

COGNISS SOFTWARE-AS-A-SERVICE

TERMS AND CONDITIONS

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, the following terms have the stated meaning:

Term	Meaning
Additional Users	packages of additional Users that can be purchased should the Customer exceed the amount of Users specified in the Base Services. See Schedule 1 for a price list.
Agreement	Section A (Agreement and Key Details, including the cover page and signature clauses) and Section B (General Terms).
Agreed Data Centre	The Data Centre where the Cogniss Software will be deployed.
Analytical Data	Data and information about the Customer's and the Customer's end users' use of the Services, but excluding Personal Data, to generate anonymised and aggregated statistical and analytical data. For the avoidance of doubt, this refers to the Supplier using metadata (i.e. information about how the app is used) not Users' Personal Information.
Applicable Law	means (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; (b) the common law and laws of equity as applicable to the parties from time to time; (c) any binding court order, judgment or decree; (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Archived User	a User that has been archived by the Customer in the Cogniss platform and is no longer considered active.

Term	Meaning
Base Services	Services offered to the Customer by the Supplier that are included in the SaaS Service fee.
Cogniss Software	the software owned by the Supplier (and its licensors) that is used to provide the SaaS Service.
Confidential Information	the terms of the Agreement and any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the Agreement. The Supplier's Confidential Information includes Intellectual Property owned by the Supplier (or its licensors), including the Cogniss Software. The Customer's Confidential Information includes the Data.
Customer Client	A Client of the Customer that uses the Customer's Solution developed on the Cogniss Software.
Customer's Solution	the software solution that the Customer creates using the Cogniss Software and SaaS Service.
Customer Product Owner	the representative of the Customer who will be directly involved in the building, maintenance and management of the Customer's Solution.
Data	all data, content, and information (including Personal Data) owned, held, used or created by or on behalf of the Customer that is stored using, or inputted into, the Services.
Data Protection Law	means as applicable and binding on the Parties, the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, the General Data Protection Regulation (EU) 2016/679 ("EU GDPR") and the General Data Protection Regulation, Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the EU (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time) ("UK GDPR") and the Data Protection Act 2018.
End Date	the end date set out in the Key Details.
Fees	the fees set out in the Key Details, as updated from time to time in accordance with clause 5.4.

Term	Meaning
Force Majeure	an event that is beyond the reasonable control of a party, excluding: • an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or • a lack of funds for any reason.
Intellectual Property Rights	includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
Key Details	the Agreement specific details set out in Section A of the Agreement.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.
Payment Terms	the payment terms set out in the Key Details (if any).
Personal Data	has the meaning given in the UK GDPR.
Processing	has the meaning given in the UK GDPR and “Process”, and “Processes” shall be construed accordingly.
Related Services	any related service described in the Key Details and any further services that the Supplier agrees to provide to the Customer under the Agreement.
SaaS Service	the service having the core functionality described in the Key Details.
Services	the SaaS Service and any Related Services. For the avoidance of doubt this refers to the Cogniss Software and not the Customer’s Solution built on the Cogniss Software.
Service Levels	the performance of the SaaS Service provided to the Customer.

Term	Meaning
Service Level Agreement	the online document published at http://www.cogniss.com/sla outlining the Service Levels provided by Cogniss to the Customer and the associated financial credits that will be issued to the Customer in the case of any shortfalls in quality of service. The Service Level Agreement is updated from time to time in line with industry standards
Start Date	the start date set out in the Key Details.
Standard Contractual Clauses	in the case of export of Personal Data from the EEA to a third country shall mean the standard contractual clauses approved by the European Commission from time to time and in the case of the UK shall mean the standard contractual clauses approved by the UK's Data Protection Supervisory Authority from time to time.
Sub-processor	a subcontractor or other third party engaged by the Supplier who Processes Personal Data on behalf of the Customer under this Agreement. For the avoidance of doubt, this does not refer to the providers of Underlying Systems as data access on Underlying Systems are under the control of the Supplier.
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws
User Response Data	means any answers provided by Users, or any other data about Users added to the Customer's Solution by the Customer
Super App	A single software application available in Apple and Google app stores as well as on the world wide web that acts as a portal to all apps created by the Customer on the Cogniss Software
Underlying Systems	the Cogniss Software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.
User	a user that has created an account in the Customer's Solution and is not archived.
Website	the internet site at the domain set out in the Key Details, or such other site notified to the Customer by the Supplier.
Year	a 12 month period starting on the Start Date or the anniversary of that date.

