# Vista Cloud Agreement

# Standard Terms

*Effective from 25 November 2022 – 4 May 2023*

These Standard Terms, the Vista Key Terms, the Movio Key Terms, the Data Processing Terms, and any Statements of Work contain the terms and conditions under which Vista and/or Movio will make the Services available to the Client (collectively, the **Agreement**). The Client agrees to be bound by the Agreement by either executing the Vista Key Terms or otherwise accessing the Services (or any part thereof).

# Definitions and Interpretation

* 1. **Definitions**: In the Agreement, unless otherwise specified or the context otherwise requires:

**Affiliate** means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and any Person owning, directly or indirectly, 50% or more of the voting securities of, or economic interests in, a second Person will be deemed to control that second Person.

**Agreement** has the meaning given to that term in the introduction above.

**Background Rights** means any Intellectual Property Rights owned by, or licensed from, a third party to a Party that are or have been created independently of the Agreement (whether prior to the date of the Agreement or otherwise), including all enhancements, developments and modifications to the same.

**Beta Services** means services or functionality made available to the Client to trial at the Client’s option which are clearly designated by Vista as Beta, limited release, developer preview, non-production, evaluation, or by some similar description.

**Bill Rate** means in respect of any rate of interest to be calculated pursuant to the Agreement the mid or “FRA” rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.00am on the first Business Day of the period in respect of which that rate of interest is to be calculated, and thereafter at intervals of 90 days from that Business Day.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Auckland, New Zealand (if the Governing Law is New Zealand), Los Angeles, California (if the Governing Law is State of California, USA), London, England (if the Governing Law is England and Wales) or Mexico City, Mexico (if the Governing Law is Mexico).

**Client** has the meaning given to that term in the Vista Key Terms.

**Client Branding** means any of the Client’s trademarks, logos and other branding provided to Vista in connection with the Agreement.

**Client Data** means any data input by, or on behalf of, the Client into the SaaS Service, including any Personal Data Processed by Vista on behalf of the Client under the Agreement that forms part of such data.

**Client IP** means any Client Branding, Client Data and Client Materials.

**Client Materials** means any content, materials, and deliverables (including works that are derived or adapted from such materials) that were created, owned or licensed by the Client and provided to Vista in connection with the Agreement or included in the Services by, or on behalf of, the Client.

**Cloud Service Providers** means: (a) Microsoft Azure; (b) Amazon Web Services; and/or (c) any other reputable cloud service provider appointed by Vista to provide services in respect of the Services that has been notified to the Client, and agreed and approved by the Client, in writing from time to time (such consent not to be unreasonably withheld or delayed).

**Confidential Information** means the existence and contents of the Agreement and all information disclosed by a Disclosing Party (or its Representatives) to the Non-Disclosing Party (or its Representatives) under the Agreement which should reasonably be understood by the Non-Disclosing Party to be confidential and/or proprietary to the Disclosing Party. Confidential Information includes the terms and conditions of the Agreement and, in the case of the Client, the Client Data, but does not include any information which is:

* + 1. on receipt by the Non-Disclosing Party, in the public domain or which subsequently enters the public domain without any breach of the Agreement;
		2. on receipt by the Non-Disclosing Party, already known from a third party source by the Non-Disclosing Party;
		3. at any time after the date of receipt, lawfully received in good faith from a third party who is not bound by any confidentiality obligations to the Disclosing Party; or
		4. independently developed by the Non-Disclosing Party without any breach of the Agreement and without use of or reference to any Confidential Information.

**Currency** has the meaning given to that term in the Vista Key Terms.

**Data Processing Terms** means:

1. in respect of Vista, Vista’s Data Processing Terms available here; and
2. in respect of Movio, Movio’s Data Processing Terms available here,

in each case as may be amended or updated from time to time.

**Data Protection Laws** means applicable legislation protecting the personal data of natural persons, together with binding guidance and codes of practice issued from time to time by relevant Supervisory Authorities and/or any local data protection law applicable in respect of Personal Data collected by the Client and Processed by Vista under the Agreement, including as amended or replaced from time to time.

**Default Interest Rate** means the Bill Rate plus 3% per annum.

**Disclosing Party** has the meaning given to that term in clause [8.3.](#_bookmark20)

**Dispute** has the meaning given to that term in clause [10.1.](#_bookmark22)

**Documentation** means the supporting documentation (if any) for any of the Services as provided under the Agreement (including under any Statement of Work).

**Effective Date** has the meaning given to that term in the Vista Key Terms.

**Environments** means the environment or environments the Services will be provided in as listed in the Vista Key Terms up to and including the network edge of the subscription(s) that Vista holds with the Cloud Service Providers, including VPN termination point(s).

**Feedback** has the meaning given to that term in clause [5.6.](#_bookmark5)

**Fees** means the fees payable under the Agreement as set out in the Vista Key Terms and any Statement of Work (where applicable).

**Force Majeure Event** means an act of God, act of governmental body or military authority, fire, explosion, flood, epidemic, pandemic, riot, strikes, lock outs or other industrial disputes, changes in law, failure of third party suppliers, shortages of supplies or raw materials, or civil disturbance, war, sabotage, insurrections, blockades, embargoes, storms or other similar events that are beyond the reasonable control of the affected Party. Notwithstanding the foregoing, Force Majeure Event expressly excludes any event which could have been prevented by reasonable precautions and could reasonably be circumvented by the non- performing Party through the use of alternate sources, work-around plans or other means.

**Generated Data** means any data that is derived or generated from the Client Data as part of providing the SaaS Service but excludes any formula, calculation or algorithm used to derive or generate that data.

**GDPR** has the meaning given to that term in the Data Processing Terms.

**Governing Law** has the meaning given to that term in the Vista Key Terms.

**Inappropriate Content** means content which infringes any applicable laws, regulations or third party rights (including material which is obscene, indecent, libellous, tortuous, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights).

**Indemnification Conditions** means the following conditions with which a party must comply in order to be entitled to defence or indemnification under the Agreement by the other party: (i) the indemnified party notifies the indemnifying party in writing of any claim that might be the subject of indemnification promptly after any executive officer of the indemnified party or member of the indemnified party’s legal department first knows of the claim, provided, however, that no failure to so notify an indemnifying party will relieve the indemnifying party of its obligations under the Agreement except to the extent that such failure materially prejudices defence of the claim, and except to the extent of any damages incurred by the indemnifying party as a result of the delay; (ii) the indemnifying party is given primary control over the defence and settlement of the claim (subject to the foregoing, the indemnified party may nonetheless participate in the defence at its sole cost and expense); (iii) the indemnified party makes no admission of liability (except as required by applicable law) nor enters into any settlement without the indemnifying party’s prior written agreement (not to be unreasonably withheld); (iv) the indemnified party provides such assistance in defence of the proceeding as the indemnifying party may reasonably request, at the indemnifying party’s reasonable expense; and (v) the indemnified party uses all commercially reasonable efforts to mitigate its losses.

