



## **Software Service - Terms and Conditions**

**Service Name:** What Caused This  
**Service Type:** Software as a Service (SaaS)  
**Framework:** G-Cloud 15  
**Lot:** 2b

### **Provider Details**

**Supplier Name:** What Caused This Ltd  
**Registered Address:** Bankside 300, Peachman Way, Broadland Business Park,  
Norwich, NR7 0LB  
**Company Registration Number:** 13917006  
**VAT Number:** 462 7038 90  
**Website:** [whatcausedthis.com](http://whatcausedthis.com)

**Document Title:**  
Software Service - Terms and Conditions

**Version:** 5.0  
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## WHAT CAUSED THIS PLATFORM LICENCE AGREEMENT

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.
- (a) **API:** means any application programming interface made available by WCT to the Customer for the purpose of the Customer accessing data in the Platform, or extracting or importing data from or to the Platform.
  - (b) **Authorised Users:** those employees and agents of the Customer who are authorised by the Customer to use the Services and the Documentation.
  - (c) **Authorised User Account:** an individual account linked to the Platform, established by an Authorised User for use of the Services.
  - (d) **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
  - (e) **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 13.1.
  - (f) **Core Hours:** 9am to 5pm on a Business Day.
  - (g) **Customer:** the person receiving the Services, whose details are given in the Order Form.
  - (h) **Customer Data:** the data inputted into the Platform by the Customer or its Authorised Users.
  - (i) **Data Protection Legislation:** means (i) the Data Protection Act 2018 (as amended or replaced from time-to-time) (the **DPA**) (ii) UK GDPR (as defined in the DPA) (iii) any other legally binding rules or regulations concerning the protection of personal data in the United Kingdom
  - (j) **Documentation:** all documentation supplied by WCT to the Customer in connection with the use of the Platform and Services, including developer information for use of the API.
  - (k) **Effective Date:** the date of this Agreement, as given in the Order Form.
  - (l) **Force Majeure:** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;

- (m) **Initial Term:** the initial term of this Agreement as set out in the Order Form.
- (n) **Insolvency Event:** any one or more of the following events in any jurisdiction in relation to a party: making an application for a Company Voluntary Arrangement or Individual Voluntary Arrangement; the filing of a bankruptcy petition; the filing of a petition, making of an application, or passing of a resolution for the winding up of the party or for the appointment of an administrator, liquidator, receiver or trustee in bankruptcy of that party; the taking of any steps by any person to enforce any security over the assets of the party; any event analogous or which has an effect equivalent or similar to any of the foregoing.
- (o) **Intellectual Property Rights:** means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, domain names and all similar rights and, in each case:
  - (i) whether registered or not;
  - (ii) including any applications to protect or register such rights;
  - (iii) including all renewals and extensions of such rights or applications;
  - (iv) whether vested, contingent or future; and
  - (v) wherever existing;
- (p) **Live Date:** the date upon which the Customer is to have access to the Platform and Services, as set out in the Order Form or otherwise agreed between WCT and the Customer.
- (q) **Losses:** all claims, damages, losses, liabilities, fines, penalties and costs and expenses (including legal and professional fees).
- (r) **Order Form:** the order form setting out details of the Customer's order.
- (s) **personal data** has the meaning given in Data Protection Legislation.
- (t) **Platform:** the online platform and software applications provided by WCT (including the API), with the functionality as described in the Order Form.
- (u) **Renewal Commitment Date:** has the meaning given in the Order Form.
- (v) **Renewal Period:** the period described in clause 15.1.
- (w) **Services:** services provided by WCT to the Customer under this Agreement as set out in the Order Form.
- (x) **Set-Up Services:** the initial customisation and set-up services detailed in the Order Form.

- (y) **Subscription Fees:** the subscription fees payable by the Customer to WCT for use of the Services, as set out in the Order Form and subsequently varied in accordance with this Agreement.
  - (z) **Subscription Term:** has the meaning given in clause 15.1 .
  - (aa) **Support Services:** the support services to be provided by WCT to the Customer, as detailed in Schedule 1.
  - (bb) **Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
  - (cc) **WCT:** What Caused This Limited, company number 13917006.
- 1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
  - 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  - 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
  - 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
  - 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
  - 1.7 A reference to **writing** or **written** includes email and messages within the Platform.
  - 1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## 2. LICENCE

- 2.1 WCT hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Customer (acting by its Authorised Users) to use the Services during the Subscription Term solely for the Customer's internal operations.

