

General Terms and Conditions

1. Interpretation

- 1.1. The definitions and rules of interpretation in Appendix A apply to this Agreement.
- 1.2. Unless the context otherwise expressly requires, references to:
 - 1.2.1. "including" or "includes" shall be deemed to have the words "without limitation" inserted after them;
 - 1.2.2. "writing" or "written" includes e-mail;
 - 1.2.3. references to any applicable laws and to terms defined in such applicable laws shall be replaced with or incorporate (as the case may be) references to any applicable laws replacing, amending, extending, re-enacting or consolidating such applicable law and the equivalent terms defined in such applicable laws, once in force and applicable; and a reference to a law includes all subordinate legislation made under that law; and
 - 1.2.4. a time shall be GMT or BST (as applicable).
- 1.3. Clause and Schedule headings do not affect the interpretation of this Agreement.
- 1.4. In the event of any conflict in respect of the provisions of the Agreement, the terms of the Order Form shall prevail over these General Terms and Conditions.

2. Changes to the Platform or the Services

Notwithstanding clause 10, the Supplier shall be entitled to update and change the Services, Specification, Platform and/or its Software from time to time to address a change in applicable laws or to maintain the security and/or performance and availability of the Services. The Supplier will use commercially reasonable endeavours to give the Customer reasonable notice of any major changes under this clause 2 but the Customer acknowledges that depending on the nature of such changes, prior notification may not be possible.

3. Customer use of the Services

- 3.1. Subject to the Customer paying all Charges and complying with this Agreement and the Authorised Users complying with the Terms of Use, the Supplier hereby grants to the Customer a non-exclusive, non-transferable, revocable right, without the right to grant sub-licenses, to permit the Authorised Users, to use the Services and the Documentation during the Term, solely for the Customer's internal business operations.
- 3.2. In relation to the use of the Services, the Customer undertakes that:
 - 3.2.1. it will procure that Authorised Users shall adhere to the Terms of Use and terms of this Agreement and will be liable for all acts and omissions of any Authorised Users; and
 - 3.2.2. it will not use, and shall ensure that Authorised Users shall not use, the Services in excess of the Permitted Usage.
- 3.3. The Supplier shall monitor the Customer's use of the Services remotely and if the Supplier detects use of the Services in excess of the agreed Permitted Usage or discrepancies with the Authorised Users or Developers specified in the Order Form or otherwise mutually agreed in writing, it shall notify the Customer in writing and automatically increase the Charges to reflect the actual usage in accordance with the rates set out in Schedule 4 (such rates may be subject to change for future Renewal Periods on prior notice to the Customer). Such increased Charges shall take effect immediately and shall be prorated for the remainder of the payment period. The Supplier shall raise an invoice for the additional Charges due for the remainder of the payment period at the end of the Quarter during which additional usage was identified, payable by the Customer in accordance

with clause 11.4. The increased Charges shall apply for the remainder of the Term unless otherwise agreed in writing between the parties.

3.4. If the Customer does not comply with the terms of the Agreement or an Authorised User fails to comply with the Terms of Use, the Supplier reserves the right to suspend the provision of the relevant Service, including access to the Generated Data.

3.5. The Customer shall not, and shall procure that Authorised Users do not, access, store, distribute or transmit any Malicious Code, or any material during the course of its use of the Services that:

3.5.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.5.2. facilitates illegal activity;

3.5.3. depicts sexually explicit images;

3.5.4. promotes unlawful violence;

3.5.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.5.6. is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights or remedies under this Agreement, to disable the Customer's (and any Authorised User's) access to the Services for failure to comply with this clause 3.5.

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

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

3.6.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

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

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

3.6.3. deliberately circumvent any of the Services licence limits, including by sharing accounts between Authorised Users, mapping multiple individuals under the same contributors or otherwise corrupting the data integrity of Development Projects or any third-party cloud services interoperating with the Platform;

3.6.4. subject to clause 24.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or

3.6.5. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3;

3.6.6. share account log in information between Authorised Users.

