

Terms and conditions

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 shall be governed by these Terms and Conditions, and the Provider will ask for the Customer's acceptance of these Terms and Conditions before providing any such services to the Customer.

1. Definitions

1.1 In these Terms and Conditions, except to the extent expressly provided otherwise:

"Access Credentials" means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface;

"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;

"Authorised Users" means the Customer's employees, officers, agents, contractors, and Affiliates authorized by the Customer to access the Hosted Services;

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

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

"Change" means any change to the scope of the Services;

"Charges" means:

- (a) the charges and other payable amounts specified on the website tools.wecoulden.com and elsewhere in these Terms and Conditions;
- (b) such charges and payable 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 when registering on the website tools.wecoulden.com;

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider at any time before the termination of the Agreement (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 Customer using the Hosted Services (but excluding usage data relating to the Platform and Hosted Services, and excluding server log files);

"Customer Indemnity Event" has the meaning given to it in Clause 22.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

"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;

"Data Protection Laws" means the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018; the EU General Data Protection Regulation (EU GDPR) (Regulation (EU) 2016/679); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and any other applicable data protection and privacy laws, in each case as amended, replaced, or superseded from time to time.

"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 Customer completing and submitting the form to upgrade from a free account on the tools.wecouldeven.com website, or the date upon which the Provider sends to the Customer an order confirmation;

"Error" means a failure of the Hosted Services to materially conform to the Documentation, resulting in material impairment of the Customer's use of the Hosted Services;

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"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 (which may include 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, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means the services provided at
<https://tools.wecouldeven.com>;

"Hosted Services Defect" means a defect, error or bug in the Platform having an 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;

"Initial Term" means the period of 12 months beginning on the Effective Date for an annual subscription, or the period of 1 month beginning on the Effective Date for a monthly subscription;

"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;

"Personal Data" means personal data under any of the Data Protection Laws;

"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, and the system and server software used to provide the Hosted Services;

"Provider" means We Could Even Llp, a limited liability partnership incorporated in Scotland (registration number SO307782) having its registered office at 5 South Charlotte Street, Edinburgh, Scotland, EH2 4AN;

"Provider Confidential Information" means:

- (a) any information disclosed by 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 22.1;

"Quiz Participation" means a successful form submission by a respondent completing a quiz created by the Customer using the Hosted Services, as recorded by the Platform;

"Usage Allowance" means 10,000 Quiz Participations per calendar month, or such other allowance as specified for the Customer's subscription tier;

"Overage Charges" means charges for Quiz Participations exceeding the Usage Allowance, as set out in Clause 16.5;

"Quiz Respondent Data" means the Personal Data of individuals who respond to quizzes created by the Customer;

"Renewal Term" means a period of 12 months beginning at the end of the end of the Initial Term or at the end of a preceding Renewal Term for annual subscriptions, or a period of 1 month beginning at the end of the end of the Initial Term or at the end of a preceding Renewal Term for monthly subscriptions;

"Resolution" means either permanent correction of an Error or provision of a Workaround;

"Service Data" means all data, works and materials provided or made available to the Customer by means of the Hosted Services under the Agreement, excluding the Customer Data;

"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;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Google Chrome, Mozilla Firefox or Apple Safari;

"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 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, cloud or software-based services provided by any third party that are or may be integrated with the Hosted Services by the Provider from time to time in circumstances where the Customer must, in order to activate the integration, have an account with the relevant services provider or obtain activation or access credentials from the relevant services provider;

"UK GDPR" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

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

"Upgrade" means a major version upgrade of any Platform software;

"User Interface" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services;

"Workaround" means a temporary procedure that enables the Customer to avoid or reduce the material impact of an Error.

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 25 or any other provision of these Terms and Conditions.

3. Entire agreement

- 3.1 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.

- 3.2 The provisions of this Clause 3 are subject to Clause 29.1.

4. Third party rights

- 4.1 The Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.
- 4.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

5. Hosted Services

5.1 Access and License Grant

- (a) Upon the Effective Date, the Provider shall provide the Customer with Access Credentials to access and use the Hosted Services.
- (b) The Provider grants the Customer a worldwide, non-exclusive, non-transferable license to access and use the Hosted Services through the User Interface during the Term, subject to the terms of the Agreement.

5.2 License Limitations

The license is subject to the following limitations:

- (a) the User Interface may only be accessed through a Supported Web Browser;
- (b) the Hosted Services may only be used by the Customer's employees, officers, agents, contractors, and Affiliates; and
- (c) the Customer must maintain the Access Credentials securely and ensure no unauthorized person or application gains access to the Hosted Services.
- (d) the Hosted Services are licensed for the Customer's own organizational purposes only and may not be used primarily for the benefit of third parties;

- (e) Access Credentials are personal to individual Authorised Users and must not be shared between individuals; each person accessing the Hosted Services must have their own Access Credentials;
- (f) where the Customer is part of a group, coalition, consortium, network, or similar arrangement of multiple organizations, each participating organization requires its own separate subscription unless otherwise agreed in writing by the Provider.

5.3 Prohibited Uses

The Customer must not:

- (a) sublicense, resell, or redistribute access to the Hosted Services;
- (b) permit unauthorized access to the Hosted Services;
- (c) use the Hosted Services to provide services to third parties (white-label, resale, or service bureau use);
- (d) modify, reverse engineer, decompile, or attempt to access the source code of the Platform;
- (e) conduct penetration testing or security testing without the Provider's prior written consent;
- (f) use the Hosted Services in any manner that damages, impairs, or overloads the Platform or degrades service for other customers; or
- (g) use the Hosted Services unlawfully or in violation of Schedule 1 (Acceptable Use Policy).

5.4 Acceptable Use and Availability

- (a) The Customer must comply with Schedule 1 (Acceptable Use Policy) and ensure all authorized users comply.
- (b) The Provider may implement reasonable technical measures to limit resource usage or prevent abuse that affects service for other customers.
- (c) Service availability is governed by Schedule 2 (Availability SLA).

5.5 Customisations

The Provider may, at its discretion, agree to develop Customisations to the Hosted Services for the Customer. Customisations are not included in the standard Hosted Services and are subject to the Provider's capacity and technical feasibility.

5.6 Any Customisation must be agreed in writing between the parties before work commences, including:

- (a) a description of the Customisation and its functional requirements;
- (b) the fees payable, payment schedule, and any ongoing maintenance costs;

- (c) the estimated or agreed timeline for delivery;
- (d) acceptance criteria and testing procedures (if applicable); and
- (e) any ongoing support or maintenance arrangements.

5.7 Fees for Customisations are separate from and in addition to the Charges for the Hosted Services, and shall be agreed in writing before work commences.

5.8 Unless expressly agreed otherwise in writing:

- (a) the Provider shall own all Intellectual Property Rights in any Customisation;
- (b) the Customer is granted a non-exclusive, non-transferable licence to use the Customisation as part of the Hosted Services for the duration of the Agreement; and
- (c) the Provider may incorporate Customisations into the standard Hosted Services for use by other customers.

5.9 Nothing in this Agreement obliges the Provider to agree to any Customisation request.

6. Service Data

6.1 License to Service Data

- (a) The Provider grants the Customer a non-exclusive, worldwide license during the Term to access, use, copy, and display the Service Data for the Customer's internal business purposes.
- (b) The Customer may incorporate Service Data into its own materials, reports, and presentations for its internal use and for use in its advocacy, campaigns, and fundraising activities.

