



Terms of Service

Last modified 21 July 2021

These Terms of Service (the "**Terms**") set out the conditions for using the Sites (as defined below) and, along with an Order Form, the Services provided by the Supplier.

1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in these Terms.

Active Contributor	any individual, such as an employee, external collaborator or Affiliate who has directly contributed to the development of an Application at least once in any ninety (90) day period immediately prior to, or during, the Term.
Add-On Services	those supplementary services which are provided to a Customer to enhance their use of the Services, as set out in an Order Form.
Affiliate	any entity that directly or indirectly controls, or is controlled by, or is under common control with, another entity.
Aggregated Data	non-personal, non-proprietary information in an anonymous aggregated form generated by the Supplier from the Generated Data, Customer Data and any other data received by the Supplier in the course of providing Services to Customers.
Agreement	has the meaning given to it under clause 3.6.
API	an application programming interface utilised by the Customer or an Authorised User for the purpose of using the Services or integrating with third-party applications.
Application	any software development project undertaken by the Customer for which the Services are being utilised.
Authorised User	those individuals, employees, agents, third-party suppliers, service recipients, independent contractors or Affiliates of the Customer who are authorised by the Customer to use the Services, including the Active Contributors.
Beta Services	any services or functionality that may be made available by Supplier in its sole discretion, to a Customer at no additional charge, which is clearly designated a beta, pilot, preview, non-production or evaluation services.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Charges	all fees and payments due from and payable by the Customer to the Supplier under the Agreement in accordance with clause 12 and as detailed in an Order Form.
Confidential Information	means all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be

considered to be confidential in nature including in relation to the Supplier, information relating to the Supplier's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers.

Controller	as defined by the UK GDPR.
Core Services	the automated code scanning service, used either for one-time assessments or continuous monitoring of a Customer's Applications.
Customer	the business customer using the Services as detailed in the Order Form.
Customer Data	the data input by (or retrieved from) the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of Supplier's provision of the Services or facilitating the Customer's use of the Services, excluding the Generated Data, Aggregated Data and Feedback.
Data Protection Legislation	means, as applicable and binding on the parties or Services: (a) in the United Kingdom: (i) the Data Protection Act 2018; (ii) the UK GDPR; and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426 and any legislation replacing, extending or supplementing such legislation in the United Kingdom; and (b) in member states of the European Union: the GDPR and all relevant member state laws or regulations giving effect to or corresponding with the GDPR.
Data Subject	as defined in the UK GDPR.
Documentation	the supporting documentation for each applicable Service, as updated by the Supplier from time to time and accessible via help.clayton.io or as otherwise provided by the Supplier to the Customer by any other means.
Effective Date	the date set out in an Order Form.
Feedback	has the meaning given to it in clause 7.3.
Free Services	any services provided by the Supplier to a Customer, in its sole discretion, without charge and for a limited period, including Beta Services, Freemium Services and any other Services which are provided as part of a Free Trial, as set out in an Order Form.
Freemium Services	any services which are provided by the Supplier to a Customer, in its sole discretion, without charge and for a limited period or with limited functionality, as set out in an Order Form, and further described at clause 14.
Free Trial	the provision of Services by the Supplier to a Customer, in its sole discretion, without charge and for a limited period, as set out in an Order Form, and further described at clause 14.
GDPR	the General Data Protection Regulation (Regulation 2016/679).
Generated Data	the data, results, reports, insights, data visualisations, analytics, interpretations and statistics generated by the Supplier in the course of providing the Services to the

