materials;
 - 21.2.3 any person who is appointed by TOPdesk to maintain the system on which the Licensed Programs are being used (in accordance with the terms of the Licence);
 - 21.2.4 any governmental or other authority or regulatory body;
 - 21.2.5 auditors appointed pursuant to Clause 14; and/or
 - 21.2.6 any authorised Personnel or advisers (including legal advisers) of any party described in Clauses 21.2.1 to 21.2.5.
- 21.3 Disclosure under Clause 21.2 may be made only to the extent that is either necessary for the purposes contemplated by this Agreement or required by applicable laws. In each case of disclosure under this Clause 21.3, the disclosing Party must first inform the recipient that the Confidential Information is confidential and (except where the recipient is any such body described in Clause 21.2.3 or is any authorised Personnel or adviser of such body) obtain and submit to the other Party a written confidentiality undertaking from the Party in question to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 21.4 Either Party may use any Confidential Information for any purpose, or disclose it to a Third Party, to the extent only that it is at the Effective Date, or at any time after the Effective Date it becomes, public knowledge through no fault of that Party.
- 21.5 When using or disclosing Confidential Information pursuant to Clause 21.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.

22 Publicity Rights

- 22.1 The Customer acknowledges and agrees that TOPdesk may during and following the Term:

- 22.1.1 use, exhibit and/or display the Customer's name and logo for presentations, demonstrations and other publications, including TOPdesk's internal magazine, customer reference book and website;
- 22.1.2 use the Customer as a reference regarding the Customer's and its Affiliates' use of the Licensed Program Materials;
- 22.1.3 cooperate with Customer in arranging reasonable on-site visits (not to exceed three (3) per year unless otherwise agreed between the Parties), at the convenience of the Customer, by prospective TOPdesk customers; and
- 22.1.4 request the Customer to accept reasonable telephone reference calls.

23 Entire Agreement

- 23.1 This Agreement, and any variation in writing signed by a duly authorised representative of both Parties, constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior or contemporaneous oral or written communications, proposals and representations between TOPdesk and the Customer with respect to the Services or other subject matter covered by this Agreement. This Agreement may not be released, discharged, supplemented, amended, varied or modified except by a written document signed by a duly authorised representative of both Parties.
- 23.2 The Customer acknowledges and agrees that TOPdesk hereby rejects all terms and conditions other than those expressly outlined in this Agreement. In the event that terms and conditions other than those expressly outlined in this Agreement are held to apply to the dealings between the Parties, the provisions of this Agreement shall at all times prevail.
- 23.3 Any reference made to statements, representations, conditions, warranties or other provisions of any kind in purchasing orders, e-mails, invoicing or other communication shall be excluded from this Agreement.
- 23.4 The Customer acknowledges and agrees that, in entering into this Agreement, it does not rely on and shall have no remedy in respect of any statement, representation, condition, warranty or other provision of any kind other than as expressly outlined in this Agreement and that all statements, representations, conditions, warranties or other provisions of any kind not expressly outlined in this Agreement, but which might have effect between the Parties or be implied or incorporated into this Agreement, whether by statute, common law or otherwise, are hereby excluded from this Agreement to the fullest extent permitted by applicable laws.

24 Offers

- 24.1 All offers, including quotes, quotations, pricing proposals, Investment Proposals and other similar communication, received by the Customer from TOPdesk regarding the Licensed Programs Materials or any part thereof shall be non-committal, unless either otherwise agreed in writing by both Parties or outlined in Schedule 4. TOPdesk may revoke any such offers at any point prior to TOPdesk's receipt of the Customer's written acceptance of an offer. An offer shall remain valid for thirty (30) calendar days from it being sent to the Customer.

25 Representatives

- 25.1 The representatives of each Party are subject to change from time to time and any such change shall be notified to the other Party in writing.

26 Assignment and Sub-contracting

- 26.1 The Customer shall neither mortgage, charge, sell, lease, licence, novate, pledge, assign, sub-contract nor transfer its rights and/or obligations under this Agreement except by a written document signed by a duly authorised representative of TOPdesk.
- 26.2 TOPdesk may assign, transfer or sub-contract its rights and/or obligations under this Agreement, including to any acquirer of all or of substantially all of TOPdesk's assets, equity securities or business relating to the subject matter of this Agreement or to any entity controlled by, or that is under the common control of, TOPdesk.