6.2 Restrictions on Service Data

The Customer must not:

- (a) sell, license, sublicense, or commercially redistribute the Service Data to third parties;
- (b) use the Service Data to develop competing products or services, or to provide services that compete with the Provider;
- (c) use the Service Data to train, develop, or improve AI systems, machine learning models, or similar technologies without the Provider's written consent;
- (d) remove or alter any proprietary notices, watermarks, or branding from the Service Data; or
- (e) use the Service Data in any manner that violates applicable laws or third-party rights.

6.3 Security

The Customer shall implement reasonable security measures to protect Service Data from unauthorized access.

6.4 Ownership

All intellectual property rights in the Service Data remain the property of the Provider or its licensors. The Customer obtains only the limited license rights expressly granted in this Clause 6.

7. Free Trial Access

7.1 Free Account Creation

Anyone may create a free account to trial the Hosted Services, including creating and editing quiz content.

7.2 Free Account Permissions

Free account holders may:

- (a) create and edit quiz content;
- (b) publish quizzes on their own website to test them;
- (c) access the User Interface and Documentation.

7.3 Free Account Limitations

Free accounts are subject to the following limitations:

- (a) the Customer cannot view, access, or export quiz submissions or Quiz Respondent Data;
- (b) integrations with Third Party Services are not available;
- (c) Support Services and service level commitments under Schedules 2 and 3 do not apply;
- (d) the Provider may impose reasonable usage limits (including on the number of quizzes or quiz responses);
- (e) free accounts may be suspended or deleted after 90 days of inactivity; and
- (f) the Customer must comply with Schedule 1 (Acceptable Use Policy).

7.4 No Warranty

Free accounts are provided "as is" without warranty of any kind. The Provider may modify or discontinue free accounts at any time without liability.

7.5 Conversion to Paid Subscription

Free account holders may convert to a paid subscription at any time through the User Interface, at which point these Terms and Conditions apply in full and the limitations in Clause 7.3(a)-(d) cease to apply.

8. Scheduled Maintenance

8.1 The Provider may suspend the Hosted Services for scheduled maintenance with at least 5 Business Days' notice, except where urgent security or system issues require shorter notice.

8.2 Scheduled maintenance shall be performed outside 09:00-17:00 UK time, Monday-Friday, where reasonably practicable, and shall not exceed 4 hours of complete unavailability per month.

8.3 Emergency maintenance may be performed without notice where necessary for security, service stability, or legal compliance.

8.4 Maintenance performed in accordance with this Clause 8 is excluded from availability calculations in Schedule 2.

9. **Support Services**

9.1 During the Term, the Provider shall provide the Support Services to the Customer, comprising:

- (a) technical support for issues relating to the availability, functionality, or performance of the Hosted Services;
- (b) assistance with configuration and use of the Hosted Services in accordance with the Documentation;
- (c) investigation and resolution of Errors;

all in accordance with the service levels and support standards set out in Schedule 3 (Support SLA).

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

9.3 Support Channels and Hours

- (a) The Customer may request Support Services through the channels specified in Schedule 3 during the Support Hours specified therein.
- (b) Support requests submitted outside Support Hours will be acknowledged during the next Support Hours period.

9.4 Exclusions from Support Services

The Support Services do not include:

- (a) support for issues caused by:
 - (i) the Customer's breach of these Terms and Conditions;
 - (ii) modifications to the Hosted Services not performed or authorized by the Provider;
 - (iii) use of the Hosted Services with unsupported software, systems, or browsers;
 - (iv) problems with the Customer Systems, internet connectivity, or infrastructure outside the Provider's control;
 - (v) force majeure events; or
 - (vi) actions or omissions of the Customer or third parties;
- (b) custom development, consulting, or professional services (which may be available separately for additional fees);

- (c) training services (except as specifically included in Schedule 3);
- (d) support for Third Party Services or integrations, except to the extent the Provider's integration is defective; or
- (e) support relating to restoration of Customer Data beyond what is provided under Clause 12.6.

9.5 Updates and Customer Cooperation

- (a) The Provider shall provide Updates (bug fixes, patches, minor improvements) at no charge. Upgrades (major new features) may require additional fees.
- (b) The Customer shall provide reasonable cooperation, accurate information, and implement reasonable solutions provided by the Provider.
- (c) When submitting support requests involving Personal Data, the Customer shall minimize Personal Data disclosure and may request deletion after resolution.

9.6 Suspension for Non-Payment

- (a) If any amount due to be paid by the Customer to the Provider under the Agreement remains unpaid 30 days after the due date, the Provider may, by giving the Customer at least 14 days' written notice, suspend the Customer's access to the Support Services and/or the Hosted Services until such overdue amounts (together with any interest accrued under Clause 22.4) are paid in full.
- (b) The Provider's right to suspend under this Clause 9.6 is without prejudice to any other rights or remedies the Provider may have, including the right to terminate the Agreement under Clause 25.5.
- (c) The Provider shall restore access promptly upon receipt of all overdue amounts.
- (d) The Customer shall remain liable to pay all Charges during any period of suspension.

10. Customer obligations

- 10.1** Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider:
 - (a) reasonable 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.

10.2 Customer Systems

The Customer shall ensure that the Customer Systems:

- (a) meet and continue to meet the requirements specified in Clause 11; and

- (b) are maintained in good working order and compatible with the Hosted Services.

10.3 Customer Data

The Customer shall:

- (a) ensure that the Customer Data and the Customer's use of the Hosted Services comply with all applicable laws and regulations;
- (b) ensure that it has all necessary rights, licences, and consents to provide the Customer Data to the Provider;
- (c) ensure that the Customer Data does not infringe any third party rights or contain any unlawful, harmful, or malicious content;
- (d) maintain independent backup copies of Customer Data; and
- (e) promptly notify the Provider of any unauthorized access to Customer Data.
- (f) Where the Customer uses Third Party Services integrations, the Customer warrants that it has appropriate data processing agreements in place with such Third Party Services and has obtained all necessary consents and lawful bases for transmitting Personal Data to those services.

10.4 Account Management

The Customer shall:

- (a) designate Customer Representatives authorized to give instructions to the Provider and designate primary contacts authorized to give binding instructions and receive notices;
- (b) ensure Access Credentials are used only by Authorised Users and not shared;
- (c) maintain accurate and current account and contact information;
- (d) promptly notify the Provider of material changes in the Customer's circumstances; and
- (e) be responsible for all activities under the Customer's account.

10.5 Security

The Customer shall:

- (a) implement and maintain appropriate security measures to protect Access Credentials, Customer Data, and Provider Confidential Information;
- (b) ensure Authorised Users comply with security obligations;
- (c) promptly notify the Provider of any security incidents, unauthorized access, or compromised credentials;
- (d) cooperate with the Provider in investigating security incidents; and

- (e) not attempt to breach or circumvent Provider security measures.

10.6 Payment

The Customer shall pay the Charges in accordance with Clauses 16 and 17, and shall:

- (a) maintain accurate and current payment information; and
- (b) ensure sufficient funds are available when Charges become due.

10.7 Compliance

The Customer shall:

- (a) comply with Schedule 1 (Acceptable Use Policy);
- (b) comply with all restrictions set out in Clause 5;
- (c) ensure all Authorised Users comply with these Terms and Conditions; and
- (d) be responsible for any breaches by Authorised Users.

10.8 The Customer acknowledges that failure to comply with its obligations under this Clause 10 may result in the Provider being unable to perform its obligations, and the Provider shall not be liable for any failure or delay to the extent caused by the Customer's breach of this Clause 10.

11. Customer Systems

11.1 The Customer is responsible for obtaining and maintaining:

- (a) a Supported Web Browser (as defined in Clause 1.1);
- (b) adequate internet connectivity; and
- (c) compatible equipment and systems to access the Hosted Services.

