

Klaxon Technologies Limited
Terms & Conditions

The Customer wishes Klaxon to provide the Service as detailed in the attached Klaxon Order Form ("Order Form") subject to the terms and conditions in this document.

The Order Form and these terms and conditions shall together be referred to as the "Agreement".

1 Definitions and interpretation

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

"Authorised Users" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Service pursuant to clause 2.

"Business Day" means a day other than a Saturday, Sunday or public holiday in the United Kingdom when banks in London are open for business.

"Confidential Information" means information that is proprietary or confidential and is either clearly labelled as such or is identified as being confidential information.

"Customer Content" means the content created by the Customer and which is uploaded to or entered into the Service by the Customer or Authorised Users.

"Normal Business Hours" means 9.00am to 6.00pm local time in England, on each Business Day.

"Klaxon" means Klaxon Technologies Limited (Company number 10456705), registered office: 15 QUEEN SQUARE, LEEDS, UNITED KINGDOM, LS2 8AJ.

"Service" means the hosted service set out in the Order Form (including any Updates) which is provided to and made available for use by the Customer via the internet by Klaxon.

"Service Fees" means the fees payable by the Customer to Klaxon for the provision of the Service and other related charges as set out in the Order Form.

"Service Level Agreement" means the service level agreement applicable to the Service as made available at [Service Levels](#) or such other website address as may be notified to the Customer from time to time.

"Subscription Term" means the period commencing on the "start date" indicated in the Order Form and ending upon the date on which this Agreement terminates.

1.2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.3. Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Service – Usage Rights & Restrictions

2.1. Subject to the Customer paying the Service Fees in accordance with clause 7, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, Klaxon hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Service during the Subscription Term solely for the purpose of enabling the Customer to send notifications to Authorised Users via the Service and to permit Authorised Users to access the dashboard and other features made available from time-to-time within the Service.

2.2. If the Customer wishes to increase and/or decrease the number of Authorised Users it may do this within the admin dashboard made available within the Service or by requesting that Klaxon does this on their behalf. Any increase in Software Fees arising from an increase in the number of Authorised Users will be applied in the case of both monthly and annual subscriptions on the first day of the calendar month following an increase in the number of Authorised Users. In the case of the annual subscription, any increase will be applied on a pro-rata basis until the end of the term. Any reduction in Software Fees arising from a reduction in the number of Authorised Users will be applied in the case of monthly subscriptions on the first day of the calendar month following a reduction in the number of Authorised Users or in the case of annual subscriptions on the first day of the start of each annual period following a reduction in the number of Authorised Users.

2.3. The Customer undertakes that the maximum number of Authorised Users that it authorises to access and use the Service shall not exceed the level stated within the Order Form as such level may be increased/decreased pursuant to clause 2.2. The Customer acknowledges that any individual who accesses and/or uses the Service in any way must be an Authorised User and Customer must hold a valid Service licence to cover that individual.

2.4. If the Customer has underpaid Service Fees to Klaxon and/or if the Customer exceeds its authorised usage level, then, without prejudice to Klaxon's other rights, the Customer shall pay to Klaxon an amount equal to such underpayment and/or additional usage as calculated in accordance with Klaxon's list prices within 10 Business Days of receipt of an invoice from Klaxon relating to these additional fees.

2.5. The Customer shall comply with the Klaxon Acceptable Use at all times, as may be amended from time to time by Klaxon in its sole discretion. A copy of the Acceptable Use Policy is available at [Acceptable Use Policy](#) or such other website addresses as may be notified to the Customer from time to time. Klaxon reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any content or material that breaches the provisions of this clause.

2.6. The Customer shall not:

2.6.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

2.6.1.1. and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Service in any form or media or by any means; or

2.6.1.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Service; or

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

2.6.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service available to any third party except the Authorised Users.

2.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and, in the event of any such unauthorised access or use, promptly notify Klaxon.

3 Service – Service Level Agreement & Support

3.1. Klaxon will, as part of the provision of the Service, provide the Customer with support in accordance with Klaxon's standard Service Level Agreement. Klaxon may amend the Service Level Agreement in its sole and absolute discretion from time to time.

3.2. Klaxon will periodically provide updates, new releases, bug fixes or other developments relating to the Service ("Updates"). Updates will be notified to the Customer and will be installed by Klaxon.