3.7. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform by any third party and, in the event of any such unauthorised access or use, shall promptly notify the Supplier.

4. Services

4.1. The Supplier shall, during the Term, provide the Services to the Customer on and subject to the terms of this Agreement.

4.2. The Supplier shall use reasonable endeavours to make the Services (not including the Free-of-charge Services) available 24 hours a day, seven (7) days a week, except for:

- 4.2.1. maintenance on the Platform or Software at any time, provided such maintenance does not adversely impact the Services;
 - 4.2.2. routine planned maintenance;
 - 4.2.3. unscheduled maintenance to deal with or prevent an incident. Details of any actual incidents shall be available to the Customer on the Supplier's online status page; and
 - 4.2.4. any unavailability caused by circumstances beyond the Supplier's reasonable control, including for example a force majeure event pursuant to clause 19, a denial-of-service attack, any delay or failure of third-party or Customer cloud services or any action or omission by the Customer which renders the provision of Services by the Supplier unfeasible.
- 4.3. Where such maintenance will adversely impact the Services (not including the Free-of-charge Services), the Supplier will use commercially reasonable endeavours to give the Customer reasonable notice of such maintenance, but the Customer acknowledges that, depending on the nature of such maintenance, prior notification may not be possible.
- 4.4. The Platform, Software and Services will not be classified as 'unavailable' where the unavailability is due to maintenance, or action taken in accordance with clause 4.
- 4.5. The Supplier will, as part of the Services (not including the Free-of-charge Services), provide the Customer with basic customer Support Services. The Customer may purchase enhanced support services separately at the Supplier's then-current rates.

5. Customer Data

- 5.1. The Customer shall:
 - 5.1.1. own all rights, title and interest (including all Intellectual Property Rights) in and to all of the Customer Data; or
 - 5.1.2. where Customer does not own all such rights, title and interest (including all Intellectual Property Rights) in and to all of the Customer Data, shall ensure it secures all necessary licences, permissions and consents from such owner to enter the Agreement and to submit Customer Data on the terms of the Agreement,and (under both clause 5.1.1 and 5.1.2), shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2. By submitting the Customer Data for verification under the Services as part of a Development Project or otherwise, the Customer grants (and warrants that it has all necessary licences, permissions and consents (including but not limited to under clause 5.1.2 above)) to grant the following licence to the Supplier. The Customer hereby grants to the Supplier a non-exclusive, royalty-free, worldwide and irrevocable licence to access, retrieve, retain, store, use, copy and disclose such Customer Data during the Term solely:
 - 5.2.1. in connection with the provision of the Services and to carry out its obligations under the Agreement;
 - 5.2.2. to produce the Generated Data and Aggregated Data; and
 - 5.2.3. in order for the Supplier to improve the Services.
- 5.3. The Customer grants the Supplier a royalty-free, non-exclusive, irrevocable and perpetual licence to use any feedback, enhancement requests, recommendations, corrections and any other suggestions for improvement that the Customer may make during the course of its receipt of the Services (together, the "Feedback"), in order for the Supplier to improve, enhance or fix any errors identified in its services (including its provision of the Services).
- 5.4. The Customer agrees that the Supplier has the right to create Aggregated Data pursuant to its provision of Services to a Customer. The Customer acknowledges that the Supplier may retain, use, combine and share Aggregated Data with any third party for the Supplier's business purposes during or after the expiry or termination of the Agreement.