1.2 **Interpretation:** In the Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- b words in the singular include the plural and vice versa;
- c a reference to:
 - i a **party** to the Agreement includes that party's permitted assigns;
 - ii **personnel** includes officers, employees, contractors and agents, but a reference to the Customer's personnel does not include the Supplier;
 - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv **including** and similar words do not imply any limit; and
 - v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of the Agreement is to be read against a party because the term was first proposed or drafted by that party; and
- e if there is any conflict between Section B and Section A of the Agreement, Section B prevails unless expressly stated otherwise in Section A.

2 SERVICES

2.1 **General:** The Supplier must use reasonable efforts to provide the Services:

- a in accordance with the Agreement and the laws of England and Wales;
- b exercising reasonable care, skill and diligence; and
- c using suitably skilled, experienced and qualified personnel.

2.2 **Non-exclusive:** The Supplier's provision of the Services to the Customer is non-exclusive. Nothing in the Agreement prevents the Supplier from providing the Services to any other person.

2.3 **Availability:**

- a Subject to clause 2.3b, the Supplier will use reasonable efforts to ensure the SaaS Service is available on a 24/7 basis. However, it is possible that on occasion the SaaS Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. The Supplier will use reasonable efforts to notify the Customer by email advance details of any expected unavailability, and where possible to agree a date and time with the Customer for scheduled downtime. However, in the case of urgent maintenance, such as applying a significant security fix, the Customer authorises the Supplier to perform such maintenance in as timely a manner as possible.
- b Through the use of web services and APIs, the SaaS Service interoperates with a range of third party service features. The Supplier does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, the Supplier may cease to make available that feature to the Customer. To avoid doubt, if the Supplier exercises its right to cease the availability of a third party feature, the Customer is not entitled to any refund, discount or other compensation.
- c The SaaS Service uses various Underlying Systems provided by third party vendors. In the event the SaaS Service becomes unavailable or less than fully functional for a period of time as the result of the failure of an Underlying Systems, the Customer will be entitled to a credit equal to the credit received by the Supplier from the third party provider of the Underlying System.

2.4 **Additional Related Services:**

- a The Supplier may, from time to time, make available additional services to supplement the SaaS Service.
- b At the request of the Customer and subject to the Customer paying the applicable Fees, the Supplier may agree to provide to the Customer an additional Related Service on the terms of the Agreement.

2.5 **Service Levels:**

- a The Supplier will comply with the terms of the Service Level Agreement ("SLA"). Credits issued under the SLA constitute the entirety of compensation offered to the client for failure to meet the goals set out in the SLA available at <https://www.cogniss.com/sla>. If this agreement and the SLA conflict, the terms and conditions of this SLA apply, but only to the extent of such conflict and only in relation to clause 2.5. In the wider agreement, this agreement will take precedence.
- b Cogniss Support can be accessed at support@cogniss.atlassian.net or via a Customer service portal that will be set up as part of delivery of the Services. The following table describes the support process for customers as part of Service Levels:

Severity	Severity level code	First-time response time	Description and support plan
General guidance	low	Response time: 2 working days	You have a general development question, or you want to request a feature.)
System fault or incident	normal	Response time: 1 business day (Target: restore within 5 business days and resolve within 15 business days)	Non-critical functions of your application are behaving abnormally, or you have a time-sensitive development question.
Production system degraded	high	Response time: Same business day (Target: restore within 1 business day and resolve within 10 business days)	Important functions of your application are degraded and impacting the usability of the system
Production system down, business critical failure or human risk	urgent	Response time: 1 hour (Target: restore within 4 business hours and resolve within 5 business days)	Your business is significantly impacted or at risk. Important functions of your application are severely degraded or not available. There is a human injured or at risk of injury.

3 CLIENT OBLIGATIONS

3.1 **General use:** The Customer and its personnel must:

- a use the Services in accordance with the Agreement solely for:
 - i the Customer's own internal business purposes;
 - ii lawful purposes including complying with the Data Protection Laws and all other appropriate legislation in all markets in which the Customer's Solution shall be made available; and
- b not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

- c not resell or make available the Services to any third party, or otherwise commercially exploit the Services.

