Contents

TERMS AND CONDITIONS

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions.

1.   Definitions

1.1   Except to the extent expressly provided otherwise, in these Terms and Conditions:

"**Acceptance Criteria**" means:

   a)   the Platform and Hosted Services conforming in all respects with the Hosted Services Specification; and

   b)   the Hosted Services being free from Hosted Services Defects;

"**Acceptance Period**" means a period of 10 Business Days following the making available of the Hosted Services to the Customer for the purposes of testing in accordance with Clause 4 or any repeated making available of the Hosted Services to the Customer for the purposes of testing in accordance with Clause 4, or such other period or periods as the parties may agree in writing;

"**Acceptance Tests**" means a set of tests designed to establish whether the Hosted Services meet the Acceptance Criteria, providing that the exact form of the tests shall be determined and documented by the Customer acting reasonably, and communicated to the Provider in advance of the carrying out of the tests;

"**Account**" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:30 GMT/BST on a Business Day;

"**Charges**" means the following amounts:

   a)   the amounts specified in Section 5 of the Services Order Form;

   b)   such amounts as may be agreed in writing by the parties from time to time

"**Confidential Information**" means the Provider Confidential Information and the Customer Confidential Information;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Customer**" means the person or entity identified as such in Section 1 of the Services Order Form;

"**Customer Confidential Information**" means:

   a)   any information disclosed by the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
      i.   was marked or described as "confidential"; or
      ii.   should have been reasonably understood by the Provider to be confidential; and

   b)   the Customer Data;

"**Customer Data**" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"**Customer Indemnity Event**" has the meaning given to it in Clause 27.3;

"**Customer Personal Data**" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement, but excluding personal data with respect to which the Provider is a data controller;

"**Customer Systems**" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

"**Customisation**" means a customisation of the Hosted Services, whether made through the development, configuration or integration of software, or otherwise;

"**Data Protection Laws**" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"**Effective Date**" means the date upon which the parties execute a hard-copy Services Order Form; or, following the Customer completing and submitting the online Services Order Form published by the Provider on the Provider's website, the date upon which the Provider sends to the Customer an order confirmation;

"**Expenses**" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under the Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means 'topbox', as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

"**Hosted Services Defect**" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"**Hosted Services Specification**" means the specification for the Platform and Hosted Services set out in Section 3 of the Services Order Form and in the Documentation;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Maintenance Services**" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"**Minimum Term**" means, in respect of the Agreement, the period of time as defined in the topbox Order Form, beginning on the date of the first invoice for the Charges. If no Minimum Term is stated in the order form, then the Minimum Term shall deemed to be 12 months, beginning on the date of the first invoice for the Charges.

"**Mobile App**" means the mobile application known as 'topbox driver' that is made available by the Provider through the Google Play Store and the Apple App Store;

"**Personal Data**" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"**Provider**" means DA Systems Limited, a company incorporated in England and Wales (registration number 3699510) having its registered office at Aston Court, Kingsmead Business Park, Loudwater, High Wycombe HP11 1JU;

"**Provider Confidential Information**" means:

a)   any information disclosed by or on behalf of the Provider to the Customer at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and

b)   the terms of the Agreement.

"**Provider Indemnity Event**" has the meaning given to it in Clause 27.1;

"**Remedy Period**" means a period of 20 Business Days following the Customer giving to the Provider a notice that the Hosted Services have failed the Acceptance Tests, or such other period as the parties may agree in writing;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"**Services Order Form**" means an online order form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

"**Set Up Services**" means the configuration, implementation and integration of the Hosted Services in accordance with Section 2 of the Services Order Form;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Supported Web Browser**" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

"**Term**" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"**Terms and Conditions**" means all the documentation containing the provisions of the Agreement, namely the Services Order Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

"**Third Party Services**" means any hosted or cloud services provided by any third party that may transmit data to and/or from the Hosted Services;

"**Update**" means a hotfix, patch or minor version update to any Platform software; and

"**Upgrade**" means a major version upgrade of any Platform software.

2. Term
2.1   The Agreement shall come into force upon the Effective Date.
2.2   The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 30.
2.3   Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

3. Set Up Services
3.1   The Provider shall provide the Set Up Services to the Customer.
3.2   The Provider shall use reasonable endeavours to ensure that the Set Up Services are provided in accordance with any timetable set out in Section 2 of the Services Order Form.
3.3   The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 28.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
3.4   Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

4. Acceptance procedure
4.1   During each Acceptance Period, the Customer shall carry out the Acceptance Tests.
4.2   The Provider shall provide to the Customer at the Customer's cost and expense all such assistance and co-operation in relation to the carrying out of the Acceptance Tests as the Customer may reasonably request.
4.3   Before the end of each Acceptance Period, the Customer shall give to the Provider a written notice specifying whether the Hosted Services have passed or failed the Acceptance Tests.