- 2.2 The Customer acknowledges that the Services do not include:
- (a) any services, systems or equipment required to access the internet or to use the Platform;
  - (b) dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data); or
  - (c) legal or other professional or regulated services and that, except as expressly stated in the Agreement, no assurance is given that the Services will comply with or satisfy any legal or regulatory obligation of any person.
- 2.3 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer, except where stated in the Order Form.
- 2.4 The Customer shall not:
- (a) use the Services to provide services to third parties; or
  - (b) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
  - (c) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
  - (d) introduce or permit the introduction of, any Virus or other vulnerability into WCT's network and information systems.

### **3. AUTHORISED USERS**

- 3.1 The Customer shall ensure that only Authorised Users use the Services and that such use is at all times in accordance with the terms of this Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to the Services, the employees or contractors of the Customer.
- 3.2 The Customer shall keep a list of all Authorised Users and shall notify WCT within ten Business Days if any updates to any list of Authorised Users are made or required, including when Authorised Users cease to be employed or engaged by a relevant entity such that they are no longer entitled to be Authorised Users.
- 3.3 The Customer shall:
- (a) be liable for the acts and omissions of the Authorised Users as if they were its own;
  - (b) only provide Authorised Users with access to the Services via the access method provided by WCT and shall not provide access to (or permit access by) anyone other than an Authorised User; and

- (c) procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on the Customer under this Agreement, including all obligations and restrictions relating to WCT's Confidential Information.
- 3.4 The Customer warrants and represents that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party (or with other individuals except those with administration rights at the Customer as necessary for use of the Service) their password or access details for any Service.
- 3.5 The Customer shall (and shall ensure all Authorised Users shall) at all times comply with any acceptable use policy or other terms of use of the Platform, and all other provisions of this Agreement.
- 3.6 If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and notify WCT as soon as practicable.

#### **4. SERVICES**

- 4.1 WCT shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 4.2 WCT shall endeavour to make the Platform available by the Live Date, but Customer acknowledges that the Live Date is a target date only, and WCT shall have no liability to the Customer for failure to make the Platform available by the Live Date for any reason whatsoever.
- 4.3 WCT shall endeavour to make the Platform available 24 hours a day, seven days a week, except for:
  - (a) planned maintenance performed outside of Core Hours; and
  - (b) unscheduled maintenance performed during Core Hours.
- 4.4 WCT will endeavour to notify the Customer in advance of scheduled maintenance, the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.
- 4.5 WCT will provide the other Services (not provided via the Platform) at such times as specified in the Order Form or agreed between the Customer and WCT in writing.
- 4.6 WCT, will, as part of the Services, provide the Customer with the Support Services in accordance with Schedule 1 to these terms.
- 4.7 WCT shall be entitled to modify the features and functionality of the Platform and Services provided that such modifications to not materially reduce the current features and functionality of the Platform. WCT shall provide prior notice to the

Customer of any such changes. WCT may, without limitation to the generality of this clause, establish new limits on the Services (or any part of them), including limiting the volume of data which may be used, stored or transmitted in connection with the Service, remove or restrict application programming interfaces or make alterations to data retention periods.

## 5. DATA PROTECTION

- 5.1 The following terms shall have the meaning given to them in Data Protection Legislation: **controller, processor, data subject, personal data breach.**
- 5.2 The Customer and WCT agree that WCT acts as a processor in respect of Customer Data, for the purposes of Data Protection Legislation.
- 5.3 Each party shall comply with Data Protection Legislation in respect of all personal data transferred by the other party to it, in connection with the Services.
- 5.4 The Customer warrants that it has in place all necessary notices and consents to permit the transfer of personal data from the Customer to WCT in connection with the Services. The Customer shall indemnify WCT against all Losses suffered or incurred by WCT as a result of or in connection with any breach by the Customer of the warranty given in this clause.
- 5.5 The provisions of Schedule 2 (Data Processing) apply in respect of personal data which WCT processes as a processor.