	Customer, excluding Customer Data.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
List of Sub-Processors	the latest version of the list of Sub-Processors used by the Supplier available at https://www.getclayton.com/legal .
Malicious Code	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Normal Business Hours	9.00 am to 5.30 pm local UK time, each Business Day.
Order Form	a written order in the form prescribed by Supplier, which is executed by the Customer and Supplier detailing the Services to be supplied by Supplier, the Term of supply and the Charges payable by Customer in respect of the Services. The Order Form may be executed in hard written copy or completed online by the Customer.
Permitted Usage	the maximum usage limits granted to a Customer, as set out in an Order Form, the Terms of Use, the Documentation or otherwise as may be communicated by the Supplier in writing from time to time (and any updates thereto), including limitations related to Authorised Users and Active Contributors.
Personal Data	as defined by the UK GDPR.
Personal Data Breach	as defined by the UK GDPR.
Processor	as defined by the UK GDPR.
Renewal Period	the period described in clause 20.1.
Services	the provision of access for the Customer and Authorised Users to those Core Services, Add-On Services, Free Services and Support Services to which the Customer has subscribed, provided by the Supplier as set out in an Order Form, and in accordance with these Terms.
Site(s)	means each of getclayton.com , clayton.io and any other

websites operated by the Supplier from time to time.

Software	the underlying software applications which are proprietary to the Supplier and which are used by the Supplier to deliver the Services.
Specification	the specification outlined in relation to each Service, as set out in an Order Form.
Sub-Processor	another Processor engaged by the Supplier for carrying out processing activities in respect of the Personal Data processed in relation to this Agreement on behalf of the Customer.
Supplier	Space Heroes Ltd, a limited company incorporated in England and Wales with company number 09425439 and registered office at Suites 5 & 6 The Printworks Hey Road, Barrow, Clitheroe, Lancashire, England, BB7 9WB
Support Services	any error corrections, troubleshooting, assistance, training, updates or any other support that the Supplier may provide to the Customer or perform with respect to the Services under these Terms.
Term	has the meaning given in clause 20.1 (being the Initial Term together with any subsequent Renewal Periods).
Terms of Use	the terms of use located at www.getclayton.com/legal .
UK GDPR	retained Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018.

2. Contacting Us

- 2.1. The Services are provided by the Supplier.
- 2.2. To contact the Supplier, please email hello@clayton.io.

3. Acceptance of these Terms

- 3.1. The Customer may request that the Supplier provide specific Services at any time by giving written notice to the Supplier.
- 3.2. Following receipt of the Customer's notice pursuant to clause 3.1, the parties shall within a reasonable timeframe mutually agree and detail in an Order Form:
 - 3.2.1. the description and scope of the Services to be provided by the Supplier to the Customer;
 - 3.2.2. any applicable timescales and delivery dates in respect of the Services; and
 - 3.2.3. the Charges for the Services.
- 3.3. The parties shall complete an Order Form in respect of any and all Services.
- 3.4. All Order Forms shall be subject to these Terms. Each Order Form shall form a separate contract which incorporates these Terms.
- 3.5. No terms or conditions endorsed upon, delivered with or contained in the Customer's acknowledgement or acceptance of an Order Form or similar document shall form part of the Agreement and the Customer waives any right which it otherwise might have to rely on such terms

and conditions.

- 3.6. These Terms, the Terms of Use and each Order Form under which it has subscribed for the Services shall together constitute the “**Agreement**”.

4. Changes to these Terms, the Site or the Services

- 4.1. The Supplier shall be entitled to update and change the Services, Specification, Site and/or its Software from time to time to address a change in applicable laws, to maintain the security and/or performance and availability of the Services. The Supplier will use commercially reasonable endeavours to give the Customer reasonable notice of any major changes under this clause 4 but the Customer acknowledges that, depending on the nature of such changes, prior notification may not be possible.
- 4.2. The Supplier reserves the right to amend these Terms from time to time, and to display the amended Terms on the Site. Notification of the amendment will be notified to the Customer Representative as detailed in the Order Form. If the Customer is not happy with the change to the Terms the Customer may terminate the relevant Order Form by giving the Supplier written notice within 14 days from the date it is notified of the amended Terms. If no termination notice is received by the Supplier within 14 days from the notice of the change to the Terms being issued then the Customer shall be deemed to have accepted the changes to the Terms.