4.4   If the Customer fails to give to the Provider a written notice in accordance with Clause 4.3, then the Hosted Services shall be deemed to have passed the Acceptance Tests.

4.5   If the Customer notifies the Provider that the Hosted Services have failed the Acceptance Tests, then the Customer must provide to the Provider, at the same time as the giving of the notice, written details of the results of the Acceptance Tests including full details of the identified failure.

4.6   If the Customer notifies the Provider that the Hosted Services have failed the Acceptance Tests:

   (a) if the Provider acting reasonably agrees with the Customer that the Hosted Services have not passed the Acceptance Tests, then the Provider must correct the issue and make available the corrected Hosted Services to the Customer before the end of the Remedy Period for a further round of Acceptance Tests; or

   (b) otherwise, then the parties must meet as soon as practicable and in any case before the expiry of the Remedy Period and use their best endeavours to agree whether the Hosted Services have not passed the Acceptance Tests, and if appropriate a plan of action reasonably satisfactory to both parties, and they must record any agreement reached in writing.

4.7   Notwithstanding the other provisions of this Clause 4, but subject to any written agreement of the parties to the contrary, the maximum number of rounds of Acceptance Tests under this Clause 4 shall be 3, and if the final round of Acceptance Tests is failed, the Provider shall be deemed to be in material breach of the Agreement.

4.8   A notification by the Customer that the Hosted Services have passed the Acceptance Tests will not prejudice the Customer's rights in the event of a breach of any warranty given by the Provider to the Customer in the Agreement in relation to the Hosted Services; nor will any deemed passing of the Acceptance Tests under this Clause 4.

5.   **Hosted Services**

5.1   The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account upon the completion of the Set Up Services.

5.2   The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer during the Term.

5.3   The licence granted by the Provider to the Customer under Clause 5.2 is subject to the following limitations:

   (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer or a customer of the Customer.

5.4   Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 5.2 is subject to the following prohibitions:

   (a) the Customer must not sub-license its right to access and use the Hosted Services;

   (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;

   (c) the Customer must not republish or redistribute any content or material from the Hosted Services;

   (d) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and

   (e) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

5.5   The Customer shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an Account.

5.6   The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.

5.7   The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an Account comply with Schedule 1 (Acceptable Use Policy).

5.8   The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

5.9   The Customer must not use the Hosted Services:

        (a) in any way that is unlawful, illegal, fraudulent or harmful; or

        (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

5.10   For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

6.   Customisations

6.1   The Provider and the Customer may agree that the Provider shall design, develop and implement a Customisation or Customisations in accordance with a specification and project plan agreed in writing by the parties.

6.2   All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider (unless the parties agree otherwise in writing).

6.3   From the time and date when a Customisation is first delivered or made available by the Provider to the Customer, the Customisation shall form part of the Platform, and accordingly from that time and date the Customer's rights to use the Customisation shall be governed by Clause 5.

6.4   The Customer acknowledges that the Provider may make any Customisation available to any of its other customers or any other third party at any time after making available of the Customisation to the Customer.

7.   Maintenance Services

7.1   The Provider shall provide the Maintenance Services to the Customer during the Term.

7.2   The Provider shall provide the Maintenance Services with reasonable skill and care.

7.3   The Provider shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).

7.4   The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 7 days written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

8.   Support Services

8.1   The Provider shall provide the Support Services to the Customer during the Term.

8.2   The Provider shall provide the Support Services with reasonable skill and care.

8.3   The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).

8.4   The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 7 days written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

9.   Customer obligations

9.1   Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:

        (a) co-operation, support and advice;

        (b) information and documentation; and

(c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

9.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Agreement.

9.3 The Customer undertakes to use the Services in good faith for the purpose they have been provided and to observe the Provider's fair us policy (communicated to the Customer) from time to time, and to indemnify and hold harmless the Provider against any breach of this clause or any other provision of this Agreement.

10. Customer Systems

10.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements of Section 4 of the Services Order Form in all material respects, subject to any changes agreed in writing by the Provider.

11. Customer Data

11.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.

11.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

11.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 7 days.

12. Integrations with Third Party Services

12.1 The Hosted Services are integrated with those Third Party Services identified in the Documentation as at the Effective Date. The Provider may integrate any Third Party Services with the Hosted Services at any time.