## 6. WCT'S OBLIGATIONS

- 6.1 Subject to the remainder of this clause 6, WCT warrants that:
  - (a) each Service shall operate materially in accordance with its description when used in accordance with our Agreement under normal use and normal circumstances during the Subscription Term; and
  - (b) it shall provide each of the Services with reasonable care and skill.
- 6.2 The Customer acknowledges that clause 6.1 does not apply to any free or trial Services or to other Services provided in connection with the same. Without prejudice to WCT's obligations in respect of Customer Data, free or trial Services and other Services provided in connection with the same, are provided 'as is' and without warranty to the maximum extent permitted by law.
- 6.3 WCT:
  - (a) does not warrant that:
    - (i) the Customer's use of the Services will be uninterrupted or error-free;

- (ii) the Services, Documentation and/or other information obtained by the Customer through the Services will meet the Customer's requirements; or
    - (iii) the Platform or the Services will be free from vulnerabilities or Viruses;
    - (iv) the information contained in the Platform or Documentation is accurate, up to date or complete;
  - (b) does not warrant that the output of the Platform will be error free;
  - (c) is not responsible for the use or interpretation of the output from the Platform, which shall be the sole responsibility of the Customer (save to the extent WCT agrees to provide services in connection with such output);
  - (d) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.4 This Agreement shall not prevent WCT from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 6.5 WCT warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 6.6 If there is a breach of any warranty in this clause 6, WCT shall at its option:
- (a) use reasonable endeavours to repair or replace the impacted Services within a reasonable time; or
  - (b) (whether or not it has first attempted to repair or replace the impacted Service) refund the Fees for the impacted Services which were otherwise payable for the period during which WCT was in breach of any such warranty (provided such period is at least 5 consecutive days).
- To the maximum extent permitted by law, this clause 6.6 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 6,
- 6.7 The warranties in clause 6 are subject to the limitations set out in clause 14 and shall not apply to the extent that any error in the Services arises as a result of:
- (a) any failure to follow the operating documentation or instructions by the Customer or any Authorised User, or a failure to operate the Services on hardware meeting the minimum specifications;
  - (b) use of any of the Services other than for the purposes for which it is intended;

- (c) use of any Services with other software or services or on equipment with which it is incompatible;
  - (d) any act by any third party (including hacking or the introduction of any virus or malicious code);
  - (e) any modification of Services (other than that undertaken by WCT or at its direction); or
  - (f) any breach of this Agreement by the Customer (or by any Authorised User).
- 6.8 Other than as set out in this clause 6, and subject to clause 14.2, all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the extent permitted by law.
- 6.9 WCT may publish data regarding trends and performance, observed by WCT from its Customers and their respective Authorised Users. Where such data is compiled in whole or in part, from personal data collected by WCT, WCT shall ensure that such data is aggregated and anonymised before publication.

## **7. CUSTOMER'S OBLIGATIONS**

- 7.1 The Customer shall:
- (a) provide WCT with:
    - (i) all necessary co-operation in relation to this Agreement; and
    - (ii) all necessary access to such information as may be required by WCT;in order to provide the Services;
  - (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - (c) carry out all other Customer responsibilities set out in this Agreement in a timely manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, WCT may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - (d) comply with, and ensure that the Authorised Users comply with, any acceptable use policy or terms of use for the Platform applicable from time to time;
  - (e) ensure that its network and systems comply with the relevant specifications (if any) provided by WCT to the Customer prior to Effective Date ; and

- (f) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Platform, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 7.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, discriminatory, obscene, infringing, harassing or racially or ethnically offensive, or otherwise illegal or causes damage or injury to any person or property.
- 7.3 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 7.4 Unless agreed otherwise in writing by WCT, the Customer is solely responsible for the integration of the Services with any other software, platforms or services owned or used by the Customer.
- 7.5 The Customer is solely responsible for the Customer's own hardware, networks, systems and connections.
- 7.6 The Customer shall defend, indemnify and hold harmless WCT against claims, actions, proceedings, losses, liabilities, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of this Agreement or use of the Services and/or Documentation in breach of this Agreement.