11.2 The Provider may update minimum system requirements with reasonable notice. If such changes require material upgrades and the Customer cannot reasonably comply, the Customer may terminate under Clause 25 without penalty.

11.3 The Customer's security and cooperation obligations are set out in Clauses 5.2(c), 10.2, 10.5, and 9.5. The Provider's exclusions for Customer system issues are set out in Clause 9.4.

12. Customer Data

12.1 Ownership and License

- (a) The Customer retains all rights in Customer Data. The Customer grants the Provider a non-exclusive license to process Customer Data solely to provide the Hosted Services.
- (b) The Provider acquires no ownership rights in Customer Data and shall use it only to: provide Services; maintain and improve Services; comply with law; or enforce this Agreement.

- (c) The Provider may use aggregated, anonymized data for service improvement and benchmarking.

12.2 Customer Warranties

The Customer warrants that: it has rights to provide Customer Data; Customer Data does not infringe third-party rights or violate laws; it has obtained necessary consents for Personal Data; and Customer Data complies with Schedule 1 (Acceptable Use Policy).

12.3 Backups and Restoration

- (a) The Provider shall: perform daily backups retained for 7 days; encrypt backups at rest; and test quarterly.
- (b) The Provider shall restore Customer Data from backups within 1 Business Day (or 4 hours if urgent). Up to 2 standard restorations per year are free.
- (c) The Customer should maintain independent backups.
- (d) Personal Data of individuals who respond to quizzes created by the Customer ("Quiz Respondent Data") shall be deleted in monthly batches, with all data older than 30 days deleted on the first day of each month. Data is therefore retained for no less than 30 days and no more than 60 days from collection. The Customer may export such data at any time. Aggregated, anonymized analytics may be retained indefinitely. Full details are set out in Schedule 4, Section 7.6.

12.4 The Provider shall implement appropriate technical and organizational measures to protect Customer Data, including encryption, access controls, and incident response procedures.

12.5 The Provider shall notify the Customer within 24 hours of any security incident affecting Customer Data, investigate promptly, and provide post-incident reports.

12.6 Data Export and Deletion

- (a) The Customer may export Customer Data at any time through self-service tools (JSON format), and may export Quiz Respondent Data at any time through self-service tools (CSV format).
- (b) During the Term, the Provider shall delete specified Customer Data within 5 Business Days of written request.
- (c) Upon termination:
 - (i) the Customer may export Customer Data using the self-service tools for up to 30 days following the effective date of termination;
 - (ii) the Customer must notify the Provider within 30 days of termination whether the Customer requires the Provider to return Customer Data (in JSON format for Customer Data and CSV format for Quiz Respondent Data) or delete it;

- (iii) if the Customer requests return, the Provider shall provide the data within 10 Business Days of the request;
- (iv) if the Customer requests deletion, or does not notify the Provider within 30 days of termination, the Provider shall securely delete all Customer Data within 10 Business Days; and
- (v) deletion under this Clause 12.6(c) is permanent and the Provider shall have no obligation to retain or recover Customer Data thereafter.

13. Integrations with Third Party Services

- 13.1 The Provider may offer integrations with Third Party Services (e.g., Engaging Networks). The Provider may add, remove, or modify integrations with reasonable notice.
- 13.2 Third Party Services are separate agreements between the Customer and third parties. The Provider is not responsible for third-party services, pricing, support, or data handling.
- 13.3 When the Customer activates integrations:
 - (a) Customer Data may be transmitted to Third Party Services per the Customer's configuration;
 - (b) The Third Party Service is the Customer's chosen processor, not the Provider's sub-processor;
 - (c) The Customer is responsible for: data processing agreements with third parties; obtaining necessary consents; and compliance with third-party terms; and
 - (d) The Provider's obligations are limited to secure transmission (HTTPS/TLS) and transmitting only configured data.
- 13.4 Subject to Clause 23.1, the Provider gives no warranties regarding Third Party Services and is not liable for losses caused by them.

14. Intellectual Property Rights

14.1 Ownership

- (a) Nothing in these Terms and Conditions transfers any Intellectual Property Rights between the parties.
- (b) The Provider (or its licensors) owns all Intellectual Property Rights in the Platform, Hosted Services, Documentation, and Service Data. The Customer (or its licensors) owns all Intellectual Property Rights in the Customer Data.
- (c) Licenses granted under this Agreement do not constitute assignment or transfer of Intellectual Property Rights.

14.2 Quiz Content Ownership

- (a) The Customer owns all Intellectual Property Rights in quiz content created by the Customer using the Hosted Services, including quiz questions, text, images, and branding added by the Customer ("Customer Quiz Content").

(b) The Provider owns all Intellectual Property Rights in the underlying quiz platform, templates, algorithms, and methodologies.

(c) The Customer acknowledges that quiz results and analytics may be derived from Provider proprietary algorithms and methodologies, and the Customer obtains no Intellectual Property Rights in such underlying Provider technology.

14.3 Feedback, Improvements, and Aggregated Data

(a) If the Customer provides suggestions, feedback, ideas, or recommendations ("Feedback"), the Provider may freely use such Feedback without obligation or compensation. The Customer assigns all Intellectual Property Rights in Feedback to the Provider and waives any moral rights.

(b) The Provider may create improvements and enhancements to the Hosted Services based on experience, usage patterns, Feedback, or aggregated data. All such improvements belong exclusively to the Provider.

(c) The Provider may collect, use, and retain aggregated, anonymized data that cannot identify any individual customer or person ("Aggregated Data") for service improvement, research, and benchmarking. The Provider owns all Intellectual Property Rights in Aggregated Data.

(d) The Provider may develop similar or related products for other customers, subject to confidentiality obligations under Clause 23.

14.4 Trademarks

Each party retains all rights in its trademarks, logos, and trade names. Neither party obtains any rights in the other party's marks. Any permitted use shall follow the mark owner's usage guidelines, and all goodwill inures to the mark owner's benefit.

14.5 Open Source Software

(a) The Platform may incorporate open source software subject to third-party licenses. The Customer's use of such components is subject to the applicable open source licenses.

(b) Upon written request, the Provider shall provide a list of open source components and applicable licenses.

15. Publicity

The Customer grants the Provider permission to identify the Customer as a user of the Hosted Services, including on the Provider's website and marketing materials.

16. Charges

16.1 Charges and Fees

(a) The Customer shall pay the following charges and fees (collectively, "Charges"):

- (i) Subscription Fees: recurring fees for the Hosted Services, payable either monthly or annually as selected;
- (ii) Professional Services Fees (if applicable): fees for optional services;

- (iii) Overage Charges: charges for Quiz Participations exceeding the Usage Allowance, as set out in Clause 16.5;
- (b) Charges are as specified on the Provider's pricing page at the time of subscription.
- (c) All Charges are in GBP and exclusive of VAT unless stated otherwise.

16.2 Subscription Model

- (a) The Charges are based on a subscription model, either:
 - (i) Monthly Subscription: recurring monthly payments; or
 - (ii) Annual Subscription: annual payment in advance.
- (b) The Charges for each subscription tier are as set out as published on the Provider's website at the time of subscription.
- (c) Charges are based on the selected subscription tier and usage metric.
- (d) All Charges are exclusive of VAT and other applicable taxes unless expressly stated otherwise.

16.3 Value Added Tax

Prices exclude VAT. If we become VAT registered, VAT will be added at the applicable rate.