27 Relationship between the Parties

- 27.1 The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both Parties are free to enter into similar relationships with Third Parties.
- 27.2 Nothing in this Agreement shall be construed to create, constitute, give effect to or otherwise imply the relationship of principal and agent, the relationship of employer and employee, a partnership, a joint venture, agency or other relationship of any kind between the Parties other than the contractual relationship expressly provided for in this Agreement.

28 Third Parties

- 28.1 A Third Party shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a Third Party which exists, or is available, apart from that Act.

29 No waiver

- 29.1 A failure or delay by either Party in exercising any of its rights under this Agreement shall not be deemed to be a waiver of such right. In this Clause 29.1, right includes any power, privilege, remedy or proprietary or security interest.
- 29.2 A waiver by either Party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision of this Agreement.

30 Severance

- 30.1 If one or more of the provisions of this Agreement is found to be either unlawful, invalid or otherwise unenforceable by any court or other authority, that/those provision(s) shall be deemed severed from the remainder of this Agreement (which shall remain valid and enforceable).

31 Set-off

- 31.1 Where either Party has incurred any liability to the other Party, whether under this Agreement or otherwise, the Parties may consent in writing (such consent not to be unreasonably withheld, delayed or conditioned) to set-off the amount of such liability against any sum that would otherwise be due to the other Party under this Agreement or otherwise.

32 Costs and Expenses

- 32.1 Each Party shall pay its own legal costs and other costs and expenses arising out of or in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement, unless expressly stipulated otherwise in this Agreement.

33 Notice

- 33.1 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.
- 33.2 Notices shall be deemed to have been duly given either:
- 33.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient;
 - 33.2.2 when sent, if transmitted by e-mail;
 - 33.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 33.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 33.3 Notices under this Agreement shall be addressed:
- 33.3.1 for TOPdesk either to 22 Lavington Street, London, SE1 0NZ or info@topdesk.co.uk; and
 - 33.3.2 for the Customer either to [Customer address] or [Customer e-mail address].

34 Dispute Resolution

- 34.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with the laws of England and Wales notwithstanding the conflict of law provisions and other mandatory legal provisions save that: (i) TOPdesk shall have the right to recover its Fees in any jurisdiction in which the Customer is operating or has assets; and (ii) TOPdesk shall have the right to sue for breach of its Intellectual Property Rights and other proprietary information (collectively "IPR") (whether in connection with this Agreement or otherwise) in any jurisdiction where it believes that infringement or a breach of this Agreement relating to its IPR or other proprietary information might be taking place. For the avoidance of doubt, the place of performance of this Agreement is agreed by the Parties to be England.
- 34.2 Each Party recognises that the other Party's business relies upon the protection of its IPR. In the event of a breach or threatened breach of IPR, the other Party shall be caused irreparable damage and may therefore be entitled to injunctive or other equitable relief in order to prevent a breach or threatened breach of its IPR.

- 34.3 With respect to all other disputes which are not IPR related pursuant to Clause 34.1, the following procedures outlined in Clauses 34.3 to 34.5 shall apply. Where there is a dispute, the aggrieved Party shall notify the other Party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other Party. A representative from senior management of each of the Parties shall meet in person or communicate by telephone within fourteen (14) Business Days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by each Party. The representatives shall produce a report about the nature of the dispute in detail to their respective boards and if no agreement is reached on corrective action, then the chief executives of each Party shall meet in person or communicate by telephone to facilitate an agreement within fourteen (14) Business Days of a written notice by one Party to the other Party. If the dispute cannot be resolved at board level within a further fourteen (14) Business Days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either Party may seek its legal remedies as provided below.
- 34.4 If the Parties cannot resolve a dispute in accordance with the procedure in Clause 34.3, then they shall with the assistance of the Centre for Effective Dispute Resolution seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ("ADR") procedure acceptable to both Parties before pursuing any other remedies available to the Parties. If either Party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both Parties within forty-two (42) Business Days after it has arisen, the matter shall be settled in accordance with the procedure below.
- 34.5 If the Parties cannot resolve the dispute by the procedure set out above, the Parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of or in connection with this Agreement as confirmed under Clause 36.

35 Language

- 35.1 All written and oral communications and all written material referred to under this Contract shall be in English.

