



Terms of Use - Important please read carefully

The following terms and conditions (**Terms**) shall form part of the agreement (**Agreement**) between Texthelp Ltd (**Texthelp**) who is a company incorporated and registered in Northern Ireland with a company number NI031186 whose registered office is at Lucas Exchange, 1 Orchard Way, Antrim, Co, Antrim, BT41 2RU and the person or entity who has signed a Quotation (together with its Affiliates, the **Customer**). By agreeing to Texthelp's Quotation or otherwise accessing or using the Product(s), the Customer acknowledges that it has read, understands and agrees to be bound by these Terms.

Texthelp and the Customer shall be collectively known as the "**Parties**" or individually as a "**Party**".

Definitions

The defined terms are set out in clause 17 of these Terms.

Introduction

Texthelp agrees to provide the Customer with the Product(s) (and associated Support) as set out in the Quotation. The Quotation must be in writing and reference these Terms to be valid. The Quotation shall be governed by these Terms and any contrary or additional terms are deemed null and void and of no effect unless agreed by ticking the "accept" box prior to acceptance of the Quotation.

Term and Termination

The term of this Agreement is effective from and shall be in force: (i) from the Commencement Date specified in the Quotation until terminated in accordance with this clause 3; or (ii) where the Quotation specifies a fixed term, the duration specified therein (as applicable) (the **Term**). Where the Quotation specifies a fixed term, this Agreement shall auto renew for successive twelve (12) month periods (each a **Renewal Period**) unless and until the Customer provides written notice of termination at least 30 days prior to the end of the Term or the then current Renewal Period (as applicable).

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:

- the other Party is in material breach of the Agreement and fails to cure such breach within thirty (30) days of receipt of written notice. For clarity, material breach shall include the Customer's failure to pay, undisputed invoices on the due date for payment and remaining in default not less than 45 days following the due date for payment; or
- the other Party suffers an Insolvency Event.

In addition to clause 3.2, Texthelp may suspend the Customer's access to the Product(s) and/or terminate this Agreement if the Customer's use of the Product(s) is at any time in breach of clauses 4, or in a manner that is otherwise unlawful .

Texthelp may discontinue:

- a functionality of a Product from time to time provided that such discontinuation does not result in a material detrimental reduction to the Customer's use of the Products to which it is subscribed to (as set out in the Quotation); and
- a Product or a material functionality of a Product from time to time provided that prior to any discontinuation Texthelp will provide at least twelve (12) months' advance notice to the Customers that may be affected pursuant to this clause 3.3, except that this notice will not be required if the twelve (12) month notice period: (i) poses a security or IPR risk to the Product, (b) is materially economically or technically burdensome or (c) would cause Texthelp to contravene any applicable law.

On termination of this Agreement for any reason: (a) all licences granted under this Agreement, and Support provided by Texthelp, shall immediately terminate; (b) each Party shall return and make no further use of Confidential Information belonging to the other Party; (c) all undisputed Fees committed or owed by the Customer to Texthelp as at the effective date of termination will become immediately due and payable; (d) Texthelp shall retain and/or destroy or otherwise dispose of any of the Customer Data in its possession in accordance with its data retention policy ; and (e) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced.

The following provisions shall survive any termination of this Agreement: clauses 3.5, 6, 9, 10, 11, 12, 13, 14 and 16.

Licence

Subject to the terms and conditions of this Agreement, Texthelp hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Product(s) specified in the Quotation and/or any Documentation during the Term solely for the Customer's internal business operations.

The restrictions set out in these Terms represent conditions of the Customer's licence. Accordingly, the Customer hereby agrees that: (i) the maximum number of Authorised Users that it authorises to access and use the Product(s) shall not exceed the number of Authorised Seats it has purchased from time to time; (ii) it will procure that each of its Authorised Users shall keep a secure password for their use of the Product(s) (if applicable), that such password (if applicable) shall be changed at regular intervals and in accordance with any security requirements that are imposed by the Customer and that each Authorised User shall keep their password confidential; and (iii) it shall permit Texthelp or Texthelp's designated auditor to audit the Customer's data processing facilities to confirm compliance with these Terms (**Audit**). If an Audit reveal that the Customer has underpaid Product Fees to Texthelp, then without prejudice to Texthelp's other rights, the Customer shall pay to Texthelp an amount equal to such underpayment as calculated in accordance with the prices set out the relevant Quotation within 10 Business Days of the date of the relevant Audit.