4 Customer Content

4.1. The Customer shall own all right, title and interest in and to all of the Customer Content and shall have sole responsibility for the legality, reliability, integrity, accessibility, accuracy and quality of the Customer Content.

4.2. The Customer shall be responsible for keeping back-up copies of all Customer Content. Klaxon shall not be responsible for any loss, destruction or alteration of Customer Content arising from the Customer's, any Authorised User's or any third party's use of the Service.

4.3. The Customer has sole responsibility for assigning and verifying access rights to the Service for Authorised Users. Klaxon accepts no liability arising from the Customer wrongly assigning access rights to Authorised Users.

5 Klaxon's Obligations

5.1. Klaxon warrants that the Service will operate substantially in accordance with the documentation made available at [Knowledge Base](#) or such other website address as may be notified to the Customer from time to time.

5.2. The warranty in clause 5.1 shall not apply to the extent of any non-conformance which is caused by: (i) use of the Service contrary to Klaxon's instructions; (ii) modification or alteration of the Service by any party other than Klaxon; (iii) issues caused by user error; or (iv) issues caused by faults within the Customer's system or hardware (including issues caused by faults within the Customer's network connections, telecommunications links and/or internet connection). If the Service does not conform with the warranty in clause 5.1, Klaxon will, at its expense, use its reasonable commercial 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 warranty in clause 5.1. If requested, the Customer shall provide Klaxon with full details of the non-conformance so that Klaxon may properly understand the defect. Notwithstanding the foregoing, Klaxon:

5.2.1. does not warrant that the Customer's use of the Service will be uninterrupted or error-free; and

5.2.2. 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 Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3. Klaxon warrants that: (i) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement; and (ii) it has implemented appropriate security measures in respect of the Service.

5.4. Klaxon makes no warranty in respect of and will not be responsible for any liability arising from unauthorised access to Customer Content.

6 Customer's Obligations

6.1. The Customer shall:

6.1.1. provide Klaxon with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by Klaxon in order to perform its' obligations under this Agreement;

6.1.2. ensure that the Authorised Users use the Service in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

6.1.3. obtain and shall maintain all necessary licences, consents, and permissions necessary for Klaxon, its contractors and agents to perform their obligations under this Agreement, including without limitation the provision of the Service to the Customer;

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

6.1.5. be solely responsible for: (i) procuring and maintaining its network connections and telecommunications links from its systems to Klaxon's data centres; and (ii) 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 relating to this Agreement.

7 Service Fees and Payment

7.1. The Customer shall pay the Service Fees to Klaxon as set out in the Order Form and in accordance with this clause 7.

7.2. Unless otherwise stated, all fees due under this Agreement are payable monthly and each invoice is payable within 30 days of its date of issue. The Customer shall pay interest on any overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time in force; such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. All fees due under this Agreement are subject to applicable taxes which will be payable by the Customer at the rate and in the manner prescribed by law from time to time.

7.3. Klaxon may increase the Service Fees once in any 12-month period by not more than the increase in the Consumer Prices Index over the preceding 12-month period subject to notifying the Customer of such increase at least 60 days in advance.

8 Proprietary Rights

8.1. The Customer acknowledges and agrees that Klaxon and/or its licensors own all intellectual property rights in the Service. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Service.

8.2. Klaxon warrants that it has all the rights in relation to the Service (including any Updates) that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

8.3. All rights not specifically granted in this Agreement are reserved by Klaxon.

8.4. Customer hereby grants to Klaxon a royalty-free, non-exclusive, non-transferable right to use the Customer Content and any Customer branding solely for the purpose of enabling Klaxon to perform its obligations under this Agreement and for the duration of the Subscription Term.

9 Confidentiality

9.1. Under this Agreement, either party may be given access to Confidential Information belonging to the other. A party's Confidential Information shall not include information that:

9.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

9.1.2. was in the other party's lawful possession before the disclosure;

9.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

9.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

9.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

9.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

9.4. The Customer acknowledges that information relating to the content and operation of the Service constitutes Klaxon's Confidential Information.

9.5. Klaxon acknowledges that the Customer Content is the Confidential Information of the Customer.

9.6. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction. Klaxon is permitted to refer to the Customer within lists referring to its customer base, on its website and within marketing literature.

10 Customer Indemnity

10.1. The Customer shall indemnify Klaxon against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use (including the Authorised Users' use) of the Service, provided that:

10.1.1. the Customer is given prompt notice of any such claim;

10.1.2. Klaxon provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

10.1.3. the Customer is given sole authority to defend or settle the claim.