16.4 Changes to Charges

- (a) The Provider may increase Charges by giving 30 days' notice before a Renewal Term.
- (b) Price increases do not apply to pre-paid periods.
- (c) The Provider may immediately increase Charges to reflect Tax changes, currency fluctuations, or legal requirements.

16.5 Usage Allowance and Overage Charges

- (a) The Customer's subscription includes a Usage Allowance of 10,000 Quiz Participations per calendar month.
- (b) If the Customer exceeds the Usage Allowance in any calendar month, Overage Charges shall apply at the rate of £10 per additional 10,000 Quiz Participations (or part thereof).
- (c) Quiz Participations are measured by the Platform's records, which shall be conclusive in the absence of manifest error.
- (d) The Provider shall make usage data available to the Customer through the User Interface, showing current month Quiz Participations and historical usage.
- (e) Unused Quiz Participations do not roll over to subsequent months.
- (f) The Provider shall use reasonable endeavours to notify the Customer by email when usage reaches 80% and 100% of the Usage Allowance, but

failure to send such notifications does not affect the Customer's liability for Overage Charges.

17. Payments

17.1 Subscriptions

(a) Monthly Subscriptions:

- (i) Charges are payable monthly in advance by recurring credit card or debit card payment through the Provider's payment processor (currently Stripe).
- (ii) Payment is due on the first day of each calendar month (or the date the Customer first subscribed if mid-month).
- (iii) The Provider will automatically charge the Customer's payment method on file each month.
- (iv) The Customer will receive a receipt by email following each successful payment.
- (v) The Customer will not receive invoices for monthly subscriptions unless specifically requested.
- (vi) If automatic payment fails, the Customer will be notified and given 5 Business Days to update payment details or make manual payment before suspension.
- (vii) The Customer may cancel at any time through the User Interface or by written notice, effective at the end of the then-current monthly billing period.

(b) Annual Subscriptions:

- (i) Charges are payable annually in advance by bank transfer (BACS) or by such other method as agreed in writing.
- (ii) The Provider will issue an invoice to the Customer at the start of each Term.
- (iii) Payment is due within 30 days of the invoice date.
- (iv) The invoice will specify: invoice number and date; Customer details; description of Services; Charges (excluding VAT); VAT amount and total (if applicable); payment instructions (bank details, reference); and payment due date.
- (v) The Customer is responsible for ensuring payment is made by the due date, including obtaining any necessary internal approvals or purchase orders.
- (vi) Either party may terminate the Agreement at the end of the Initial Term or any Renewal Term by giving written notice in accordance with Clause 25.1.

(vii) If neither party gives notice under Clause 25.1, the Agreement will automatically renew for a further Renewal Term.

(c) The Customer may change payment method or subscription frequency (monthly to annual or vice versa) by giving 30 days' written notice, effective from the start of the next billing period or Term.

(d) **Overage Charges:**

- (i) Overage Charges are calculated at the end of each calendar month based on Quiz Participations recorded by the Platform.
- (ii) For monthly subscriptions, Overage Charges for the preceding month will be added to the next month's automatic payment.
- (iii) For annual subscriptions, the Provider will issue a separate invoice for Overage Charges within 10 Business Days of the end of each calendar month in which overages occurred. Payment is due within 14 days of the invoice date.
- (iv) The Provider shall provide a breakdown of Quiz Participations with each Overage Charge.

17.2 Late Payment and Suspension

(a) **Non-payment procedures:**

- (i) **Monthly Subscriptions:** If automatic payment fails, the Provider will notify the Customer immediately, retry payment up to 2 times over 5 Business Days, and request updated payment details.
- (ii) **Annual Subscriptions:** If an invoice remains unpaid by the due date (30 days from invoice date), the Provider will send a payment reminder.

(b) The Provider may suspend access to the Hosted Services under Clause 9.6 if payment is not received within:

- (i) **Monthly Subscriptions:** 5 Business Days of the first failed payment attempt; or
- (ii) **Annual Subscriptions:** 14 days of the payment reminder (44 days from invoice date).

(c) The Provider may terminate the Agreement under Clause 25.5 if payment is not received within:

- (i) **Monthly Subscriptions:** 15 days of the first failed payment attempt; or
- (ii) **Annual Subscriptions:** 60 days from the invoice date.

(d) Upon payment of all overdue amounts plus any applicable interest, access will be restored within 1 Business Day.

(e) During suspension, Customer Data will be preserved but the Customer will not have access to the Hosted Services. Suspension or termination for non-payment does not waive the Customer's obligation to pay all amounts due, including Charges accrued up to the effective termination date.

(f) The Provider reserves the right to charge a reconnection fee of £50 to restore access following suspension for non-payment.

17.3 Interest on Late Payments

(a) The Customer shall pay interest on overdue amounts at 4% per annum above the Bank of England base rate, accruing daily from the due date until payment and compounded monthly.

(b) The Provider may waive interest charges at its discretion. Charging interest does not affect the Provider's other rights, including suspension (Clause 9.6) or termination (Clause 25.5).

(c) These contractual interest rights replace any statutory interest rights under the Late Payment of Commercial Debts (Interest) Act 1998.

17.4 Payment Methods and Updates

(a) Monthly subscriptions are paid by card through Stripe. The Customer must keep payment details current.

(b) Annual subscriptions are paid by bank transfer per invoice instructions within 30 days.

(c) The Provider may change accepted payment methods with 30 days' notice.

17.5 Refunds

(a) General principles:

(i) This Clause 17.5 governs all refunds under the Agreement, including refunds arising on termination. Clause 26.2 (payment settlement on termination) should be read together with this Clause 17.5.

(ii) Refunds will be processed within 30 days of becoming due, using the original payment method where possible.

(iii) Professional Services Fees, and other one-time charges are non-refundable in all circumstances once services have commenced.

(b) Monthly subscriptions:

(i) Monthly subscriptions are non-refundable except as required by law.

(ii) If the Customer cancels mid-month, no pro-rata refund will be provided and access will continue until the end of the then-current monthly billing period.

(iii) If the Provider terminates for its convenience or for reasons other than Customer breach, the Customer will receive a pro-rata refund for any unused portion of the month.

(c) Annual subscriptions:

(i) Annual subscriptions are non-refundable except in the circumstances set out in paragraph (ii).

(ii) The Customer is entitled to a pro-rata refund of prepaid Charges for the unused portion of the Term if:

- the Provider terminates for its convenience or for reasons other than Customer breach;
- the Customer terminates for the Provider's material breach under Clause 25.3;
- the Customer terminates for chronic SLA failures under Clause 25.6;
- the Provider exercises the IP infringement termination option under Clause 22.4(a)(iii);
- the Customer terminates following a material adverse unilateral variation under Clause 33.3; or
- otherwise required by applicable law.

(iii) No refund is due if:

- the Customer terminates for convenience (other than pursuant to a lawful termination right);
- the Provider terminates for the Customer's material breach under Clause 25.3;
- the Provider terminates for insolvency under Clause 25.4; or
- the Provider terminates for non-payment under Clause 25.5.

(d) Service credits:

(i) Upon termination, any unapplied service credits accrued under Schedule 2 (Availability SLA) or Schedule 3 (Support SLA) will be refunded or credited to the Customer within 30 days.

(ii) Service credits may not be exchanged for cash during the Term except upon termination in accordance with paragraph (i).

(e) Calculation of pro-rata refunds:

(i) Pro-rata refunds for annual subscriptions will be calculated on a daily basis from the effective date of termination to the end of the then-current Term.

(ii) For the avoidance of doubt, Charges for any period during which the Hosted Services were suspended under Clause 9.6 are not refundable.