5.5. This clause 5 shall survive termination and expiry of this Agreement.

6. Data Protection

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

7. Third-Party Providers

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

8. Supplier's obligations

- 8.1. The Supplier undertakes that the Services (not including the Free-of-charge Services) will be performed in accordance with the Specification and the Service Levels and with reasonable skill and care.
- 8.2. The obligation at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions or this Agreement, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents.
- 8.3. If the Services (not including the Free-of-charge Services) do not conform with the obligation at clause 8.1, the Supplier will, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution, as well as provision of Service Credits (if agreed in Schedule 2) for any Service Level failures, constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:
 - 8.3.1. does not warrant that a Customer's or Authorised User's use of the Services will be uninterrupted or error-free; and
 - 8.3.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over third party communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.4. This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.
- 8.5. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

9. Customer's obligations

The Customer shall:

- 9.1. provide the Supplier with:
 - 9.1.1. all necessary cooperation in relation to this Agreement; and
 - 9.1.2. all necessary access to such information as may be required by the Supplier;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 9.2. comply with all applicable laws and regulations with respect to its activities under this Agreement;

- 9.3. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 9.4. ensure that the Authorised Users use the Services in accordance with the Terms of Use and the terms of this Agreement, and shall be responsible for any Authorised User's breach of the Terms of Use or Agreement;
- 9.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- 9.6. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- 9.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- 9.8. comply with the agreed Permitted Usage set out in the Order Form.

10. Change Order

- 10.1. Either party may propose changes to the Order Form, including to cover the purchase of additional Services or access to Services for an increased Fair Use Limit or increased number of Authorised Users or Active Contributors, but no proposed Order Form changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order may be signed by any authorised signatory of a party or any person listed as an Authorised Representative on the Order Form.
- 10.2. If the Supplier wishes to make a change to the Order Form it shall provide a draft Change Order to the Customer.
- 10.3. If the Customer wishes to make a change to the Order Form:
 - 10.3.1. it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
 - 10.3.2. the Supplier shall, as soon as reasonably practicable after receiving the information at clause 10.3.1, provide a draft Change Order to the Customer.
- 10.4. If the parties agree to a Change Order, they shall sign it and that Change Order shall amend the Order Form. All references to the Order Form shall include the Order Form as amended by any signed Change Order.
- 10.5. The Supplier shall activate any changes to Customer's Services within two (2) Business Days of the Change Order being signed and the Customer shall pay any additional agreed Charges in accordance with clause 11.
- 10.6. Nothing in this clause 10 shall limit the Supplier's liability to adjust the Charges under clause 3.3 or to make changes to the Services, Specification, Platform and/or its Software in accordance with clause 2.

11. Charges and payment

- 11.1. The Customer shall pay the Charges to the Supplier for the Services to which it has subscribed under this Agreement in accordance with this clause 11, including any adjustments to the Charges which may be chargeable under clauses 3.3 or 10.5.
- 11.2. The Customer shall provide to the Supplier valid, up-to-date and complete billing details including credit card details or necessary approved purchase order numbers, as applicable.
- 11.3. The Customer may opt to pay via continuous payment authority, direct debit or similar recurring payment means, in which case the Customer hereby authorises the Supplier to bill such credit card or debit such bank account on a recurring and periodic basis from:
 - 11.3.1. the commencement date of the relevant Services (including the commencement date of any additional Services or access rights agreed under clause 10); or

11.3.2. the date immediately following the expiry of any period during which the Supplier, in its sole discretion, agrees to provide Free-of-charge Services, as specified in the Order Form.

11.4. The Supplier may provide the Customer with an invoice for the Services, which shall become due and payable in the timeframe set out in the Order Form. If no timeframe is detailed in the Order Form, then payment of invoices shall become due ten (10) days from the date of invoice.

11.5. If the Supplier has not received payment within the agreed payment period, without prejudice to any other rights and remedies of the Supplier:

11.5.1. the Supplier may, without liability to the Customer, disable the Customer's account and access (including Authorised User's access) to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

11.5.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Supplier's bank in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement.