**Information Security Policy** means Movio’s information security policy as may be updated or amended by Movio from time to time in accordance with clause 2.13.

**Infringing Service(s)** has the meaning given to that term in clause [6.2.](#_bookmark7)

**Initial Term** has the meaning given to that term in the Vista Key Terms.

**Intellectual Property Rights** means all rights (including ownership rights, rights or licences to use, rights arising through use, and rights which are the subject of applications to register) in or to any trade name, design, patent, copyright, know-how, process, method, invention, database, circuit layout or other form of intellectual property (whether or not registered), and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those in any part of the world.

**Malware** means any thing or device (including any software, code, file or program) which may:

1. 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;
2. 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
3. adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; or
4. enable unauthorised or unwanted access to the SaaS Service (or any part thereof) or a Party's systems or network (or those of any Person or subcontractor operating on behalf of the relevant Party).

**Movio** has the meaning given to that term in the Movio Key Terms.

**Movio Client Campaign** means a marketing campaign undertaken by the Client in connection with the Movio Services whether undertaken using the Movio software or using information produced using the software;

**Movio Key Terms** means the Movio Key Terms substantially on Movio’s standard form, including any schedules, setting out the key terms that apply to Movio’s provision of the Movio Services, which incorporate the Standard Terms by reference.

**Movio Services** has the meaning given to that term in the Movio Key Terms.

**Non-Disclosing Party** has the meaning given to that term in clause [8.3.](#_bookmark20)

**Notice of Dispute** has the meaning given to that term in clause [10.1.](#_bookmark22)

**On Premise Software** means any on premise Vista applications available to the Client.

**Permitted Purpose** means Client’s own lawful internal business purposes relevant to the SaaS Service provided hereunder and relating to the cinema exhibition industry or other entertainment industry agreed by the Parties.

**Person** means any individual, corporation, partnership, limited partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization or a government or any agency or political subdivision thereof or any other entity.

**Production Date** has the meaning given to that term in the Vista Key Terms.

**Professional Services** means customisation, training, advisory, consultancy and other services including systems design and analysis, programming and application design and development, software support and modification, data base design and data conversion, special studies and staff training and other duties that are required to be performed by Vista pursuant to a Statement of Work entered into under the Agreement and includes any specifications and deliverables (as each term is defined in the relevant Statement of Work) provided under a Statement of Work.

**Renewal Term** has the meaning given to that term in the Vista Key Terms.

**Representatives** means, in respect of a Person, that Person’s officers, directors, employees or contractors.

**SaaS Applications** has the meaning given to that term in the Vista Key Terms.

**SaaS Service** has the meaning given to that term in the Vista Key Terms.

**Services** means the SaaS Service, the Support Services and any Professional Services provided by Vista to the Client as described in the Vista Key Terms or a Statement of Work.

**Site** means a cinema site owned and operated by the Client.

**Standard Support Framework** means Vista’s (but not Movio’s) standard support framework available at [www.cloud.vista.co/standard-support-framework](http://www.cloud.vista.co/standard-support-framework), as may be updated and amended from time to time in accordance with clause 2.13.

**Standard Terms** means these Vista Cloud Agreement Standard Terms, on Vista’s standard form, including any schedules, setting out the standard terms that apply to Vista’s provision of the Services.

**Statement of Work** or **SOW** means a statement of work (and any applicable amendments) entered into between the Parties, substantially on Vista’s standard form, which will be incorporated into the Agreement when executed by the Parties, identifying a particular agreed scope of work relating to any Professional Services or additional SaaS Applications to be provided to the Client pursuant to the Agreement.

**Support Services** means second level support services in respect of the Client’s use of the SaaS Service, including troubleshooting, advice and assistance with the use of the SaaS Service, resolving support incidents relating to the SaaS Service logged by the Client on the Support Site and/or resolving support incidents where Vista detects an issue with the SaaS Service that requires resolution.

**Support & Service Level Framework** means Movio’s support and service level policy, available at [www.cloud.vista.co/movio-support-service-framework](http://www.cloud.vista.co/movio-support-service-framework), as may be updated and amended by Movio from time to time in accordance with clause 2.13

**Support Site** means the Vista Support Site located at [www.support.vista.co](../www.support.vista.co) or such other website as Vista notifies in writing to the Client.

**Term** means the Initial Term and any Renewal Term(s).

**Third Party Features** means a range of third party service features which certain of the SaaS Services interoperates with through the use of web services and APIs.

**Third Party Provider** has the meaning set out in clause [6.5(a).](#_bookmark8)

**Vista** means, with respect to the Vista Key Terms, the Vista entity as set out in the Vista Key Terms and with respect to the Movio Key Terms, means the Movio entity as set out in the Movio Key Terms.

**Vista IP** has the meaning given to that term in clause [5.2.](#_bookmark3)

**Vista Key Terms** means the Vista Cloud Agreement Key Terms agreement entered into between the Client and Vista, substantially on Vista’s standard form, including any schedules (including the Movio Key Terms), setting out the key terms that apply to Vista’s provision of the SaaS Service, which incorporate the Standard Terms by reference.

The terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", “**Sensitive Personal Data**”, "**Personal Data Breach**", “**Sub-Processor**”, “**Supervisory Authority**” and "**Process**, **Processed** or **Processing**" have the same meaning given to them (and equivalent expressions) in the Data Protection Laws.

* 1. **Interpretation**: In the Agreement, unless the context otherwise requires, or specifically stated otherwise:
		1. a capitalised term not defined in these Standard Terms has the meaning given to that term in the Vista Key Terms or the Statement of Work (as applicable);
		2. headings are to be ignored in construing the Agreement;
		3. the singular includes the plural and vice versa, and words importing one gender include the other genders;
		4. references to “including”, “includes” or similar words will be read to include a reference to “without limitation”;
		5. references to individuals include companies and other corporations and vice versa;
		6. a right or power may be exercised from time to time and at any time;
		7. each Schedule or other attachment forms part of the Agreement; and
		8. reference to a clause, subclause, Schedule, or a Party is a reference to that clause, subclause, Schedule, or a Party in the Agreement.
	2. In the event, and to the extent of, any conflict or inconsistency between the provisions of any of the following documents, the relevant provision of the document listed first will prevail provided that any specific term in any of the following documents will prevail in respect to the subject matter of that term over any general term in another document:
		1. the Vista Key Terms;
		2. the Standard Terms; and
		3. a Statement of Work.
	3. This Agreement has been agreed by the Parties in English. In the event any translation of this Agreement is prepared in any other language, the provisions of the English version will prevail.