36 Law and Jurisdiction

- 36.1 This Agreement and any dispute, controversy, proceedings or claim arising out of or in connection with this Agreement, its subject matter or formation (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 without giving effect to any choice or conflict of laws provision or rule.
- 36.2 Any dispute, controversy, proceedings or claim arising out of or in connection with this Agreement, its subject matter or formation (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been duly executed on the Effective Date.

SIGNED by

[Full Name], [Position]

for and on behalf of TOPdesk UK Limited

and

SIGNED by

[Full Name], [Position]
for and on behalf of [Customer Name]

37 Schedule 1: Maintenance and Support

Standard Support Scope

Support is limited to the Services and includes:

- Registering Bugs and receipt of Workarounds
- Cooperating with your technical manager(s) to remedy disruptions by offering technical expertise
- Questions about the use of TOPdesk functionalities and Maintenance
- Questions about the functioning of imports and links
- Being able to make Feature Requests and receive status updates regarding these requests
- Right to regular product updates
- Access to information about, among other subjects, security and privacy
- The exit strategy

Support excludes:

- Consultancy-related topics, including adjustments in the set-up, bespoke work and process-related and organisation-specific questions
- Implementing TOPdesk via the telephone
- Realisation of, adjusting or implementing customer solutions, imports and integrations
Fixing non-TOPdesk built automations and creating bespoke organisation-specific (API) integrations / automations

Access to Support

There are several ways you can reach Support. Feel free to choose the communication method that best suits you. There are some parts of Support where we advise using a specific portal.

How	What	Where
Self-Service Portal	The Self-Service Portal lets you: • Register an incident • View or update the status of your call • Give product feedback • Consult the extensive knowledge base • Request services like consultancy and imports • View specific information about your TOPdesk environment	https://my.topdesk.com
Email	You can email your calls to us.	support@topdesk.com

Phone If you have an urgent +44 (0)2078034210
question, you can contact us
by phone.

Support Window

The Support service window is time frame during which we offer support (“**Support Window**”). During the Support Window, you can reach our Support department, and this is the time frame in which calls will be handled.

Day	Time
Monday to Friday (with the exception of national holidays)	08:30 – 17:30 (GMT)*

*If you have chosen the extended Support Window, other times are applicable.

Priority levels

Support has two priority levels.** Based on the Incident details provided to us, Support determines the priority of your Incident and processes it based on this estimate.

- High priority: You can't use TOPdesk. For instance: It is impossible to log in, or your TOPdesk environment isn't accessible. In the case of an Incident with high priority, it is important to contact TOPdesk Support by phone, as this makes us immediately aware of the situation. In cases where TOPdesk notices that a TOPdesk SaaS environment isn't accessible, an Incident with high priority is published in the Self-Service Portal. TOPdesk monitors the availability of TOPdesk SaaS production environments 24 hours a day, 7 days a week.
- Standard priority: all other calls.

**If you have chosen the extended Support Window, other priorities are applicable.

Reaction Time and Resolution Time

Support strives to provide quick and efficient services. In the table below, you can see the response and solution times that Support endeavours to achieve. The response time is only measured during the Support Window applicable to you.

Priority	Reaction Time	Resolution Time
Normal	8 hours	75% within 1 working day
High	Within 15 minutes	75% within 30 minutes

The status of an incident can be checked at all times via the Self-Service Portal or requested by phone during the Support Window. When new information is available, the Support team will communicate this by email or phone.

Dealing with Bugs

Calls that lead to having to adjust the TOPdesk source code are classified as Bugs. Because Bugs are located in the source code, these are resolved in a future update. Support makes an effort to offer a suitable workaround until the error is resolved. This is a temporary solution to allow you to continue to work in TOPdesk.

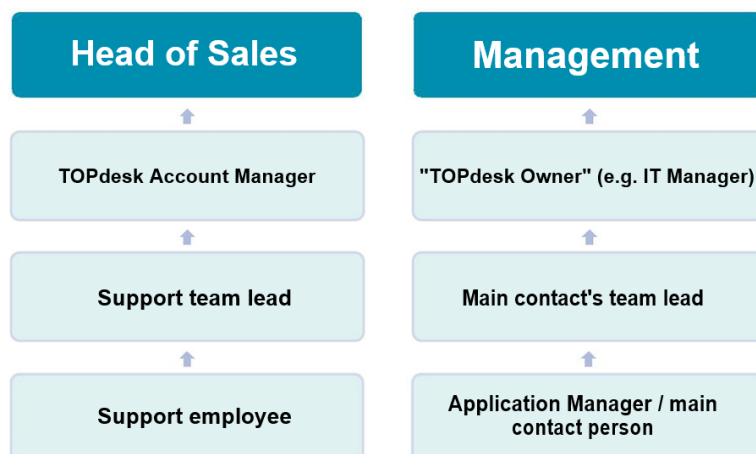
TOPdesk user performance

TOPdesk strives for the following performance for all customers:

