

## AWARENESS SOFTWARE LTD: TERMS AND CONDITIONS

### (these "Terms and Conditions")

We are Awareness Software Ltd, a company registered in England and Wales with registered number 03705875 and registered office at The Copper Room, Deva Centre, Trinity Way, Manchester, M3 7BG. In these Terms and Conditions, Awareness Software Limited is referred to as "**we**", "**us**" and "**our**".

#### 1. Definitions

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Account"	the account to which we provide you access in order that you are able to access, and use, the Portal;
"Agreement"	these Terms and Conditions together with the relevant Proposal, the Schedules referred to in that Proposal and any document referred to in these Terms and Conditions, the Proposal or the Schedules;
"Breach of Duty"	the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
"Business Day"	any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;
"Business Hours"	9.00 am to 5.00 pm on Business Days;
"Confidential Information"	any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;
"Customer", "you" or "your"	the recipient of services from us under this Agreement, as stipulated in the Proposal;
"Data Controller"	has the meaning set out in GDPR;
"Data Processor"	has the meaning set out in GDPR;
"Data Protection Legislation"	in relation to any Personal Data which is Processed in the performance of this Agreement, the Data Protection Act 1998 and EU Data Protection Directive 95 / 46 / EC (up to 25 May 2018), the General Data Protection Regulation (EU 2016/679) (" <b>GDPR</b> ") (on and from 25 May 2018), the Investigatory Powers Act 2016, Telecommunications (Lawful Business Practice), the Privacy and Electronic Communications Directive 2002 / 58 / EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003 / 2426), in each case together with all laws implementing or supplementing the same and any other applicable or equivalent data protection or privacy laws, and all other applicable law, regulations and codes of conduct relating to the processing of personal data and privacy, including the guidance and codes of practice issued by a relevant Supervisory Authority;
"Data Subject"	has the meaning set out in the Data Protection Act 1998;
"Event of Force Majeure"	has the meaning given to it in Clause 15.1;
"Fees"	the fees payable by you to us under this Agreement for our provision of the Services, as stipulated in the Proposal;
"Liability"	liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to " <b>this Agreement</b> " shall be deemed to include any collateral contract);
"Manager"	has the meaning given to it in Clause 7.1;
"Material"	your material that you upload (or permit to be uploaded) onto our servers, or otherwise use, as part of our provision of the Services, including any and all materials, works of authorship, software, files, multimedia and audiovisual material, tools, processes, systems, manuals, databases, database structures, a website's "look and feel", content, documents, records, reports, ideas, know-how, information, text, data, diagrams, artwork, screenshots, drawings, plans, descriptions, specifications, images, graphics, domain names and marks (in whatever form and on whatever media);
"Party"	us or you, and " <b>Parties</b> " means both of us and you;
"Personal Data"	has the meaning given to it by GDPR, and relates only to personal data, or any part of such personal data, of which you are the Data Controller and in relation to which we are the Data Processor and providing services under this Agreement;
"Personal Data Breach"	has the meaning given to it by GDPR;
"Personnel"	all persons employed or engaged by us to provide the Services;
"Portal"	the online portal made available by us for you to access, by means of an account entered by use of a username and password, through which you can access functionality and information relating to the services we provide to you from time to time, and which is available at <a href="https://intranet.aware-soft.net/">https://intranet.aware-soft.net/</a> ;
"Process" and	has the meaning given to it by GDPR;

<b>"Processing"</b>	
<b>"Proposal"</b>	our written communication to you setting out the services which we propose to supply to you;
<b>"Rates"</b>	our time and materials rates from time to time for the provision of services by the Personnel, which, in respect of the Services and as at the date of this Agreement, shall be as set out in the Proposal and subject to change from time to time by notification by us to you;
<b>"Schedule"</b>	a schedule containing a description of the services provided by us to you, including further rights and obligations for the Parties in relation to such services;
<b>"Services"</b>	the services we are to provide under this Agreement, as more particularly described in the Proposal and the relevant Schedule(s), including access to the Portal;
<b>"Special Categories of Personal Data"</b>	those categories of data listed in Article 9(1) GDPR;
<b>"Supervisory Authority"</b>	(a) an independent public authority which is established by a Member State pursuant to Article 51 GDPR; and (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws; and
<b>"Term"</b>	has the meaning given to it in Clause 14.1;

- 1.2 references to **"Clauses"** are to clauses of these Terms and Conditions; references to **"Paragraphs"** are to paragraphs of a Schedule;
- 1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4 a **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8 any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.9 a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except under Clause 16).