17.6 Disputed Charges

(a) If the Customer disputes any Charges in good faith, the Customer must notify the Provider in writing within 30 days of the invoice date (or, for monthly subscriptions, within 30 days of the payment date), specifying the amount disputed and the grounds for the dispute.

(b) The parties shall seek to resolve disputed Charges in good faith within 30 days of notification.

(c) Amounts not in dispute must be paid by the due date notwithstanding any ongoing dispute regarding other amounts.

(d) The Provider uses Stripe for card payments. By providing payment details, the Customer agrees to Stripe's terms of service. The Provider is not responsible for Stripe's services or any failure by Stripe to process payments.

17.7 Purchase Orders

If the Customer requires a purchase order for internal processes, the Customer must provide it before the invoice due date. The Provider's invoices are valid and payment is due regardless of whether a purchase order has been issued. In the event of any conflict between these Terms and Conditions and the terms of any purchase order, these Terms and Conditions shall prevail.

18. Confidentiality

18.1 Confidentiality Obligations

For the purposes of this Clause 18, "Disclosing Party" means the party disclosing Confidential Information and "Receiving Party" means the party receiving Confidential Information.

- (a) Each party shall:
 - (i) keep the other party's Confidential Information strictly confidential;
 - (ii) not disclose the other party's Confidential Information to any third party without the Disclosing Party's prior written consent;
 - (iii) use at least a reasonable standard of care to protect the other party's Confidential Information (being at least the same standard of care it uses to protect its own confidential information);
 - (iv) use the other party's Confidential Information solely for the purposes of performing its obligations or exercising its rights under the Agreement; and
 - (v) not use the other party's Confidential Information for any competitive purpose or to develop competing products or services.
- (b) Notwithstanding paragraph (a), the Receiving Party may disclose Confidential Information to:
 - (i) its employees, officers, directors, and contractors who have a legitimate need to know and are bound by confidentiality obligations;
 - (ii) its professional advisers (lawyers, accountants, auditors) bound by professional confidentiality obligations;
 - (iii) its insurers and insurance brokers;
 - (iv) its subcontractors and service providers (subject to Clause 29 and equivalent confidentiality obligations);
 - (v) potential or actual investors, acquirers, or merger partners (and their advisers), provided they are bound by confidentiality obligations; or
 - (vi) as required by law, regulation, court order, or governmental authority, in which case the Receiving Party shall (where legally permitted):
 - notify the Disclosing Party promptly before disclosure;

- provide reasonable assistance (at the Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure; and
- disclose only the minimum information necessary.

18.2 Exceptions

No confidentiality obligations apply to information that:

- (a) was known to the Receiving Party before disclosure (evidenced by written records) and was not subject to any confidentiality obligation;
- (b) is or becomes publicly available through no breach by the Receiving Party;
- (c) is lawfully obtained from a third party not under a confidentiality obligation; or
- (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information (evidenced by written records).

18.3 Return or Destruction

Upon termination of the Agreement or upon the Disclosing Party's written request:

- (a) the Receiving Party shall promptly return or securely destroy all Confidential Information in its possession or control;
- (b) upon request, the Receiving Party shall certify in writing that it has complied with paragraph (a); and
- (c) the Receiving Party may retain Confidential Information to the extent required by law or in archived backup systems, provided such retained information remains subject to the confidentiality obligations in this Clause 18.

18.4 Duration

The confidentiality obligations in this Clause 18 shall continue for 5 years following termination of the Agreement, except that:

- (a) trade secrets shall remain confidential for as long as they retain their status as trade secrets under applicable law; and
- (b) obligations regarding Customer Personal Data shall continue in accordance with Clause 19 (Data Protection) and applicable Data Protection Laws.

18.5 Remedies

Each party acknowledges that breach of this Clause 18 may cause irreparable harm for which monetary damages would be inadequate. Accordingly, in addition to any other remedies, either party may seek injunctive or equitable relief to prevent or remedy breaches.

19. Data protection

19.1 The parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the controller and the Provider is the processor of Customer Personal Data.

19.2 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.

19.3 Scope of Processing

(a) The Customer shall only supply, and the Provider shall only process, Customer Personal Data:

- (i) of data subjects in the categories specified in Schedule 4, Section 1;
- (ii) of the types specified in Schedule 4, Section 2; and
- (iii) for the purposes specified in Schedule 4, Section 3.

(b) The Provider shall process Customer Personal Data only on the Customer's documented instructions, as set out in this Agreement or otherwise agreed in writing.

19.4 Duration of Processing

(a) The Provider shall process Customer Personal Data only during the Term, except as provided in paragraphs (b) and (c).

(b) Following termination, the Provider may continue processing Customer Personal Data:

- (i) for up to 30 days to facilitate data retrieval and orderly termination;
- (ii) as required by applicable law (tax, accounting, regulatory);
- (iii) in backup systems per standard retention policy (data remains subject to this Clause 19 and is securely deleted per backup retention); or
- (iv) as necessary to establish, exercise, or defend legal claims.

(c) After the 30-day period in (b)(i), the Provider shall delete or return Customer Personal Data per Clause 19.17, subject to exceptions in (b)(ii)-(iv).

19.5 Processing Instructions and Legal Obligations

(a) The Provider shall promptly inform the Customer if an instruction infringes Data Protection Laws.

(b) The Provider may process Customer Personal Data if required by law, provided the Provider informs the Customer beforehand (unless prohibited by law on public interest grounds).

19.6 Confidentiality

The Provider shall ensure persons authorized to process Customer Personal Data are bound by confidentiality obligations or appropriate statutory duties of confidentiality.

19.7 Security Measures

The Provider shall implement appropriate technical and organizational measures to ensure security for Customer Personal Data, including those specified in Schedule 4, Section 4.

19.8 International Transfers

- (a) The Customer authorizes the Provider to transfer Customer Personal Data:
 - (i) internally within the Provider's organization with appropriate safeguards;
 - (ii) to sub-processors in jurisdictions identified in Schedule 4, Section 5, with appropriate safeguards;
 - (iii) to countries with adequacy decisions by the UK ICO or European Commission; or
 - (iv) where recipients have Binding Corporate Rules approved by data protection authorities.
- (b) For transfers outside the UK or EEA without adequacy decisions, the Provider shall ensure protection by:
 - (i) Standard Contractual Clauses adopted by the European Commission or approved by the UK ICO (incorporated into this Agreement); and/or
 - (ii) other appropriate safeguards permitted under Data Protection Laws.
- (c) The Provider shall: conduct transfer impact assessments where required; implement supplementary measures where necessary; and inform the Customer of any inability to comply with transfer requirements.
- (d) If legal changes in a destination country materially impact data protection, the Provider shall promptly inform the Customer and work together to identify appropriate measures or alternatives.

19.9 Sub-processors

- (a) The Customer grants general authorization for the Provider to engage sub-processors, subject to the following:
 - (i) the Provider shall notify the Customer at least 14 days before adding or replacing any sub-processor, including name, location, and processing activities;
 - (ii) the Customer may object on reasonable data protection grounds within 14 days;
 - (iii) if objection cannot be resolved and the Provider cannot provide Services without the sub-processor, the Customer may terminate without penalty with 30 days' notice;
 - (iv) if no objection within 14 days, the sub-processor is deemed approved.
- (b) The Provider shall: ensure each sub-processor is bound by equivalent data protection obligations; remain fully liable for sub-processor performance; and maintain an up-to-date sub-processor list available upon request.

- (c) Sub-processors identified in Schedule 4, Section 5 are pre-authorized as of the Effective Date.