11.6. All amounts and fees (including the Charges) stated or referred to in this Agreement:

11.6.1. shall be payable in pounds sterling (unless agreed otherwise);

11.6.2. are non-refundable; and

11.6.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

11.7. If any Renewal Period(s) have been agreed in the Order Form, after expiry of the Initial Term, the Supplier shall increase the Charges by 7% per annum, such increase to be calculated based on the Charges payable during the immediately preceding year.

11.8. All Charges exclude all taxes that may apply. Any such taxes are the responsibility of the Customer.

12. Free-of-charge Services

12.1. The Customer may request and the Supplier may, in its sole discretion and for a limited period, grant the Customer access to certain Free-of-charge Services, the terms of which shall be set out in the Order Form. Any Free-of-charge Services shall be provided on an as-is basis and the Supplier gives no warranties and makes no guarantees in respect of the Free-of-charge Services.

12.2. In addition to any other terms, restrictions and limitations of receiving Free-of-charge Services set out in the Order Form, or within any Documentation which may be supplied by Supplier to Customer from time to time, and to which a Customer agrees to be bound, the Customer:

12.2.1. agrees to be bound by the Permitted Usage agreed and set out in the Order Form, the Documentation, or as may otherwise be communicated by Supplier from time to time. Any use of the Free-of-charge Services in excess of the Permitted Usage may be subject to additional charges; and

12.2.2. acknowledges that the Supplier reserves the right to withdraw, suspend or terminate the Customer's access to the Free-of-charge Services or any part thereof at any time in its sole discretion, and without any liability owed to the Customer (whether under this Agreement or otherwise).

12.3. In respect of a Free Trial, unless the Customer terminates its access to Free-of-charge Services received under a Free Trial by giving the Supplier not less than two (2) Business Days' prior written notice before expiry of the Free Trial period, the Customer will be automatically signed up to receive the same Services as those received in the Free Trial, and will be charged the applicable Charges for those Services.

13. Intellectual Property

13.1. Save as otherwise expressly set out in the Agreement, nothing shall affect, or grant any right to, any Intellectual Property Rights owned by and/or licensed to either party prior to the commencement of the Agreement.

13.2. All Intellectual Property Rights in and to the Software, Generated Data, Aggregated Data, Documentation, Platform and Services are, and shall remain, the property of the Supplier (or its licensors as applicable) and the

Customer acknowledges that save as otherwise expressly set out in the Agreement, it shall acquire no rights (including Intellectual Property Rights) in and to the Software, Generated Data, Aggregated Data, Documentation, Platform and the Services by virtue of receiving Services under the Agreement. The Customer shall at the request of the Supplier do, and shall use all reasonable endeavours to procure that any necessary third party shall do, all necessary acts and execute all documents that the Supplier may reasonably request to perfect the right, title and interest of the Supplier in the Software, Generated Data, Aggregated Data, Documentation, Platform or Services.

13.3. The Supplier grants to the Customer, a non-exclusive, non-transferable and perpetual licence to use the Generated Data for the Customer's internal business operations. The Customer acknowledges that the granting of such licence in no way amounts to any warranty or representation by the Supplier relating to the accuracy of the Generated Data (including any errors in or omissions to the Generated Data), and Customer assumes sole responsibility for its use of and reliance on the Generated Data. For the avoidance of doubt, the Supplier shall in no way be liable to the Customer (or any third party), for any damage to or loss suffered by the Customer (or any third party) which may be attributable to the Customer's (or a third party's) reliance on the Generated Data (including but not limited to on account of any errors in or omissions to the Generated Data).

13.4. This clause 13 shall survive the termination or expiry of the Agreement.

14. Publicity

The Customer agrees that the Supplier may use the Customer's company and trading name(s) and logo in its online and printed sales and marketing material strictly for the purpose of identifying the Customer as a customer of the Supplier.

15. Confidentiality

15.1. Neither party shall use and/or disclose any Confidential Information which is acquired by it (the "receiving party") about the other party's (the "disclosing party") business and/or given by the disclosing party to the receiving party and/or generated by the receiving party from the disclosing party's Confidential Information except in the proper performance of the Agreement (the "Permitted Purpose").