5. Customers use of the Services

- 5.1. Subject to the Customer paying all Charges and complying with these Terms, the Terms of Use, and an Order Form, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users, to use the Services and the Documentation during the Term, solely for the Customer's internal business operations.
- 5.2. In relation to the use of the Services, the Customer undertakes that:
- 5.2.1. it will procure that Authorised Users shall adhere to the terms of the Agreement (in particular the Terms of Use) and will be liable for all acts and omissions of any Authorised Users; and
- 5.2.2. it will not use, and shall ensure that Authorised Users shall not use, the Services in excess of the Permitted Usage.
- 5.3. The Supplier reserves the right to track the Customer's use of the Services remotely and if the Supplier detects any breach by the Customer of the Agreement, including use of the Services in excess of the agreed Permitted Usage or discrepancies in the Customer's Applications, Authorised Users or Active Contributors specified in the Order Form or otherwise mutually agreed in writing, it shall notify the Customer in writing. The Customer shall have 14 days from the date of such notice to remedy any non compliance and meet the Permitted Usage and all other terms of the Agreement. If the non compliance is not rectified within the 14 day period then the Supplier reserves the right to automatically increase the Charges to reflect the actual usage in accordance with its then current rates. Such increased Charges shall take effect immediately and shall be pro rated for the remainder of the Term. The increased Charges shall apply for the remainder of the Term unless otherwise agreed in writing between the parties.
- 5.4. If the Customer does not comply with the terms of the Agreement, the Supplier reserves the right to suspend the provision of the relevant Service, including access to the Generated Data.
- 5.5. The Customer shall not, and shall procure that Authorised Users do not, access, store, distribute or transmit any Malicious Code, or any material during the course of its use of the Services that:
- 5.5.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 5.5.2. facilitates illegal activity;

- 5.5.3. depicts sexually explicit images;
- 5.5.4. promotes unlawful violence;
- 5.5.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 5.5.6. is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights or remedies under this Agreement, to disable the Customer's (and any Authorised User's) access to the Services.

5.6. The Customer shall not, and shall procure that Authorised Users do not:

5.6.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:

- 5.6.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
- 5.6.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

5.6.2. access all or any part of the Services in order to build a product or service which competes with the Services;

5.6.3. remove or alter any author metadata in the code of Applications designated by a Customer for the Supplier's supply of Services;

5.6.4. subject to clause 26.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or

5.6.5. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 5.

5.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software or Sites and, in the event of any such unauthorised access or use, promptly notify the Supplier.

5.8. Email addresses and other authoring metadata or identifiers ("**Aliases**") shall be linked to Active Contributors. An individual Active Contributor may have more than one Alias. The Customer shall not and procure that Authorised Users shall not attribute Aliases of different individual users under one Active Contributor. The Supplier may charge the Customer in accordance with clause 13 if it believes, acting reasonably and using information of the Aliases, that the Customer has more Active Contributors than it has confirmed to the Supplier.

6. **Services**

6.1. The Supplier shall, during the Term, provide the Services to the Customer on and subject to these Terms, the Terms of Use, and each Order Form.

6.2. The Supplier shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- 6.2.1. maintenance on the Sites or Software at any time, provided such maintenance does not adversely impact the Services;

- 6.2.2. planned maintenance usually carried out at weekends during the maintenance window of 8.00 am to 12.00 am UK time (but such times are indicative only);
 - 6.2.3. unscheduled maintenance to deal with an incident. Details of incidents shall be available to the Customer on the Suppliers online status page; and
 - 6.2.4. any unavailability caused by circumstances beyond the Supplier's reasonable control, including for example a force majeure event pursuant to clause 19, denial-of-service attack, any delay or failure of third-party or Customer-operated version control systems, identity providers or other non-Supplier applications (including but not limited to the Applications), or any action or omission by the Customer which renders the provision of Services by the Supplier unfeasible.
- 6.3. Where such maintenance will adversely impact the Services, the Supplier will use commercially reasonable endeavours to give the Customer reasonable notice of any unavailability of the Services due to planned maintenance, but the Customer acknowledges that, depending on the nature of such maintenance, prior notification may not be possible.
- 6.4. The Site, Software and Services will not be classified as 'unavailable' where the unavailability is due to maintenance, or action taken in accordance with clause 6.
- 6.5. The Supplier will, as part of the Services, provide the Customer with the Supplier's standard customer Support Services. The Customer may purchase enhanced support services as an Add-On Service separately at the Supplier's then current rates.