The Customer shall, and shall procure its Authorised Users shall, not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Products that:

- is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- facilitates illegal activity;
- depicts sexually explicit images;

promotes unlawful violence;
is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
is otherwise illegal or causes damage or injury to any person or property,

and Texthelp reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

The Customer shall not (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): (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product(s) in any form or media or by any means; de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product(s); (b) access all or any part of the Product(s) in order to build a product or service which competes with the Product(s); (c) sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product(s) available to any third party except the Authorised Users, (d) attempt to obtain, or assist third parties in obtaining, access to the Product(s), other than as provided under this 4; and/or (e) introduce or permit the introduction of, any Virus into Texthelp's network and information systems.

The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Product(s) and, in the event of any such unauthorised access or use, promptly notify Texthelp.

Support

Texthelp shall provide Support to the Customer in accordance with Schedule 1.

Data Protection

For the purposes of this clause 6, the terms **Commissioner**, **controller**, **data subject**, **personal data**, **personal data breach**, **processor** and **processing**, shall have the meaning given to them in the UK GDPR, and supervisory authority shall have the meaning given to it in the EU GDPR.

Each Party shall comply with all applicable requirements of the Applicable Data Protection Laws. This clause 6 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Applicable Data Protection Laws.

The Parties have determined that, for the purposes of Applicable Data Protection Laws and processing Customer Personal Data, the Customer is the Controller and Texthelp is the Processor, and Texthelp are a Controller in relation to any processing described in our privacy and cookie policies located at www.texthelp.com. Our Data Protection Addendum (DPA) <https://text.help/DPA> sets out the scope, nature and purpose of processing by Texthelp, the duration of the processing and the types of personal data and categories of data subject. For clarity, the DPA shall form part of this Agreement.

If the determination in clause 6.3 changes, the Parties shall use all reasonable endeavours to make any changes that are necessary to this clause 6 and the DPA.

Texthelp's obligations

Texthelp warrants that the Product(s) will perform materially in accordance with the applicable Documentation and any Support will be performed with reasonable skill and care.

The warranty at 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Product(s) contrary to Texthelp's instructions, or modification or alteration of the Product(s) by any party other than Texthelp or Texthelp's duly authorised contractors or agents.

If, during the Term, (a) Texthelp is promptly notified (in writing) by the Customer that a Product is not conforming with the warranty at clause 7.1; and (b) Texthelp confirms the issue and that the relevant Product does not meet any of the conditions set out in clause 7.2, then, as Texthelp's entire liability and the Customer's sole remedy for such breach of warranty, Texthelp shall (at Texthelp's sole option and expense) correct, repair or replace the Product within a reasonable time period or provide or authorise a refund of any pre-paid, unused Product Fees, in which case the Agreement shall terminate.

Texthelp does not warrant that: (a) the Customer's use of the Product(s) will be uninterrupted or error-free; (b) that the Product(s), Documentation and/or the information obtained by the Customer through the Support services will meet the Customer's requirements or (c) the Product(s) will be free from Viruses (provided that Texthelp has taken reasonable steps including using industry standard anti-virus software to protect the Product(s) against Viruses). Furthermore, Texthelp shall not be held 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 Product(s) and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

This Agreement shall not prevent Texthelp 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.

