

Terms & Conditions

1. Definitions

"Agreement" means these Terms and Conditions, the Order Form and any Service Agreement elements contained therein.

"Applicable Law" means any legally binding obligation applicable to a party, including statutes, rules, regulations, codes, court rulings, or any other binding requirement.

"Audiem", "we", "us", or "our" means Workplace Advantage Ltd. (trading as Audiem), with its registered office at White House Farm, West Rounton, Northallerton, DL6 2LW, with company number 10976073 and VAT number 412702635.

"Audiem Data" means any data resulting from the processing of Client data to make sense of and/or generate insights from it, or any other proprietary data that is related to any services we offer.

"Author" means a person that provides textual (Viewpoint) and numerical or categorical (metadata) content data from, or relating to, a Client organisation.

"Client" means the managing organisation commissioning Audiem to either gather data on their behalf and/or generate insights from Author content.

"Client Data" means any data generated by the Client and/or their Authors that is provided to us for processing using our tools, or that we collect using our tools on their behalf.

"Exported Data" means Audiem Data that is exported or downloaded from our systems.

"Viewpoint" is defined as a discrete piece of textual data (such as a survey response, intranet post, helpdesk comment etc.) from one respondee in response to one prompt for feedback.

"Order Form" means an ordering document or online order specifying the Services that we agree to provide to you and any Third Party Services (as applicable).

"Professional Services" means our training, implementation, or other Professional Services.

"Services" means the services that we agree to provide to you, including any Professional Services.

"Term" is defined in section 7.1.

"Third Party Services" means the products or services provided to you by anybody other than us.

"Client User" means an individual that you (or your nominated parties) have authorised to use our Services.

"you" or "Customer" means the party identified on an Order Form as a customer.

2. The services

2.1. The Services

This Agreement governs your use of our Services and any information provided to you resulting from your use of those Services. The Services will be set out in an agreed Order Form (and we will not provide any Services except as agreed on an Order Form). The Services are subject to the terms of this Agreement.

2.2. Warranties and exclusions

We warrant that during the Term we will:

- provide the Services with reasonable skill and care;
- maintain all licences and permissions necessary to perform our obligations under this Agreement; and
- not make a material adverse change to the functionality of the Services or Audiem Data within the Services.

2.3. Services

We will provide the Services in accordance with the Order Form and any supplemental scope of work. We exclude all liability for delays in performance that are due to your failure to provide what we need to complete the Professional Services.

2.4. Third Party Services

An Order Form may contain obligations on us to provide to you our Services and obligations on a third party to provide to you Third Party Services. The obligation to provide our Services creates a contract between us (as principal) and you (and that contract is this Agreement). The obligation to provide Third Party Services creates a contract between the third party (as principal) and you (to provide Third Party Services to you on the terms that are in place between you and the third party). We are only responsible to you for our Services and not any Third Party Services. We or a third party may send you an Order Form.

3. Your use of the services

3.1. Responsibility

You:

- are responsible for your use of the Services and for your Users' compliance with the online user guides, help and training materials, and your Users' compliance with this Agreement (as if they were you);
- will ensure that your use of Exported Data complies with Applicable Law;
- will comply with the Terms of Service of any Third-Party Services you are using to collect data to provide Audiem Data; and
- will comply with the marketing materials we may provide to you related to your use and description of both our Services and our intellectual property rights.

3.2. User protection

You will not:

- knowingly display, distribute, or otherwise make available Audiem Data to any person or entity that you reasonably believe will use Audiem Data in any manner that would have the potential to be inconsistent with an individual's reasonable expectations of privacy;
- conduct any research or analysis that isolates a small group of individuals or any single individual for unlawful or discriminatory purposes;
- use Audiem Data to target, segment, or profile any individual based on health, negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law; or
- without our prior written consent, display, distribute, or otherwise make Audiem Data available to any member of the US intelligence community or any other government or public sector entity.

3.3. Password protection

You are responsible for ensuring that any user IDs and passwords required for your Users to use Services are kept safe and confidential. You will promptly notify us upon discovery if the security of a user ID or password may have been compromised.