# Access to the Services

* 1. In consideration for the Client paying Vista the Fees, and complying with its obligations, under the Agreement, Vista will:
		1. provide the Client with access to the SaaS Service for the Term solely for the Permitted Purpose as contemplated by the Agreement; and
		2. provide the Services to the Client on the terms and conditions set out in the Agreement, exercising the level of skill, care and diligence which would reasonably be expected of an experienced and professional provider of services similar to the Services.
	2. Client must, and must ensure that its Representatives:
		1. use the Services solely for the Permitted Purpose and in accordance with the Documentation;
		2. provide Vista with all necessary co-operation in relation to the Agreement, and all necessary access to information as Vista reasonably requires, so that Vista can provide the Services to the Client, Client acknowledges and agrees that if Client fails to provide such co-operation and access, Vista will not be liable for any failure or delay in providing the Services to Client;
		3. keep secure logins and passwords associated with the Client’s access to, and use of, the SaaS Service and keep such logins and passwords confidential. The Client will be responsible for all activities that occur under usernames and/or passwords that are allocated to its Representatives;
		4. prevent any unauthorised access to, or use of the SaaS Service or the Documentation and, in the event of any such unauthorised access or use, immediately notify Vista in writing (email to suffice). Vista may take all steps and actions it reasonably considers necessary to maintain the security of the SaaS Services and the Client’s access to them;
		5. promptly disable any login account if the Client or Vista discovers that any login details have been provided to, or used by, any unauthorised third party or where any Client Representative ceases to be employed or engaged by the Client;
		6. ensure that Client’s network, software applications (including SQL servers), systems and operating systems (including Microsoft Windows, Apple MacOS, Linux, Android and Apple iOS): (i) have been updated to a supported version; (ii) are free of Malware; (iii) are at all times up to date with critical security patches; and (iv) comply with relevant specifications as Vista may notify in writing (email to suffice) from time to time;
		7. ensure that the Client has implemented and is using an antivirus protection system that (i) has been updated to a supported version; (ii) is free of Malware; (iii) is at all times up to date with critical security patches and (iv) comply with relevant specifications as Vista may notify in writing (email to suffice) from time to time;
		8. are solely responsible, and Vista will have no liability, for procuring and maintaining the Client’s network connections and telecommunications links from the Client’s systems to the Environments, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client’s network connections or telecommunications links or caused by the internet;
		9. update, where required and at its cost, the Client’s integrations to conform to Vista’s updated standards or versions, in order to make secure and efficient use of the SaaS Service. The Client acknowledges that Vista may regularly upgrade and update the SaaS Service and that some of these changes will occur automatically. Vista will provide the Client with reasonable notice of any such changes; and
		10. comply with all applicable laws (including Data Protection Laws including as they relate to the collection, use and disclosure of Personal Data that is included in the Client IP) with respect to their use of the Services and in carrying out their obligations under the Agreement, including having and maintaining data protection and technical, physical, and organisational security measures and practices that comply with industry best practice.
	3. The Client must not, and will ensure that its Representatives do not:
		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 the Agreement, attempt to copy, modify, duplicate, create derivative works from, mirror, republish, download, display, transmit, or distribute all or any portion of the SaaS Service or the Documentation in any form or media or by any means;
		2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS Service;
		3. access, store, distribute or transmit any Malware, and Vista may, without liability to the Client, disable the Client’s access to the SaaS Service (or any part of it) if the Client is in breach of this subclause (c);
		4. sell, resell, rent, lease, sublicense, lend, assign, time share, act as a service bureau or application service provider or make available the SaaS Services to any third party that is not a Permitted User (as that term is defined in clause 2.7 below);
		5. allow any third party or any software other than products offered by Vista or Vista’s Affiliates to access or integrate with the SaaS Service, unless otherwise agreed in writing by Vista;
		6. allow themselves or any third party or third party software to store, transit or otherwise include full credit card numbers in the SaaS Service;
		7. undermine or attempt to undermine the integrity or security of the SaaS Service or Vista’s or any third party’s systems, networks or resources used in the provision of the SaaS Service;
		8. attempt to view or gain unauthorised access to any information or materials other than those to which the Client has been authorised to access as part of the SaaS Service;
		9. use, or misuse the SaaS Service in any way which may impair the functionality of the SaaS Service or the ability of another user to use the SaaS Service;
		10. use the SaaS Service in a manner, or transmit, input or store any data, that breaches or may breach the Agreement or any third party right (including Intellectual Property Rights and/or privacy rights), or that is or may be Inappropriate Content, incorrect, misleading or otherwise unlawful;
		11. alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret legend or notice, or any numbers, or other means of identification used on or in relation to the SaaS Services; and
		12. do any act which would or might invalidate, or be inconsistent with, Vista’s or its licensors’ Intellectual Property Rights.
	4. The Client acknowledges and agrees that Vista’s provision of the Services to the Client is non-exclusive. Nothing in the Agreement prevents Vista from providing the Services or similar services to any other Person.
	5. Without limiting any other right or remedy available to Vista and without liability to the Client, Vista may restrict, or suspend the Client’s access to and use of the Services (or any part thereof) and/or delete, edit or remove any relevant Client Data or Generated Data if Vista, acting reasonably in the circumstances then known to Vista, considers that the Client or any of its Representatives have materially breached any of the obligations in clauses [2.2](#_bookmark0) or [2.3.](#_bookmark1) Additionally, if Vista, acting reasonably in the circumstances then known to Vista, determines or suspects that Client’s or any of its users’ use of the SaaS Service poses an imminent threat to (i) the security or integrity of any Client Data, the Generated Data or the data of any other Vista client, or (ii) the availability of the SaaS Service to the Client or any other Vista client (collectively, a **Critical Threat**), Vista will immediately attempt to contact the Client to resolve or prevent the Critical Threat. If Vista is unable to immediately contact Client, or if Vista contacts the Client but the Client is unable to immediately remediate the Critical Threat, Vista may, in its sole discretion and without liability to the Client or any other Person, suspend Client’s and its users’ access to and use of the SaaS Service until the Critical Threat is resolved or prevented and Vista is able to restore the SaaS Service for Client.
	6. If the Client wants Vista to provide any of its APIs and/or connectors to a third party for the purpose of enabling data to flow between a third party’s application and the SaaS Service and/or wants Vista to provide any support services in relation to such third party integration (the **Integration Services**), the Client must seek Vista’s prior written consent. Vista (or its relevant Affiliates) may determine in its (or their) sole discretion whether or not to undertake any Integration Services and/or any terms and conditions on which any Integration Services would be performed which will be agreed between the parties and documented in a Statement of Work. The Client acknowledges and agrees that Vista may make the provision of any Integration Services conditional on the third party entering into separate arrangements with Vista (or its relevant Affiliates) on terms acceptable to Vista (including relating to confidentiality and any fees payable by such third party). Vista (or its relevant Affiliates) will not be liable to the Client or any third party for any loss arising out of the integration of any third party’s application with the SaaS Service (including, any act or omission of the third party, any adverse impact of such integration on the SaaS Service and/or any failure by the third party to respond appropriately to any error code issued by the SaaS Service).
	7. A Permitted User may access and use the SaaS Services for the Client’s Permitted Purpose only provided that the Client remains liable to Vista for the Permitted User’s access to and use of the SaaS Services and will be responsible for ensuring that the Permitted User complies with the terms of this Agreement (including the Client’s confidentiality obligations in clause 8). A “**Permitted User**” for the purposes of the Agreement will mean any third party, advertising agency or Affiliate of the Client which has been approved by Vista in writing (Vista will not unreasonably withhold its approval). For the avoidance of doubt, Vista may withhold its consent to any direct competitor becoming a Permitted User.
	8. The Client acknowledges that, through the use of web services and APIs, certain of the SaaS Services interoperate with a range of third party service features (**Third Party Features**). Vista does not make any warranty or representation on the availability of Third Party Features. Without limiting the previous sentence, if a Third Party Feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, Vista may cease to make available that feature to the Client. Any link from the relevant SaaS Service to third party websites or feeds that are connected or relevant to the SaaS Service does not imply any Vista endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operations. To the maximum extent permitted by law, Vista excludes all liability for those third party websites or feeds.
	9. From time to time, Vista may make Beta Services available to the Client in writing (email to suffice) at no charge or at a pre-agreed cost. The Client understands and agrees that the Client uses such Beta Services at its own risk, in its sole discretion. Vista may terminate Beta Services at any time, in Vista’s sole discretion and without liability to the Client. Vista will have no liability for any harm, costs or damages the Client or third parties suffer arising out of or in connection with any Beta Service, including with respect to any claims or disputes arising out of or in connection with such Beta Service. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Unless otherwise determined by the Vista, the term of any Beta Services will expire upon the earlier of one year from the date on which Vista first provides the Beta Services to the Client or the date that a version of the Beta Services becomes generally available (if ever).
	10. The Client acknowledges and agrees that:
		1. The Movio Cinema Service may contain software provided by a third party Tableau Software, LLC (or its Affiliate) (**Tableau**) which provides users with access to analysis and visualisations of data insights. Movio downloads, installs and operates Tableau on Movio’s Cloud Service Provider’s servers and therefore Movio does not transfer Client Data to Tableau;
		2. Movio has the right to permit the Client access to the Tableau software as part of the Movio Service under this Agreement pursuant to Clause 3.7 of the Tableau EULA www.mkt.tableau.com/legal/tableau\_eula.pdf;
		3. Tableau has no warranty, support or other obligation or liability to the Client; and
		4. it will comply with the license restrictions set out in clause 3.9 of the Tableau EULA in respect of its use of the Tableau service, which are made a part of and incorporated by reference into this Agreement.