Texthelp warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

Texthelp shall perform daily back-ups of the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Texthelp shall be for Texthelp to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Texthelp. Texthelp shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Texthelp to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

Customer's obligations

The Customer shall:

- provide Texthelp with all necessary: (i) co-operation in relation to this Agreement; and (ii) access to such information as may be required by Texthelp in order to provide the Product(s), including but not limited to Customer Data, security access information and configuration services;
- without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Texthelp may adjust any agreed timetable or delivery schedule as reasonably necessary;
- ensure that the Authorised Users use the Product(s) in accordance with the terms of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- obtain and shall maintain all necessary licences, consents, and permissions necessary for Texthelp, its contractors and agents to perform their obligations under this Agreement, including without limitation the Product(s); and
- ensure that its network and systems comply with the relevant specifications provided by Texthelp from time to time.

Customer Data

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.

Without prejudice to the foregoing, the Customer expressly acknowledges that Texthelp does not create or validate any Customer Data processed or used in conjunction with the Product(s) and/or any associated outputs created or generated by the Customer in using, or via, the Products (**Outputs**). The Customer assumes sole responsibility for any results obtained from the use of the Products, Support and/or for any conclusions drawn from such use, and Texthelp disclaims all liability for any loss or damage caused by errors or omissions in any Outputs.

Product Fees and Payment

The Product Fees are stated in the Quotation. The Customer shall pay the Product Fees to Texthelp in accordance with this 10 and the Quotation. No refunds will be made except for as provided in clause 7.3 and clause 13.3. Product Fees shall be payable in the currency as set out in the Quotation and are exclusive of applicable sales tax (including value added tax), which shall be added to Texthelp's invoice(s) at the appropriate rate.

The Customer shall on the Commencement Date provide to Texthelp valid, up-to-date and complete payment details and any other relevant valid, up-to-date and complete contact and billing details and Texthelp shall:

invoice or bill (as applicable) the Customer on the Commencement Date for the Product Fees payable in respect of the Term; and
subject to 3.1:

bill the Customer using the relevant payments details on; or
invoice the Customer at least 30 days prior to,

each anniversary of the Commencement Date for the Product Fees payable in respect of the next Renewal Period (as applicable).

If Texthelp has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Texthelp:

Texthelp may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Product(s) and Texthelp shall be under no obligation to re-activate access to any or all of the Product(s) while the relevant invoice(s) remain unpaid; and

interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Texthelp's bankers in the UK from time to time (or at 4% a year for any period when that base rate is below 0%), commencing on the due date and continuing until fully paid, whether before or after judgment.

Texthelp shall increase the Product Fees in line with the then current prices of Texthelp and its suppliers, including (without limitation) on an annual basis: (i) automatically increasing Product Fees by 5% for a non-profit "Education" Customer and (ii) having the right to increase Product Fees by up to 10% for a "Workplace" Customer (as determined by Texthelp at its sole discretion) provided Texthelp serves the relevant Customer with 30 days' prior written notice of such revised Product Fees. Any changes to the Product Fees pursuant to this clause 10.4 shall take effect on expiry of the 30 day notice period.

IPR Ownership

The Customer acknowledges and agrees that Texthelp and/or its licensors own all existing and future IPR in the Product(s), Documentation and any Support provided (together, the "**Texthelp IP**"). Except as expressly stated herein, this Agreement does not grant the Customer any rights or licences to, under, or in, the Texthelp IP. The Customer agrees to inform Texthelp promptly of any infringement of the Texthelp IP that comes to the Customer's attention.

Texthelp confirms that it has all the rights in relation to Texthelp IP as is necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

Confidentiality

Each Party shall keep the other Party's Confidential Information confidential and take all reasonable steps to ensure that the other Party's Confidential Information to which it has access is not disclosed or distributed by its Representatives or otherwise in violation of the terms of this Agreement

Subject to clause 12.5, neither Party shall disclose the other Party's Confidential Information to any third party unless the other Party consents in writing to the disclosure of such Confidential Information and that Party procures that such third party enters into a confidentiality agreement on terms equivalent to those contained in this Agreement.

Subject to this clause 12, each Party shall only use the other Party's Confidential Information disclosed to it for the purposes of this Agreement including the purpose of exercising or performing its rights and obligations under this Agreement.