## 2. Agreement

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to all Services.
- 2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4 The Proposal shall be in the form that we require from time to time. This Agreement shall be legally formed as follows:
- 2.4.1 this Agreement shall be legally formed, and the Parties shall be legally bound, when you have confirmed to us, in accordance with the Proposal, that you accept the terms of the Proposal, and, based on such acceptance, either (i) we confirm that we will provide the Services, or (ii) we commence the provision of the Services;
- 2.4.2 submission by us to you of the Proposal shall not be deemed to be an offer by us to provide Services to you;
- 2.4.3 your acceptance of the Proposal that we send to you, in accordance with the Proposal, shall be deemed to be an offer by you to purchase the Services (as specified in the Proposal) from us, subject to the provisions of this Agreement;
- 2.4.4 the earlier of (i) our confirmation that we will provide the Services based on your acceptance of the Proposal, and (ii) commencement of provision of the Services, shall be deemed to be our acceptance of your offer; and
- 2.4.5 the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any advance payment of Fees as required under this Agreement.
- 2.5 If you provide to us a purchase order for your receipt of Services other than as set out in Clause 2.4, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6 In the event of a conflict between these Terms and Conditions, Schedules and the Proposal, then:
- 2.6.1 these Terms and Conditions shall prevail over
- 2.6.2 a Schedule, which shall prevail over
- 2.6.3 the Proposal.
- 2.7 Each Proposal, with its relevant Schedules, constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as this Agreement.

## 3. Services

- 3.1 We warrant that:
- 3.1.1 we shall use our reasonable skill and care in providing the Services;

- 3.1.2 our employees, agents and subcontractors have the necessary skill to provide any Services;
  - 3.1.3 any Services will be provided in a professional, competent and workmanlike manner;
  - 3.1.4 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement;
  - 3.1.5 we shall ensure that our employees, agents and subcontractors co-operate with, and make themselves available at all reasonable times for, discussion and meetings with you and your employees, agents or subcontractors;
  - 3.1.6 we shall use our reasonable endeavours to ensure that whilst our employees, agents and subcontractors are on your premises they conform to your normal codes of staff and security practice as are advised to them in advance by you;
  - 3.1.7 we shall fully, frequently and promptly update you as to progress with use of the Services, including reporting on any concerns, issues, comments or queries that need to be addressed or resolved; and
  - 3.1.8 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.
- 3.2 We do not warrant that the Services will meet your individual requirements. We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree in writing to advise or do, we shall not be responsible, or have any Liability (subject to Clause 13.2) for advising on, or failing to advise on, or doing, or failing to do, anything else.
- 3.3 Subject to us performing the Services within any timeframe agreed as being necessary for the performance of the Services, we may select our own working times and location provided that the nature of particular services does not require those particular services to be undertaken during particular working times or at a particular location (in which situation you shall be entitled to request that we perform the Services at such working times and location as are reasonable in the circumstances).
- 3.4 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, subject to Clause 13.2, we shall not have any Liability for any delays or failures to accurately perform our obligations:
- 3.4.1 if we have used those endeavours; or
  - 3.4.2 if caused by any failure or delay on your part or on the part of your employees, agents or subcontractors or by any breach by you of this Agreement or any other agreement.
- If there is any slippage in time, we shall use our reasonable endeavours to reschedule delayed tasks to a mutually convenient time.
- 3.5 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at the Rates for:
- 3.5.1 any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our Personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and
  - 3.5.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.
- 3.6 Where we say, in this Agreement or in respect of the Services generally, that features of the Services are "unlimited", that is always subject to:
- 3.6.1 fair use (taking into account that the services we provide to our customer-base, of which the Services form part, share an overall system capacity and that disproportionately high usage of the Services by you will impact on allocations to our other customers);
  - 3.6.2 Clause 4.10; and
  - 3.6.3 your compliance with Clauses 4.1.15(e) and 4.9.
- 3.7 We do not warrant that the Services will be uninterrupted, error-free or secure from unauthorised access. Whilst we use our reasonable endeavours to make the Services available, we shall not have any Liability (subject to Clause 13.2) if for any reason the Services are unavailable for any time or for any period. We make no warranty that your access to the Services will be uninterrupted, timely or error-free. Due to the nature of the Internet, this cannot be guaranteed. However, we will use our reasonable endeavours to ensure at least a 99.9% uptime Services availability level.
- 3.8 We reserve the right, at any time, to carry out repairs, maintenance or introduce new facilities and functions in respect of all or any part of the Services.
- 3.9 We will monitor our provision of the Services using our own monitoring tools. We will only rely on our own monitoring tools to assess the performance of the Services, and we will not consider or accept any results, reports or data from your monitoring tools in relation to the Services.
- 3.10 Where necessary, we may need to access the Services you are using, and you acknowledge that we may make such access without informing you.
- 3.11 We do not warrant that the Services will be compatible with all Material.
- 3.12 Subject to Clause 11.4.4, we may, at our absolute discretion, from time to time either host the Services on our own servers or use third party suppliers to do so in whole or in part. You acknowledge that we may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on you or reasonably restrict your rights due to the requirements of the third-party suppliers.
- 3.13 You acknowledge that the servers used in the provision of the Services (including virtual private servers and physical private servers) may be accessible to all users of the Internet. We do not and cannot make any guarantee as to, and (subject to Clause 13.2) we shall not have any Liability in respect of, the protection or security of any information held on the servers.
- 3.14 Except as specifically stipulated in this Agreement, we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time.
- 3.15 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services.