3.2 **Access conditions:** When accessing the SaaS Service, the Customer and its personnel must:

- a not impersonate another person or misrepresent authorisation to act on behalf of others or the Supplier;
- b correctly identify the sender of all electronic transmissions;
- c not attempt to undermine the security or integrity of the SaaS Service or Underlying Systems;
- d not use, or misuse, the SaaS Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the SaaS Service;
- e not attempt to view, access or copy any material or data other than:
 - i that which the Customer is authorised to access; and
 - ii to the extent necessary for the Customer and its personnel to use the SaaS Service in accordance with the Agreement;
- f neither use the SaaS Service in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading; and
- g comply with any terms of use on the Website, as updated from time to time by the Supplier.

3.3 **Authorisations:** The Customer is responsible for procuring all licences, authorisations and consents required for it and its personnel to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.

3.4 **Indemnification:** The Customer shall indemnify and hold harmless the Supplier against any claims in respect of any Intellectual Property Rights breach by the Customer including any content uploaded to the SaaS Service by the Customer, the Customer's Client or Users.

4 DATA

4.1 **Supplier access to Data:**

- a The Customer acknowledges that:
 - i the Supplier may require access to the Data to exercise its rights and perform its obligations under the Agreement; and
 - ii only to the extent that this is necessary but subject to clause 4 and clause 7, the Supplier may authorise a member or members of its personnel to access the Data for this purpose.
- b The Customer must arrange all consents and approvals that are necessary for the Supplier to access the Data as described in clause 4.1a.
- c For the avoidance of doubt, clause 4.1a does not give the Supplier any licence or right to access data for any other purpose than performing its obligations under this agreement.

4.2 Analytical Data: The Customer acknowledges and agrees that:

- a the Supplier may:
 - i use Data and information about the Customer's and the Customer's end users' use of the Services, but excluding any Personal Data or User Response Data, to generate anonymised and aggregated statistical and analytical data (**Analytical Data**); and
 - ii use Analytical Data for the Supplier's internal research and product development purposes in relation to the Cogniss product and to conduct statistical analysis and identify trends and insights. The Supplier may not use the Analytical Data for any other purposes unless authorised by the Customer;
- b the Supplier's rights under clause 4.2a above will survive termination or expiry of the Agreement; and
- c title to, and all Intellectual Property Rights in, Analytical Data is and remains the Supplier's property.

4.3 Personal Data:

- a The Parties shall make the information referred to in these clauses 4.3(j) to clause 4.3(m), including the results of any audits, available to the competent Supervisory Authority on request.

Use of Sub-processors

- b The Supplier shall not subcontract any of its Processing operations performed on behalf of the Customer in accordance with this clause 4.3 to a Sub-processor, without the Customer's prior specific written authorisation, not to be unreasonably withheld or delayed.
- c Where the Supplier engages a Sub-processor for carrying out specific Processing activities (on behalf of the Customer), it shall do so by way of a written agreement which imposes on the Sub-processor, in substance, the same data protection obligations as the ones imposed on the Supplier in accordance with this clause 4.3. The Supplier shall ensure that the Sub-processor complies with the obligations to which the Supplier is subject pursuant to this clause 4.3 and Data Protection Laws.
- d At the Customer's reasonable request, the Supplier shall provide a copy of such Sub-processor agreement and any subsequent amendments to the Customer. To the extent necessary to protect business secret or other confidential information, including personal data, the Supplier may redact the text of the agreement prior to sharing a copy.
- e The Supplier shall remain fully responsible to the Customer for the performance of the Sub-processor's obligations in accordance with the agreement between the Supplier and Sub-processor. The Supplier shall notify the Customer of any failure by the Sub-processor to fulfil its contractual obligations.
- f The Supplier shall agree a third party beneficiary clause with the Sub-processor whereby – in the event the Supplier has factually disappeared, ceased to exist in law or has become insolvent- the Customer shall have the right to terminate the Sub-processor agreement and to instruct the Sub-processor to erase or return the Personal Data.

International Transfers

- g Any transfer of Personal Data to a third country or an international organisation by the Supplier shall be done only on the basis of documented instructions from the Customer or in order to fulfil a specific requirement under Applicable Law and shall take place in compliance with Data Protection Laws.

- (i) The Customer agrees that where the Supplier engages a Sub-processor in accordance with this clause 4.3 for carrying out specific Processing activities (on behalf of the Customer) and those Processing activities involve a transfer of Personal Data within the meaning of Chapter V of UK GDPR, the Supplier and the Sub-processor can ensure compliance with Chapter V of UK GDPR by using standard contractual clauses adopted by the UK Government and/or EU Commission (as applicable) provided the use of those standard contractual clauses are met.
 - (ii) The obligations in Article 32 UK GDPR.
- h The Parties shall set out in Schedule 2 Part B the appropriate technical and organisational measures by which the Supplier is required to assist the Customer in the application of this clause 4.3 as well as the scope and the extent of the assistance required. This schedule 2 to completed no later than the app being publicly available.