## **8. CUSTOMER SYSTEMS AND CUSTOMER DATA**

- 8.1 Customer Data shall at all times remain the property of the Customer or its licensors.
- 8.2 Except to the extent WCT has direct obligations under Data Protection Legislation, the Customer acknowledges that WCT has no control over any Customer Data hosted as part of the provision of the Services and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.
- 8.3 If WCT becomes aware of any allegation that any Customer Data may not comply with the Platform's acceptable use policy or any other part of this Agreement, WCT shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing

from the Services. Where reasonably practicable and lawful WCT shall notify the Customer before taking such action.

- 8.4 Except as otherwise expressly agreed in this Agreement, WCT shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Subscription Term. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's business.
- 8.5 WCT routinely undertakes regular backups of the Platform (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make WCT responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, WCT shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.
- 8.6 Unless otherwise set out in the Order Form, or subsequently agreed by the parties in writing, the Customer hereby instructs that WCT shall within 3 months of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws require WCT to store such Customer Data. WCT shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with this Agreement.

## **9. CHARGES AND PAYMENT**

- 9.1 The Customer shall pay the Subscription Fees (if any) to WCT as follows (unless agreed otherwise in the Order Form):
- (a) the Subscription Fees for the Initial Term, and all additional Subscription Fees agreed in the Order Form for Set-up Services or Services to be performed prior to the Live Date, shall be due on or before the Live Date. WCT shall not be required to make the Platform available unless and until the Subscription Fees for the Initial Period have been paid;
  - (b) WCT shall issue an invoice for the Subscription Fees for each Renewal Period on or after the Renewal Commitment Date, and the Subscription Fees shall be payable within 30 days of the date of the invoice ; and
  - (c) all other Subscription Fees, shall be payable within 30 days of the date of the invoice or such other date as specified in the Order Form.
- 9.2 If WCT has not received payment of the relevant Subscription Fees by the due date, without prejudice to any other rights and remedies of WCT:

- (a) WCT may, without liability to the Customer, disable the Customer's and its Authorised Users' password, account and access to all or part of the Services and WCT shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.3 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable (other than where expressly stated otherwise in this Agreement);
- (c) are exclusive of value added tax, which shall be added to WCT's invoice(s) at the appropriate rate.

9.4 Where any Initial Term or Renewal Term lasts for a period exceeding 12 months, WCT may increase the Subscription Fees on the first and each subsequent anniversary of the commencement of the Initial Term or Renewal Term (as the case may be) by an amount not exceeding the most recently published UK Retail Prices Index annual measure of inflation, as published by the Office for National Statistics (or any replacement measure of inflation).

## 10. PROPRIETARY RIGHTS

10.1 The Customer acknowledges and agrees that WCT and/or its licensors own all Intellectual Property Rights in the Services (including the Documentation), the API, the Platform, , and any other materials produced in the course of providing the Services. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any Intellectual Property Rights in respect of the Services (including the Documentation), or the Platform.

10.2 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform; or

- (b) circumvent, disable or otherwise interfere with any security-related features of the Platform;
  - (c) access all or any part of the Services or Documentation in order to build a product or service which competes with the Services; or
  - (d) use the Documentation for any purpose other than the purpose for which they were provided to the Customer, or distribute the Documentation (or any variation of it) to any third party.
- 10.3 If the Customer (or any of its Authorised Users) acquires any Intellectual Property Rights in the API or Platform or Services, the Customer shall transfer (and shall procure the relevant Authorised User(s) transfers) those rights, both existing and future, with full title guarantee, to WCT or anyone else nominated by WCT. The Customer shall take such steps, and execute such documents, as WCT considers necessary or desirable to give effect to such transfer.
- 10.4 The Customer and Authorised Users may be able to store or transmit Customer Data using the Platform, and the Platform may interact with Customer systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for WCT (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer systems to the extent necessary to perform or provide the Services or to exercise or perform WCT's rights, remedies and obligations under this Agreement.
- 10.5 WCT warrants that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## 11. INFRINGEMENT CLAIMS