#### **4. Your obligations**

- 4.1 You shall:

- 4.1.1 ensure that the terms of the Proposal and any specification or instructions you provide to us for the Services, are complete and accurate;
  - 4.1.2 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if we undertake any work at your premises;
  - 4.1.3 inform us in writing a reasonable time before the commencement of any Services of any regulations relevant to us when working at any premises under your control;
  - 4.1.4 be present and available at your premises at the required times to enable us to perform our obligations at the times we reasonably require under this Agreement;
  - 4.1.5 sign a confirmatory note upon any of the Services (in whole or in part) having taken place if we reasonably require you to do so;
  - 4.1.6 ensure that your employees, agents and subcontractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;
  - 4.1.7 promptly comply with all of our reasonable requests in connection with this Agreement;
  - 4.1.8 report any faults or suspected faults with or in the Services to us immediately upon discovery;
  - 4.1.9 report to us any abuse of the Internet (including spam, hacking and phishing) that you consider to have taken place through the use of the Services by any person, and you shall include in such report as much information as you are able to provide to us relating to the type of abuse that you have witnessed;
  - 4.1.10 keep any password for your access to the Services strictly confidential and secure, and immediately change your password if you know or suspect that any unauthorised third party becomes aware of your password or if you become aware of unauthorised use of your password or there is any other breach of security known or suspected by you;
  - 4.1.11 maintain access to the Services through your Internet or telecoms service providers, and we are not responsible for any connections from your system to the Services;
  - 4.1.12 license and configure any third-party hardware and/or software necessary for you to access and make use of the Services;
  - 4.1.13 be responsible for ensuring that you have the knowledge and expertise necessary to access and make use of the Services;
  - 4.1.14 ensure that all Material is suitable and prepared for use in conjunction with the Services;
  - 4.1.15 be responsible for ensuring that, and you hereby warrant and undertake to us that, your use of the Services and any Material:
    - (a) does not infringe the privacy rights or Intellectual Property Rights of any third party;
    - (b) does not harm us or bring us or our name into disrepute;
    - (c) is not for the purposes of sending spam or other unsolicited emails;
    - (d) is not for the purposes of breaching or circumventing the security of any network or Internet user;
    - (e) does not impose an unreasonable or disproportionately large load on our infrastructure or the Services (whether or not the Services have "unlimited" elements, such as in relation to Internet traffic or disk usage);
    - (f) does not interfere with another user's use of the Services or similar services;
    - (g) is not defamatory, obscene, abusive, malicious, indecent, harassing or discriminatory;
    - (h) conforms in all respects will all applicable laws, rules, regulations, bye-laws and codes of practice (including disability discrimination, intellectual property, privacy and Data Protection Laws); and
    - (i) does not contain any material detrimental to us or any other user of the Services or similar services, including any viruses, trap doors, back doors, Trojan horses, time bombs, easter eggs, worms, cancelbots or other computer programming routines that are intended to detrimentally interfere with, damage, expropriate or surreptitiously intercept any system, data or personal information;
  - 4.1.16 have all rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
  - 4.1.17 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.
- 4.2 It is your responsibility to ensure that the Services are sufficient and suitable for your purposes and meet your individual requirements. This responsibility includes ensuring that the Services, and any deliverables or other materials we provide as part of the Services, are compliant with any regulatory regime to which you are subject. We shall not be responsible or, subject to Clause 13.2, have any Liability in the event that the Services are not suitable for your purposes or do not meet your individual requirements, including if they fail to comply with any laws or regulations to which you are subject.
- 4.3 You are responsible for ensuring that you provide us with the information required to enable us to properly provide the Services. We shall not be responsible or, subject to Clause 13.2, have any Liability for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information.
- 4.4 You must not, whether yourself or in conjunction with anyone else:
- 4.4.1 manipulate your use of the Services in ways that are unfair to us or other users of the Services; or
  - 4.4.2 use or access the Services in contravention of any applicable law.
- 4.5 You warrant that any Material is owned by, or appropriately licensed to, you. It is your responsibility to make sure that you have all necessary rights and consents relating to your use of the Material in conjunction with the Services.
- 4.6 You shall indemnify and hold us harmless against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any breach by you of Clauses 4.1, 4.4, 4.5 or 4.7. This indemnity shall apply whether or not you have been negligent or at fault.
- 4.7 You are responsible for keeping regular and full backups of all Material, which may include (but not be limited to) subscribing to backup services provided by us for the full backup of the Material. Subject to Clause 13.2, we shall have no Liability for any failure by you to backup any Material. If