7. Customer Data

7.1. The Customer shall:

- 7.1.1. own all rights, title and interest (including all Intellectual Property Rights) in and to all of the Customer Data; or
- 7.1.2. where Customer does not own all such rights, title and interest (including all Intellectual Property Rights) in and to all of the Customer Data, shall ensure it secures all necessary licences, permissions and consents from such owner to enter the Agreement and to submit Customer Data on the terms of the Agreement,

and (under both clause 7.1.1 or 7.1.2), shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

7.2. By submitting the Customer Data for verification under the Services as part of an Application or otherwise, the Customer grants (and warrants that it has all necessary licences, permissions and consents (including but not limited to under clause 7.1.2 above)) to grant the following licence to the Supplier: a non-exclusive, royalty-free, worldwide and irrevocable licence to access, retrieve, retain, store, use, copy and disclose such Customer Data during the Term solely:

- 7.2.1. in connection with the provision of the Services and to carry out its obligations under the Agreement;
- 7.2.2. to produce the Generated Data and Aggregated Data,
- 7.2.3. in order for the Supplier to improve or enhance the Services; and
- 7.2.4. to satisfy applicable legal, accounting or regulatory requirements.

7.3. The Customer grants the Supplier a royalty-free, non-exclusive, irrevocable and perpetual licence to use any feedback, enhancement requests, recommendations, corrections and any other suggestions for improvement that the Customer may make during the course of its receipt of the Services (together, the "**Feedback**"), in order for the Supplier to improve, enhance or fix any errors identified in its services (including its provision of the Services).

7.4. The Customer agrees that the Supplier has the right to create Aggregated Data pursuant to its provision of Services to a Customer. The Customer acknowledges that the Supplier may retain, use, combine and share Aggregated Data with any third party for the Supplier's business purposes during or after the expiry or termination of the Agreement.

7.5. This clause 7 shall survive termination and expiry of this Agreement.

8. Data Protection

The parties agree that in respect of the Services, the Customer shall be the Controller and the Supplier shall be the Processor and each party shall comply with its respective obligations under Schedule 1 (Data Processing).

9. Third-party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

10. Supplier's obligations

10.1. The Supplier undertakes that the Services will be performed substantially in accordance with the Specification and with reasonable skill and care.

10.2. The obligation at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions or this Agreement, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the obligation at clause 10.1, the Supplier will, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1. Notwithstanding the foregoing, the Supplier:

10.2.1. does not warrant that a Customer's or Authorised User's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

10.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.3. These Terms shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

10.4. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

11. Customer's obligations

The Customer shall:

11.1. provide the Supplier with:

11.1.1. all necessary co-operation in relation to these Terms; and

11.1.2. all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

11.2. comply with all applicable laws and regulations with respect to its activities under these Terms;

11.3. carry out all other Customer responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

11.4. ensure that the Authorised Users use the Services in accordance with the Agreement (including these Terms, the Order Form and in particular, the Terms of Use), and shall be responsible for any Authorised User's breach of the Agreement;

11.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;

11.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;

11.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and

11.8. comply with the agreed Permitted Usage set out in an Order Form.

12. Charges and payment

12.1. The Customer shall pay the Charges to the Supplier for the Services to which it has subscribed under an Order Form in accordance with this clause 12, including any adjustments to the Charges which may be chargeable under clauses 5.3 or 12.5.

12.2. The Customer shall provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and the Customer hereby authorises the Supplier to bill such credit card on a recurring and periodic basis from:

12.2.1. the Effective Date; or

12.2.2. the date immediately following the expiry of any period during which Supplier, in its sole discretion, agrees to provide Free Services,

as may be relevant and as is set out in an Order Form.