Where the Movio Cinema Service does contain Tableau services, Movio will procure unique login credentials from Tableau for its Permitted Users. Additional user logins may incur additional charges. The provisions set out in clause 2.2 above will apply to such logins.

* 1. Prior to the Production Date, the Client may be required to carry out certain tasks for the implementation of the SaaS Services in preparation for the Production Date as outlined in the Vista or Movio Key Terms or as reasonably notified by Vista to the Client. The Client will provide Vista with any assistance reasonably requested by Vista to enable Vista to provide such implementation services.
	2. Vista will use commercially reasonable efforts to provide the Support Services in accordance with the Standard Support Framework. The Standard Support Framework may be amended and updated from time to time by Vista provided that Vista will not make any changes which would lower the level of support from that current at the time of signing of the Vista Key Terms. Vista will provide the Client with the current Standard Support Framework promptly on request. For the avoidance of doubt, these obligations do not apply to the Movio Services.
	3. Movio will use commercially reasonable efforts to provide support for the Movio Services in accordance with its Support & Service Level Framework and Information Security Policy. The Movio Support & Service Level Framework and Movio Information Security Policy may be amended and updated from time to time by Movio provided that Movio will not make any changes which would lower the level of support or security from that current at the time of signing of the Vista Key Terms. Movio will provide the Client with the current Movio Support & Service Level Framework and Information Security Policy promptly on request. For the avoidance of doubt, these obligations do not apply to any other SaaS Services other than the Movio Services, and do not apply to any Vista group entity other than Movio.

# Professional Services

* 1. Where the Client requests, and Vista agrees to provide, any Professional Services, Vista will agree the terms and any fees applicable to the provision of the Professional Services with the Client in a separate Statement of Work.
	2. Excluding for termination by the Client due to Vista’s material breach in accordance with the Agreement, in the event a Statement of Work is terminated, Vista will be entitled to be paid the pro rata portion of the fees earned by Vista under such Statement of Work based on the amount of the Professional Services that have been completed as at the relevant date of termination.
	3. Subject to clause [6.8,](#_bookmark10) Vista’s maximum liability arising out of all claims under a Statement of Work will not exceed in aggregate an amount equal to the fees actually paid by the Client to Vista for the supply of the Professional Services under the relevant Statement of Work to which the claim relates.

# Fees and Payment

* 1. Vista will invoice, and the Client will pay to Vista, the Fees in the manner specified in the Vista Key Terms or relevant SOW (where applicable) and in accordance with this clause [4.](#_bookmark2)
	2. The Client will pay each invoice by 5.00pm on the date that is thirty (30) days after the invoice issue date (or, where that day is not a Business Day, then the first Business Day after that day). If the Client fails to pay any invoice by the date it is due (**Due Date**) then Vista will notify the Client in writing and give the Client 10 (ten) days from the date of the notice to pay the relevant invoice (**Late Payment Notice**). If the Client fails to pay the relevant invoice by 5.00pm on the date that is ten (10) days after the date of the Late Payment Notice (or, where that day is not a Business Day, then the first Business Day after that day) then, without prejudice to any of Vista’s other rights and remedies:
		1. Vista may, without liability to the Client, disable or suspend the Client’s access to all or part of the Services, and will be under no obligation to provide the Services (or any part of it) to the Client while the invoice(s) concerned remain unpaid; and/or
		2. interest will accrue on such due amounts at the Default Interest Rate calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.
	3. All amounts stated or referred to in the Agreement are exclusive of all goods and services taxes, value added taxes, sales tax or similar taxes (if any). Applicable taxes, including (but not limited to) sales taxes, will be included in Vista’s final invoices.
	4. If the Client is required by law to deduct or withhold taxes or charges from the amounts due to Vista under the Agreement, the Client will ensure that the amount due to Vista is increased so that the payment actually made to Vista equals the amount due to Vista as if no such taxes or charges had been imposed.
	5. All payments under the Agreement will be made in the Currency specified in the Vista Key Terms, unless otherwise agreed in writing by the Parties.
	6. Vista may charge additional fees to be agreed between the Parties in writing in respect of:
		1. materially increased usage of the SaaS Service;
		2. access to Environments (excluding any production or disaster recovery environments) outside of Client head office Business Hours; and
		3. additional Sites or territories (as applicable).