Notification of Personal Data Breach

- i In the event of a Personal Data Breach, the Supplier shall cooperate with and assist the Customer for the Customer to comply with its obligations under Articles 33 and 34 of UK GDPR where applicable, taking into account the nature of Processing and the information available to the Supplier.

Data Breach concerning data processed by the Customer

- j In the event of a Personal Data Breach concerning data processed by the Customer, the Supplier shall assist the Customer:
 - (i) In notifying the Personal Data Breach to the competent Supervisory Authority, without undue delay after the Customer has become aware of it, where relevant (unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons);
 - (ii) In obtaining the following information which, pursuant to Article 33(3) UK GDPR shall be stated in the Customer's notification and must at least include:
 - (a) The nature of the Personal Data including where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
 - (b) The likely consequences of the Personal Data Breach;
 - (c) The measures taken or proposed to be taken by the Customer to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

Where insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- (iii) In complying, pursuant to Article 34 UK GDPR, with the obligation to communicate without undue delay the Personal Data Breach to the Data Subject, when the Personal Data Breach is likely to result in a high risk to the rights and freedoms of natural persons.

Data breach concerning data processed by the Supplier

- k In the of a Personal Data Breach concerning data processed by the Supplier, the Supplier shall notify the Customer without undue delay after the Supplier having become aware of the breach. Such notification shall contain, at least:

- (i) A description of the nature of the breach (including, where possible, the categories and approximate number of data subjects and data records concerned);
- (ii) The details of a contact point where more information concerning the Personal Data Breach can be obtained;
- (iii) Its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

Non-compliance and termination

- l Without prejudice to any provisions of UK GDPR, in the event that the Supplier is in breach of its obligations under this clause 4.3, the Customer may instruct the Supplier to suspend the Processing of Personal Data until the latter complies with this clause 4.3 or this Agreement is terminated. The Supplier shall promptly inform the Customer in case it is unable to comply with this clause 4.3, for whatever reason.
 - m Without prejudice to clause 10, the Customer shall be entitled to terminate this Agreement insofar as it concerns Processing of Personal Data in accordance in accordance with this clause 4.3 if:
 - (i) The Processing of Personal Data by the Supplier has been suspended by the Customer pursuant to clause 4.3(cc) and if compliance with this clause 4.3 is not restored within a reasonable time and in any event within one (1) month following suspension;
 - (ii) The Supplier is in substantial or persistent breach of this clause 4.3 or its obligations under Data Protection Laws;
 - (iii) The Supplier fails to comply with a binding decision of a competent court or the competent Supervisory Authority regarding its obligations pursuant to this clause 4.3 or Data Protection Laws.
 - n The Supplier shall be entitled to terminate the Agreement insofar as it concerns Processing of Personal Data under this clause 4.3 where, after having informed the Customer that its instructions infringe applicable legal requirements in accordance with clause 4.3(d), the Customer insists on compliance with the instructions.
 - o Following termination of this Agreement, the Supplier shall, at the choice of the Customer, delete all Personal Data Processed on behalf of the Customer and certify to the Customer that it has done so, or, return all the Personal Data to the Customer and delete existing copies unless Applicable Law requires storage of the Personal Data. Until the data is deleted or returned, the Supplier shall continue to ensure compliance with this clause 4.3.
- 4.4 **Backups of Data:** While the Supplier will take standard industry measures to back up all Data stored using the Services, the Customer agrees to keep a separate back-up copy of all Data uploaded by it onto the SaaS Service.
- 4.5 **International storage of Data:** This agreement is based on all data being stored at the Agreed Data Centre.
- 4.6 **Indemnity:** The Customer indemnifies the Supplier against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by the Supplier's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the

rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

5 FEES

5.1 **Fees:** The Customer must pay the Supplier the Fees.