15.2. The receiving party may disclose the disclosing party's Confidential Information to its employees, workers, personnel or subcontractors, who need to know such Confidential Information for the Permitted Purposes, provided that the receiving party (i) informs such individual of the confidential nature of the Confidential Information before disclosure; and (ii) at all times, shall be responsible for its employers', workers', personnel's or subcontractors' compliance with the confidentiality obligations set out in this clause 15.

15.3. Notwithstanding clause 15.1, a party may disclose the other party's Confidential Information to the extent required by law, a court of competent jurisdiction, or governmental or regulatory order provided that, where it is permitted to make such notification, it notifies the other party as soon as possible prior to making any disclosure.

16. Indemnity

16.1. The Supplier shall defend, indemnify and hold harmless the Customer against all losses, liabilities, costs, expenses and damages suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer alleging infringement of a third party's Intellectual Property Rights arising out of the Customer's use of Supplier's Software or Services (not including the Free-of-charge Services).

16.2. The Customer shall defend, indemnify and hold harmless the Supplier against all losses, liabilities, costs, expenses and damages suffered or incurred by the Supplier arising out of or in connection with the Supplier's use of the Customer Data.

16.3. If any third party makes a claim, or notifies of an intention to make a claim against either party, which may reasonably be considered likely to give rise to liability for the other party under this clause 16 (an "Indemnity Claim"), the indemnified party shall:

16.3.1. immediately give written notice of the Indemnity Claim to the indemnifying party, specifying the nature of the Indemnity Claim in reasonable detail;

- 16.3.2. not make any admission of liability, agreement or compromise in relation to the Indemnity Claim without the indemnifying party's prior written consent; and
 - 16.3.3. allow the indemnifying party to conduct all negotiations and proceedings and provide the indemnifying party with such reasonable assistance, documents, records and information as required by the indemnifying party in respect of the Indemnity Claim.
- 16.4. If an Indemnity Claim is made (or the indemnifying party reasonably anticipates an Indemnity Claim is likely to be made) the indemnifying party may, either:
- 16.4.1. procure for the indemnified party the right to continue using the relevant item which is subject to the Indemnity Claim; or
 - 16.4.2. replace or modify the relevant item subject to the Indemnity Claim with non-infringing substitutes.
- 16.5. Nothing in this clause 16 shall restrict or limit either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this clause 16.

17. Limitation of liability

- 17.1. The Customer assumes sole responsibility for its use of the Services (including the Generated Data) by the Customer, and for conclusions drawn from such use (including conclusions drawn from the contents of (including any omissions within) the Generated Data). The Supplier shall have no liability for any damage caused by or loss suffered as a result of any errors or omissions in any analysis, information, instructions or scripts (including the Generated Data) provided by the Supplier to the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction.
- 17.2. Neither the Supplier, nor its employees, agents or subcontractors shall be liable to any Customer, Authorised User or other third party, without limitation, for any harm, loss, costs, damages, charges or expenses, or in connection to any claims (including third party claims), actions or proceedings which may arise on account of;
- 17.2.1. the actions or omissions of the Supplier's third-party hosting provider;
 - 17.2.2. the Customer's use of any Free-of-charge Services or Support Services;
 - 17.2.3. a modification of the Services by anyone other than the Supplier;
 - 17.2.4. the Customer's use of the Services in a manner contrary to the terms of the Agreement, or the instructions given to the Customer by the Supplier from time to time; or
 - 17.2.5. a claim that any Customer Data or Feedback submitted by a Customer infringes the intellectual property or other rights of a third party, the Customer shall be liable to Supplier in connection with any such claim.
- 17.3. All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 17.4. Nothing in this Agreement excludes the liability of the Supplier:
- 17.4.1. for death or personal injury caused by the Supplier's negligence; or
 - 17.4.2. for fraud or fraudulent misrepresentation; or
 - 17.4.3. any other liability that cannot be excluded or limited by law.
- 17.5. Subject to clause 17.4:
- 17.5.1. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill, loss of reputation and/or similar losses or loss or corruption of data (including but not limited to Customer Data) or information, or loss or corruption of software or systems (including but not limited to Development Projects), or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;