The provisions of this clause shall not apply to any Confidential Information that: (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause), (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party, (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality Agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; (d) the Parties agree in writing is not confidential or may be disclosed; or (e) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

A Party may disclose the other party's Confidential Information to those of its Representatives who "need to know" such Confidential Information in order to perform their obligations pursuant to this Agreement, provided that the disclosing Party: (a) informs such Representatives of the confidential nature of the Confidential Information before any disclosure is made, (b) is at all times responsible for such Representatives' compliance with the confidentiality obligations set out in this clause and (c) keeps a written record of those persons.

A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.

Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach of this clause 12 and that an affected Party shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this clause 12

Neither Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

Indemnity

Subject to clause 13.2, Texthelp shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Product(s) or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

Texthelp is given prompt notice of any such claim by the Customer within ten (10) days of receiving written notice of any threat or claim;
the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Texthelp in the defence and settlement of such claim, at Texthelp's expense; and
Texthelp is given sole authority to defend or settle the claim; and
the Customer mitigates its losses insofar as is reasonable in the circumstances.

In no event shall Texthelp, its employees, agents and sub-contractors be liable to the Customer pursuant to clause 13.1 or otherwise to the extent that the alleged infringement is based on:

any content, material or information (including Customer Data) that has been uploaded, embedded or otherwise displayed or stored on the Product(s) by a Customer;
a modification of the Product(s) or Documentation by anyone other than Texthelp; or
the Customer's use of the Product(s) or Documentation:

in a manner not in accordance with this Agreement or the Documentation, if the third party claim would have thereby otherwise been avoided;
with other software, services or products not provided by Texthelp, if the actual or alleged claim in question would have been avoided by the independent use of the relevant Product; or
after notice of the alleged or actual infringement from Texthelp or any appropriate authority.

If, during the Term, Texthelp reasonably believes that a Product infringes any third parties IPR, then, Texthelp may (at its sole discretion): (a) procure the right for the Customer to continue using the relevant Product, (b) replace the Product or (c) modify the Product so that it becomes non-infringing. If none of the aforementioned remedies are commercially reasonable, Texthelp may terminate the licence for the allegedly infringing Product and refund all of the Customer's un-used, pre-paid, Product Fees from the date a third party claim arose for the allegedly infringing Product to the then-current date, whereupon this Agreement shall automatically terminate.

This clause 13 sets out the Customer's sole and exclusive rights and remedies, and Texthelp's (including Texthelp's employees', agents' and sub-contractors') entire obligations and liability, for any third party IPR claims for infringement.

Limitation of liability

Except as expressly and specifically provided in this Agreement:

the Customer assumes sole responsibility for results obtained from the use of the Product(s) and the Documentation by the Customer, and for conclusions drawn from such use. Texthelp shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Texthelp by the Customer in connection with the Product(s), or any actions taken by Texthelp at the Customer's direction;

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

the Product(s) and the Documentation are provided to the Customer on an "as is" basis.

Nothing in this Agreement excludes the liability of either Party:

for death or personal injury caused by Texthelp's negligence; or

for fraud or fraudulent misrepresentation.

Subject to clause 14.1 and clause 14.2:

Texthelp shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any 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 for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

Texthelp's total aggregate liability in contract (including in respect of the indemnity at clause 13.1), 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 lesser of £1,000,000 or the total Product Fees paid for the Authorised Seats during the 12 months immediately preceding the date on which the claim arose.

Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Texthelp's IPR.

Subject to clause 14.1, clause 14.2 and clause 14.4, the Customer's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited as follows:

for non-payment of undisputed invoices for Products purchased, to the amount unpaid, and any interest due on such amount under clause 10.3;
or

for any other type of liability, as an aggregate of all claims, to £1,000,000.

Notices

Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company). Without prejudice to the foregoing, any notices required to be given to Texthelp or questions concerning this Agreement can be sent via email to info@texthelp.com.

Any notice shall be deemed to have been received:

if delivered by hand, at the time the notice is left at the proper address; or
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.

This clause 15 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.