5.2 **Invoicing and payment:**

- a The Supplier will provide the Customer with valid invoice containing all relevant taxes, where applicable, on the dates set out in the Payment Terms
- b The Fees exclude all relevant taxes, which the Customer must pay on taxable supplies under the Agreement.
- c The Customer must pay the Fees:
 - i on the dates set out in the Payment Terms, or if there are none, within 7 days following the date of invoice; and
 - ii electronically in cleared funds without any set off or deduction.
- d If acting in good faith, the Customer disputes any item within an invoice, it shall raise such dispute by written notice to the Supplier within 14 days of receipt of the invoice and the parties shall negotiate in good faith to attempt to resolve the dispute promptly in accordance with clause 11.

5.3 **Overdue amounts:** The Supplier may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by the Supplier's primary trading bank as at the due date (or, if the Supplier's primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

5.4 **Increases:**

- a By giving at least 30 days' notice, the Supplier may at its discretion increase the Fees once each Year (but not the first Year of this Agreement) by the percentage change in the Consumer Price Index (CPI) (or similar or equivalent index if that index ceases to be published) over the 12 months preceding the last quarterly publication of that index issued by the UK Office of National Statistics prior to the date of the notice. Fees updated under this clause are deemed to be the Fees listed in the Key Details.
- b If the Customer does not wish to pay the increased Fees, it may terminate the Agreement on no less than one months' notice, provided the notice is received by the Supplier before the effective date of the Fee increase. If the Customer does not terminate the Agreement in accordance with this clause, it is deemed to have accepted the increased Fees.

6 INTELLECTUAL PROPERTY

6.1 **Ownership:**

- a Subject to clause 6.1b, title to, and all Intellectual Property Rights in, the Services, the Website, and all Underlying Systems is and remains the property of the Supplier (and its licensors). The Customer must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the Customer. For the avoidance of doubt, the Data includes all user input in the SaaS Service by the Customer or its agents for the purposes of creating and

maintaining the Customer's Solution. The Customer grants the Supplier a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of its rights and performance of its obligations in accordance with the Agreement. For the avoidance of doubt, the Supplier makes no claim on any Customer know-how or IP for their own business development purposes.

- 6.2 **Know-how:** To the extent not owned by the Supplier, the Customer grants the Supplier a royalty-free, transferable, irrevocable and perpetual licence to use for the Supplier's own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by the Supplier in the provision of the Services.
- 6.3 **Feedback:** If the Customer provides the Supplier with ideas, comments or suggestions relating to the Services or Underlying Systems (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by the Supplier; and
 - b the Supplier may use or disclose the feedback for any purpose.
- 6.4 The Customer acknowledges that the SaaS Service may link to third party websites or feeds that are connected or relevant to the SaaS Service. Any link from the SaaS Service does not imply any Supplier endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, the Supplier excludes all responsibility or liability for those websites or feeds.
- 6.5 **Third party Intellectual Property Rights indemnity:**
- a The Supplier indemnifies the Customer against any claim or proceeding brought against the Customer to the extent that claim or proceeding alleges that the Customer's use of the SaaS Service in accordance with the Agreement constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to the Customer:
 - i promptly notifying the Supplier in writing of the IP Claim;
 - ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without the Supplier's prior written consent; and
 - iii giving the Supplier complete authority and information required for the Supplier to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for the Supplier's account.
 - b The indemnity in clause 6.5a does not apply to the extent that an IP Claim arises from or in connection with:
 - i the Customer's breach of the Agreement;
 - ii use of the SaaS Service in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by the Supplier; or
 - iii any third party data or any Data.
 - c If at any time an IP Claim is made, or in the Supplier's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, the Supplier may (at the Supplier's option):
 - i obtain for the Customer the right to continue using the items which are the subject of the IP Claim; or

- ii modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

7 CONFIDENTIALITY

7.1 **Security:** Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 7.1a and 7.1b.

7.2 **Permitted disclosure:** The obligation of confidentiality in clause 7.1 does not apply to any disclosure or use of Confidential Information:

- a for the purpose of each party performing its obligations under the Agreement or exercising its rights under the Agreement;
- b required by law (including the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party to the Agreement from a third party without restriction and without breach of any obligation of confidentiality; or
- e by the Supplier only if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that the Supplier enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 7.

8 WARRANTIES

8.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under the Agreement which, when signed, will constitute binding obligations on the warranting party.

8.2 **No implied warranties:** To the maximum extent permitted by law:

- a warranties given by both parties are limited to those set out in the Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to the total amount paid by the Customer to the Supplier under this agreement.