12.3. The Supplier shall provide the Customer with an invoice for the Services, which shall become due and payable in the timeframes set out in the Order Form. If no timeframe is detailed in the Order Form then payment of invoices shall become due 30 days from the date of invoice. If the Supplier has not received payment within the payment period, without prejudice to any other rights and remedies of the Supplier:

- 12.3.1. the Supplier may, without liability to the Customer, disable the Customer's password, account and access (including Authorised User's access) to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 12.3.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bank in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 12.4. All amounts and fees (including the Charges) stated or referred to in these Terms:
 - 12.4.1. shall be payable in pounds sterling (unless agreed otherwise); and
 - 12.4.2. are non-refundable, except refunds provided in accordance with clause 20.2; and
 - 12.4.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 12.5. The Supplier shall be entitled to increase the Charges, at the start of each Renewal Period upon 90 days' prior written notice to the Customer. Should the Customer fail to cancel the Services in accordance with clause 20.1.1 of these Terms, the increase in Charges shall be deemed agreed by the Customer and a relevant Order Form shall be considered amended accordingly.
- 12.6. The Customer may increase its Permitted Usage under the Agreement but may not decrease its Permitted Usage under the Agreement
- 12.7. All Charges exclude all taxes that may apply. Any such taxes are the responsibility of the Customer.

13. Changes to Services

- 13.1. Subject to clause 13.2, the Customer may, from time to time during any Term, purchase additional Services or purchase access to Services for an increased number of Authorised Users or to reflect an increased number of Active Contributors and the Supplier shall grant access to such Services and to such additional Authorised Users in accordance with the provisions of the Agreement subject to all additional Charges being agreed and paid by the Customer.
- 13.2. If the Customer wishes to make changes to the Services pursuant to clause 13.1 above, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request(s) and respond to the Customer with approval or rejection of the request(s) (such approval not to be unreasonably withheld) in writing. Where the Supplier approves the request, the Supplier shall activate the changes to Customer's Services within 2 Business Days of its written approval of the Customer's request.

14. Free Services

- 14.1. The Customer may request and the Supplier may, in its sole discretion and for a limited period, grant the Customer access to certain Beta Services, Freemium Services and such other of its Services as part of a Free Trial, the terms of which shall be set out in an Order Form.
- 14.2. The Customer may be required to enter its billing information in accordance with clause 12.2 in order to receive Free Services.
- 14.3. In addition to any other terms, restrictions and limitations of receiving Free Services set out in an Order Form, or within any Documentation which may be supplied by Supplier to Customer from time to time, and to which a Customer agrees to be bound, the Customer:
 - 14.3.1. agrees to be bound by the Permitted Usage agreed and set out in an Order Form, the Documentation, or as may otherwise be communicated by Supplier from time to time. Any use of the Free Services in excess of the Permitted Usage may be subject to

Charges in accordance with the Order Form and these Terms; and

- 14.3.2. acknowledges that the Supplier reserves the right to withdraw, suspend or terminate the Customer's access to the Free Services or any part thereof at any time in its sole discretion, and without any liability owed to the Customer (whether under these Terms or otherwise).
- 14.4. The Customer will not be charged by the Supplier for Free Services until the end of the term applicable to the Free Services, as set out in an Order Form. In respect of a Free Trial, unless the Customer cancels its access to Services received under a Free Trial by giving the Supplier not less than two (2) Business Days' prior written notice, the Customer will be automatically signed up to receive the same Services as those received in the Free Trial, and will be charged the applicable Charges for those Services.

15. Intellectual Property

- 15.1. Save as otherwise expressly set out in the Agreement, nothing shall affect, or grant any right to, any Intellectual Property Rights owned by and/or licensed to either party prior to the commencement of the Agreement.
- 15.2. All Intellectual Property Rights in and to the Software, Generated Data, Aggregated Data, Documentation, Sites and Services are, and shall remain, the property of the Supplier (or its licensors as applicable) and the Customer acknowledges that save as otherwise expressly set out in the Agreement, it shall acquire no rights (including Intellectual Property Rights) in and to the Software, Generated Data, Aggregated Data, Documentation, Sites and the Services by virtue of receiving Services under the Agreement. Should the Customer, its Affiliates or Authorised Users acquire any Intellectual Property Rights in the Software, Generated Data, Aggregated Data, Documentation, Sites or Services by virtue of the Supplier's provision or the Customer's receipt of the Services under the Agreement, the Customer hereby assigns to the Supplier, unencumbered and with full title guarantee, all such rights (including Intellectual Property Rights and in the case of moral rights, hereby waives such rights), both existing and future, in and to the Software, Generated Data, Aggregated Data, Documentation, Sites and the Services. The Customer shall execute all such documents and take all such steps required in order to give effect to this clause 15.2.
- 15.3. The Supplier grants to the Customer, a royalty-free, non-exclusive, non-transferable and perpetual licence to use the Generated Data for the Customer's internal business operations, unless otherwise agreed between the parties and set out in the Order Form. The Customer acknowledges that the granting of such license in no way amounts to any warranty or representation by the Supplier relating to the accuracy of the Generated Data (including any errors in or omissions to the Generated Data), and Customer assumes sole responsibility for its use of and reliance on the Generated Data. For the avoidance of doubt, the Supplier shall in no way be liable to the Customer (or any third party), for any damage to or loss suffered by the Customer (or any third party) which may be attributable to the Customer's (or a third party's) reliance on the Generated Data (including but not limited to on account of any errors in or omissions to the Generated Data).
- 15.4. This clause 15 shall survive the termination or expiry of the Agreement.