# Intellectual Property Rights

* 1. The Parties acknowledge and agree that all Background Rights will remain vested in, and remain the property of, that Party or its third party licensors, as appropriate.
	2. The Client acknowledges and agrees that Vista and/or its licensors own all Intellectual Property Rights in:
		1. the Services but excluding any Client IP contained within the Services;
		2. the Documentation;
		3. the Professional Services, including any deliverables, specifications and Documentation specified in or provided under each Statement of Work, or arising out of work performed by Vista under each Statement of Work and any inventions, ideas or original works of authorship in whole or in part conceived or made by Vista which arise from or result from the work performed by Vista for the Client under each Statement of Work, whether or not fixed in a tangible medium of expression, but excluding any Client IP contained within the Professional Services; and
		4. Feedback in accordance with clause [5.6,](#_bookmark5)

(together, the **Vista IP**).

* 1. The Client assigns without reservation or extra charge all Intellectual Property Rights and all other rights which the Client may have in the Vista IP to Vista and its Affiliates (as applicable) and will not use, copy, reproduce, adapt, vary or modify the Vista IP or any part of it except as expressly provided in the Agreement. The Client will execute all instruments and perform such acts as are necessary to give effect to this clause and to permit Vista to fully protect the Vista IP.
	2. Except as expressly stated in the Agreement, the Agreement does not grant the Client any rights to, or in, the Vista IP, or any other rights or licences in respect of the Vista IP.
	3. Vista acknowledges and agrees that, subject to this clause [5.5,](#_bookmark4) Vista will not have, or make any claim to, any interest in, or ownership of, or any rights to, the Client IP. The Client will arrange all consents and approvals necessary for Vista to access and use the Client IP as described in the Agreement. The Client grants to Vista a non-exclusive, irrevocable, non-transferable, non-sublicensable, fully paid-up, royalty-free and limited right and license during the Term to use, store and otherwise process the Client IP solely for the purposes of providing the Services in accordance with the Agreement, including for the purposes set out in clause [7.2.](#_bookmark12)
	4. The Client acknowledges and agrees that Vista may use and incorporate royalty free and worldwide in the Services any suggestions, enhancement requests, recommendations and other feedback provided by the Client (**Feedback**) and on such use or incorporation into the Services, Vista will own all necessary Intellectual Property Rights in such Feedback to the extent used or incorporated into the Services.
	5. The Client grants to Vista a non-exclusive and non-sublicensable license during the Term to display the Client’s name, logo and other brand features within the SaaS Services and in providing the Services and in marketing material solely for the purposes of Vista’s marketing (with the Client’s prior written approval) or fulfilling Vista’s obligations to the Client under this Agreement, provided that all such use is in accordance with the express terms of this Agreement and the lawful branding guidelines (if any) provided by the Client to Vista.

# Warranties and Liability

* 1. Vista warrants that:
		1. the Services will function substantially as described in the Documentation (where applicable);
		2. the Services (excluding any Client IP in the Services, or the Client’s use of the Services) do not infringe the Intellectual Property Rights of a third party; and
		3. Vista will comply with all applicable laws in providing the Services and the Documentation.
	2. If a claim is made that:
		1. the Services do not function substantially as described in the Documentation (where applicable); or
		2. the Services (excluding any Client IP in the Services, or the Client’s use of the Services) infringes the Intellectual Property Rights of a third party,

(**Infringing Service**) Vista will, at its option, either:

* + 1. modify the Infringing Service to conform to the Documentation or such that it does not infringe the relevant Intellectual Property Rights of such third party; or
		2. provide a workaround solution or procure a continuing lawful right for the Client to use the Infringing Service (or component thereof).

If neither of the options in subclauses (c) or (d) is deemed by Vista to be commercially feasible, Vista will notify the Client and either Party may terminate the Agreement by giving written notice to the other Party. Subclauses (c) and (d) constitute the Client’s sole and exclusive remedy for any breach of the warranties set out in this clause [6.2.](#_bookmark7)

* 1. Except as provided for in clause [6.1:](#_bookmark6)
		1. to the extent permitted by law, the Services and the Documentation are provided on an “as is” basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of non-infringement, merchantability or fitness for a particular purpose) in respect of the Services and the Documentation are expressly and entirely excluded. The Client is solely responsible for determining whether it is appropriate to use, and for its use of, the Services and the Documentation, and assumes any risks of any nature associated with the same;
		2. Vista will not be liable for any act or omission of the Client, its Representatives, or any other Person using the Client IP and/or the Services; and
		3. Vista does not warrant that the Services will be free from defects, uninterrupted or error-free, free of Malware, or will meet the Client’s requirements.
	2. Vista will not be responsible for any Liabilities arising from or in connection with (i) any Client Data; or (ii) any breach of the Agreement to the extent that the breach is related to the use of or access to the Services by Client that is contrary to clauses 2.2 or 2.3, the Documentation and/or any of Vista’s other written instructions, or in combination with any hardware, software or operating system not used in accordance with the Agreement, or that is otherwise provided or approved in writing by Vista. Movio has no liability to the Client nor any third party in connection with any Movio Client Campaigns and provides no assurance or guarantee as to the likelihood of success of any Movio Client Campaigns.
	3. The Client acknowledges that, in providing the Services:
		1. Vista may rely on the provision of data and services by third parties, including Cloud Service Providers, data centres, electricity, telecommunications providers (**Third Party Providers**) to provide the Services and that the Services may be subject to limitations, delays and other problems inherent in the use of services provided by Third Party Providers;
		2. Vista will not be responsible for any delays, delivery failures, or any other loss or damage arising out of or in connection with any services provided by any Third Party Providers, including any delays, delivery failures, or any Liabilities resulting from the transfer of data over communications networks and facilities, including the internet; and
		3. Vista disclaims any and all liability in connection with any third party breach of the Client IP, and the Client waives any legal or equitable rights or remedies the Client may have against Vista, its Affiliates, and their respective Representatives with respect to any third party breach of the Client IP.
	4. The Client represents and warrants that:
		1. it has all of the rights, licences and consents required to lawfully use the Services, in the manner used under, or contemplated by, the Agreement; and
		2. the Client IP does not, and the use of Client IP by Vista in accordance with the Agreement will not, infringe in any way the Intellectual Property Rights, publicity or privacy or other proprietary rights of a third party, or breach any applicable laws, orders or regulations, contracts or duty of confidence.
	5. Each Party (the **Indemnifying Party**) indemnifies, defends and holds the other Party, their respective Affiliates and their respective Representatives (each an **Indemnified Party**) harmless against all costs, losses, expenses (including, without limitation, reasonable attorney’s fees and costs of defence and appeal), claims, liabilities or damages (collectively, **Liabilities**) such Indemnified Party may incur through any third party claim arising out of or in connection with the Agreement relating to:
		1. the Indemnifying Party’s infringement of the Intellectual Property Rights, publicity or privacy or other proprietary rights of any Person; and
		2. the Indemnifying Party’s violation of any applicable laws, orders or regulations,

provided, however, that this clause [6.7](#_bookmark9) is subject to the Indemnification Conditions at all times and in no event will such indemnity, defence and hold harmless apply to the extent of any Liabilities directly resulting from the fraud, bad faith or wilful misconduct of the Indemnified Party or its Representatives.