8.3 **Limitation of remedies:** Where legislation or rule of law implies into the Agreement a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in the Agreement. However, the liability of the Supplier for any breach of that condition or warranty is limited, at the Supplier's option, to:

- a supplying the Services again; and/or
- b paying the costs of having the Services supplied again.

9 LIABILITY

9.1 **Maximum liability:** The maximum aggregate liability of both Parties under or in connection with the Agreement or relating to the Services, whether in contract, tort (including negligence),

breach of statutory duty or otherwise, must not in any Year exceed an amount equal to the Fees paid by the Customer under the Agreement in the previous Year which in the first Year is deemed to be the total Fees paid by the Customer from the Start Date to the date of the first event giving rise to liability. The cap in this clause 9.1 includes the cap set out in clause 8.2a.

9.2 **Unrecoverable loss:** Neither party is liable to the other under or in connection with the Agreement or the Services for any:

- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

9.3 **Unlimited liability:**

a Clauses 9.1 and 9.2 do not apply to limit the Supplier's liability:

- i under the indemnity in clause 6.5a; or
- ii under or in connection with the Agreement for:
 - personal injury or death;
 - fraud or wilful misconduct; or
 - a breach of clause 7.

b Clause 9.2 does not apply to limit the Customer's liability:

- i to pay the Fees;
- ii under the indemnity in clause 4.6; or
- iii for those matters stated in clause 9.3aii.

9.4 **No liability for other's failure:** Neither party will be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the other party or its personnel.

9.5 **Mitigation:** Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with the Agreement.

10 TERM, TERMINATION AND SUSPENSION

10.1 **Duration:** Unless terminated under this clause 10, the Agreement:

- a starts on the Start Date and ends on the End Date; but
- b where no End Date is set out in the Key Details, continues for successive terms of 12 months from the Start Date unless a party gives 90 days notice that the Agreement will terminate on the expiry of the then-current term.

10.2 Termination rights:

- a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:
 - i breaches any material provision of the Agreement and the breach is not:
 - remedied within 30 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - capable of being remedied;
 - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - iii is unable to perform a material obligation under the Agreement for 30 days or more due to Force Majeure.
- b If the remedies in clause 6.5c are exhausted without remedying or settling the IP Claim, the Supplier may, by notice to the Customer, immediately terminate the Agreement.

10.3 Consequences of termination or expiry:

- a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- b On termination or expiry of the Agreement, the Customer must pay all Fees for Services provided prior to that termination or expiry, unless such Fees are reasonably disputed under the Agreement.
- c Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of the Agreement and subject to clause 10.3d, a party must, at the disclosing party's instruction, promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- d At any time prior to one month after the date of termination or expiry, the Customer may request:
 - i a copy of any Data stored using the SaaS Service, provided that the Customer pays the Supplier's reasonable costs of providing that copy. On receipt of that request, the Supplier must provide a copy of the Data in a common electronic form. The Supplier does not warrant that the format of the Data will be compatible with any software; and/or
 - ii deletion of the Data stored using the SaaS Service, in which case the Supplier must use reasonable efforts to promptly delete that Data.

To avoid doubt, the Supplier is not required to comply with clause 10.3di to the extent that the Customer previously requested deletion of the Data.

10.4 Obligations continuing: Clauses which, by their nature, are intended to survive termination or expiry of the Agreement, including clauses 4.6, 6, 7, 9, 10.3, 10.4 and 11, continue in force.**10.5 Rights to restrict:** Without limiting any other right or remedy available to the Supplier, the Supplier may restrict or suspend the Customer's access to the SaaS Service and/or delete, edit or remove the relevant Data if the Supplier considers that the Customer (including any of its personnel) has:

- a undermined, or attempted to undermine, the security or integrity of the SaaS Service or any Underlying Systems;

- b used, or attempted to use, the SaaS Service:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the SaaS Service;
- c transmitted, inputted or stored any Data that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- d otherwise materially breached the Agreement.

10.6 **Process:**

- a The Supplier must notify the Customer where it restricts or suspends the Customer's access, or deletes, edits or removes Data, under clause 10.5.
- b Clause 10.3di will not apply to the extent that it relates to Data deleted or removed under clause 10.5.