3.4. Restrictions

You will not:

- sell, resell, license, sublicense, distribute, or otherwise make the Services (or the results of the Services) available to anybody other than your Users, unless stated otherwise on an Order Form;
- subject to Applicable Law, attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form any part of the Services;
- use the Services or any Audiem Data to violate Applicable Law, including Applicable Law about data protection, privacy, or information security;
- communicate any material which is obscene, defamatory, offensive, or abusive via the Services; or



- purposefully interfere with or disrupt the integrity or performance of our Services, including spamming, hacking, purposefully violating or circumventing our API rate limits, or similar activities.

3.5. Removal of Audiem Data

A licensor or Applicable Law may require us to remove Audiem Data from our Services. In such cases, we will notify you of the impacted data and you will promptly remove the same Exported Data from your systems, whether during or after the Term.

4. Fees and payment for services

4.1. Fees

You will pay the fees for our Services set out in any Order Form. Except as otherwise specified, the fees are based on the Services set out in the Order Form and not on actual usage. The Services set out in the Order Form cannot be decreased during the relevant Term. If you sign an Order Form that a third party sends to you, you will pay the fees for our Services directly to the third party, who will collect the amounts due to us on our behalf. If you sign an Order Form that we send to you and that contains Third Party Services, you will pay us the fees for our Services and Third-Party Services (although we collect the fees for Third Party Services as collecting agent only on behalf of the third party).

4.2. Invoicing and Late Payment

You will provide us with the information we reasonably require to invoice you. If you pay the fees late, we may charge you interest at 1.5% over the applicable base rate of our principal bankers compounded monthly, or any higher amount allowed by Applicable Law. A third party may also charge you interest on late fees owed for Third Party Services.

4.3. Taxes

The fees are exclusive of legally applicable taxes, levies, duties or similar governmental assessments, including goods and services, value-added, and sales taxes (collectively, "Taxes"). If we are legally required to pay or collect Taxes for which you are responsible, we (or a third party) will invoice you and you will pay that amount unless you provide us (or a third party) with a valid tax exemption certificate by the appropriate taxing authority.

5. Confidential information

5.1. Confidential Information

“Confidential Information” means any information that is disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”) that is expressly marked as confidential or that a reasonable person under the circumstances would understand to be confidential. Our Confidential Information includes Audiem Data, trade secrets, non-public copyrighted materials, our product roadmap, and this Agreement. Confidential Information does not include any information that:

- is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
- the Receiving Party knew prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
- is received from a third party without breach of any obligation owed to the Disclosing Party; or
- the Receiving Party independently developed.

5.2. Strict confidence

From the effective date of this Agreement until two years after the end of the Term, each party will hold in strict confidence, and will not use other than for the purposes of performing its obligations under this Agreement and/or using or supplying the Services, all Confidential Information of the other party. Nothing in this section 5 prevents the Receiving Party from disclosing the Confidential Information of the Disclosing Party to its corporate affiliates, legal advisers, accountants, or other professional advisers where required (collectively, “Permitted Recipients”), provided that the party so disclosing will remain responsible for its obligations and for the Permitted Recipients’ use (and any disclosure) of the Confidential Information.

6. Intellectual property

6.1. Our intellectual property rights

We, or our licensors, own all intellectual property rights in the Services, including Audiem Data and Queries that we generate or write. Except as expressly stated otherwise in this Agreement, no one is granted any rights to or interest of any kind in our intellectual property rights.

6.2. Deliverables

Upon your payment of the fees for any deliverable from Professional Services (specified as such on an Order Form), you will retain all ownership rights to copyrightable works, work product, or other materials we created for you as part of those Professional Services; provided that if the deliverable contains Audiem Data, then the Audiem Data in the deliverable is granted to you under a worldwide, non-exclusive, non-transferable, royalty-free licence to use the deliverable in accordance with this Agreement.