12.2 The Provider may remove, suspend or limit any Third Party Services integration at any time in its sole discretion.

12.3 The supply of Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. The Provider does not contract to supply the Third Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third Party Services.

12.4 The Customer acknowledges that:
(a) the integration of Third Party Services may entail the transfer of Customer Data from the Hosted Services to the relevant Third Party Services; and
(b) the Provider has no control over, or responsibility in respect of, any disclosure, modification, deletion or other use of Customer Data resulting from any integration with any Third Party Services.

12.5 Without prejudice to its other obligations under this Clause 12, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:

(a) the transfer of relevant Customer Personal Data to a provider of Third Party Services is lawful; and

(b) the use of relevant Customer Personal Data by a provider of Third Party Services is lawful.

12.6 The Customer shall have the opportunity to consent to transfers of Customer Data to any Third Party Services operator. The Provider must ensure that such transfers shall not take place without the consent of the Customer.

12.7 The Customer hereby consents to the transfer of the Customer Data to the Third Party Services.

12.8 The use of some features of the Hosted Services may depend upon the Customer enabling and agreeing to integrations between the Hosted Services and Third Party Services.

12.9 The Customer warrants to the Provider that the transfer of Customer Data by the Provider to a provider of Third Party Services in accordance with this Clause 12 will not infringe any person's legal or contractual rights and will not put the Provider in breach of any applicable laws.

12.10 Additional Charges may be payable by the Customer to the Provider in respect of a Third Party Services integration, as set out in Section 5 of the Services Order Form.

12.11 Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 28.1:

(a) the Provider gives no warranties or representations in respect of any Third Party Services; and

(b) the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by any Third Party Services or any provider of Third Party Services.

13. Mobile App

13.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly these Terms and Conditions shall not govern any such use, rights, obligations or liabilities.

14. No assignment of Intellectual Property Rights

14.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

15. (removed)

16. Management

16.1 The parties shall hold management meetings at each party's offices, by telephone conference or using internet-based conferencing facilities at the reasonable request of either party.

16.2 A party requesting a management meeting shall give to the other party at least 10 Business Days' written notice of the meeting.

17. (removed)

18. Charges

18.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.

18.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 18.2.

18.3   All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

18.4   The Provider may elect to vary any element of the Charges once in each calendar year by giving to the Customer no less that 30 days' written notice of the variation, providing that no such variation shall exceed +5%.

19.   Expenses

19.1   The Customer shall reimburse the Provider in respect of any Expenses, providing that the Provider must obtain the prior written authorisation of the Customer before incurring any Expenses exceeding such limitations as may be agreed in writing by the parties from time to time.

19.2   The Provider must collect and collate evidence of all Expenses, and must retain such evidence during the Term and for a period of 90 days following the end of the Term.

19.3   Within 10 Business Days following receipt of a written request from the Customer to do so, the Provider must supply to the Customer such copies of the evidence for the Expenses in the possession or control of the Provider as the Customer may specify in that written request.

20.   Timesheets

20.1   The Provider must:
   (a) ensure that the personnel providing Services, the Charges for which will be based in whole or part upon the time spent in the performance of those Services, complete reasonably detailed records of their time spent providing those Services; and
   (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.

20.2   Within 10 Business Days following receipt of a written request, the Provider shall supply to the Customer copies of such of the timesheets referred to in Clause 20.1 and in the Provider's possession or control as the Customer may specify in that written request.

21.   Payments

21.1   The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in Section 5 of the Services Order Form.

21.2   The Customer must pay the Charges to the Provider within the period of 7 days following the issue of an invoice in accordance with this Clause 21.

21.3   The Customer must pay the Charges by direct debit (using such payment details as are notified by the Provider to the Customer from time to time).

21.4   If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:
   (a) Restrict or suspend access to the Hosted Services until such time the amount has been paid; and
   (b) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
   (c) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

22.   Confidentiality obligations

22.1   The Provider must:
   (a) keep the Customer Confidential Information strictly confidential;

(b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;

(c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;

(d) act in good faith at all times in relation to the Customer Confidential Information.

22.2 The Customer must:

(a) keep the Provider Confidential Information strictly confidential;

(b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent;

(c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;

(d) act in good faith at all times in relation to the Provider Confidential Information.

22.3 Notwithstanding Clauses 22.1 and 22.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

22.4 No obligations are imposed by this Clause 22 with respect to a party's Confidential Information if that Confidential Information:

(a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;

(b) is or becomes publicly known through no act or default of the other party; or

(c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

22.5 The restrictions in this Clause 22 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

22.6 Upon the termination of the Agreement, each party must immediately cease to use the other party's Confidential Information.