11 **DISPUTES**

- 11.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, the Agreement through good faith negotiations by referring the matter to [*signatories of this agreement*] from each party who shall use their reasonable endeavours to resolve it. In the event a dispute is not resolved by the parties through good faith negotiations within [14 days] of the referral being made, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the London Court of International Arbitration Mediation Rules.
- 11.2 Until the parties have completed the steps referred to in clauses 11.1, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.
- 11.3 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under the Agreement even if there is a dispute.
- 11.4 **Right to seek relief:** This clause 11 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

12 **GENERAL**

- 12.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under the Agreement to the extent caused by Force Majeure, provided that the affected party:
 - a immediately notifies the other party and provides full information about the Force Majeure;
 - b uses best efforts to overcome the Force Majeure; and
 - c continues to perform its obligations to the extent practicable.
- 12.2 **Rights of third parties:** No person other than the Supplier and the Customer has any right to a benefit under, or to enforce, the Agreement.
- 12.3 **Waiver:** To waive a right under the Agreement, that waiver must be in writing and signed by the waiving party.
- 12.4 **Independent contractor:** Subject to clause 4.3, the Supplier is an independent contractor of the Customer, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.

- 12.5 **Notices:** A notice given by a party under the Agreement must be delivered to the other party via email using the email address set out in the Key Details or otherwise notified by the other party for this purpose.
- 12.6 **Severability:**
- a If any provision of the Agreement is, or becomes, illegal, unenforceable or invalid, the relevant provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity.
 - b If modification under clause 12.6a is not possible, the provision must be treated for all purposes as severed from the Agreement without affecting the legality, enforceability or validity of the remaining provisions of the Agreement.
- 12.7 **Variation:** Subject to clause 5.4, any variation to the Agreement must be in writing and signed by both parties.
- 12.8 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to the Services, and supersedes and cancels anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the Start Date
- 12.9 **Subcontracting and assignment:**
- a Both Parties may not assign, novate, subcontract or transfer any right or obligation under the Agreement without the prior written consent of the other, that consent not to be unreasonably delayed or withheld. The original Party to the Agreement remains liable for its obligations under the Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.
 - b Any change of control of a Party is deemed to be an assignment for which the other Party's prior written consent is required under clause 12.9a. In this clause **change of control** means any transfer of shares or other arrangement affecting a Party or any member of its group which results in a change in the effective control of that Party of more than 50% of the voting power on the board or members.
- 12.10 **Law:** The Agreement is governed by, and must be interpreted in accordance with the laws of England and Wales. Each party submits to the non-exclusive jurisdiction of the Courts of England and Wales in relation to any dispute connected with the Agreement.
- 12.11 **Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and emailing a counterpart copy to the other party.

SCHEDULE 1: Additional User Price Tiers

Additional User pricing tiers for 1 x published web app.

End user tier		Per user	Top of tier	Base price	Total price at the top of tier
From	To				
5,000	10,000	£0.50	£5,000	£29,988	£34,988
10,001	20,000	£0.42	£9,200	£29,988	£39,188
20,001	50,000	£0.36	£19,999	£29,988	£49,987
50,000	100,000	£0.32	£35,999	£29,988	£65,987
100,000	onwards	£0.29	POA	£29,988	

SCHEDULE 2: Data Protection

TO BE COMPLETED NO LATER THAN PRIOR TO PUBLISHING APP PUBLICALLY ON APP STORES.

PART A: Description of the Processing

Categories of data subjects whose personal data is processed

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Categories of personal data processed

.....

Special category data processed (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

.....

Nature of the processing

.....

Purpose(s) for which the personal data is processed on behalf of the controller

.....

Duration of the processing

.....

.....

For processing by (sub-) processors, also specify subject matter, nature and duration of the processing

PART B: Technical and organisational measures including technical and organisational measures to ensure the security of the data

Description of the technical and organisational security measures implemented by the processor(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, as well as the risks for the rights and freedoms of natural persons. Examples of possible measures:

- *Measures of pseudonymisation and encryption of personal data*
- *Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services*
- *Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident*
- *Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing*
- *Measures for user identification and authorisation*
- *Measures for the protection of data during transmission*
- *Measures for the protection of data during storage*
- *Measures for ensuring physical security of locations at which personal data are processed*
- *Measures for ensuring events logging*
- *Measures for ensuring system configuration, including default configuration*
- *Measures for internal IT and IT security governance and management*
- *Measures for certification/assurance of processes and products*
- *Measures for ensuring data minimisation*
- *Measures for ensuring data quality*
- *Measures for ensuring limited data retention*

- Measures for ensuring accountability
- Measures for allowing data portability and ensuring erasure]

For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller

Description of the specific technical and organisational measures to be taken by the processor to be able to provide assistance to the controller.