any Material is lost or corrupted for any reason and you do not have an appropriate backup, we will not be able to help you recover that lost or corrupted Material except to the extent that you subscribe for specific backup services in accordance with a Schedule.

- 4.8 You are responsible to ensure that you have in place insurance in relation to any Material and Personal Data, including in relation to the loss or corruption of that Material or Personal Data.
- 4.9 You acknowledge that the Services and any Material may not be used for the purpose of:
- 4.9.1 data warehousing such as (but not limited to) storage of backup or archival data, mirror sites, or personal multimedia content such as movies, music, photos or other media;
  - 4.9.2 peer-to-peer file or media sharing, streaming, BitTorrent, Tor or other similar forms of data transmission; or
  - 4.9.3 providing or participating in a content delivery network.
- 4.10 We reserve the right to suspend our provision of the Services to you if your use of the Services is having a detrimental impact on our other customers. This might happen if, for example, a website or other hosting (in respect of which you use the Services):
- 4.10.1 has been hacked (such as through bugs in commonly-used software including WordPress);
  - 4.10.2 contains malware;
  - 4.10.3 is attacked (including by a denial of service attack); and/or
  - 4.10.4 is badly coded.

In all of these examples, your use of the Services might use excessive resource on our servers to the detriment of our other customers' use of the Services. Following the decision to suspend any Services, we will contact you with details of the suspension and invite you to remedy the situation if appropriate, or – for example in the case of a denial-of-service attack – when we will next review the situation. In such a situation, you are able to discuss what may be required for the Services to be reinstated by emailing us at [support@aware-soft.com](mailto:support@aware-soft.com) or by calling us on 0345 862 0355.

## **5. The Portal**

- 5.1 If we have allocated to you an Account, you will be able to access information and functionality for use of the Services.
- 5.2 In order for us to allocate to you access to the Portal and an Account, you shall provide such information as we may require from time to time.
- 5.3 Once we have allocated access to the Portal to you, we will allocate to you a username and password to access your Account. You must keep the password confidential and immediately inform us if any unauthorised third party becomes aware of that password or if there is any unauthorised use of the Portal or any breach of security known to you. You agree that any person to whom your username or password is disclosed is authorised to act as your agent for the purposes of using the Portal. You are entirely responsible if you do not maintain the confidentiality of your password.