- 11.1 Subject to clauses 11.2 and 11.4, WCT shall:
- (a) defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Services infringes any copyright, database right or registered trade mark, registered design right, registered patent or other Intellectual Property Rights of any third party in the United Kingdom (an **IP Claim**); and
  - (b) pay, subject to clause 14, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.
- 11.2 The provisions of clause 11.1 shall not apply unless the Customer:
- (a) promptly notifies WCT upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
  - (b) makes no comment or admission and takes no action that may adversely affect WCT's ability to defend or settle the IP Claim;

- (c) provides all assistance reasonably required by WCT, subject to WCT paying the Customer's reasonable costs; and
  - (d) gives WCT sole authority to defend or settle the IP Claim as WCT considers appropriate.
- 11.3 In the event of any IP Claim WCT may elect to terminate the Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Subscription Fees paid in advance.
- 11.4 WCT shall have no liability or obligation under this clause 11 in respect of (and shall not be obliged to defend) any IP Claim to the extent that such IP Claim arises in whole or in part from:
  - (a) any modification of the Services (or any part) without WCT's express written approval;
  - (b) any Customer Data;
  - (c) any free or trial Services (or any Support Services provided in connection with them);
  - (d) any open source software;
  - (e) any breach of the Agreement by the Customer;
  - (f) installation or use of the Services (or any part) otherwise than in accordance with the Agreement, the instructions of WCT or the Documentation; or
  - (g) installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by WCT.
- 11.5 Subject to clause 14.2, the provisions of this clause 11 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

## **12. USE OF THE API**

Where WCT provides access to the API to the Customer, the following provisions apply:

- 12.1 The Customer shall only permit Authorised Users to access and use the API.
- 12.2 Access to the API shall only be through the API key provided.
- 12.3 The Customer shall, and shall procure that its Authorised Users shall, comply with all terms and requirements of any Documentation relating to the API.
- 12.4 The Customer must obtain all consents from the third party software or application required for any connection on integration between the Platform and third party software or application.

- 12.5 The Customer must not use the API in any way which does or may infringe the Intellectual Property Rights of any third party.
- 12.6 The Customer must not:
- (a) modify, add to, or otherwise enhance the API;
  - (b) copy or decompile the API;
  - (c) observe or study the functioning of the API.

### 13. CONFIDENTIALITY

- 13.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, assets, affairs, Intellectual Property Rights, Authorised Users, Customer Data, clients or suppliers of the other party (all of which are **Confidential Information**), except as permitted by Clause 13.2.
- 13.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

### 14. LIMITATION OF LIABILITY

- 14.1 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for use of the Services. WCT shall have no liability for any damage caused by:
    - (i) the Customer using the Services;
    - (ii) errors or omissions in any information provided to WCT by the Customer in connection with the Services (including errors in Customer Data);
    - (iii) any actions taken by WCT at the Customer's direction;

- (iv) any errors or omissions in any information contained within the Platform, or the outputs of the Platform;
    - (v) errors in the transfer of data to or from the Platform, from or to any third party software, platform or service used by the Customer, including any loss of or corruption of data occurring in connection with such transfer;
    - (vi) any equipment or third party software or application used in connection with the Platform;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - (c) the Services are provided to the Customer on an "as is" basis.
- 14.2 Nothing in this Agreement excludes the liability of WCT:
- (a) for death or personal injury caused by WCT's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 14.3 Subject to clause 14.1 and clause 14.2:
- (a) WCT shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
    - (i) direct losses comprising loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss; or
    - (ii) for any special, indirect or consequential loss, costs, damages, charges or expenses,

in each case however arising under this Agreement or in connection with the provision of the Services; and
  - (b) WCT's total aggregate liability in contract (including in respect of any indemnity given in this agreement), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose.
- 14.4 The Customer agrees the limitations of liability in this clause 14 are reasonable.
- 14.5 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of WCT's Intellectual Property Rights.

## 15. TERM AND TERMINATION

15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue until the expiry of the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**) unless:

- (a) either party notifies the other party of termination, in writing, before the Renewal Commitment Date, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
- (b) this Agreement is otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.2 This Agreement shall terminate at the expiry of any trial or free period in accordance with the terms of the Order Form.