Action	System response time	
Opening and refreshing a card	95%	< 4 seconds
Saving a card	95%	< 4 seconds
Keystroke registration	95%	< 200ms
Opening a results list	95%	< 8 seconds
Opening full interface when logging in	95%	< 10 seconds

Governance

If your application manager and the Support employee have a difference of opinion when working with TOPdesk, you have the option to escalate this situation. The governance structure below indicates which escalation steps can be taken, and which people are involved.



38 Schedule 2: TOPdesk SaaS Services

SaaS Window and availability

We strive for continuous availability. In practice, we have managed to achieve an availability of 99.8% per month.

Due to maintenance work, like updates, your environment may become temporarily unavailable. These updates are scheduled during the SaaS maintenance window, which is between 22:30 and 03:00 depending on your chosen time zone.

Your environment is divided into one of these 5 time zones:

US West Coast	PST (UTC -8)
Atlantic	AST (UTC -4)
Europe & Africa	CET (UTC +1)
India	IST (UTC +5.5)
Asia	JST (UTC +9)

You can check the time zone of your environment in the Self-Service Portal.

Circumstances that do not affect the availability percentage

The circumstances listed in the table below can affect the availability of your TOPdesk SaaS environment. However, these are not taken into account when calculating the availability percentage.

Does not affect availability	Explanation
Announced Maintenance	We also call this scheduled downtime. TOPdesk announces that your SaaS environment is temporarily unavailable at least 7 days prior to the maintenance. This happens, for instance, when we need to perform maintenance to the underlying infrastructure. This scheduled maintenance is preferably performed during the maintenance window. If maintenance is required outside the SaaS maintenance window, this is discussed with the SaaS main contact.
External factors	For example: Disruptions to external connections (for instance disruptions to the internet connection), disruptions in your own technical infrastructure or disruptions to own systems which TOPdesk cannot control.
Performing updates	Your SaaS environment is updated once a week during the SaaS maintenance service window. We perform regular updates to limit the changes per update, so we can quickly fix any problems that may occur. Updates usually only take a few minutes.

Improper use

Disruptions due to improper use of your TOPdesk environment, such as overloading your TOPdesk environment with API requests or independently adjusting import links.

SaaS data security

We are aware that the data recorded in TOPdesk can be sensitive and varies from personal to business-sensitive data. For this reason, we have taken the below measures in an effort to ensure the safety of your data.

TOPdesk development

In the development process, we have taken precautionary measures in an effort to ensure the safety of your data. Some examples of these measures include: 'pair programming'; security awareness training for developers; automated tests which keep system vulnerabilities in mind defined by OWASP; following secure coding guidelines; and a combination of penetration and vulnerability tests.

TOPdesk hosting

For the TOPdesk SaaS service, we have taken several technical and organisational measures in an effort to ensure the safety of your data. These are documented and audited annually by an independent party. To maintain an adequate security level, we regularly evaluate the measures taken and adjust these when necessary. As part of our promise to our customers, we use our best endeavours to ensure a security level similar to that previously achieved, as documented in the most recent audit report. TOPdesk annually publishes the audit report, including an explanation, which you can request from TOPdesk Support.

Data centres

TOPdesk only engages with professional data centres proven to be trustworthy and safe. TOPdesk demands relevant audits from these parties and validates the corresponding reports periodically. For recent information about the datacentres and their certifications, please refer to the Self-Service Portal.

TOPdesk offers several hosting locations. As a customer, you can indicate at which location you would like to host your TOPdesk environment and data. The data centre can be located within the EU or the US. All data, including backups, are stored within the chosen location. You may submit a written request to TOPdesk to change your hosting location.