22.7 Following the termination of the Agreement, and within 5 Business Days following the date of receipt of a written request from the other party, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its computer systems.

22.8 The provisions of this Clause 22 shall continue in force for a period of 5 years following the termination of the Agreement, at the end of which period they will cease to have effect.

23. Publicity

23.1 Neither party may make any public disclosures relating to the Agreement or the subject matter of the Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, and providing that the following public disclosures may be made without consent:

(a) the fact that the Customer is a customer of the Provider.

23.2 Nothing in this Clause 23 shall be construed as limiting the obligations of the parties under Clause 22.

24. Data protection

24.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

24.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

24.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement:

(a) the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 5 (Data processing information) (or such other categories as may be agreed by the parties in writing); and

(b) Personal Data of the types specified in Part 2 of Schedule 5 (Data processing information) (or such other types as may be agreed by the parties in writing).

24.4 The Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 5 (Data processing information).

24.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 24.

24.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in these Terms and Conditions or any other document agreed by the parties in writing.

24.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:

(a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities in the European Economic Area, providing that such transfers must be protected by appropriate safeguards, namely

i. the Customer Personal Data is only transmitted over a secure connection; and

ii. the Customer Personal Data is deleted once the Provider has completed the task which required the Customer Personal Data to be transferred.

(b) the Provider may transfer the Customer Personal Data to its sub-processors in the jurisdictions identified in Part 5 of Schedule 5 (Data processing information), providing that such transfers must be protected by any appropriate safeguards identified therein; and

(c) the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the European Commission has decided that the country, territory or sector ensures an adequate level of protection for Personal Data.

24.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

24.9 Notwithstanding any other provision of the Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

24.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

24.11 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Part 4 of Schedule 5 (Data processing information).

24.12 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such

changes before their implementation, then the Customer may terminate the Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 24.

24.13   As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, third parties within the categories identified in Part 5 of Schedule 5 (Data processing information).

24.14   The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

24.15   The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.15.

24.16   The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after the Provider becomes aware of the breach.

24.17   The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 24 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.17.

24.18   The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

24.19   The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 24. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of the Agreement or any security breach affecting the systems of the Provider.

24.20   If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

25.   Warranties

25.1   The Provider warrants to the Customer that:

(a)   the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;

(b)   the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and

(c)   the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

25.2   The Provider warrants to the Customer that:

    (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;

    (b) the Hosted Services will be free from Hosted Services Defects;

    (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;

    (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

    (e) the Platform will incorporate security features reflecting the requirements of good industry practice.

25.3   The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

25.4   The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

25.5   If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

    (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or

    (b) procure for the Customer the right to use the Hosted Services in accordance with these Terms and Conditions.

25.6   The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

25.7   All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

26.   Acknowledgements and warranty limitations

26.1   The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

26.2   The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

26.3   The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

26.4   The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

27.   Indemnities

27.1   The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions (a "**Provider Indemnity Event**").

27.2   The Customer must:

   (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;

   (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;

   (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and

   (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 27.1 shall not apply unless the Customer complies with the requirements of this Clause 27.2.

27.3   The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

27.4   The Provider must:

   (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;

   (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;

   (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and

   (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 27.3 shall not apply unless the Provider complies with the requirements of this Clause 27.4.

27.5   The indemnity protection set out in this Clause 27 shall be subject to the limitations and exclusions of liability set out in the Agreement.

28.   Limitations and exclusions of liability

28.1   Nothing in these Terms and Conditions will:

   (a) limit or exclude any liability for death or personal injury resulting from negligence;

   (b) limit or exclude any liability for fraud or fraudulent misrepresentation;

   (c) limit any liabilities in any way that is not permitted under applicable law; or

   (d) exclude any liabilities that may not be excluded under applicable law.

28.2   The limitations and exclusions of liability set out in this Clause 28 and elsewhere in these Terms and Conditions:

   (a) are subject to Clause 28.1; and

   (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

28.3   The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

28.4   The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

28.5   The Provider shall not be liable to the Customer in respect of any loss of revenue or income.

28.6   The Provider shall not be liable to the Customer in respect of any loss of use or production.

28.7   The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

28.8   The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 28.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 11.3.

28.9   The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

28.10   The liability of the Provider to the Customer under the Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.

28.11   The aggregate liability of the Provider to the Customer under the Agreement shall not exceed the greater of the total amount paid and payable by the Customer to the Provider under the Agreement.

29.   Force Majeure Event

29.1   If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

29.2   A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
   (a) promptly notify the other; and
   (b) inform the other of the period for which it is estimated that such failure or delay will continue.