## **6. Resale of third party software and services**

- 6.1 Where the Services involve the resale by us to you of software owned, or services/products provided, by a third party, you purchase a licence to use that software and those services/products from the relevant third party, and you do so subject to the relevant third party's software licence and/or terms and conditions; those terms and conditions are available on our website and, in some instances, in a Schedule. You will receive no representations or warranties in respect of the license of such software and provision of services/products except those contained in the relevant third party's licence and/or terms and conditions, and you acknowledge that the third party is able to terminate any licence and/or provision of services/products at any time.
- 6.2 The Fees for your purchase of a licence to third party software and/or third-party services/products are dependent on the relevant third party. Any Fees set out in the Proposal are estimated only, and the actual amount you pay for the licence and/or the services/products is at the absolute discretion of the third party.
- 6.3 We may provide specific support and maintenance Services in respect of third party software and services/products purchased through the Services. Whether we are able to provide those Services is dependent on the relevant third party providing appropriate support to us.
- 6.4 Subject to Clause 13.2, we will not have any Liability for the actions of third party software and service/product providers, the software they licence, and/or services/products they provide, to you through the Services, or the availability (or otherwise) of support in respect of that software and those services/products.

## **7. Management of the Services**

- 7.1 Each Party shall appoint a person for each Schedule to oversee the provision of Services by us to you under that Schedule, where such person shall act as the first point of contact for the other Party in respect of the relevant Services (each being a "Manager").
- 7.2 The Managers shall cooperate with each other and shall attend meetings at reasonable intervals to discuss the provision of the relevant Services.

## **8. Fees**

- 8.1 In consideration of obtaining the relevant Services we provide pursuant to this Agreement, you shall pay to us the Fees.
- 8.2 The Fees shall be as set out in the Proposal.
- 8.3 In accordance with the Proposal, or as otherwise in accordance with our normal expenses policies or procedures from time to time, we may charge you for our reasonable expenses incurred in the course of performing our obligations under this Agreement, including for the reasonable accommodation, travel, telephone, food, subsistence, out-of-pocket, any other expenses incurred in the course of performing this Agreement outside of the relevant person's normal place of work, stationery, and materials or equipment agreed in writing between the Parties that we will purchase on your behalf. Such expenses shall not be considered to be included in any estimates or quotations we provide to you at any time, and shall be incurred and charged to you on an ad hoc basis.
- 8.4 You shall pay the Fees (and expenses) to us at such times and in such instalments as we may direct from time to time. Unless set out otherwise in this Agreement, we may issue invoices to you for the Fees (and expenses) at such intervals as we may, at our absolute discretion, consider appropriate. However, if we are to incur significant expense on your behalf, the Parties may agree (such agreement not to be unreasonably withheld or delayed), on a case-by-case basis, that you shall pay us in advance before we have incurred the expense; you acknowledge that, without your agreement to incur the expense, we reserve the right to stop performing the Services that are dependent on us incurring that expense, and we shall have no Liability, subject to Clause 13.2, for any delay or failure in the performance of the Services as a result.

- 8.5 All sums due to us under this Agreement:
- 8.5.1 unless otherwise set out in the Proposal, are exclusive of VAT or other sales, import or export duties or taxes (if applicable) which shall be payable in addition at the same time as payment of any sums due;
  - 8.5.2 shall be paid by you to us by any payment method that we may stipulate from time to time; no payment shall be considered paid until we have received it in cleared funds in full;
  - 8.5.3 shall be paid by you to us in the currency in force in England from time to time or such other currency as we may stipulate from time to time for the Fees; and
  - 8.5.4 shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.6 If you are late in paying any part of any monies due to us under this Agreement and such payment remains outstanding for seven days following us providing notice to you of such outstanding payment, we may (without prejudice to any other right or remedy available to us whether under this Agreement or by any statute, regulation or bye-law) do any or all of the following:
- 8.6.1 charge interest and other costs on the overdue amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly;
  - 8.6.2 recover our costs and expenses and charges (including legal and debt collection fees and costs) in collecting the late payment; and/or
  - 8.6.3 suspend performance of this Agreement (or the relevant Schedule) until payment in full has been made.
- 8.7 We may increase the Fees and the Rates (or any of them) on an annual basis during the Term. In the event that you do not agree with the increase, you may terminate this Agreement on three months' written notice, during which period the existing Fees (prior to the planned increase) shall apply.