16. Publicity

- 16.1. The Customer agrees that the Supplier may issue a press release (or if the Supplier wishes, another form of public communication) relating to the parties' entry into the Agreement.
- 16.2. The Customer agrees that the Supplier may use the Customer's company and trading name(s) and logo in its online and printed sales and marketing material strictly for the purpose of identifying the Customer as a customer of the Supplier.

17. Confidentiality

- 17.1. Neither party shall use and/or disclose any Confidential Information which is acquired by it (the

“receiving party”) about the other party’s (the “disclosing party”) business and/or given by the disclosing party to the receiving party and/or generated by the receiving party from the disclosing party’s Confidential Information except in the proper performance of the Agreement (the “Permitted Purpose”).

- 17.2. The receiving party may disclose the disclosing party’s Confidential Information to its employees, workers, personnel or subcontractors, who need to know such Confidential Information for the Permitted Purposes, provided that the receiving party (i) informs such individual of the confidential nature of the Confidential Information before disclosure; and (ii) at all times, shall be responsible for its employers’, workers’, personnel’s or subcontractors’ compliance with the confidentiality obligations set out in this clause 17.
- 17.3. Notwithstanding clause 17.1, a party may disclose the other party’s Confidential Information to the extent required by law, by a court of competent jurisdiction, governmental or regulatory order provided that, where it is permitted to make such notification, it notifies the other party as soon as possible prior to making any disclosure.

18. Indemnity

- 18.1. The Customer shall defend, indemnify and hold harmless the Supplier against all claims (including third party claims), actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Supplier’s use of the Customer Data.
- 18.2. The Supplier shall:
 - 18.2.1. give the Customer prompt notice of any such claim;
 - 18.2.2. provide reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer’s expense.

19. Limitation of liability

- 19.1. The Customer assumes sole responsibility for its use of the Services (including the Generated Data) by the Customer, and for conclusions drawn from such use (including conclusions drawn from the contents of (including any omissions within) the Generated Data). The Supplier shall have no liability for any damage caused by or loss suffered as a result of any errors or omissions in any analysis, information, instructions or scripts (including the Generated Data) provided by the Supplier to the Customer in connection with the Services, or any actions taken by the Supplier at the Customer’s direction.
- 19.2. Neither the Supplier, nor its employees, agents or sub-contractors shall be liable to any Customer, Authorised User or other third party, without limitation, for any harm, loss, costs, damages, charges or expenses, or in connection to any claims (including third party claims), actions or proceedings which may arise on account of;
 - 19.2.1. the actions or omissions of the Supplier’s third-party hosting provider;
 - 19.2.2. the Customer’s use of any Free Services or Support Services;
 - 19.2.3. a modification of the Services by anyone other than the Supplier;
 - 19.2.4. the Customer’s use of the Services in a manner contrary to the terms of the Agreement, or the instructions given to the Customer by the Supplier from time to time; or
 - 19.2.5. a claim that any Customer Data or Feedback submitted by a Customer infringes the intellectual property or other rights of a third party, the Customer shall be liable to Supplier in connection with any such claim.