* 1. To the extent permitted by law, neither Party will be liable to the other Party, or its Affiliates, or their respective Representatives for any loss of profits, loss of revenue, loss of data (other than as contemplated by clause [7.5](#_bookmark15) below), or any other indirect, consequential or special loss or damage suffered or incurred by a Party, or its Affiliates, or their respective Representatives arising out of or in connection with the Agreement or the Services.
	2. Other than in the case of personal injury or death, or a Party’s fraud, wilful misconduct, breach of its payment or confidentiality obligations (other than any breach of confidentiality obligations which also constitutes a breach of clause 7 (Client Data) which will remain subject to the following liability cap), or infringement of the other Party’s Intellectual Property Rights, a Party’s maximum liability arising out of all claims under the Agreement will not exceed in aggregate an amount equal to the Fees actually paid by the Client to Vista in the twelve (12) month period immediately preceding the date the aggrieved Party first asserted such claim against the other Party.

# Client Data and Security

* 1. The Client acknowledges and agrees that the Client will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data. The Client will arrange all consents and approvals necessary under applicable laws for Vista to access, process and use the Client Data as described in the Agreement, including in relation to any Personal Data contained within the Client Data.
	2. The Client acknowledges and agrees that Vista may use, store, and otherwise Process Client Data and the Generated Data for the purposes of:
		1. performing Vista’s obligations under the Agreement;
		2. ensuring that the Client is complying with the terms and conditions of the Agreement;
		3. improving or enhancing the Services, and any services provided by a Vista Affiliate;
		4. understanding how the Client is using the Services;
		5. performing data analysis (including insight, trend, optimisation and/or benchmarking analysis) on an aggregated and/or anonymous basis (**Data Analysis**) and sharing the results of such Data Analysis with any of Vista’s Affiliates and Vista’s Affiliates’ customers, provided that Vista complies with its confidentiality obligations under the Agreement and does not disclose any Client Data, Personal Data or Sensitive Personal Data as part of sharing the results of such Data Analysis; and
		6. such other purposes as the Parties may agree from time to time, provided that Vista complies with its obligations under this clause [7.](#_bookmark11)
	3. The Client warrants that:
		1. it owns or has obtained all necessary rights, title and interest in the Client Data and all Intellectual Property Rights and other rights contained therein, as well as the consent of any Data Subjects necessary for the Parties to perform their respective obligations under the Agreement;
		2. Vista's use of the Client Data in accordance with the Agreement will not constitute an infringement of the Intellectual Property Rights, publicity or privacy or other proprietary rights of a third party, or the violation of any applicable laws, rules or regulations (including Data Protection Laws) or a violation of any applicable privacy policy or terms and conditions;
		3. it has disclosed to the Data Subjects in compliance with applicable Data Protection Laws how it will collect, use, and disclose their Personal Data; and
		4. unless otherwise stated in the Agreement, it will not upload any Sensitive Personal Data, nor instruct Vista to upload, include or Process any Sensitive Personal Data, in the SaaS Service.
	4. The Client, subject to the Indemnification Conditions, indemnifies, defends and holds harmless Vista from and against all Liabilities arising out of or in connection with the Client’s breach of any of the warranties in clause [7.3.](#_bookmark13)
	5. Each Party will take appropriate technical and organisational security measures including in accordance with Data Protection Laws against unauthorised or unlawful Processing of Client Data or Generated Data, or their accidental loss, destruction or damage and Vista will, as part of these measures, use reasonable endeavours to back-up Client Data and Generated Data. The Client acknowledges that if there is any loss or damage to Client Data or Generated Data as a result of Vista’s negligence or breach of this clause, the Client’s sole and exclusive remedy will be for Vista to use reasonable commercial endeavours to restore such lost or damaged data from the latest back-up of the Client Data or Generated Data that Vista has maintained. Subject to Vista’s use of Sub-Processors in accordance with the Data Processing Terms (where applicable to the Client) and applicable Data Protection Laws where related solely to Personal Data, and Vista’s compliance with its obligations under this clause [7.5,](#_bookmark15) Vista will not be responsible for any loss, destruction, alteration or disclosure of Client Data or Generated Data caused by Vista, Client or any third party.
	6. Where Vista Processes Personal Data of Data Subjects for which the GDPR does not apply to under the Agreement, Vista will:
		1. process any Personal Data solely on the Client’s documented instructions (whether in the Agreement or otherwise) for the purposes of providing the Services or as otherwise required by Data Protection Laws or the Agreement;
		2. take reasonable steps to ensure that any staff who may have access to any Personal Data treat such Personal Data as confidential and otherwise in accordance with the Agreement;
		3. promptly notify the Client of any communication from an individual regarding any Processing of their Personal Data and provide reasonable assistance in responding to such communication;
		4. notify the Client without undue delay of any Personal Data Breach;
		5. within ninety (90) days of termination of the Agreement, (at the Client’s option) return to or delete any Personal Data Processed under the Agreement;
		6. on reasonable notice, provide the Client with information reasonably requested by the Client to demonstrate Vista’s compliance with its obligations under this clause [7.6;](#_bookmark16) and
		7. to the extent Vista receives “personal information” from the Client (as defined under the California Consumer Privacy Act of 2018, as amended (**CCPA**)) of “consumers” (as defined under the CCPA) under the Agreement, Vista will not: (i) “sell” (as defined under the CCPA) such personal information; (ii) retain, use, or disclose such personal information for any purpose other than performing the Services (or as otherwise permitted by the CCPA), including without limitation retaining, using, or disclosing such personal information for any “commercial purpose” (as defined under the CCPA) other than providing the Services; or (iii) retain, use, or disclose such personal information outside of the direct business relationship between the Parties. Vista certifies that it and each of its Representatives who will process such personal information understand, and will comply with, the restrictions set forth in this clause 7.6[(g).](#_bookmark17)
	7. In carrying out their respective obligations under this Agreement, and to the extent Client Data or Generated Data includes Personal Data, each Party will comply with Data Protection Laws and the Data Processing Terms. The Data Processing Terms are expressly incorporated in this Agreement by reference and apply between the Parties.
	8. Unless stated otherwise in the Agreement, Vista reserves the right to charge additional reasonable fees for any assistance provided by Vista to the Client to assist the Client to comply with its obligations under Data Protection Laws which Vista reasonably considers go beyond a reasonable level of support and/or assistance, provided that such fees will be pre-agreed by the Parties in writing.
	9. The Parties acknowledge and agree that the Generated Data in whatever form and on whatever media remains at all times jointly owned by the Parties and each Party grants to the other Party an unrestricted, royalty free, transferable, sub-licensable, perpetual and irrevocable licence, without the need for the approval of the other Party, to use, copy, modify, and in the case of Vista only, distribute and commercialise, the Generated Data provided that, neither Party may use the Generated Data for any purpose where that use discloses any Confidential Information of that other Party.