6.3. Exported Data Licence

We grant to you a worldwide, non-exclusive, non-transferable, royalty-free, licence to use the Exported Data in accordance with this Agreement.

6.4. Licence to use your feedback

You grant to us, and you undertake to procure that your Users grant to us, a worldwide, perpetual, irrevocable, royalty-free licence to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by you or your Users arising out of your use of the Services.

7. Term and termination

7.1. Term

The "Initial Term" of this Agreement is the period designated as such on the Order Form, unless terminated earlier in accordance with this Agreement. After the Initial Term, unless stated otherwise on the Order Form, the Agreement automatically renews for successive periods equal to the Initial Term (each a "Renewal Term" and collectively the "Term") unless a party gives at least 30 days written notice to terminate prior to the expiration of the then-current Term, such notice to be effective at the end of the then-current Term.

7.2. Mutual termination

A party may terminate this Agreement by written notice to the other party at any time if:

- the other party is in material breach and, if remediable, the breach is not remedied within 60 days of being notified in writing of the breach; or
- the other party begins bankruptcy proceedings or becomes the subject of a petition in liquidation or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors.

7.3. Our termination rights

We may immediately suspend our performance or terminate this Agreement upon written notice if:

- you fail to pay any fees by their due date and the default is more than 30 days;
- you breach sections 3.4 or 3.5; or
- we have good faith concerns about your financial solvency.

8. Exclusions and limitations of liability

8.1. What the parties are liable for

Nothing in this Agreement excludes or limits a party's liability for any liability that cannot be excluded or limited under Applicable Law (including fraud).

8.2. Losses a party is never liable for

Subject to section 8.1, each party excludes all liability, whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation, restitution, or otherwise, direct or indirect, whether foreseeable, known, foreseen, or otherwise, however arising, for any:

- loss of revenue or profits (of any kind);
- loss of goodwill;
- loss of business;
- losses suffered on third party websites or applications; or
- special, indirect, or consequential loss, costs, damages, charges, or expenses.

8.3. Other important exclusions of loss

Subject to sections 2.2 and 8.1, we make no warranties or representations:

- about the truth or accuracy of our analysis of Client Data; or
- that we will have any specific types of data or that you may be able to access third party sites or applications. Other than as set out elsewhere in this Agreement, we exclude all other warranties, conditions, representations, or other terms (whether express or implied), subject to Applicable Law.

8.4. Liability cap

Subject always to sections 8.1, 8.2, 8.3 and 10.10, each party's total liability, however arising, will under no circumstances exceed in aggregate, 110% of the total amount of fees paid or payable for our Services under this Agreement for the 12 months immediately preceding the date any first claim arose.

9. Mutual indemnities

9.1. When we indemnify you

We will indemnify you, your Affiliates, and your and their officers, directors, employees, and agents, against any claims, demands, actions, proceedings, losses, liabilities, damages, expenses, and costs (including court costs and reasonable attorneys' fees), whether direct or indirect (collectively "Losses") arising out of a claim against you that your use of the Services infringes the intellectual property rights of a third party ("IP Indemnity"). The IP Indemnity does not apply if the claim is based on:

- your modification of the Services without our prior written consent;
- your use of the Services in a manner contrary to your obligations under this Agreement; or
- your continued use of the Services after we have notified you of the alleged or actual infringement and requested you to stop using the Services.

In the defence or settlement of any claim relating to the IP Indemnity, we may:

1. procure the right for you to continue using the Services;
2. replace or modify the Services so that they become non-infringing; or
3. if (1) and (2) are not reasonably available to us, we may terminate this Agreement (in whole or in part) on 30 days' written notice to you and refund you any prepaid fees covering the remainder of the Term of the terminated Services.

9.2. When you indemnify us

You will indemnify us, our Affiliates, and our and their officers, directors, employees, and agents, against any Losses arising out of your breach (including a breach by your Users or any agency clients) of sections 3.2 or 3.4.

9.3. Indemnity process

An indemnity is subject to the indemnified party giving the indemnifying party prompt written notice of any claim and sole control to defend or settle the claim. The indemnified party will use its commercially reasonable efforts to mitigate its Losses.