- 19.3. All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Terms and the Services are provided to the Customer on an "as is" basis.
- 19.4. Nothing in these Terms excludes the liability of the Supplier:
- 19.4.1. for death or personal injury caused by the Supplier's negligence; or
 - 19.4.2. for fraud or fraudulent misrepresentation; or
 - 19.4.3. any other liability that cannot be excluded or limited by law.
- 19.5. Subject to clause 19.4:
- 19.5.1. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill, loss of reputation and/or similar losses or loss or corruption of data (including but not limited to Customer Data) or information, or loss or corruption of software or systems (including but not limited to Applications), or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Terms; and
 - 19.5.2. the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of an applicable Order Form shall be limited to the total Charges paid or payable by the Customer for the relevant Services during the 12 months immediately preceding the date on which the liability arose.

20. Term and termination

- 20.1. The Agreement shall, unless otherwise terminated as provided in this clause 20, commence on the Effective Date and shall continue for the Initial Term and, thereafter, the Agreement shall be automatically renewed for such successive periods as are set out in an Order Form or as may otherwise be agreed in writing between the parties (each a Renewal Period), unless:
- 20.1.1. either party notifies the other party of termination, in writing, at least 14 days before the end of the Initial Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
 - 20.1.2. otherwise terminated in accordance with the provisions of these Terms.
- 20.2. Either party may terminate the Agreement at any time by giving the other party at least 30 days' prior written notice. The parties agree that if the Supplier terminates the Agreement under this clause 20.2, it will refund to the Customer a prorated proportion of the Charges paid by the Customer in respect of the Services that the Supplier has not performed as at the date of termination. The Supplier shall refund the Customer within 30 days of the date of termination. For the avoidance of doubt, if the Customer terminates the Agreement pursuant to this clause, it shall not be entitled to a refund of any Charges paid in advance for Services not rendered as at the date of termination.
- 20.3. A party may immediately terminate the Agreement by written notice if the other party:
- 20.3.1. fails to make any payment when due;
 - 20.3.2. breaches the terms of these Terms (and if remediable the breach has not been remedied in 14 days of receiving notice requiring it to be remedied);
 - 20.3.3. persistently breaches any one or more terms of these Terms;
 - 20.3.4. ceases or threatens to cease to carry on business; and/or

- 20.3.5. is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect or any of these circumstances.
- 20.4. On termination of the Agreement for any reason:
- 20.4.1. all licences that are not perpetual licences granted under these Terms shall immediately terminate and the Customer shall immediately cease all use of the Services; and
- 20.4.2. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

21. Force majeure

The Supplier shall have no liability to the Customer under these Terms if it is prevented from or delayed in performing its obligations under these Terms, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, sub-contractors or any other act or omission of a third party engaged by Supplier in the course of its provision of the Services. The Supplier will use commercially reasonable endeavours to notify the Customer of such an event and its expected duration.

22. Waiver

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23. Rights and remedies

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

24. Severance

- 24.1. If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25. Entire agreement

- 25.1. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made

innocently or negligently) that is not set out in the Agreement.

- 25.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

26. Assignment

26.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

26.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.

27. No partnership or agency

Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. Third party rights

These Terms does not confer any rights on any person or party (other than the parties to these Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

29. Notices

29.1. Any notice required to be given under these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in these Terms, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in these Terms.

29.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at 9 am on the first Business Day following delivery.

30. Governing law

These Terms 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 law of England and Wales.

31. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 – Data Processing

- 1.1. Each party shall:
 - 1.1.1. at all times during the Term, comply with the applicable Data Protection Legislation; and
 - 1.1.2. to the extent applicable under the Data Protection Legislation, obtain and maintain all appropriate registrations required in order to allow that party to perform its obligations under this Agreement.
- 1.2. Processing of the Personal Data by the Supplier under this Agreement shall be for the subject-matter, duration, nature and purposes, and involve the types of Personal Data and categories of Data Subjects, set out in this paragraph 1.2. The Supplier provides the Services used by the Customer to analyse and review code and metadata, for the duration of this Agreement. The purpose of the processing is to allow the Customer and its Authorised Users to submit Customer Data for verification. The types of Personal Data processed are (i) Identification information: name and job title; (ii) Contact information: email address (business and/or personal); (iii) User information: username and related log-in details; and (iv) meta data related to code authored. Such types of Personal Data relate to the Customer's Authorised Users.
- 1.3. In relation to all Personal Data provided or made available to the Supplier by or on behalf of the Customer, to the extent that the Supplier is the processor of such Personal Data, the Supplier shall:
 - 1.3.1. unless required to do otherwise by applicable laws, only process the Personal Data in accordance with the Customer's documented instructions and in accordance with paragraph 1.2 of this Schedule 1;
 - 1.3.2. taking into account the nature of the processing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 1.3.3. not, without the prior written consent of the Customer, transfer any such Personal Data to a country or territory outside both the United Kingdom and European Economic Area unless adequate contractual or other assurances have first been put in place to enable each party to comply with the requirements of the Data Protection Legislation;
 - 1.3.4. take reasonable steps to ensure the reliability of its personnel who have access to any such Personal Data and ensure that such Personal Data shall only be accessible by its personnel to the extent they need to know or require access for the purpose of properly performing their duties in relation to this Agreement and who, are contractually bound to maintain its confidentiality;
 - 1.3.5. prior to any Sub-Processor authorised in accordance with paragraph 1.4 carrying out any processing activities in respect of Personal Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Schedule 1 that is enforceable by the Supplier;
 - 1.3.6. remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own;
 - 1.3.7. notify the Customer, without undue delay, of any Personal Data Breach and provide reasonable assistance to the Customer in respect of any such Personal Data Breach;
 - 1.3.8. at the end of the Term, at the choice of the Customer, delete or return all Personal Data processed in relation to this Agreement, unless the Supplier is the Controller of that Personal Data;
 - 1.3.9. subject to the Customer paying the Supplier's reasonable costs (unless prohibited by applicable law), provide such cooperation and assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) in ensuring compliance with:
 - 1.3.9.1. the Customer's obligations to respond to any complaint or request from any applicable data protection authority or Data Subjects seeking to exercise their rights under Data Protection Legislation, including by promptly notifying the Customer of any subject access request the Supplier receives;
 - 1.3.9.2. the Customer's obligations to:
 - 1.3.9.2.1. ensure the security of the processing;

- 1.3.9.2.2. notify the relevant supervisory authority and any Data Subjects, where relevant, of any Personal Data Breach;
 - 1.3.9.2.3. carry out any data protection impact assessments ("DPIA") on the impact of the processing on the protection of Personal Data; and
 - 1.3.9.2.4. consult the relevant supervisory authority prior to any processing where a DPIA indicates that the processing would result in a high risk in the absence of measures taken by the Customer to mitigate the risk;
 - 1.3.10. make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this Schedule 1, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose only (subject to a maximum of one (1) audit request in any twelve (12) month period under this paragraph 1.3.10).
- 1.4. The Customer authorises the appointment of each of the Sub-Processors identified on the List of Sub-Processors at the Effective Date. The Supplier shall give the Customer thirty (30) days' prior written notice of any change to the List of Sub-Processors. In the event the Customer reasonably believes that any such change materially impacts it negatively in any manner it may by written notice elect to terminate this Agreement in respect of all impacted Services provided it exercises such right within fourteen (14) days of receipt of the change notification and notifies the Supplier in writing at the time of exercising such right of the negative impact which has caused it to exercise this right.
- 1.5. The Customer warrants, represents and undertakes, that all:
 - 1.5.1. Personal Data provided by the Customer to the Supplier for use in conjunction with the Services shall comply in all respects, including in terms of its collection, storage and processing, with Data Protection Legislation; and
 - 1.5.2. instructions given by it to the Supplier in respect of Personal Data shall at all times be in accordance with Data Protection Legislation.
- 1.6. The Supplier shall inform the Customer without undue delay if the Supplier believes that a processing instruction infringes Data Protection Legislation, provided that to the maximum extent permitted by applicable law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, liabilities, costs, expenses and damages arising from or in connection with any processing in accordance with the Customer's unlawful processing instructions.