19.10 Data Subject Rights

- (a) The Provider shall assist the Customer (taking into account processing nature) to respond to data subject requests, including: access, rectification, erasure, restriction, portability, and objection rights.
- (b) If the Provider receives a data subject request directly, it shall: not respond without Customer authorization; forward to Customer within 2 Business Days; and provide reasonable assistance.
- (c) Assistance is provided at no charge for routine requests. The Provider may charge for extensive requests requiring significant custom work.

19.11 Compliance Assistance

- (a) The Provider shall assist the Customer with: security of processing; breach notification to authorities; breach communication to data subjects; data protection impact assessments; and prior consultation with authorities.
- (b) Assistance is provided at no charge for: matters arising from Provider's breach; routine provision of maintained information; or reasonable requests within normal processor obligations.
- (c) The Provider may charge for: significant custom work beyond normal obligations; multiple or frequent requests for same information; extensive senior personnel involvement; or Customer's own audits/investigations unrelated to Provider performance.

19.12 Personal Data Breach Notification

- (a) The Provider must notify the Customer of any Personal Data breach affecting Customer Personal Data within 24 hours of becoming aware.
- (b) "Becoming aware" means when any Provider employee or contractor with responsibility for data security has sufficient information to conclude a breach has occurred or is likely.
- (c) Notification shall include (to extent known): nature of breach; affected data subjects/records; Provider contact point; likely consequences; measures taken/proposed; and timeline for complete information.
- (d) If complete information unavailable initially, the Provider shall provide phased updates at least every 24 hours.
- (e) The Provider shall fully cooperate in investigating, mitigating effects, and helping Customer comply with Data Protection Laws.

19.13 Demonstrating Compliance

- (a) The Provider shall make available information to demonstrate compliance, including: policies/procedures; any security

- certifications ; third-party audit results; technical/organizational measures documentation; and sub-processor contracts.
- (b) Provided at no charge for: annual standard information security questionnaire; existing documentation/certifications; or reasonable due diligence during negotiations.
- (c) Chargeable for: custom compliance reports; multiple complex questionnaires beyond annual standard; or extensive legal/technical review.

19.14 Audits and Inspections

- (a) The Provider shall allow audits and inspections by the Customer or independent auditor to verify compliance with this Clause 19 and Data Protection Laws.
- (b) Provided at no charge where: audit arises from Provider breach; conducted not more than once annually during Business Hours with 30 days' notice; or required by supervisory authority.
- (c) Chargeable for: audits more than once yearly (unless from Provider breach); audits without reasonable notice or outside Business Hours; extensive senior personnel time; or custom reports/documentation.
- (d) Audit rights subject to: 30 days' notice (routine audits); reasonable confidentiality agreements; Business Hours conduct without unreasonable disruption; and Customer paying reasonable costs per paragraph (c).

19.15 Deletion or Return of Data

The Provider shall, at Customer's choice, delete or return all Customer Personal Data after service provision, and delete existing copies except where applicable law requires storage.

19.16 Changes to Data Protection Laws

If changes to Data Protection Laws result in non-compliance, the parties shall use best endeavors to agree necessary Agreement variations promptly.

19.17 Standard Contractual Clauses

- (a) For processing in countries outside UK/EEA without adequacy decisions, the parties agree to Standard Contractual Clauses (Decision 2021/914, UK ICO approved) for controller-to-processor transfers.
- (b) Module Two applies with: Customer as data exporter; Provider as data importer; Schedule 4 as Annex I; Schedule 4 Section 4 as Annex II.
- (c) SCCs prevail in case of conflict with this Clause 19.
- (d) For UK GDPR transfers, SCCs interpreted with UK International Data Transfer Addendum.

19.18 UK and EU GDPR Compliance

- (a) Where Customer is UK-established, GDPR references mean UK GDPR.
- (b) Where Customer is EEA-established, GDPR references mean EU GDPR.
- (c) Where both apply, Provider shall comply with both, with stricter requirement prevailing in conflicts.
- (d) If laws diverge making simultaneous compliance impractical, parties shall cooperate in good faith for mutually acceptable solution.

20. Warranties

20.1 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;
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions; and
- (d) the Provider will perform its obligations under the Agreement with reasonable skill and care.

20.2 The Provider warrants to the Customer that:

- (a) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs;
- (b) the Platform will incorporate security features reflecting the requirements of good industry practice; and
- (c) the Hosted Services will perform substantially in accordance with the Documentation.

20.3 The Provider warrants to the Customer that the Hosted Services, as provided by the Provider and excluding the Customer Data and the Customer's use of the Hosted Services, will comply with all applicable laws in England and Wales.

20.4 The Provider warrants to the Customer that the Hosted Services, excluding the Customer Data, Third Party Services, and any content not created by the Provider, will not infringe any Intellectual Property Rights enforceable in the United Kingdom.

20.5 The Provider warrants to the Customer that it will process Personal Data in accordance with Clause 19 (Data protection) and the Data Protection Laws.

- 20.6 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.
- 20.7 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.

21. Acknowledgements and warranty limitations

21.1 Software Limitations

The Customer acknowledges that:

- (a) no software can be entirely free from security vulnerabilities or completely secure against all cyber threats, and the Provider does not warrant complete invulnerability (subject to Clause 20.2); and
- (b) the Hosted Services are designed for compatibility with Supported Web Browsers and specified systems, and the Provider does not warrant compatibility with other software or systems or continued compatibility if third-party systems are modified.

21.2 Performance Factors

The Customer acknowledges that Hosted Services performance may be affected by factors outside the Provider's control (internet connection, Customer systems, third-party services, other users). Subject to Schedule 2 (Availability SLA), the Provider does not warrant any particular speed or performance level.

22. Indemnities

22.1 Provider's Indemnification

The Provider shall indemnify the Customer against all liabilities, damages, losses, costs, and expenses (including legal fees and settlement amounts) arising from:

- (a) any third-party claim that the Hosted Services, when used in accordance with this Agreement, infringe any Intellectual Property Rights enforceable in the United Kingdom, subject to the limitations and exclusions in Clause 28.4;
- (b) breach by the Provider of Clause 19 (Data Protection) or applicable Data Protection Laws; or
- (c) the Provider's willful misconduct or gross negligence.

22.2 Customer's Indemnification

The Customer shall indemnify the Provider against all liabilities, damages, losses, costs, and expenses (including legal fees and settlement amounts) arising from:

- (a) any third-party claim that Customer Data infringes Intellectual Property Rights or other legal rights;
- (b) breach by the Customer of Schedule 1 (Acceptable Use Policy);

- (c) the Customer's unlawful use of the Hosted Services;
- (d) breach by the Customer of its warranties in Clause 12.2 or obligations under Clause 19 (Data Protection); or
- (e) content published, distributed, or transmitted by the Customer using the Hosted Services.

22.3 Indemnification Procedures

- (a) The indemnified party must: notify the indemnifying party promptly of any claim; provide reasonable assistance; and not admit liability or settle without the indemnifying party's consent.
- (b) The indemnifying party shall have exclusive control of the defense and settlement of any claim.
- (c) The indemnity does not apply to the extent loss is attributable to the indemnified party's material breach of these procedures.