## **9. Insurance**

- 9.1 We shall maintain in force such insurance policies with reputable insurance companies as we consider reasonably necessary to cover our relevant potential liabilities in connection with this Agreement.
- 9.2 We shall, during the term of this Agreement, and for a period of one year thereafter:
- 9.2.1 do nothing to invalidate any insurance policy or to prejudice your entitlement under any insurance policy; and
  - 9.2.2 procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies for you.

## **10. Confidentiality**

- 10.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 10.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
  - 10.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 10.
- Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.
- 10.2 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:
- 10.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
  - 10.2.2 it does so subject to obligations equivalent to those set out in this Clause 10.
- 10.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 10.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 10.4 The obligations of confidentiality in this Clause 10 shall not extend to any matter which either Party can show:
- 10.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
  - 10.4.2 was independently developed by it; or
  - 10.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
  - 10.4.4 was in its written records prior to receipt.
- 10.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.
- 10.6 We may identify you as our client and the type of Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).
- 10.7 On termination of this Agreement, each Party shall:
- 10.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - 10.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
  - 10.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause 10.7, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 10.8 The provisions of this Clause 10 shall continue to apply after termination of this Agreement.

## **11. Data protection**

- 11.1 The Parties acknowledge that, for the purposes of Data Protection Laws, we are an independent Data Controller with respect to the processing of billing, utilisation, usage/patterns/counts/statistics, traffic data and other account related information related to you (to the extent it is Personal Data) which is necessary for us to perform of our obligations under the Agreement, or with respect to any Personal Data held for general business purposes. To the extent that we Process Personal Data on your behalf under this Agreement, the Parties acknowledge that, for the purposes of Data Protection Laws, you are the Data Controller and we are the Data Processor of any Personal Data. The nature and purpose of Processing is set out at in our Personal Data Processing Schedule, as may be updated by us from time to time at our reasonable discretion.
- 11.2 Each Party confirms that it holds, and during the term of this Agreement will maintain, all registrations and notifications required in terms of the Data Protection Laws which are appropriate to its performance of the obligations under this Agreement.
- 11.3 Each Party confirms that, in the performance of this Agreement, it will comply with Data Protection Laws.
- 11.4 We will:
- 11.4.1 Process Personal Data only on documented instructions from you, unless required to do so by Data Protection Laws or any other applicable law to which we are subject; in such a case, we shall inform you of that legal requirement before Processing, unless that law prohibits us to so inform you;
  - 11.4.2 ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - 11.4.3 take all measures required pursuant to Article 32 of the GDPR in respect of security of Processing;
  - 11.4.4 subject to Clause 11.11 and Clause 11.12, not commission any subcontractor in respect of Processing Personal Data without your prior written consent (such consent not to be unreasonably withheld or delayed), and ensure that any such subcontractor we commission complies with the provisions of this Clause 11 as if it was a Party;
  - 11.4.5 taking into account the nature of the Processing, assist you by putting in place appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of your obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Laws, to the extent that such requests relate to this Agreement and our obligations under it;
  - 11.4.6 assist you in ensuring compliance with your obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing the Personal Data and the information available to us;
  - 11.4.7 at your option, delete (to the extent practicable) or return all the Personal Data to you after termination of this Agreement or otherwise on your request, and delete existing copies (to the extent practicable) unless applicable law requires our ongoing storage of the Personal Data;
  - 11.4.8 make available to you all information necessary to demonstrate our compliance with this Clause 11.4, and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you; and
  - 11.4.9 inform you immediately if, in our opinion, an instruction from you infringes (or, if acted upon, might cause the infringement of) Data Protection Laws.
- 11.5 Each Party will notify the other Party as soon as is reasonably practicable if it becomes aware of a Personal Data Breach relating to either Party's obligations under this Agreement.
- 11.6 You shall undertake appropriate data protection impact assessments to ensure that Processing of Personal Data complies with Data Protection Laws. We will provide you with reasonable assistance, where necessary and upon your request, in carrying out any data protection impact assessment and undertaking any necessary prior consultation of the Supervisory Authority.
- 11.7 It is your responsibility to ensure that Personal Data is dealt with in a way that is compliant with Article 5(1) of the GDPR.
- 11.8 You shall ensure that:
- 11.8.1 you are able to justify the Processing of Personal Data in accordance with Article 6(1) of the GDPR (including, where applicable, obtaining any and all consents of Data Subjects required in order to commence the Processing), and that you have recorded or documented this in accordance with the record keeping requirements of the GDPR;
  - 11.8.2 where Personal Data falls within the Special Categories of Personal Data, Article 9(2) of the GDPR applies to that Personal Data before Processing takes place;
  - 11.8.3 where Article 9(2) of the GDPR does not apply to any Personal Data falling within the Special Categories of Personal Data, no such data will be sent to us; and
  - 11.8.4 you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.
- 11.9 In the event that we:
- 11.9.1 comply with your instructions in respect of Processing, we shall not have any Liability (subject to Clause 13.2) for any damage caused by Processing that Personal Data, or for any consequences in the event that such Processing otherwise infringes Data Protection Laws, to the extent that such damage or consequences result from our compliance with such instructions; and/or
  - 11.9.2 refuse to comply with your instructions in respect of Processing due to concerns that compliance will cause a breach of Data Protection Laws, we shall not have any Liability (subject to Clause 13.2) for any failure to follow such instructions.
- 11.10 You agree to indemnify us, and keep us indemnified and defend us at your own expense, against all costs, claims, damages or expenses incurred by us or for which we may become liable, due to any failure by you or your employees or agents to comply with this Clause 11.
- 11.11 You authorise our engagement of third parties as subcontractors for the purposes of Processing; in the event that we contract with such subcontractors in accordance with the requirements of Data Protection Laws, your entry into this Agreement will constitute your prior written consent to that subcontracting by us in respect of the relevant Processing. Information about the subcontractors that we engage for Processing purposes can be obtained by contacting us.
- 11.12 In the event that we engage any new subcontractor for the purposes of Processing during the term of this Agreement, we will inform you at least 1 month in advance of the engagement commencing, together with relevant information relating to that subcontractor and its operations. You may