Automatic updates

Following Implementation, you will start using the latest Version of TOPdesk. TOPdesk will update your SaaS environment weekly, unless otherwise agreed. TOPdesk endeavours to announce material changes which could affect the use of your TOPdesk in advance. If desired, you can request a test environment at TOPdesk, which is updated before your operational environment. This gives you the opportunity to perform additional checks before they are deployed to your live environment.

Exit Strategy

Data which you save in your TOPdesk environment will always remain your property. We offer an easy way to retrieve your data from our software, including when you terminate your contract with us. You can always download your data via your own TOPdesk environment.

After expiration or earlier termination of this Agreement, we keep your data for up to 90 days, after which it is removed automatically. To ensure that your data is fully removed, the sweep is fully automated with a built-in verification system. Moreover, we have an active monitoring system which scans current folders, databases and live environments for data that should have been removed.

During the Term, your SaaS main contacts can request data from us via the Self-Service Portal. We will send you this data as quickly as possibly via a secure connection. All data is offered in an industry-accepted file format.

39 Schedule 3: Data Processing

1 Background

- 1.1 For all intents and purposes of this Agreement, TOPdesk shall be a Data Processor ("**Processor**") and the Customer shall be a Data Controller ("**Controller**").

2 Compliance

- 2.1 Each Party shall comply with, and shall provide all necessary assistance to enable the other Party to comply with, the Data Protection Laws.

3 Scope of Processing

- 3.1 The Controller hereby appoints the Processor to Process Personal Data on behalf of the Controller to the extent reasonably necessary to implement, operate, maintain, deliver, improve and provide support for the Licensed Programs ("**the Purpose**").
- 3.2 This Schedule 3 constitutes the Controller's written Instructions to the Processor for the Processing of Personal Data.
- 3.3 The Controller may suggest to the Processor additional or alternate Instructions provided that such Instructions:
- 3.3.1 are consistent with the purpose and scope of this Agreement;
 - 3.3.2 are confirmed in writing by the Controller; and
 - 3.3.3 do not alter the scope of this Agreement.

4 Controller Acknowledgements and Requirements

- 4.1 The Controller:
- 4.1.1 shall be responsible for ensuring the compliance of its Instructions with Data Protection Laws;
 - 4.1.2 acknowledges that it shall be solely responsible for determining the adequacy of the technical and organisational security measures of the Processor and any Sub-Processor in relation to the Processing prior to entering into this Agreement;
 - 4.1.3 acknowledges that the Processor and Sub-Processors regularly test, assess and evaluate the effectiveness of their technical and organisational security measures and may periodically review and update such measures to address new and evolving technologies, changes to industry standard practices and changing security threats;
 - 4.1.4 acknowledges that it shall be solely responsible for responding to any request by a Data Subject to access, correct, rectify, erase or block Personal Data, or to transfer or port such Personal Data, within the Licensed Programs, as may be required by Data Protection Laws ("**Data Subject Request**"), provided that the Processor shall reasonably cooperate with the Controller to respond to Data Subject Requests to the extent that the Controller is unable to using the functionality in the Licensed Programs;
 - 4.1.5 shall communicate to the Processor without undue delay and, in any event, as soon as possible any Data Subject Request or any other correspondence, enquiry or complaint received from a Data Subject, Supervisory Authority, regulator or

- other Third Party in connection with the Processing that has not been responded to by the Controller using the functionality in the Licensed Programs, unless otherwise required or prohibited by applicable laws; and
- 4.1.6 acknowledges that the Processor may Cross-Border Process Personal Data for the Purpose in accordance with Data Protection Laws and this Schedule 3.