22.4 Limitations

- (a) IP Infringement Indemnity Cap and Exceptions:
 - (i) The Provider's total liability for IP infringement under Clause 22.1(a) shall not exceed the greater of:
 - three times the total Charges paid or payable by the Customer in the 12 months immediately preceding the date the claim was first asserted; or
 - £100,000.
 - (ii) The Provider shall have no obligation to indemnify the Customer for IP infringement claims to the extent arising from:
 - Customer Data or content provided by the Customer;
 - modifications to the Hosted Services made by the Customer or any third party (other than the Provider);
 - use of the Hosted Services in combination with hardware, software, data, or services not provided or approved by the Provider, where the infringement would not have occurred without such combination;
 - use of the Hosted Services other than in accordance with the Documentation and this Agreement;
 - use of a non-current version of the Hosted Services where the Provider has provided a non-infringing updated version and notified the Customer;
 - Third Party Services or integrations (except to the extent the Provider's integration code itself infringes); or
 - continued use of the Hosted Services after the Provider has notified the Customer to discontinue use due to an infringement claim.
 - (iii) In addition to the indemnification rights under Clause 28.1(a), if the Provider reasonably determines, or any third party alleges,

that the Hosted Services infringe Intellectual Property Rights, the Provider may, at its option and expense:

- modify or replace the Hosted Services to make them non-infringing while providing substantially equivalent functionality;
- procure the right for the Customer to continue using the Hosted Services; or
- if neither (A) nor (B) can be accomplished on commercially reasonable terms within 60 days, terminate this Agreement upon 30 days' written notice and refund any prepaid, unused Charges on a pro-rata basis.

- (iv) If the Provider exercises the termination option in sub-clause (iii)(C), the Customer's sole remedies shall be the indemnification under Clause 22.1(a) (subject to the cap in sub-clause (i)) and the pro-rata refund. The Customer waives any claim for consequential damages resulting from such termination.

- (b) Each party's maximum aggregate liability for indemnification under Clauses 22.1(b), 22.1(c) and 22.2 (other than IP infringement) shall not exceed the total Charges paid or payable in the 12 months preceding the claim, except that indemnities for fraud, willful default, or gross negligence are not subject to this limitation.

23. Limitations and exclusions of liability

23.1 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.

23.2 The limitations and exclusions of liability set out in this Clause 23 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 23.1; 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.

23.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

23.4 Subject to Clause 23.1, neither party shall be liable to the other for any indirect, special or consequential loss, loss of profits, revenue, business, goodwill, or data, whether or not foreseeable.

23.5 Subject to Clause 23.1, the Provider shall not be liable to the Customer in respect of any loss or corruption of Customer Data, except to the extent caused by the Provider's failure to comply with its backup obligations under Clause 12.3(a)-(c).

23.6 Subject to Clauses 23.1 and 22.4, the total aggregate liability of each party to the other party under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed an amount equal to the greater of:

- (a) the total Charges paid by the Customer to the Provider in the 12 month period immediately preceding the date on which the claim arose; or
- (b) £25,000.

24. Force Majeure Event

24.1 Neither party shall be liable for failure or delay in performing obligations (other than payment) due to a Force Majeure Event, provided the affected party notifies the other promptly and takes reasonable steps to mitigate.

24.2 If a Force Majeure Event continues for more than 90 days, either party may terminate by written notice.

25. Termination

25.1 Termination on Notice (Annual Terms)

(a) If the Agreement is for Annual Terms, either party may terminate by giving at least 30 days' written notice to expire at the end of the Initial Term or any Renewal Term. If no such notice is given, the Agreement will automatically renew for a further Renewal Term at the Charges then in effect.

(b) The Provider shall send the Customer a renewal reminder notice:

- (i) at least 60 days before the end of the Initial Term or any Renewal Term; and
- (ii) at least 30 days before the end of the Initial Term or any Renewal Term.

(c) Each renewal reminder shall:

- (i) state the date on which the then-current Term will end;
- (ii) state the Charges that will apply for the Renewal Term (including any price increase notified under Clause 16.4);
- (iii) confirm that the Agreement will automatically renew unless the Customer gives notice to terminate; and
- (iv) explain how the Customer may give notice to terminate.

(d) If the Provider fails to send both renewal reminders in accordance with paragraphs (b) and (c), and the Agreement automatically renews, the Customer may terminate the Agreement by giving written notice within 30 days after the start of the Renewal Term. In such circumstances:

- (i) termination shall be effective upon the date of the Customer's notice (or such later date as the Customer specifies);
- (ii) the Customer shall be entitled to a pro-rata refund of any Charges paid for the Renewal Term, calculated on a daily basis from the effective date of termination to the end of the Renewal Term; and
- (iii) the refund shall be processed in accordance with Clause 17.5.

(e) The Provider's failure to send renewal reminders does not otherwise prevent automatic renewal or affect the validity of the Renewal Term, except as set out in paragraph (d).

(f) Renewal reminders shall be sent to the email address associated with the Customer's account, or such other address as the Customer has notified in writing for this purpose. The Customer is responsible for ensuring that its contact details are kept up to date.

(g) For the avoidance of doubt, termination at the end of a Term under this Clause 25.1 is not a termination for convenience under Clause 25.7 and does not give rise to any refund, early termination fee, or other termination-related consequences beyond those expressly stated in this Clause 25.1.

25.2 Termination on Notice (Monthly Terms)

If the Agreement is for Monthly Terms, either party may terminate by giving 30 days' written notice. Termination is effective at the end of the billing month in which the notice period expires, and the Customer remains liable for Charges through that date.

25.3 Termination for Breach

(a) Either party may terminate immediately by written notice if the other party commits a material breach and:

- (i) the breach cannot be remedied; or
- (ii) the breach can be remedied but the breaching party fails to remedy it within 30 days of written notice specifying the breach.

(b) Material breaches include (but are not limited to): significant breach of confidentiality (Clause 18); significant breach of data protection (Clause 19); violations of law; or material violation of Acceptable Use Policy (Schedule 1).

(c) Termination for matters relating to payment of Charges is governed exclusively by Clause 25.5 and may not be effected under this Clause 25.3.

25.4 Termination for Insolvency

Either party may terminate immediately by written notice if the other party: becomes insolvent; is unable to pay debts as they fall due; enters administration, liquidation, or receivership; convenes creditor meetings; or passes a resolution for winding up (except for solvent reorganization where obligations are assumed).

25.5 Termination for Non-Payment

(a) The Provider may terminate immediately if:

- (i) any Charges remain unpaid 30 days after the due date (excluding amounts subject to a good faith dispute notified in writing before the due date);
- (ii) the Provider has given the Customer at least 30 days' written notice of its intention to terminate, specifying the overdue amount; and
- (iii) the amount specified in the notice remains unpaid at the expiry of the notice period.

(b) The Provider may also terminate on 30 days' written notice if the Customer has paid three or more invoices late within any 12-month period, whether or not such invoices were subsequently paid in full. For these purposes, an invoice is "late" if it is paid more than 14 days after the due date for monthly subscriptions, or more than 30 days after the due date for annual subscriptions.

(c) This Clause 25.5 is the exclusive basis for termination by the Provider relating to the payment of Charges. The Provider may not terminate for payment-related matters under Clause 25.3 or any other provision of this Agreement.

(d) For the avoidance of doubt, the Provider's rights under this Clause 25.5 are without prejudice to:

- (i) the Provider's right to suspend the Hosted Services under Clause 9.6;
- (ii) the Provider's right to charge interest under Clause 17.3; and
- (iii) any other rights or remedies available to the Provider under this Agreement or at law (other than termination).

25.6 Termination for Continued Service Failures

The Customer may terminate by giving 30 days' written notice if the Provider fails to meet the Availability SLA (Schedule 2) for three consecutive months or persistently fails to remedy service issues after notice.

25.7 Other Termination Rights

(a) Either party may terminate immediately by written notice if it becomes unlawful to perform obligations under the Agreement or if sanctions prohibit the continuation of the contractual relationship.