object to that engagement by contacting us, and, as your sole and exclusive remedy for such engagement, you may terminate this Agreement on three months' written notice.

11.13 You must at all times:

11.13.1 at all times, use strong processes and controls to protect the security of Personal Data; such controls must enforce access to Personal Data on a need-to-know basis and also protect against unauthorised observation, change, deletion, corruption, contamination, acquisition or transmission, while at rest or in transit;

11.13.2 have plans and processes in place for maintenance, oversight and continuous improvement within your organisation; management and responsibility for information security must be a clear priority within your organisation; and

11.13.3 ensure that all your staff are appropriately aware and trained in information security processes and protocols as may be considered reasonable in your industry and operations.

## **12. Intellectual Property Rights**

12.1 You acknowledge that we or our licensors own:

12.1.1 all Intellectual Property Rights in the Services and any rights arising out of any works arising in connection with them; and

12.1.2 any IP address allocated to you as part of the Services, and such IP address is not portable or transferrable to another hosting provider at any time, including in the event that this Agreement is terminated.

We grant to you a non-exclusive licence to use the Services and any such IP address to the extent necessary for you to receive the provision of the Services from us.

12.2 We acknowledge that you own all Intellectual Property Rights in the Material, where your ownership is subject to the obligations contained in this Agreement and, in particular, Clause 4. You grant to us a non-exclusive licence to use that Material to the extent necessary for us to provide the Services to you.

## **13. Limitation of Liability**

13.1 This Clause 13 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:

13.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services or deliverables in connection with this Agreement; or

13.1.2 otherwise in relation to this Agreement or entering into this Agreement.

13.2 Neither Party excludes or limits its Liability for:

13.2.1 its fraud; or

13.2.2 death or personal injury caused by its Breach of Duty; or

13.2.3 any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or

13.2.4 any other Liability which cannot be excluded or limited by applicable law.

13.3 Subject to Clause 13.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.

13.4 Subject to Clause 13.2, we shall not have any Liability in respect of any:

13.4.1 indirect or consequential losses, damages, costs or expenses;

13.4.2 loss of actual or anticipated profits;

13.4.3 loss of contracts;

13.4.4 loss of use of money;

13.4.5 loss of anticipated savings;

13.4.6 loss of revenue;

13.4.7 loss of goodwill;

13.4.8 loss of reputation;

13.4.9 loss of business;

13.4.10 ex gratia payments;

13.4.11 loss of operation time;

13.4.12 loss of opportunity;

13.4.13 loss caused by the diminution in value of any asset; or

13.4.14 loss of, damage to, or corruption of, data;

whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 13.4.2 to 13.4.14 (inclusive) apply whether such losses are direct, indirect, consequential or otherwise.