29.3   A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

30.   Termination

30.1   Either party may terminate the Agreement by giving to the other party not less than 3 calendar months written notice of termination, expiring at the end of any calendar month after the end of the Minimum Term.

30.2   Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
   (a) the other party commits any material breach of the Agreement, and the breach is not remediable;
   (b) the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
   (c) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach).

30.3   Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
   (a) the other party:
      i.   is dissolved;
      ii.   ceases to conduct all (or substantially all) of its business;
      iii. is or becomes unable to pay its debts as they fall due;
      iv.   is or becomes insolvent or is declared insolvent; or
      v.   convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or

(d) if that other party is an individual:

    i.   that other party dies;

    ii.   as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

    iii.   that other party is the subject of a bankruptcy petition or order.

30.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:

(a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and

(b) the Provider has given to the Customer at least 7 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 30.4.

30.5 The Agreement may only be terminated in accordance with its express provisions.

31. Effects of termination

31.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.8, 5.10, 12.11, 13, 19.2, 19.3, 20, 21.2, 21.4, 22, 23, 24.1, 24.3, 24.4, 24.5, 24.6, 24.7, 24.8, 24.9, 24.10, 24.11, 24.12, 24.13, 24.14, 24.15, 24.16, 24.17, 24.18, 24.19, 24.20, 27, 28, 31, 32, 35, 36, 37, 38, 39, 40, 41 and 42.

31.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

31.3 Within 7 days following the termination of the Agreement for any reason:

(a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and

(b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement, without prejudice to the parties' other legal rights.

32. Non-solicitation of personnel

32.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Agreement.

32.2 The Provider must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of the Agreement.

33. Notices

33.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.

33.2 Any notice given by the Customer to the Provider under these Terms and Conditions must be:

(a) sent by courier;

(b) sent by recorded signed-for post or;

(c) sent by email

using the relevant contact details set out in Section 6 of the Services Order Form.

33.3 Any notice given by the Provider to the Customer under these Terms and Conditions must be:

(a) sent by courier;

(b) sent by recorded signed-for post or;

(c) sent by email.

using the relevant contact details set out in Section 6 of the Services Order Form.

33.4 The addressee and contact details set out in Section 6 of the Services Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 33.

33.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

33.6 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

(a) in the case of notices sent by courier, upon delivery (verifiable by proof of delivery from the courier);

(b) in the case of notices sent by post, upon delivery (verifiable by proof of delivery from the postal operator);

(c) in the case of notices sent by email, at the time of the sending of an acknowledgement of receipt by the receiving party.

34. Subcontracting

34.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

34.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

34.3 Notwithstanding the provisions of this Clause 34 but subject to any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

35. Assignment

35.1 The Provider must not assign, transfer or otherwise deal with the Provider's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed, providing that the Provider may assign the entirety of its rights and obligations under these Terms and Conditions to any Affiliate of the Provider or to any successor to all or a substantial part of the business of the Provider from time to time.

35.2 The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed.

36. No waivers

36.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

36.2   No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

37.   Severability

37.1   If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

37.2   If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

38.   Third party rights

38.1   The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

38.2   The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

39.   Variation

39.1   The Agreement may not be varied except by means of a written document signed by or on behalf of each party.

40.   Entire agreement

40.1   The Services Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

40.2   Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

40.3   The provisions of this Clause 40 are subject to Clause 28.1.

41.   Law and jurisdiction

41.1   These Terms and Conditions shall be governed by and construed in accordance with English law.

41.2   Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

42.   Interpretation

42.1   In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:
(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
(b) any subordinate legislation made under that statute or statutory provision.

42.2   The Clause headings do not affect the interpretation of these Terms and Conditions.

42.3   References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

42.4   In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

SCHEDULE 1 (ACCEPTABLE USE POLICY)

1.   Introduction

1.1   This acceptable use policy (the "Policy") sets out the rules governing:

    (a) the use of the website at "topbox.pro", any successor website, and the services available on that website or any successor website (the "Services"); and

    (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("Content").

1.2   References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to the Provider (and "we" and "our" should be construed accordingly).

1.3   By using the Services, you agree to the rules set out in this Policy.

1.4   We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

1.5   You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2.   General usage rules

2.1   You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2   You must not use the Services:

    (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or

    (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

2.3   You must ensure that all Content complies with the provisions of this Policy.

3.   Unlawful Content

3.1   Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

3.2   Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

    (a) be libellous or maliciously false;

    (b) be obscene or indecent;

    (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;

    (d) infringe any right of confidence, right of privacy or right under data protection legislation;

    (e) constitute negligent advice or contain any negligent statement;

    (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;

    (g) be in contempt of any court, or in breach of any court order;

    (h) constitute a breach of racial or religious hatred or discrimination legislation;

    (i) be blasphemous;

    (j) constitute a breach of official secrets legislation; or

    (k) constitute a breach of any contractual obligation owed to any person.