(b) For annual subscriptions, if the Customer terminates for convenience (other than for Provider breach or pursuant to a lawful termination right under this Clause 25), refunds are governed by Clause 17.5.

(c) No early termination fee applies to monthly subscriptions. The Customer may cancel a monthly subscription at any time with 30 days' notice in accordance with Clause 25.2.

(d) The express termination rights set out in this Clause 25 are without prejudice to any termination rights that may be available under applicable law.

26. Effects of termination

26.1 Survival and Accrued Rights

- (a) Upon termination, the following provisions shall survive:
 - Clause 14 (Intellectual Property Rights);
 - Clause 16 (Charges) and Clause 17 (Payments) - for amounts due;
 - Clause 18 (Confidentiality) - for 5 years;
 - Clause 19.15 (Data Protection - data deletion);
 - Clause 22 (Indemnities);
 - Clause 23 (Limitations and Exclusions of Liability);
 - Clause 28 (Notices);
 - Clause 34 (Law and Jurisdiction); and
 - any other provision intended by its nature to survive.
- (b) Termination does not affect either party's accrued rights, liabilities, or obligations arising before termination, including payment obligations, breach claims, and duties to return Confidential Information or Personal Data.

26.2 Payment Settlement

- (a) Within 30 days of termination, the Customer shall pay all amounts due to the Provider, including:
 - (i) Charges for Services provided up to the effective date of termination;
 - (ii) interest on any overdue amounts under Clause 17.3; and
 - (iii) any other amounts due under the Agreement.
- (b) Refunds following termination are governed by Clause 17.5. The Provider shall process any refunds due to the Customer within 30 days of the effective date of termination.
- (c) Either party may set off amounts owed to it against amounts it owes to the other party, provided that the amounts are undisputed or have been finally determined.

26.3 Cessation of Access

Upon termination:

- (a) all Access Credentials shall be deactivated and the Customer's right to use the Hosted Services shall immediately cease;
- (b) the Provider shall cease providing the Hosted Services and Support Services; and
- (c) the Customer shall immediately cease accessing the Hosted Services.

The Customer is solely responsible for exporting data before termination. Failure to do so may result in permanent data loss.

26.4 Customer Data

Upon termination, the Provider shall make Customer Data available for export and

shall delete or return Customer Data in accordance with Clause 12.6(c). The Customer is solely responsible for exporting any required data before the expiry of the 30-day post-termination period.

27. Legal Compliance

- 27.1 Each party warrants that it complies with all applicable laws, including:
 - (a) anti-bribery and anti-corruption laws (Bribery Act 2010);
 - (b) modern slavery laws (Modern Slavery Act 2015); and
 - (c) tax laws (Criminal Finances Act 2017).
- 27.2 Each party shall promptly notify the other of any breach or suspected breach of these laws.
- 27.3 Material breach of this Clause 27 entitles the non-breaching party to terminate immediately.

28. Notices

- 28.1 This Clause 28 applies to all notices given or to be given under these Terms and Conditions, except where expressly provided otherwise in these Terms and Conditions.
- 28.2 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.
- 28.3 Any notice given by one party to the other party under these Terms and Conditions must be:
 - (a) sent by email; or
 - (b) submitted using the form on the Provider's website.
- 28.4 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 3 Business Days following receipt of the notice.
- 28.5 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 email, at the time of the sending of an acknowledgement of receipt by the receiving party; and
 - (b) in the case of notices submitted using an online form, upon the submission of the form.

29. Subcontracting

- 29.1 Provider's Right to Subcontract
 - (a) The Provider may engage subcontractors to perform its obligations under the Agreement.
 - (b) The Provider may subcontract without Customer consent for: infrastructure and hosting; payment processing; email delivery;

analytics; support platforms; and other routine services not involving Customer Data or Confidential Information.

- (c) For subcontractors accessing Customer Data or Confidential Information, the Provider shall comply with Clause 19.9 (subprocessor requirements for Personal Data) and maintain a current list available upon request.
- (d) The Provider shall not subcontract core account management or service functionality without Customer consent.

29.2 Provider's Liability

- (a) The Provider remains fully responsible for all subcontracted work as if performed by the Provider itself.
- (b) Any subcontractor act or omission is deemed an act or omission of the Provider.
- (c) The Customer may proceed directly against the Provider for subcontractor failures.

29.3 Subcontractor Standards

- (a) The Provider shall ensure subcontractors: have necessary expertise and qualifications; comply with obligations equivalent to the Provider's (confidentiality, data protection, security); and maintain appropriate insurance.
- (b) The Provider shall conduct due diligence before engaging subcontractors and replace them if they fail to meet standards.

29.4 Customer Objection Rights

For subcontractors accessing Customer Data or Confidential Information:

- (a) The Provider shall notify the Customer at least 14 days before engagement, including subcontractor details and security measures.
- (b) The Customer may object on reasonable grounds (security, data protection, compliance, conflicts).
- (c) If the parties cannot resolve objections and the Provider cannot provide Services without the subcontractor, the Customer may terminate without penalty with 30 days' notice.

29.5 Customer Use of Service

- (a) The Customer may permit its employees, contractors, and Affiliates to use the Hosted Services, provided: use is within subscription limits; the Customer ensures compliance with the Agreement; and the Customer remains fully liable for their acts.
- (b) The Customer shall not resell or commercially redistribute the Hosted Services without the Provider's consent.
- (c) "Affiliate" means an entity controlling, controlled by, or under common control with the Customer (control = >50% voting rights).

30. Assignment

- 30.1 The Provider must not assign, transfer, or otherwise deal with its contractual rights and/or obligations under the Agreement without the Customer's prior written consent.
- 30.2 Save to the extent expressly permitted by applicable law, 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, providing that the Customer may assign the entirety of its rights and obligations under these Terms and Conditions to any Affiliate of the Customer or to any successor to all or a substantial part of the business of the Customer from time to time.

31. No waivers

No failure or delay in exercising any right under the Agreement shall constitute a waiver of that right, and no waiver of any breach shall constitute a waiver of any other breach.

32. Severability

- 32.1 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.
- 32.2 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.
- 32.3 If the severance of any provision would materially alter the fundamental nature of the Agreement or materially prejudice either party, that party may terminate the Agreement by giving 30 days' written notice within 90 days of the severance.

33. Variation

33.1 General Rule

No variation of the Agreement shall be effective unless made in writing and signed by both parties (including by electronic signature, email confirmation, or acceptance through the User Interface).

33.2 Exceptions - Provider May Vary Unilaterally

The Provider may make the following changes without Customer consent:

- (a) Price increases in accordance with Clause 16.4;
- (b) Policy updates (Acceptable Use, Privacy, Data Processing) with 30 days' notice;
- (c) Sub-processor changes in accordance with Clause 19.9;
- (d) Minor administrative, technical, or operational changes;
- (e) Changes required by law, effective immediately.

33.3 Customer's Termination Right

If Provider changes under Clause 33.2 materially and adversely affect Customer, Customer may terminate without penalty by giving notice within 30 days of the change notification.

33.4 Continued Use

Customer's continued use after changes under Clause 33.2 constitutes acceptance, except if Customer has given termination notice or the change requires mutual agreement under Clause 33.1.

34. Law and jurisdiction

34.1 These Terms and Conditions shall be governed by and construed in accordance with:

- (a) the laws of Scotland, where the Customer's principal place of business is in Scotland; or
- (b) the laws of England and Wales, in all other cases.

34.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, except that where the Customer's principal place of business is in Scotland, the Customer may elect to have such disputes subject to the exclusive jurisdiction of the courts of Scotland.