13.5 Subject to Clause 13.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the greater of:

13.5.1 110% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or

13.5.2 £20,000.

13.6 The limitation of Liability under Clause 13.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.



- 13.7 You acknowledge and accept that we only provide the Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 13.2), directly or indirectly, for any act or omission of, you or your employees, agents or subcontractors, or any third party.
- 14. Termination**
- 14.1 This Agreement shall commence on the date on which this Agreement is entered into and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect until the latest of:
- 14.1.1 the completion of the provision of the Services under the last extant Schedule; or
- 14.1.2 the conclusion of payment of all sums due under this Agreement;
- (the "**Term**").
- 14.2 Without prejudice to any of our rights or remedies, we may terminate this Agreement (or, at our absolute discretion, the relevant Schedule) with immediate effect (or such other notice period as we see fit in our absolute direction) by giving notice to you if you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than seven days after being notified to make such payment.
- 14.3 By notice in writing to the other Party, either Party may immediately terminate this Agreement:
- 14.3.1 or the relevant Schedule if the other Party is in material breach of any of its obligations under this Agreement (or that Schedule), and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 20 Business Days of being notified of such breach by the Party; and/or
- 14.3.2 if the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order, or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 14.4 You may terminate this Agreement in accordance with Clause 8.7.
- 14.5 Termination of this Agreement (or a Schedule) shall be without prejudice to any accrued rights or remedies of either Party.
- 14.6 On termination of this Agreement (or a Schedule) for any reason:
- 14.6.1 we shall cease to provide the Services under this Agreement (or that Schedule);
- 14.6.2 all relevant Material will be automatically deleted from our servers and, as is the case throughout the Term in accordance with Clause 4.7, you are responsible for taking appropriate backups of such data and material at all times; and
- 14.6.3 you shall pay to us all amounts owing to us under this Agreement, whether invoiced or not.
- 14.7 Clauses 1, 4.6, 8, 10, 12, 13, 14.5, 14.6, 14.7, 15.1, 15.6, 16, 17, 18, 19, 20, 21, 23, 24 and 25 shall survive any termination of this Agreement for any reason.
- 15. Force Majeure**
- 15.1 Subject to Clause 13.2, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "**Event of Force Majeure**" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.
- 15.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 15.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 15.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 15.5 If the performance of any obligations is delayed under this Clause 15, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 15.6 If the breach, hindrance or delay caused by the Event of Force Majeure as set out in Clause 15.1 continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 13.2) to the other Party by reason of such termination.
- 15.7 If we have contracted to provide identical or similar services to more than one customer and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.
- 16. Notices**
- 16.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.

16.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 16.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.3 The provisions of this Clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

#### **17. Restriction**

For the duration of this Agreement and for 12 months following the termination or expiry of this Agreement for any reason, you must not:

17.1.1 offer employment to, enter into a contract for the services of, or attempt to entice away from us, any individual who is at the time of such offer or attempt, or has been at any time in the six months prior to such offer or attempt, our employee; and/or

17.1.2 procure or facilitate the making of any such offer or attempt by any other person.

#### **18. Assignment**

You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

#### **19. Severance**

19.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **20. Waiver**

A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### **21. Third party rights**

A person who is not a Party shall not have any rights under or in connection with this Agreement.

#### **22. Variation**

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

#### **23. No partnership**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

#### **24. Dispute resolution**

24.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**") then the Parties shall follow the procedure set out in this Clause 24:

24.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, our relevant customer manager and your relevant services manager shall attempt, acting reasonably and in good faith, to resolve the Dispute;

24.1.2 if those persons set out in Clause 24.1.1 are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director at Awareness Software Ltd and your equivalent employee having senior authorisation to bind your business, who shall attempt, acting reasonably and in good faith, to resolve it; and

24.1.3 if those persons set out in Clause 24.1.2 are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("**ADR notice**") to the other Party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 Days after the date of the ADR notice.

24.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 25, which shall apply at all times.

24.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England in accordance with Clause 25.

#### **25. Governing law and jurisdiction**

25.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

25.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

This document was most recently updated on 13<sup>th</sup> May 2018.