3.3   You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question, and in particular for children over 12 years of age.

4.2 Content must not depict violence.

4.3 Content must not be pornographic or sexually explicit.

5. Factual accuracy

5.1 Content must not be untrue, false, inaccurate or misleading.

5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6. Negligent advice

6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.

6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7. Etiquette

7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.

7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.

7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.

7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.

7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.

7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.

7.7 You must ensure that Content does not duplicate other content available through the Services.

7.8 You must ensure that Content is appropriately categorised.

7.9 You should use appropriate and informative titles for all Content.

7.10 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.

8.3 You must not send any spam to any person using any email address or other contact details made available through the Services or that you find using the Services.

8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.

8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

9. Regulated businesses

9.1   You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

9.2   You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.

9.3   You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

10. Monitoring

10.1   You acknowledge that we may actively monitor the Content and the use of the Services.

11. Data mining

11.1   You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12. Hyperlinks

12.1   You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

13. Harmful software

13.1   The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

13.2   The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 2 (AVAILABILITY SLA)

1.   Introduction to availability SLA

1.1   This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.

1.2   In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

1.3   In this Schedule 2, "Downtime" means cumulatively in any calendar month, the number of minutes, from the time that the Customer notifies the Provider and the Provider verifies that the Customer is experiencing a Critical Incident, to the time that Supplier notifies the Customer that such fault has been rectified or the Service has been restored with an acceptable business workaround.

2.   Availability

2.1   The Provider shall use reasonable endeavours to ensure that the uptime for the Hosted Services is at least 99.9% during each calendar month.

2.2   The Provider shall be responsible for measuring uptime and shall do so using any reasonable methodology.

2.3   The Provider shall at the request of the Customer, report uptime measurements to the Customer in writing, in respect of each calendar month, within 10 Business Days following the end of the relevant calendar month.

3.   Service credits

3.1   In respect of each calendar month during which the Hosted Services uptime is less than the commitment specified in Paragraph 2.1, the Customer shall earn service credits in accordance with the provisions of this Part 3.

3.2   The service credits earned by the Customer shall be as follows:

(a) $SC = \frac{D - (T*0.1\%)}{T} \times PP$

Where:

   (i)   "SC" means service credit.
   (ii)   "D" means the number of minutes of Downtime in the calendar month.
   (iii) "T" means the total number of minutes in the calendar month.
   (iv)   "PP" means the Price Plan paid in the previous calendar month (if any).

(b) The Customer shall set out its full and final claim for Service Credits to the Provider in writing within 10 Business Days following the end of any calendar month in which the Customer believes it is entitled to Service Credits. Time shall be of the essence in respect of the Customer submitting its narrative.

(c) The Provider will verify the claim submitted by the Customer and submit its final decision to the Customer in relation to the claim within 10 Business Days of receiving the claim.

3.3   The Provider shall deduct an amount equal to the service credits due to the Customer under this Part 3 from amounts invoiced in respect of the Charges for the Hosted Services. All remaining service credits shall be deducted from each invoice issued following the reporting of the relevant failure to meet the uptime commitment, until such time as the service credits are exhausted.

3.4   Service credits shall be the sole remedy of the Customer in relation to any failure by the Provider to meet the uptime guarantee in Paragraph 2.1.

3.5   Upon the termination of the Agreement, the Customer's entitlement to service credits shall immediately cease, save that service credits earned by the Customer shall be offset against any amounts invoiced by the Provider in respect of Hosted Services following such termination.

4.   Exceptions

4.1   Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Paragraph 2.1:

       (a) a Force Majeure Event;

       (b) a fault or failure of the internet or any public telecommunications network;

       (c) a fault or failure of the Provider's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between the Provider and that company;

       (d) a fault or failure of the Customer's computer systems or networks;

       (e) any breach by the Customer of the Agreement;

       (f) scheduled maintenance carried out in accordance with the Agreement; or

       (g) events which the Customer does not report to the Provider.

SCHEDULE 3 (MAINTENANCE SLA)

1.   Introduction

1.1   This Schedule 3 sets out the service levels applicable to the Maintenance Services.

2.   Scheduled Maintenance Services

2.1   The Provider shall where practicable give to the Customer at least 3 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

2.2   The Provider shall where practicable provide all scheduled Maintenance Services outside Business Hours.

3.   Updates

3.1   The Provider shall give to the Customer written notice of the application of any security Update to the Platform and at least 3 Business Days' prior written notice of the application of any non-security Update to the Platform.