15.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 20 Business Days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party is subject to an Insolvency Event; or
- (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.4 For the purposes of clause 15.3(b), a **material breach** shall include any breach of clause 2 (*Licence*), clause 3 (*Authorised Users*) or 10.2 (*Proprietary Rights*).

15.5 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services, except that the Customer may be permitted to retain access to any free-to-access areas of the Platform;

- (b) the Customer's right to use the Documentation shall immediately terminate;
- (c) each party shall return and make no further use of any equipment, property, Documentation, and other items (and all copies of them) belonging to the other party;
- (d) WCT may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 8.6, and the Customer shall have no right to access the Customer Data stored on the Platform save that the Customer shall be entitled to and shall have access to the Platform to enable it to extract its Customer Data within 30 days of the termination of this Agreement;
- (e) any clauses which expressly or by implication continue after termination, shall continue; and
- (f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **16. MONITORING COMPLIANCE**

- 16.1 At WCT's request from time to time the Customer shall promptly (and in any event within ten Business Days of such request) provide the Supplier with details of the Authorised Users' and the Customer's use of the Services under this Agreement, and/or provide WCT with access to the Customer's administration portal within the Platform.
- 16.2 The Customer shall permit WCT or WCT's designated auditor to audit the Services in order to establish the name and password of each Authorised User to audit compliance with this Agreement. Each such audit may be conducted no more than once per year, at WCT's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.
- 16.3 If the Customer records in clause 16.1 or the audits referred to in clause 16.2 reveal:
  - (a) that any password has been provided to any individual who is not an Authorised User, then without prejudice to WCT's other rights, the Customer shall promptly disable such password(s) and WCT shall not issue any new passwords to any such individual; and
  - (b) the Customer has underpaid Subscription Fees to WCT, then without prejudice to WCT's other rights, the Customer shall pay to WCT an amount equal to such underpayment as calculated in accordance with WCT's then current pricing structure, within 10 Business Days of the date of the relevant audit.

- 16.4 WCT may monitor, collect, store and use information on the use and performance of the Services (including Customer Data) to detect threats or errors to the Services and/or WCT's operations and for the purposes of the further development and improvement of WCT's services, provided that such activities at all times comply with the Data Protection Laws and the terms of this Agreement.

## 17. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from Force Majeure (provided that this shall not apply to any obligation of the Customer to pay the Subscription Fees or other sums due under this Agreement). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

## 18. GENERAL

- 18.1 **Conflict:** If there is an inconsistency between any of the provisions in this Agreement and the Order Form, the provisions in the Order Form shall prevail.

18.2 **Variation:**

- (a) Subject to clause (b), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- (b) WCT may vary the terms of this Agreement on the commencement of any Renewal Term, by giving not less than 30 days' notice to the Customer of the variation. Such variation shall take effect on the commencement of the next Renewal Term.

18.3 **Waiver**

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 18.4 **Severance:** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

18.5 **Entire agreement**

- (a) This Agreement, and the other agreements referred to in it, constitute the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and

understandings between them, whether written or oral, relating to its subject matter.

- (b) Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- (c) Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- (d) Nothing in this clause shall limit or exclude any liability for fraud.

18.6 **Assignment**

- (a) Except as set out in clause (b) below, neither the Customer nor WCT shall, without the prior written consent of the other, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- (b) WCT may at any time assign, transfer, charge, novate, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement to any member of its Group, and notify the Customer of having done so. For these purposes, **Group** shall mean any subsidiary undertaking of WCT, parent undertaking of WCT, or subsidiary undertaking of such parent undertaking (as those terms are defined in s1161 & 1162 Companies Act 2006).

18.7 **No partnership or agency:** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other.