17.5.2. the Supplier's total aggregate liability under the indemnity in clause 16.1 shall be limited to one million pounds (£1million); and

17.5.3. the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with this Agreement shall be limited to the total Charges paid or payable by the Customer under this Agreement during the twelve (12) months immediately preceding the date on which the liability arose.

18. Term and termination

18.1. The Agreement shall, unless otherwise terminated in accordance with its terms, commence on the Effective Date and shall continue for the period of any Free Trial and the Initial Term, and thereafter shall automatically renew for successive Renewal Periods as specified in the Order Form, unless either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the Initial Term or any Renewal Period, in which case the Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period. If no Renewal Periods are specified in the Order Form, the Agreement shall, unless otherwise terminated in accordance with the provisions of this Agreement, commence on the Effective Date and shall continue for the period of any Free Trial and the Initial Term, after which the Agreement shall terminate automatically.

18.2. A party may immediately terminate the Agreement by written notice if the other party:

18.3. 18.3.1. fails to make any payment when due;

18.3.2. materially breaches the terms of this Agreement (and if remediable the breach has not been remedied in thirty (30) days of receiving notice requiring it to be remedied);

18.3.3. ceases or threatens to cease to carry on business; and/or

18.3.4. is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect or any of these circumstances.

18.4. On termination of the Agreement for any reason:

18.4.1. all licences that are not perpetual licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services; and

18.4.2. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

19. Force majeure

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

20. Waiver

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

21. Rights and remedies

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

22. Severance

22.1. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

23. Entire agreement

23.1. The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

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

24. Assignment

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

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

25. Variation

Subject to clause 10 (Order Form Changes), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised signatory).

26. No partnership or agency

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

27. Third party rights

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

28. Notices

28.1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its registered office address, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address, provided that such email address is set out in the Order Form (or any amendment thereof, made in accordance with clause 10).

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

29. Governing law

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 and Wales.

30. Jurisdiction

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

Appendix A – Definitions and rules of interpretations

Term	Definition / Interpretation
Affiliate	any entity that directly or indirectly controls, or is controlled by, or is under common control with, another entity.
Agreement	these General Terms and Conditions and the Order Form.
Aggregated Data	non-personal, non-proprietary information in an anonymous aggregated form generated by the Supplier from the Generated Data and Customer Data in the course of providing Services to Customers.
Authorised User	those individuals, employees, agents, third-party suppliers, service recipients, independent contractors or Customer Affiliates of the Customer who are authorised by the Customer to use the Services, including the Developers.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Change Order	a document in the form prescribed by the Supplier from time to time, setting out the changes to the Order Form, including any changes to the Services or Charges.
Charges	all fees and payments due from and payable by the Customer to the Supplier under the Agreement in accordance with clause 11 and as detailed in the Order Form.
Confidential Information	all information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including in relation to the Supplier, information relating to the Supplier's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers.
Controller	as defined by the Data Protection Legislation.
Customer Data	the data input by (or retrieved from) the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of the Supplier's provision of the Services or facilitating the Customer's use of the Services, excluding the Generated Data, Aggregated Data and Feedback.
Data Protection Legislation	all applicable laws binding on the parties or Services which relate to the protection of personal data, including (a) in the UK: (i) the Data Protection Act 2018; (ii) the UK GDPR; and (iii) the Privacy and Electronic Communications Regulations 2003; and (b) in member states of the EU and/or the EEA: the EU GDPR and all relevant EU and EEA member state laws or regulations giving effect to or corresponding with the EU GDPR; and (c) any legislation replacing, extending or supplementing the foregoing from time to time.
Data Subject	as defined in the Data Protection Legislation.