3.2   The Provider shall apply Updates to the Platform as follows:

(a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;

(b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the conclusion of any testing process for the relevant Update; and

(c) other Updates, which are not security Updates, shall be applied to the Platform in accordance with any timetable notified by the Provider to the Customer or agreed by the parties from time to time.

4.   Upgrades

4.1   The Provider shall use reasonable endeavours to produce Upgrades at least once in each calendar year during the Term.

4.2   The Provider shall use reasonable endeavours to give to the Customer at least 3 Business Days' prior written notice of the application of an Upgrade to the Platform.

4.3   The Provider shall use reasonable endeavours to apply each Upgrade to the Platform within any period notified by the Provider to the Customer or agreed by the parties in writing.

SCHEDULE 4 (SUPPORT SLA)

1. Introduction

1.1   This Schedule 4 sets out the service levels applicable to the Support Services.

2. Helpdesk

2.1   The Provider shall use reasonable endeavours to make available to the Customer a helpdesk in accordance with the provisions of this Schedule 4.

2.2   The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

2.3   The Provider shall use reasonable endeavours to ensure that the helpdesk is accessible by email and using the Provider's web-based ticketing system.

2.4   The Provider shall use reasonable endeavours to ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.

2.5   The Provider shall provide a special telephone number and PIN number for the Customer to report critical issues outside of Business Hours during the term. Calls to this out of hours number will be charged and invoiced for at the current rate.

2.6   The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Support Portal

3.1   The Provider will use all reasonable endeavours to make available to the Customer a web-based support portal including a ticketing system, which is the designated method for the Customer to raise an Incident with the Provider.

3.2   The Provider will use all reasonable endeavours to make available the Documentation to the Customer via the support portal.

3.3   The Provider will use all reasonable endeavours to make available the Service Request Catalogue to the Customer via the support portal.

3.4   The Customer acknowledges that although the support portal shall be available 24/7/365, Incidents and Service Requests raised through the portal shall be dealt with and responded to according to this Schedule 4.

4. Incident Management

4.1   An "Incident" is an unplanned interruption to an IT service or reduction in the quality of an IT service.

4.2   The Customer shall use all reasonable endeavours to provide 1st line support in relation to Incidents. 1st line support relates to basic and common assistance to end users, typically via an experienced user of the Hosted Services.

4.3   The Provider shall use all reasonable endeavours to provide 2nd line Support Services in relation to Incidents. 2nd line support relates to Incidents which are unable to be resolved by 1st line support.

4.4   Incidents raised through the Support Services shall be categorised as follows:

    (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;

    (b) serious: a core function of the Hosted Services is significantly impaired;

    (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and

    (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

4.5   The Provider shall determine, acting reasonably, into which severity category an incident falls.

4.6   The Provider shall use reasonable endeavours to respond to requests for Support Services in relation to Incidents promptly, and in any case in accordance with the following time periods:
   (a) critical: 1 Business Hour;
   (b) serious: 1 Business Hour;
   (c) moderate: 1 Business Hour; and
   (d) minor: 1 Business Hour.

4.7   The Provider shall seek to ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.

4.8   The Provider shall use reasonable endeavours to resolve Incidents raised through the Support Services promptly, and in any case in accordance with the following time periods:
   (a) critical: 4 Business Hours;
   (b) serious: 2 Business Days;
   (c) moderate: 5 Business Days; and
   (d) minor: 130 Business Days.

4.9   Incident management best practice is that the Provider restores normal service operation as quickly as possible minimizing the adverse impact on business operations and the Customer acknowledges that this may include a permanent solution or a work-around.

5.   **Problem Management**

5.1   The Problem Management process is to eliminate recurring Incidents and minimize Incidents that cannot be prevented.

5.2   The Provider shall seek to create a problem ticket on behalf of the Customer, for a critical Incident or when an Incident has occurred 3 times and shall categorise the problem ticket as follows:
   (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
   (b) serious: a core function of the Hosted Services is significantly impaired;
   (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
   (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

5.3   The Provider shall use reasonable endeavours to identify a root cause for a problem in accordance with the following time periods:
   (a) critical: 2 Business Days;
   (b) serious: 5 Business Days;
   (c) moderate: 20 Business Days; and
   (d) minor: 40 Business Days.