# Confidentiality

* 1. The Parties recognise and acknowledge the confidential nature of the Confidential Information. The Client recognises and acknowledges that the Services and Vista IP are Vista’s Confidential Information.
	2. Neither Party will use or disclose any Confidential Information other than:
		1. to its or its Affiliates’ Representatives to the extent necessary in the performance of the Agreement;
		2. with the express prior written consent of the other Party;
		3. to its professional advisers;
		4. if compelled to in accordance with clause [8.3;](#_bookmark20) or
		5. if permitted in accordance with the Agreement.
	3. A Party (or that Party’s parent company) may disclose Confidential Information if that Party (**Disclosing Party**) is required by law, compelled by any regulatory authority or government body, or necessary to comply with the rules of any recognised securities exchange, provided that the Disclosing Party gives the other Party (**Non- Disclosing Party**) prior notice of such disclosure (to the extent legally permitted) and reasonable assistance, at the Non-Disclosing Party’s cost, if the Non-Disclosing Party wishes to contest the disclosure. The Non- Disclosing Party will reimburse the Disclosing Party for its reasonable costs of compiling and providing secure access to such Confidential Information.
	4. Except as required to comply with relevant laws or the rules of a recognised stock exchange, neither Party will make any public announcement relating to the Agreement without the prior written approval of the other Party (not to be unreasonably withheld or delayed), provided that a Party may communicate information concerning the Agreement and the provision of the Services contemplated by the Agreement to its respective Affiliates, Representatives and professional advisers.
	5. For the avoidance of doubt, this clause [8](#_bookmark19) does not apply to the Parties’ obligations regarding use, protection and Processing of Personal Data, such obligations are specified in clause [7.](#_bookmark11) Accordingly, a breach of a Party’s data protection obligations pursuant to the Agreement will not constitute a breach of that Party’s confidentiality obligations under the Agreement.
	6. This clause [8](#_bookmark19) will survive termination of the Agreement.

# Term and Termination

* 1. The Agreement (excluding any Statements of Work) commences on the Effective Date and, unless terminated earlier by a Party in accordance with the Agreement will continue for the Initial Term specified in the Vista Key Terms or, if no Initial Term is specified, twelve (12) months from first day of the calendar month after the Production Date. The Term can be extended from the last day of the Initial Term for the Renewal Term specified in the Vista Key Terms, and for successive Renewal Terms thereafter, by written agreement between the Parties. Not later than 30 days before the end of the Initial Term (or any Renewal Term thereafter) the Parties agree to advise the other Party whether it intends to extend the Term and, if so, the terms that would apply for any agreed Renewal Term.
	2. A Statement of Work will commence on the commencement date specified in that Statement of Work or, if no date is specified, the date Vista first provides the Client the Professional Services or access to an additional SaaS Service (as applicable) and, unless terminated earlier by a Party in accordance with the Agreement or otherwise specified in that Statement of Work, will continue in effect until the relevant Professional Services have been delivered. If the Agreement (as opposed to one or more Statements of Work) is terminated by either Party or the Term otherwise expires, all Statements of Work entered into hereunder will also terminate, unless otherwise agreed in writing by the Parties.
	3. The Agreement and/or a Statement of Work may be terminated as follows:
		1. by either Party on written notice to the other Party at any time in the event the other Party has breached any representation, warranty, covenant, or other agreement contained in the Agreement in any material respect and, such breach is, in the reasonable opinion of the Party, incapable of remedy;
		2. by either Party on written notice to the other Party at any time in the event the other Party has breached any representation, warranty, covenant, or other agreement contained in the Agreement in any material respect and, if such breach is capable of remedy, the breach has continued unremedied for a period of thirty (30) days after the notice of the breach (provided the Party giving such notice is not also in breach of any provision of the Agreement in any material respect at the time such notice is given);
		3. to the fullest extent available under applicable law, by either Party on written notice to the other Party at any time in the event the other Party:
			1. files a petition in bankruptcy, or institutes proceedings, or has proceedings instituted against it, seeking relief or reorganization under any laws relating to bankruptcy or insolvency;
			2. has a court of competent jurisdiction appoint a receiver, liquidator, or trustee over all or substantially all of that Party’s property or provide for the liquidation of such Party’s property or business affairs;
			3. is or becomes insolvent or undertakes an act of insolvency, including admitting in writing its inability to pay its debts as they become due; or
			4. makes a general assignment for the benefit of creditors; or
		4. if the other Party is unable to perform a material obligation under the Agreement for a period of thirty (30) days or more due to a Force Majeure Event.
	4. The Client acknowledges that Vista is reliant on third party suppliers (including the Cloud Service Providers) in respect of the provision of the Services. Notwithstanding anything in the Agreement to the contrary, if at any time during the Term Vista’s third party costs connected with the provision of the Services increase by 10% or more, then Vista may notify the Client in writing (“**Costs Notice**”) and the Parties agree to promptly enter into good faith negotiation regarding an increase in the Recurring Fee for the application(s). If the Parties cannot agree an increase in the Recurring Fee for the application(s) within 30 days of the date of a Costs Notice, then Vista may, on 30 days’ prior written notice to the Client, terminate the Agreement in respect of the affected Services only, without any liability to the Client.
	5. On termination of the Agreement or a Statement of Work for any reason:
		1. the Client will pay Vista any Fees or any other amounts due and payable by the Client up to, and including, the date of termination and Vista will refund to the Client any amounts and Fees pre-paid by the Client relating to periods after the date of termination or expiry after deducting any amounts due for all Services provided up to the date of termination, except where this Agreement is terminated as a result of a breach by the Client;
		2. the Client will cease to access the Services or Documentation and in no event will the Client reconnect to or access the Services unless or until otherwise agreed in writing by Vista;
		3. each Party will, to the extent such information is no longer required by that Party for the purposes of the Agreement and at each other Party’s direction, either deliver to that other Party, or destroy, all copies of that other Party’s Confidential Information in its possession or control; and
		4. Vista will provide a copy of all Client Data in Vista’s possession within seven (7) Business Days of the date of termination, provided that the Client has, at that time, paid all fees and charges outstanding at, or resulting from, termination (whether or not due at the date of termination). Vista will hold Client Data for thirty (30) Business Days following the date of termination and then all Client Data in Vista’s possession will be deleted. Vista may hold Generated Data indefinitely and use it for any purpose following termination of this Agreement provided that such Generated Data is not used in a manner that identifies the Client and/or involves the disclosure of Client’s: (i) Confidential Information; (ii) Client Data; (iii) Personal Data; and/or (iv) Sensitive Personal Data. Subject to the Client’s payment of a fee reasonably determined by Vista (where permissible by Data Protection Laws) and at the Client’s written request (email to suffice), Vista will provide the Client additional copies of the Client Data or Generated Data while Vista continues to hold Client Data or Generated Data in its possession.
	6. The accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.