11 Klaxon Indemnity

11.1. Klaxon shall defend the Customer against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any claim that the Service infringes any United Kingdom patent effective as of the date of the Order Form, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

11.1.1. Klaxon is given prompt notice of any such claim;

11.1.2. the Customer provides reasonable co-operation to Klaxon in the defence and settlement of such claim, at Klaxon's expense; and

11.1.3. Klaxon is given sole authority to defend or settle the claim.

11.2. In the defence or settlement of any claim, Klaxon may procure the right for the Customer to continue using the Service or replace or modify the Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two Business Days' notice to the Customer without any additional liability or obligation to the Customer.

11.3. In no event shall Klaxon be liable to the Customer to the extent that the alleged infringement is based on:

11.3.1. a modification of the Service by anyone other than Klaxon; or

11.3.2. the use of the Service in a manner contrary to the instructions given to the Customer by Klaxon; or

11.3.3. the use of the Service after notice of the alleged or actual infringement has been given to the Customer.

11.4. This clause 11 states the Customer's sole and exclusive rights and remedies, and Klaxon's entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12 Limitation of Liability

12.1. Except as referred to in clause 12.3 and subject to clause 12.2, the aggregate liability of Klaxon in respect of all claims arising under or in connection with this Agreement (whether in contract, tort or otherwise) in any calendar year shall be limited so that it shall in no circumstance exceed the total Service Fees payable to Klaxon in the calendar year in which the applicable cause of action arose.

12.2. Klaxon shall not in any circumstance (other than those referred to in clause 12.3) be liable for any loss of profits (actual or anticipated), loss of revenue, loss of anticipated savings, loss of goodwill, loss or corruption of or damage to data or for any indirect, incidental, consequential or special loss or damage.

12.3. Nothing in this Agreement shall exclude or limit Klaxon's liability for death or personal injury resulting from negligence or in relation to any claim based on fraud, criminal act or a breach of the obligations imposed by s.12, Sale of Goods Act 1979 or s.2, Supply of Goods and Services Act 1982 or any other matter that may not be excluded or limited by law.

13 Term and Termination

13.1. The Service will be provided for the Subscription Term.

13.2. This Agreement may be terminated:

13.2.1. by either party: (i) in the case of a monthly subscription on giving at least 30 days' written notice of termination to the other, such termination to take effect on the last day of the calendar month falling after the expiration of the 30-day notice period; or (ii) in the case of an annual subscription on giving at least 60 days' written notice of termination to the other, such termination to take effect on the last day of the annual period falling after the expiration of the 60-day notice period;

13.2.2. immediately on giving notice to the other where the other party has committed a material breach of any term of this Agreement and, in the case of a breach which is capable of being remedied, shall have failed to remedy that breach within 30 days after receiving a notice from the other party requesting it to do so; or

13.2.3. by either party immediately upon the other passing a resolution for winding-up (for a reason other than a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction making an order to that effect or the other party ceasing or threatening to cease to carry on business or the occurrence of any similar event in any jurisdiction.

13.3. On termination of this Agreement:

13.3.1. all rights granted to Customer under this Agreement will terminate immediately, including without limitation all rights to use and access the Service;

13.3.2. any term of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination shall come into force or continue in force as intended; and

13.3.3. rights that have accrued to either party prior to termination shall not be affected (in particular, all monies due to Klaxon shall remain payable whether invoiced or not).

13.4. If any invoice is not paid by its due date, Klaxon reserves the right to suspend all performance under this Agreement including without limitation suspending usage of and access to the Service.

14 Customer Data

14.1. Klaxon shall, in providing the Service, comply with its Privacy Policy and Security Policy relating to the privacy and security of the Customer's data as such policies may be amended from time to time by Klaxon in its sole discretion. A copy of the Privacy Policy is available at [Privacy Policy](#) and a copy of the Security Policy is available at [Security Policy](#) or such other website addresses as may be notified to the Customer from time to time.