5.4   The Provider shall use reasonable endeavours to resolve problem tickets promptly, and in any case in accordance with the following time periods:
   (a) critical: 5 Business Days;
   (b) serious: 10 Business Days;
   (c) moderate: 40 Business Days; and
   (d) minor: 130 Business Days.

6. Provision of Support Services

6.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

7. Limitations on Support Services

7.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed four (4), then:

(a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and

(b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.

7.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

(a) the improper use of the Hosted Services by the Customer; or

(b) any alteration to the Hosted Services made without the prior consent of the Provider.

7.3 The limitations described in this Clause 7 shall related only to tickets which are categorised by the Provider as Service Request Catalogue tickets and not to tickets categorised as Incident Management or Problem Management.

8. Service Request Catalogue

8.1 The Provider operates a "Service Request Catalogue" which is a list of other services which it offers besides Issue management and Problem management. Examples of services include:

(a) Software Change Request (SCR);

(b) Software installation request;

(c) Data uploads / downloads;

(d) Information request; and

(e) Training.

8.2 The Service Request Catalogue is available via the Providers web-based ticketing portal.

8.3 The Customer acknowledges that the fulfilment of a request for a service via the Service Request Catalogue is at the sole discretion of the Provider

8.4 The Customer acknowledges that some services requested from the Service Request Catalogue may carry a charge. In such instances, the Provider will provide the Customer with a written quotation or estimate and will seek the written authorisation of the Customer in advance of starting work on the service.

8.5 Different services available through the Service Request Catalogue will have different SLAs which may change from time to time at the sole discretion of the Provider. The current SLAs are available in the Service Request Catalogue.

SCHEDULE 5 (DATA PROCESSING INFORMATION)

1. **Categories of data subject**

   The categories of data subject whose personal data may be processed:

   (a) Drivers
   (b) Customer contacts
   (c) Users of the system
   (d) Booking contacts

2. **Types of Personal Data**

   Types of personal data to be processed:

   (a) Drivers
       (i) Name,
       (ii) email,
       (iii) phone number,
       (iv) home address,
       (v) DOB,
       (vi) location (current and historical),
       (vii) photograph,
       (viii) bank details.
   (b) Customer contacts
       (i) Name,
       (ii) email,
       (iii) phone number,
       (iv) address,
       (v) payment method details (e.g. credit card/Paypal etc)
   (c) Users of the system
       (i) Name,
       (ii) email,
       (iii) phone number
   (d) Booking contacts (booker, sender, or recipient contact details)
       (i) Name,
       (ii) email,
       (iii) phone number,
       (iv) address

3. **Purposes of processing**

   Purposes for which personal data may be processed

   (a) Drivers
       (i) Login to driver app
       (ii) Current and historical location data for fleet tracking
       (iii) Photo for ID badge/display in the system
       (iv) Creation and distribution of driver invoices
   (b) Customer contacts
       (i) Login to customer portal

   (ii) Booking contact details

   (iii) Take payment for a booking via a payment method

   (iv) To correctly address customer invoices

  (c) Users of the system

   (i) Login to the system

   (ii) Audit history

   (iii) Distribution of release notes relating to Updates or Upgrades

  (d) Booking contacts

   (i) Audit history

   (ii) Sending booking update communications (e.g. booking confirmation, delivery confirmation etc)

4. Security measures for Personal Data

Security measures include a Privileged Access policy for controlling access to data – specifically, access to Personal Data at the database level is restricted to a regularly reviewed list of key support staff.

All Personal Data is encrypted at rest and in transit so in the unlikely event of unauthorised access to the data, it is unable to be read.

5. Sub-processors of Personal Data

The Provider uses a trusted third-party company (TPC) to provide first line customer service and training to the Customer. The TPC is based in Ukraine and the Customer understands and gives its authorisation for Personal Data to be processed by the TPC outside the EEA in the context given here.

Data processing by the TPC is limited to:

i. requests for assistance made by the Customer to the Provider (in all cases these are logged in the Providers helpdesk ticketing system)

ii. Initial on-boarding of the Customer by the Provider (such as training the customer in how to setup data within the system).

iii. Ongoing training provided by the Provider to the Customer.

The Provider has a Data Processing Agreement in place with the TPC.

Safeguards include the TPC not having access to Personal Data other than through the topbox customer interface (for example, no network or database level access is provided).

VERSION CONTROL

Version	Date	Issuer	Reason
v1.0	1st September 2020	David Upton	Document first issue
v1.1	24th June 2022	David Upton	Update term #30 to reflect 3 month notice period
V1.2	11th August 2022	David Upton	Minimum Term now pulled from Order Form