General Provisions

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 events, circumstances or causes beyond such Party's reasonable control including (without limitation) riots, natural catastrophes, terrorist acts, governmental intervention, failing to grant a necessary licence or consent or other act of god (each, a "**Force Majeure Event**"). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 40 continuous days, the Party not affected may terminate this Agreement by giving 7 days' written notice to the affected Party.

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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.

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.

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

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.

If any provision or part-provision of this Agreement is deemed deleted under 16.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

This Agreement constitutes 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. Notwithstanding the foregoing, a Quotation may modify or amend certain provisions of the main body of this Agreement by making specific reference to the provision to be modified and setting forth the controlling provision, provided the Quotation is signed by both Parties.

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.

Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

The Customer shall not, without the prior written consent of Texthelp, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Texthelp may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

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, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

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.

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has delivered to the other at least one executed counterpart.

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.

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).

Definitions

The definitions and rules of interpretation in this clause apply in this Agreement.

Applicable Data Protection Laws: means:

to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and

to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Texthelp is subject, which relates to the protection of personal data.

Audit: shall have the meaning given to it in clause 4.2.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Product(s), as further described in 4.2.

Authorised Seats: means the authorised seats purchased by the Customer as set out in an agreed Quotation which entitles Authorised Users to access and use the Products in accordance with this Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: means the date specified in an agreed Quotation.

Confidential Information or CI: means confidential and proprietary information (whether in written, oral or electronic form) that: (a) is by its nature confidential; and/or (b) is designated by a Party as confidential; or (c) the other Party knows or ought to know is confidential; and includes, but is not limited to the terms of this Agreement, trade secrets, know-how, inventions, techniques, processes, software programs and other IT related information, documentation, schematics, procedures, contracts, databases, business information, financial information, budgets, sales, marketing, insurance secrets, anti-money laundering and compliance data, ideas, strategies, designs, projections, business plans, strategic expansion plans, products and product designs, sourcing information, potential product labelling and marking ideas, unpublished information relating to the IPR of either Party, and all communications between the Parties and other non-public information relating to the Parties' business.

Contract Year: each successive 12 month period during the Term, the first of such periods commencing on the Commencement Date, with subsequent "**Contact Years**" commencing on the corresponding anniversary of such date.

Customer Data: means any data, documentation or Customer Confidential Information that is inputted by the Customer, Authorised Users, or Texthelp on the Customer's behalf for the purpose of using the Products.

Customer Personal Data: means any personal data which Texthelp processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

Documentation: the document made available to the Customer by Texthelp from time to time which sets out amongst other things the user instructions for the Product(s) consisting of the applicable installation guides, service descriptions, technical specifications and online help files.

DPA: shall have the meaning set out in clause 6.3.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679).

Insolvency Event: means in relation to any Party, if that Party:

becomes or is declared insolvent, has a liquidator, receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction) or if a court makes an order to that effect;

by reasons of financial difficulties suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

is the subject of any events or circumstances analogous to any of the events described in paragraphs (a) and (b) in this definition in any applicable jurisdiction.

Intellectual Property Rights or IPR means patents, rights to inventions, copyright, trademarks and service marks, business names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how), trade secrets and all other similar or equivalent rights to any of the foregoing situated anywhere in the world, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights.

Normal Business Hours: 8.00 am to 5.00 pm local UK time, each Business Day.

Product means Texthelp's online proprietary software applications and tools to enhance Authorised Users learning and working styles as is set out in the Quotation, together with any necessary fixes, updates or enhancements thereto but not including any additional products or services that Texthelp may make commercially available from time to time.

Product Fees: means all applicable fees payable by the Customer to Texthelp for the Authorised Seats as set out in the applicable Quotation.

Quotation: means Texthelp's standard Quotation to be signed by the Customer in accordance with these Terms and which sets out the details of the Customer's order for Products and/or Support from Texthelp.

Representatives: means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisers.

Renewal Period: the period described in 3.1.

Support: means any support, training and/or maintenance services that are provided by Texthelp to the Customer pursuant to an agreed Quotation as further described in Schedule 1.

Term: has the meaning given in 3.1 (being the Term together with any subsequent Renewal Periods).