# Disputes

* 1. If any dispute or difference arises out of, or in connection with, the Agreement (including any question as to its validity or termination) (**Dispute**), the Party claiming that a Dispute has arisen may give notice (a **Notice of Dispute**) to the other Party to the Dispute specifying the nature and reasonable details of the Dispute.
	2. On receipt of a Notice of Dispute, the Parties to the Dispute will endeavour to resolve the Dispute by agreement between them through good faith negotiations and discussions between their respective appointed Representatives or by an alternative dispute resolution technique that the Parties agree upon, except where the Party seeks urgent interlocutory relief.
	3. If the Governing Law is New Zealand, if the Dispute is not resolved within thirty Business Days of the date of the Notice of Dispute being referred to the Parties or by an alternative dispute resolution technique then, unless otherwise agreed and provided the Parties have first complied in full with clauses [10.1](#_bookmark22) and [10.2,](#_bookmark23) any Party to the Dispute may, by notice to the other, refer the Dispute for determination by arbitration in accordance with the following provisions:
		1. the arbitration will be conducted by a sole arbitrator agreed by the Parties (or if they fail to agree on an arbitrator within five Business Days of the reference of the Dispute to arbitration, the arbitrator will be appointed by the Chairperson for the time being of the Arbitrator’s and Mediators’ Institute of New Zealand (or his or her nominee));
		2. the decision of the arbitrator will be final and binding on the Parties;
		3. all Parties to the Dispute will use all commercially reasonable endeavours to ensure that the arbitration is conducted expeditiously, so as to obtain and implement a timely decision of the arbitrator; and
		4. subject to any award made by the arbitrator (it being the intent that the Party who is found to be at fault or incorrect in the arbitration will bear costs), the costs of the arbitrator will be borne equally by the Parties.
	4. If the Governing Law is England and Wales, if the Dispute is not resolved within twenty one (21) days of the date of receipt of the Notice of Dispute then, unless otherwise agreed and provided the Parties have first complied in full with clauses [10.1](#_bookmark22) and [10.2,](#_bookmark23) any Party to the Dispute may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation, a Party must give 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 no later than ten (10) Business Days after the date of the ADR Notice.
	5. If the Governing Law is State of California, USA, if the Dispute is not resolved within thirty (30) Business Days of the date of the Notice of Dispute being referred to the Parties or by an alternative dispute resolution technique then, unless otherwise agreed and provided the Parties have first complied in full with clauses [10.1](#_bookmark22) and [10.2,](#_bookmark23) any Party to the Dispute may, by notice to the other refer the Dispute for determination by arbitration. Any Dispute, including the determination of the scope or applicability of the Agreement to arbitrate, will be determined by arbitration in Los Angeles before one arbitrator. The arbitration will be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction.
	6. If the Governing Law is Mexico, if the Dispute is not resolved within thirty (30) Business Days of the date of the Notice of Dispute being referred to the Parties or by any alternative dispute resolution technique then, unless otherwise agreed and provided the Parties have first complied in full with clauses [10.1](#_bookmark22) and [10.2,](#_bookmark23) the Parties agree to refer the dispute to arbitration made up of three (3) arbitrators in accordance with the Arbitration Rules of the National Chamber of Commerce of Mexico City. Any rules, administration and decision of the arbitrators will be final and binding on the Parties.
	7. A Party may not issue legal proceedings (other than for urgent interlocutory and/or injunctive relief) in respect of any Dispute.
	8. Pending resolution of any Dispute, the Parties will continue to perform their obligations under the Agreement without prejudice to their respective rights and remedies under or in relation to the Agreement.

# Force Majeure

* 1. Neither Party will have any liability to the other Party for that Party’s failure to perform or a delay in performing any of that Party’s obligations under the Agreement, other than any obligation to make a payment when due, where it is prevented from, or delayed in, performing that Party’s material obligations under the Agreement, or from carrying on its business, by a Force Majeure Event. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event will:
		1. notify the other Party of such an event and its expected duration as soon as reasonably possible;
		2. use reasonable endeavours to mitigate the effects of the Force Majeure Event on that Party’s material obligations under the Agreement; and
		3. use reasonable endeavours to perform that Party’s obligations under the Agreement within the time specified by the Agreement despite the Force Majeure Event.

# General

* 1. Any notice to be given under the Agreement must be made in writing, by email, personal delivery or by post sent to the email or address designated in writing by each Party for that purpose from time to time and marked for the attention of the designated person or office holder (if any). Any communication by email will be deemed to be received when transmitted to the correct email address of the recipient with confirmation of transmission by the transmitting equipment. Any other communication in writing will be deemed to be received when left at the specified address of the recipient or on the fifth Business Day following the date of posting.
	2. Except as specifically provided for, no amendment to the Agreement will be effective unless agreed upon in writing and signed by both Parties.
	3. Each Party will from time to time on request by any other Party execute and deliver all documents and do all other acts and things, which are necessary or reasonably required to give full force and effect to the provisions of, and arrangements contemplated by, the Agreement.
	4. A Party will not assign, transfer or otherwise deal with the Agreement or any of its rights or obligations under the Agreement, whether in whole or in part, without the other Party’s prior written consent, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign any or all of its rights, or transfer any of its obligations, under this Agreement to an Affiliate of that Party for so long as that Person remains an Affiliate of that Party. A Party who assigns its rights, or transfers its obligations, under this Agreement to an Affiliate will procure that such entity assigns such rights, or transfers such obligations, back to it or to such other Affiliate of the Party as it may nominate immediately before that Person ceases to be an Affiliate.
	5. The Parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of the Agreement.
	6. If any part of the Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable such determination will not impair the enforceability of the remaining parts of the Agreement, which will remain in full force, and that provision will be deemed to be modified to the extent necessary to render it legal, valid, and enforceable.
	7. The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named in any United States government denied-party list. The Client will not and will not permit access or use of the in a U.S embargoed country or in violation of any U.S. export law or regulation.
	8. The Agreement constitutes the entire agreement and understanding (express and implied) between the Parties relating to the matters dealt with by the Agreement and prevails over and cancels all other agreements or documents relating thereto, whether written or oral including any order forms, invoices, or other documents of any nature produced by either Party. No Person other than Vista, Movio and the Client has any right to a benefit under, or to enforce, the Agreement, unless expressly permitted under the terms of the Agreement.
	9. The Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the Parties. A Party may execute the Agreement by signing any such counterpart.
	10. Nothing in the Agreement will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the Parties, and a Party may not make, or allow to be made, any representation that any such relationship exists between the Parties. A Party will not have the authority to act for, or to incur any obligation on behalf of, the other Party, except as expressly provided for in the Agreement.
	11. Any delay, failure or forbearance by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, the Agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of the Agreement will not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.
	12. Where the Governing Law is New Zealand, the Client acknowledges that the Services are acquired for the purposes of a business, and the Parties agree that the conditions, warranties and guarantees set out in the Consumer Guarantees Act 1993 will not apply and are excluded from the Agreement.
	13. The Agreement is governed by the Governing Law and, for any urgent interlocutory relief only, the Parties submit to the exclusive jurisdiction of the courts of the Governing Law.

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