Term	Definition / Interpretation
Developer	any individual, such as an employee or contractor of the Customer or a Customer Affiliate or an external collaborator, who directly contributes to a Development Project using the Services.
Development Project	any application development, configuration or implementation project undertaken by the Customer for which the Services are being utilised.
Documentation	the technical documentation, as updated by the Supplier from time to time and available in the support section of www.getclayton.com , or as otherwise provided by the Supplier to the Customer from time to time.
Effective Date	as set out in the Order Form.
Fair Use Limit	the permitted quantity of minutes for any scan or code review tasks in any ninety (90) day period, as set out in the Order Form or the Documentation.
Feedback	has the meaning given to it in clause 5.3.
Free-of-charge Services	any services provided by the Supplier to a Customer, in its sole discretion, without charge and for a limited period, including the Services provided as part of a Free Trial, as set out in the Order Form.
Free Trial	the provision of Services by the Supplier to a Customer, in its sole discretion, without charge and for a limited period prior to the commencement of the Initial Term, as set out in the Order Form, and further described at clause 12.
GDPR	the General Data Protection Regulation (Regulation 2016/679).
Generated Data	the data, results, reports, insights, data visualisations, analytics, interpretations and statistics generated by the Supplier in the course of providing the Services to the Customer, excluding Customer Data.
Initial Term	as set out in the Order Form.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
List of Sub-Processors	the list of Sub-Processors used by the Supplier at the Effective Date, contained at Schedule 3.

Term	Definition / Interpretation
Malicious Code	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Normal Business Hours	9.00 am to 5.30 pm local UK time, each Business Day.
Permitted Usage	the maximum usage limits granted to a Customer, as set out in the Order Form or the Documentation, including limitations related to Fair Use Limits, Authorised Users and Developers.
Personal Data	as defined in the Data Protection Legislation.
Personal Data Breach	as defined in the Data Protection Legislation.
Platform	each of getclayton.com, clayton.io and any other associated websites operated by the Supplier from time to time.
Processor	as defined by the Data Protection Legislation.
Quarter	a period of three (3) calendar months ending on 31 March, 30 June, 30 September, or 31 December.
Renewal Period	as set out in the Order Form.
SaaS Services	the services provided by the Supplier via the Platform during the Term, as described in the Order Form.
Service Levels	the service levels set out in Schedule 2.
Services	the provision of access for the Customer and Authorised Users to those SaaS Services, Free Services and Support Services to which the Customer has subscribed, provided by the Supplier as set out in the Order Form, and in accordance with this Agreement.
Software	the underlying software applications which are proprietary to the Supplier and which are used by the Supplier to deliver the Services.
Specification	the specification outlined in relation to each Service as set out in the Documentation and/or Order Form.
Sub-Processor	another Processor engaged by the Supplier for carrying out processing activities in respect of the Personal Data processed in relation to this Agreement on behalf of the Customer.
Support Services	any error corrections, troubleshooting, assistance, training, updates or any other support that the Supplier may provide to the Customer or perform with respect to the SaaS Services under this Agreement.
Term	any Free Trial period and the Initial Term together with any subsequent Renewal Periods.

Term	Definition / Interpretation
Terms of Use	the Customer Workspace Terms of Use located at www.getclayton.com/legal
UK GDPR	the retained Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of the European Union (Withdrawal) Act 2018.