UK GDPR has the meaning given to it in the Data Protection Act 2018.

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.

Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

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.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

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.

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.

A reference to **writing** or **written** excludes fax but not email.

References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to paragraphs of the relevant Schedule to this Agreement.

Schedule 1 – Support

Support Services

Texthelp shall, during the Term, provide the Product(s) and make available the Support to the Customer on and subject to the terms of this Agreement.

Texthelp shall use commercially reasonable endeavours to make the Product(s) available 24 hours a day, seven days a week, except for:

- planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
- unscheduled maintenance performed outside Normal Business Hours, provided that Texthelp has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

Texthelp will, as part of the Product(s) and at no additional cost to the Customer, provide the Customer with Texthelp's standard customer support services during Normal Business Hours in accordance with this Schedule in effect at the time that the Product(s) are provided. Texthelp may amend the Support services in its sole and absolute discretion from time to time.

If any performance issues arise, the Customer may contact Texthelp:

By Phone

Support is available via phone from 9am to 5pm British Standard Time, Monday through Friday. For support via phone: UK toll-free 0800-328-7910, North America toll-free 888-248-4947, Rest of World +44 2894428105.

By Email

The Customer can also communicate any issues to Texthelp by email. When emailing Texthelp about an issue, the Customer shall use the name of the relevant Product(s) that it is experiencing issues with in the subject line of the email. Support is available via email from 9am to 5pm British Standard Time Monday through Friday. For Maintenance and Support via email: support@texthelp.com

Training Materials / Technology Support Tools

Texthelp shall provide the Customer with, and access to, any new training materials and technology support tools for Products(s), developed by Texthelp from time to time.

Critical Hosting Service Interruption

Texthelp warrants to deliver the Product(s) either from its own servers or through a bona fide 3rd party hosting service. Any third party hosting service shall be required to provide continuity of service guarantees in line with industry standards for delivery of streamed speech. Texthelp reserves the right to change the hosting service from time to time.

Service Levels

Texthelp shall use all reasonable commercial efforts, being no less than prevailing industry standards in this regard, to ensure the Product(s) is/are available to the Customer 99.50% of the time in any calendar month. If it is not, the Customer may be eligible to receive the Service Credits described below.

In order to receive any of the Service Credits described above, the Customer must notify Texthelp by email or otherwise in writing within thirty (30) days from the time the Customer becomes eligible to receive a Service Credit.

The aggregate maximum number of Service Credits claimable for any and all Downtime Periods that occur in any Contract Year shall not exceed thirty days of the Product(s) added to the end of Term. Service Credits may not be exchanged for, or converted to, monetary compensation.

Exclusions: This SLA regime will not apply to any performance issues: (i) caused by factors outside of Texthelp's reasonable control; (ii) that resulted from any actions or inactions of the Customer or any third parties; or (iii) that resulted from Customer's equipment and/or third party equipment (not within the primary control of licensor). This SLA regime shall be the Customer's sole and exclusive remedy for any failure by Texthelp to provide the Product(s) as a result of downtime, except as may be otherwise agreed.

Definitions

"Downtime" means that the Product(s) is/are not responding.

"Downtime Period" means the amount of time the Product(s) is/are not available and must be 10 consecutive minutes or more.

"Monthly Uptime Percentage" means the total number of minutes in the calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in the calendar month, divided by the total number of minutes in the calendar month.

"Scheduled Downtime" means those times where Texthelp gives notification of periods of Downtime five (5) days prior to the commencement of such Downtime. There will be no more than twelve (12) hours of Scheduled Downtime per calendar year. Scheduled Downtime is not considered Downtime for purposes of this Agreement and will not be counted towards any Downtime Periods.

"Service Credit" may be provided according to the following schedule:

One day Credit: Includes One (1) day of Product(s) to be added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is between 99.5% and 97.0%;

One week Credit: Includes Seven (7) days of Product(s) added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is between 97.0% and 95.0%;

Two weeks Credit: Includes Fourteen (14) days of Product(s) added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is less than 95.0%.