14.2. If Klaxon processes any personal data on the Customer's behalf when performing Klaxon's obligations under this Agreement, the parties record their intention that the Customer shall be the data "controller" and Klaxon shall be the data "processor". Klaxon warrants that it will:

14.2.1. process any personal data provided to it by Customer only on documented instructions from Customer, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which Klaxon is subject (in which case Klaxon shall inform Customer of that legal requirement before processing, unless the law prohibits such information being passed to Customer on important grounds of public interest);

14.2.2. ensure that persons authorised to process any personal data on its behalf have committed themselves to confidentiality obligations or are under an appropriate statutory obligation of confidentiality such that they are required to keep the personal data confidential;

14.2.3. take all measures required pursuant to Article 32 of the General Data Protection Regulation ((EU) 2016/679) ("GDPR") as may be supplemented by any applicable national legislation;

14.2.4. not engage another processor without the prior written consent of Customer and, if such consent is given, Klaxon shall ensure that equivalent provisions as are imposed on Klaxon under this Agreement are imposed on any such other processor by way of a contract. Where such other processor fails to fulfil its data protection obligations, Klaxon shall remain fully liable to Customer for the performance of that other processor's obligations;

14.2.5. taking into account the nature of the processing under this Agreement, assist Customer by implementing appropriate technical and organisational measures to assist Customer to fulfil its' obligation to respond to requests for exercising any data subject's rights laid down in Chapter III to the GDPR;

14.2.6. assist Customer to ensure compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing under this Agreement and the information available to Klaxon;

14.2.7. at the choice of Customer, delete or return all the personal data provided to Klaxon under this Agreement upon the expiration or termination of this Agreement, and to delete any copies of any personal data unless Union or Member State law requires storage of that personal data;

14.2.8. make available to Customer all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer; and

14.2.9. immediately inform Customer if, in its opinion, an instruction issued by Customer infringes the provisions within the GDPR or any applicable national legislation.

14.3. If Customer personal data is to be processed under this Agreement, the Customer will advise Klaxon of this and set out within the Order Form details of the subject matter, duration, nature and purpose of processing and the personal data categories and data subject types applicable to the personal data to be processed by Klaxon.

14.4. Klaxon will promptly notify Customer if it becomes aware of any actual or suspected:

14.4.1. accidental, unauthorised or unlawful processing of any personal data; or

14.4.2. personal data breach.

14.5. Where Klaxon becomes aware of either of the matters referred to in clause 14.4.1 and/or clause 14.4.2, it shall cooperate with Customer's reasonable instructions to deal with such matter.

14.6. Klaxon will not transfer or otherwise process personal data outside the European Economic Area without the Customer's prior written consent.

15 General

15.1. This Agreement constitutes the entire agreement and understanding of the parties relating to the supply of the Service and it supersedes any previous agreement or understanding between the parties relating to that subject matter.

15.2. If any term of this Agreement is or becomes invalid or unenforceable but would be valid or enforceable if some part of it were deleted or modified by the parties, the term in question shall apply with such modification as may be necessary to make it valid and enforceable. The parties shall act reasonably and in good faith to agree any such modification.

15.3. A failure to exercise or a delay in exercising a right or remedy provided by this Agreement or by law shall not constitute a waiver of that right or remedy. If an effective waiver of a breach of any of the terms of this Agreement is made, that waiver shall not constitute a waiver in respect of any other breach.

15.4. Customer may not assign or otherwise transfer or hold on trust its rights and obligations under this Agreement in whole or in part without Klaxon's prior written approval, such approval not to be unreasonably withheld. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

15.5. No delay, failure or default in the performance of any obligation under this Agreement shall constitute a breach of contract to the extent caused by circumstances beyond the reasonable control of the party whose performance is affected but nothing in this clause shall excuse Customer from any payment obligations under this Agreement.

15.6. The terms of this Agreement are in lieu of all warranties, conditions, undertakings, terms and obligations concerning the supply and use of the Service which might but for this clause have effect between the parties or would otherwise be implied or incorporated into this Agreement whether by statute, common law, trade usage, course of dealing or otherwise, all of which are agreed to be excluded to the fullest extent permitted by law.

15.7. No variation of this Agreement shall be valid unless it is in writing, it expressly states that it varies this Agreement and it is signed by authorised representatives of each party.

15.8. All notices which are required to be given under this Agreement shall be in writing and shall be sent to the then current registered office of the recipient or such other address as the recipient may designate by notice given in accordance with this clause. All notices must be addressed to the parties' respective Finance Directors. Any notice must be delivered personally or sent by first class pre-paid recorded delivery and shall be deemed to have been served, if delivered personally at the time of delivery with signed proof of receipt, or, if sent by post 48 hours after posting with signed proof of receipt.

15.9. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).