10. GENERAL

10.1. Privacy

We collect and process User data in accordance with our Data Policy.

10.2. Rules of interpretation

The following rules of interpretation apply to this Agreement:

- the words “include” and “including” are deemed to have the words “without limitation” following them;
- references to the singular include the plural and vice versa; and
- references to “will” are to be construed as having the same meaning as “shall”.

10.3. Force Majeure

Neither party is liable for a breach caused by an event beyond its reasonable control, including a natural disaster, disease outbreak, war, riot, terrorist action, civil commotion, malicious damage, government action, industrial action or dispute, fire, flood, storm, or failure of third party telecommunications services.

10.4. Publicity

We will not disclose that you are a customer without your prior written consent.

10.5. Invalidity

If any term of this Agreement is found invalid, illegal or unenforceable, the rest of the Agreement remains in effect.

10.6. No waiver

Either party's delay or failure to enforce a term of the Agreement is not a waiver of that right and does not prevent that party from later enforcing that term or any other term.

10.7. Notice

Each party will deliver notices for legal service or material breach by a courier service or recorded delivery: for Audiem, to our registered office address as set out above; for you, to your address as set out in an Order Form. Any notices for any matter other than legal service or material breach may be delivered in accordance with the previous sentence or by email. If sent by email, you will send the notice to notice@audiem.io and we will send the notice to you via an email address listed in any Order Form. Notice sent by recorded delivery is deemed to have been received three UK business days after posting. A party is deemed to receive email notice 24 hours after it is sent.

10.8. Assignment

You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with this Agreement, or any right, benefit, or interest under it, nor transfer or novate (each an "Assignment") without our prior written consent. Any Assignment without our prior written consent is void.

10.9. Anti-bribery

The parties will:

- comply with all Applicable Law relating to anti-bribery or anti-corruption;
- not engage in any act which, if it had occurred in the United Kingdom, the United States, or Singapore would have violated Applicable Law relating to anti-bribery or anti-corruption; and
- promptly report to the other party if it receives a request for undue advantage.

10.10. Entire agreement

This Agreement, including materials incorporated by reference, constitutes the exclusive statement of agreement and understanding between the parties. This Agreement excludes all prior or contemporaneous proposals, understandings, agreements, or representations, whether oral or written about its subject matter. You agree that no representations were made prior to entering into this Agreement and that, in entering into this Agreement, you do not rely on, and will have no remedy in respect of, any statement, representation, warranty, or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as set out in this Agreement. Nothing in this Agreement excludes or limits our liability for fraudulent misrepresentations or excludes (but this Agreement does limit) our liability for any fundamental misrepresentation.

10.11. Order of priority

If there is a conflict of this Agreement: sections 8 and 10.10 of these terms and conditions prevails over an Order Form (and any Service Agreement elements contained therein), and an Order Form prevails over other sections of these terms and conditions. The English version of these terms and conditions prevails over any non-English version.

10.12. Third party rights

Other than as set out in sections 9.1 and 9.2, nothing in this Agreement creates or confers any rights or other benefits in favour of any person other than the parties to this Agreement even if that person has relied on the term or has indicated to any party to this Agreement its assent to the term.

10.13. No agency

This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

10.14. Waiver of Jury Trial

THIS IS IMPORTANT, PLEASE READ: each party waives all rights to a jury trial in any legal proceedings arising out of this Agreement.

10.15. Governing law and jurisdiction

Each party agrees to the applicable governing law and to the exclusive jurisdiction of the applicable courts, set out in the table below.

If you are domiciled in:	The governing law is:	The courts having exclusive jurisdiction are:
Australia, New Zealand, or a country in Europe (which includes countries in the European Economic Area and the U.K.), the Middle East, Africa, Central America, South America, or the Caribbean	English	English
U.S.A., Mexico, or Canada	New York and Controlling United States federal law, without regard to choice or conflicts of law rules	New York City
Countries in Asia or the Asia Pacific	Singapore	Singapore