5 Processor Warranties, Guarantees and Requirements

- 5.1 The Processor:
- 5.1.1 shall Process Personal Data only in accordance with the Controller's Instructions, unless otherwise required or prohibited by applicable laws;
 - 5.1.2 shall notify the Controller promptly if, in the Processor's reasonable opinion, an Instruction infringes Data Protection Laws;
 - 5.1.3 shall limit the duration of the Processing to the Term plus ninety (90) calendar days, unless otherwise required or prohibited by applicable laws;
 - 5.1.4 warrants that, taking into account the state of the art, the costs of implementation and the nature, scope, context and Purpose of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, it shall implement during the Term plus ninety (90) calendar days appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
 - 5.1.5 upon the Controller's written request, shall make available to the Controller auditing reports describing the measures referred to in Clause 5.1.4 of this Schedule 3;
 - 5.1.6 subject to the standard contractual clauses, shall not transfer or permit the transfer of Personal Data to any territory outside the European Economic Area without the Controller's prior written consent;
 - 5.1.7 will assist the Controller in ensuring compliance with the Controller's obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to the Processor by providing the Controller with reasonable information requested pursuant to the provisions of this Schedule 3;
 - 5.1.8 shall make available to the Controller all information reasonably requested by the Controller in writing to demonstrate the Processor's compliance with the obligations laid down in Article 28 of the GDPR;
 - 5.1.9 shall provide the Controller with information reasonably requested by the Controller in writing required to fulfil the Controller's obligations under Data Protection Laws to carry out data protection impact assessments, if any, for the Processing of the Personal Data;
 - 5.1.10 shall provide reasonable assistance (at the Controller's expense) in connection with any consultation the Controller is required to undertake with a Supervisory Authority or regulator under Data Protection Laws with respect to the Processing of the Personal Data;
 - 5.1.11 shall maintain records regarding the categories of Processing and the details of Sub-Processors as well as a general description of the technical and organisation security measures referred to in Clause 5.1.4 of this Schedule 3;
 - 5.1.12 shall taking into account the nature of the Processing, assist the Controller by appropriate technical and organisational measures, insofar as this is possible, for

- the fulfilment of the Controller's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR;
- 5.1.13 shall instruct the Data Subject to contact the Customer in the event that the Processor receives a Data Subject Request directly;
 - 5.1.14 shall take no steps to attempt to identify any person from Personal Data or aggregate Personal Data by any data matching or other exercise, unless required by the Purpose;
 - 5.1.15 shall ensure that its Personnel required to access to the Personal Data for the Purpose have committed themselves to confidentiality; and
 - 5.1.16 shall impose on any Sub-Processor at least as strenuous data protection obligations as those imposed on the Processor under this Schedule 3.
- 5.2 For the avoidance of doubt, the Controller is solely responsible for carrying out its obligations under Data Protection Laws and this Schedule 3. The Processor shall not undertake any task that can be performed by the Controller.

6 Sub-Processing

- 6.1 The Controller acknowledges and shall notify Data Subjects that the Processor may, at its absolute discretion, engage Sub-Processors in connection with the Purpose, provided that the Processor has entered into a written agreement with each Sub-Processor imposing on each Sub-Processor data protection obligations at least as strenuous as those imposed on the Processor under this Schedule 3.
- 6.2 For an overview of current Sub-Processors and how you can subscribe to e-mail updates regarding any intended change concerning the addition or replacement of Sub-Processors, please visit: <https://page.topdesk.com/saas-information#hostinglocations>.
- 6.3 The Processor shall notify the Controller of any intended change concerning the addition or replacement of Sub-Processors, giving the Controller the opportunity to object to such change if the Controller reasonably determines that such Sub-Processor is unable to Process Personal Data in accordance with the provisions of this Schedule 3 ("**Controller Objection Notice**"). A Controller Objection Notice shall be served in writing to the Processor within ten (10) Business Days of the Controller's receipt of the Processor's notice. The Controller may terminate this Agreement upon written notice of not less than ninety (90) calendar days to the Processor if, in the Controller's reasonable opinion, such Sub-Processor is unable to Process Personal Data in accordance with the provisions of this Schedule 3. If a Controller Objection Notice is not raised within ten (10) Business Days of the Controller's receipt of the Processor's notice, the Controller shall be deemed to have agreed to the change in Sub-Processor.
- 6.4 Use of a Sub-Processor will not relieve, waive or diminish any data protection obligation of the Processor expressly outlined in this Agreement. The Processor shall be liable to the Controller for the acts and omissions of any Sub-Processor to the same extent as if the acts or omissions were performed by the Processor.

7 Personal Data Breach

- 7.1 The Processor shall notify the Controller of a Personal Data Breach within twenty-four (24) hours upon becoming aware of the same with as much detail as appropriate and reasonably available to the Processor at the time of notification.

- 7.2 The Controller shall notify the Processor of a Personal Data Breach as soon as possible upon becoming aware of the same with as much detail as appropriate and reasonably available to the Controller at the time of notification.
- 7.3 Upon becoming aware of a Personal Data Breach, the Processor shall use its Best Endeavours to ensure the security of the Personal Data and shall notify the Controller of the actions taken within a reasonable period of time, considering the severity of the Personal Data Breach.
- 7.4 The Controller will cooperate with the Processor by providing any information that is reasonably requested to resolve any security incident, including any Personal Data Breach, to identify its root cause(s) and prevent a recurrence.