18.8 **Third party rights:** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

18.9 **Notices**

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company or corporate body) or its principal place of business (in any other case); or
  - (ii) sent by email to the addresses for service given in the Order Form.
- (b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email, at the time of transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**18.10 Governing law and Jurisdiction**

- (a) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
- (b) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1**  
**SUPPORT SERVICES**

1. WCT will provide support to the Customer during the Subscription Term in accordance with this Schedule.
2. Support will be provided by way of support requests submitted through the WCT support portal at <https://whatcausedthis.com/support-requests/>
3. Support requests may only be submitted by the Customer's Support Contacts..
4. Support will be available during Core Hours.
5. In most cases live and/or sample and/or scenario data will be requested to support incident discovery and resolution. However, at times, access to the Customer's production platform may be required.
6. WCT shall use reasonable efforts to prioritise support requests, and respond to support requests, in accordance with the following:

| <u>Classification</u>  | <u>Title</u>    | <u>Description</u>                                                                                          | <u>Target Response Time</u>                                                 | <u>Target Fix Time</u> |
|------------------------|-----------------|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|------------------------|
| <b>Priority 1 (P1)</b> | <b>Critical</b> | Total loss of service or critical component failure, or a significant security threat                       | Within 60 mins<br><br>(Updates on progress to be provided every 60 minutes) | Within 4 hours         |
| <b>P2</b>              | <b>Major</b>    | A partial failure of the service, critical part of the infrastructure or significant degradation of service | Within 4 hours<br><br>(Updates on progress to be provided every 2 hours)    | Same working day       |

|           |               |                                                                                        |                 |                                        |
|-----------|---------------|----------------------------------------------------------------------------------------|-----------------|----------------------------------------|
| <b>P3</b> | <b>Medium</b> | Intermittent or degraded service or batch transfer failure and no workaround in place  | Within 72 hours | Within 5 business Days                 |
| <b>P4</b> | <b>Low</b>    | Component failure that is not immediately service impacting with a workaround in place | As scheduled    | Scheduled alongside next minor release |

**SCHEDULE 2**  
**DATA PROCESSING**

**1. NATURE, PURPOSE AND SCOPE**

- 1.1 The nature, purpose and scope of the processing by WCT is as follows:
- (a) WCT processes personal data for the purpose providing the Service to the Customer.
  - (b) The Customer will upload Customer Data to the Platform for the purpose of the Customer utilising the Platform in accordance with the terms of this Agreement. Such personal data will be stored by WCT and used in the functioning of the Platform.
  - (c) The processing shall continue for the Subscription Term.
  - (d) The data subjects of the personal data processed by WCT will include staff, contacts, suppliers and customers of the Customer.
  - (e) The personal data processed will include names, job titles, employment history, employment skills, and any other records held by Customer and uploaded to the Platform.

**2. OBLIGATIONS OF WCT**

- 2.1 WCT shall, in relation to any personal data processed in connection with the performance by WCT of its obligations under this Agreement:
- (a) process that personal data only on the written instructions of the Customer unless required by the laws applicable to WCT to process personal data;
  - (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (e) notify the Customer without undue delay and in any event within 48 hours, on becoming aware of a personal data breach (and shall provide all reasonable assistance to the Customer and provide regular updates to the Customer where requested), or receives a request on behalf of a data subject which relates to Customer Data;
- (f) at the written direction of the Customer, securely delete or return personal data and copies thereof to the Customer on termination or expiry of the Agreement unless required by law to store the personal data (in which event, WCT shall inform the Customer what it is retaining and the legal reasons why it needs to be retained);
- (g) maintain complete and accurate records and information to demonstrate its compliance with this schedule, and within 21 days of written request, provide the Customer with all information reasonably necessary to demonstrate compliance with its obligations under this clause; and
- (h) allow for and contribute to audits, including inspections during normal working hours, by the Customer (or an auditor nominated by the Customer) in relation to the processing of the personal data by WCT or its sub-processors, provided WCT is given reasonable notice of such audits and inspections.

### **3. TRANSFERS OF PERSONAL DATA**

- 3.1 The Customer authorises WCT to transfer personal data to any country or territory outside of the United Kingdom as reasonably necessary for the provision of the Services, provided that WCT complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred.

### **4. SUB-PROCESSORS**

- 4.1 WCT may use sub-processors already engaged by it as at the date of this Agreement. Details of such sub-processors are available on request. WCT confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement which complies with the requirement of Data Protection Legislation.
- 4.2 WCT has published the criteria against which it will appoint any future sub-processor. WCT shall be permitted to appoint any new or replacement sub-processor according to the published criteria. WCT shall not change the criteria without the consent of the Customer. The criteria can be found at <https://whatcausedthis.com/sub-processor-criteria/>