8 Effects of Termination

- 8.1 The Processor shall delete all Personal Data, including all copies, archives and back-ups of Personal Data, within ninety (90) calendar days of the expiration or earlier termination of this Agreement, unless otherwise required or prohibited by applicable laws.
- 8.2 If requested by an authorised representative of the Controller in writing within thirty (30) calendar days of the expiration or earlier termination of this Agreement, the Processor shall return the Personal Data in a structured, commonly used and machine-readable format to the Controller or allow the Controller to retrieve the Personal Data digitally.

40 Annex 1: Details of Processing

Subject Matter of Processing

The subject matter of the Processing shall be the provision of the Services to the Customer by TOPdesk under this Agreement.

Duration of Processing

The Processor shall Process Personal Data for the Term plus ninety (90) calendar days for the Purpose in accordance with Schedule 3.

Nature and Purpose of Processing

The nature and purpose of the Processing shall be implementing, operating, maintaining, delivering, improving and providing support for the Licensed Programs.

Categories of Data Subjects

The Controller may submit Personal Data to the Licensed Programs and/or Support, the extent of which is solely determined by the Controller, and may include Personal Data relating to the following categories of Data Subjects:

- Users and Operators;
- clients and other business contacts;
- employees and contractors;
- subcontractors and agents; and
- consultants and partners.

Types of Personal Data

The Controller may submit Personal Data to the Licensed Programs and/or Support, the extent of which is solely determined by the Controller, and may include the following categories:

- communication data (e.g. name, telephone, email address);
- device identification data and traffic data (e.g. IP address); and
- other Personal Data submitted to the Licensed Programs and/or Support.

Special Categories of Personal Data

The Controller, Users and Operators may not submit Special Categories of Personal Data to the Licensed Programs and/or Support. The Controller acknowledges and agrees that the Processor shall not be responsible for Special Categories of Personal Data uploaded to the Licensed Programs and/or Support.

Processing Operations

The Personal Data transferred will be subject to the following basic Processing activities:

- All activities reasonably necessary for the performance of this Agreement.

41 Schedule 4: Investment Proposal³

³ Please insert a copy of the Investment Proposal in this Schedule 4.

42 Schedule 5: Fair Use SaaS Policy

TOPdesk wants to ensure and maintain an optimal user experience. That's why we monitor TOPdesk's technical usage and work according to this Fair Use Policy. This Policy has been created to prevent improper use of the software, so we can guarantee an excellent user experience. This Policy for TOPdesk SaaS compromises attachment storage, the amount of data traffic and the number of emails sent from TOPdesk.

TOPdesk does not charge extra costs when the tool is used reasonably. When we determine the scope of Fair Use we take into account your contract, the observed use of more than a thousand TOPdesk SaaS customers, technical advances and the current price rate of all necessary assets.

We'll adjust these values when there is reasonable cause. In general, this could mean expansion as a result of lower costs. We inform you in a timely fashion, when these changes affect your costs or use.

When we detect something out of the ordinary in your TOPdesk SaaS environment, we'll contact you to discuss the situation and potential alternatives. If the situation doesn't change, you may have to limit the available storage, bandwidth or allowed emails, for example.

Amount of data storage

Within your TOPdesk environment you can store images to exchange them with other operators or callers. These images can be photos, screenshots or other data files. To make sure that there is enough storage for everyone, we've limited the amount of data you can save with TOPdesk. The amount of storage depends on your type of contract. We've made sure that almost all customers have plenty of disk space when the tool is used normally.

You can always request the actual size of your data storage within TOPdesk. You can also free up more storage by using the automatic file clean-up-service. This deletes files after the amount of days indicated by you. For more information about insight into your data storage and the clean-up of files you can take a look in the knowledge system on TOPdesk Extranet.

If we detect that your organisation structurally saves more data than the mentioned Fair Use value, we'll contact you to discuss the situation. It's possible to expand your storage in blocks of 25 gigabytes (GB). The costs for this are €25 per block per month. SaaS main contact persons can request extended storage quota using the form on the TOPdesk Extranet. Storage can be expanded up to 500GB. At that point, we'll contact you to discuss alternative storage solutions.

Operators	Storage limit (in GB)
50	100
75	150
125	250
275	550
525	1050

Network bandwidth

To prevent a negative effect of excessive network traffic on your user experience or that of others, we monitor the traffic. We compare your use to the average use of all our SaaS customers with the same contract. With normal use you don't have to worry about the network bandwidth available to you.

If we detect a situation that could lead to a decrease in service, TOPdesk will contact you to discuss the situation. In some situations, we can intervene by limiting the available bandwidth.

Number of sent emails

To prevent spam, we use worldwide blacklists among other things. To guarantee smooth email traffic from TOPdesk for you and our other customers, we monitor the TOPdesk mail servers to ensure we don't end up on one of those lists. This could happen when an excessive number of emails are sent from the TOPdesk SaaS environments, for example.

For this, TOPdesk maintains very broad margins based on the average use of our SaaS customers with similar contracts. With normal use, you won't notice a thing. When we detect abnormal values that could negatively impact the service, we'll limit the number of emails you can send. Before we do this, we'll always contact you first to discuss possible solutions.

43 Schedule 6: Privacy Policy

Privacy and security

We store the data we need to maintain relationships with our customers, partners, sponsors and people interested in our services or information we provide. To maintain such relations, some data stored will be personal data (such as your name). We value transparency and honesty, which is why we want to clarify which details we store and how we use that data. If you still have questions after reading this page, please don't hesitate to contact us directly, either on +4420 7803 4200, info@topdesk.co.uk, or speaking to your account manager.

Protecting your data

We take care to protect the information you've entrusted to us. In line with the General Data Protection Regulations (GDPR), our current technologies and procedures are focused on safeguarding your information from unwanted access or unauthorised processing. When any party other than TOPdesk is involved in processing information, we require them to comply with the same standards and regulations. Our data protection procedures are regularly reviewed by independent external experts to ensure we can deliver on this promise.

How do we use your information?

We process and use your information to maintain our existing relationships, create new relationships and establish contact points. The data processed usually consists of data you have provided to us or we have gathered through interactions with you, such as at trade shows, on our website, or other platforms we use. We process this data to ensure that we can provide you with the most up-to-date, relevant information and to improve our services to you. This may also entail sharing some personal data with a third party to help us better communicate with you by providing you with suitable and interesting information. Below, we explain how we use the information for our main data processing purposes.

Website, emails and newsletters

We may also use some third-party tools on our website to gather information on how you use our materials and other resources. This helps us improve our content and adjust the presentation of our resources to better match your interests.

For our emails, we intend to only send you interesting information and materials. This may include emails about our blogs, webinars, and other marketing and product information.

Contact details and purchases

We keep basic details of our conversations and agreements to ensure that we can have productive interactions with you. We also document your preferences regarding what information you want to receive from us. This means we keep basic details on the best persons to speak to in your organisation and the purpose of our conversations.

We also document which service you've purchased from us and in what context you use them. This way, we can get an idea of our customers' goals. We also keep track of other services in which you have shown interest. We use this information to keep our services in tune with the market and provide you with relevant information about our services.

SaaS customers and Support

If you are a TOPdesk customer and use our SaaS and support services, TOPdesk may process data stored in your TOPdesk environment to ensure we can provide the best possible customer service. The details of this processing are recorded in our agreement with you; for more information, please speak to your account manager.

Accessing, correcting and deleting your information

You may unsubscribe from these communications, as well as change or correct the information we store at any time via links provided in any email-based communication, or by getting in touch with us on info@topdesk.co.uk. Information that has become obsolete will be deleted from our systems according to GDPR guidelines.

TOPdesk reserves the right to change this privacy policy without any notice of change.

Last updated: 17 October 2022

For further information please refer to: <https://www.topdesk.com/en/privacy-policy/>

For users of the Ebbot Live Chat and AI Chatbot, those services shall be governed by the Ebbot Terms and Conditions that can be found at: <https://library.topdesk.com/share/1805A716-843F-448F-9D354DD9C1381E71/>



TOPdesk UK Limited

London Office

22 Lavington Street
London
SE1 0NZ

Manchester Office

City Tower – Suite 25B
Piccadilly Plaza
New York Street
Manchester
M1 4BT

t +44 (0)20 7803 4200
f +44 (0)20 7803 4215
e info@topdesk.co.uk
w www.topdesk.com/uk/