Schedule 1 – Data Processing

1. Each party shall:
 - 1.1. at all times during the Term, comply with the applicable Data Protection Legislation; and
 - 1.2. to the extent applicable under the Data Protection Legislation, obtain and maintain all appropriate registrations required in order to allow that party to perform its obligations under this Agreement.
2. Processing of the Personal Data by the Supplier under this Agreement shall be for the subject-matter, duration, nature and purposes, and involve the types of Personal Data and categories of Data Subjects, set out in this paragraph 2. The Supplier provides the Services used by the Customer to analyse and review code and metadata, for the duration of this Agreement. The purpose of the processing is to allow the Customer and its Authorised Users to submit Customer Data for verification. The types of Personal Data processed are (i) Identification information: name and job title; (ii) Contact information: email address (business and/or personal); (iii) User information: username and related log-in details; and (iv) meta data related to code authored. Such types of Personal Data relate to the Customer's Authorised Users.
3. In relation to all Personal Data provided or made available to the Supplier by or on behalf of the Customer, to the extent that the Supplier is the processor of such Personal Data, the Supplier shall:
 - 3.1. unless required to do otherwise by applicable laws, only process the Personal Data in accordance with the Customer's documented instructions and in accordance with paragraph 2 of this Schedule 1;
 - 3.2. taking into account the nature of the processing, implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 3.3. not, without the prior written consent of the Customer, transfer any such Personal Data to a country or territory outside both the United Kingdom and European Economic Area unless adequate contractual or other assurances have first been put in place to enable each party to comply with the requirements of the Data Protection Legislation;
 - 3.4. take reasonable steps to ensure the reliability of its personnel who have access to any such Personal Data and ensure that such Personal Data shall only be accessible by its personnel to the extent they need to know or require access for the purpose of properly performing their duties in relation to this Agreement and who, are contractually bound to maintain its confidentiality;
 - 3.5. prior to any Sub-Processor authorised in accordance with paragraph 4 carrying out any processing activities in respect of Personal Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Schedule 1 that is enforceable by the Supplier;
 - 3.6. remain fully liable to the Customer for all the acts and omissions of each Sub-Processor as if they were its own;
 - 3.7. notify the Customer, without undue delay, of any Personal Data Breach and provide reasonable assistance to the Customer in respect of any such Personal Data Breach;
 - 3.8. at the end of the Term, at the choice of the Customer, delete or return all Personal Data processed in relation to this Agreement, unless the Supplier is the Controller of that Personal Data;
 - 3.9. subject to the Customer paying the Supplier's reasonable costs (unless prohibited by applicable law), provide such cooperation and assistance to the Customer as the Customer reasonably requires (taking into account the nature of processing and the information available to the Supplier) in ensuring compliance with:
 - 3.9.1. the Customer's obligations to respond to any complaint or request from any applicable data protection authority or Data Subject seeking to exercise their rights under Data Protection Legislation, including by promptly notifying the Customer of any subject access request the Supplier receives in connection with this Agreement;

3.9.2. the Customer's obligations to:

3.9.2.1. ensure the security of the processing;

3.9.2.2. notify the relevant supervisory authority and any Data Subjects, where relevant, of any Personal Data Breach;

3.9.2.3. carry out any data protection impact assessments ("DPIA") on the impact of the processing on the protection of Personal Data; and

3.9.2.4. consult the relevant supervisory authority prior to any processing where a DPIA indicates that the processing would result in a high risk in the absence of measures taken by the Customer to mitigate the risk;

3.10. make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this Schedule 1, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose only (subject to reasonable prior written notice and a maximum of one (1) audit request in any twelve (12) month period under this paragraph 3.10).

4. The Customer authorises the appointment of each of the Sub-Processors identified on the List of Sub-Processors. The Supplier shall give the Customer thirty (30) days' prior written notice of any change to the List of Sub-Processors. In the event the Customer reasonably believes that any such change materially impacts it negatively in any manner it may by written notice elect to terminate this Agreement in respect of all impacted Services provided it exercises such right within fourteen (14) days of receipt of the change notification and notifies the Supplier in writing at the time of exercising such right of the negative impact which has caused it to exercise this right.
5. The Customer warrants, represents and undertakes, that all:
 - 5.1. Personal Data provided by the Customer to the Supplier for use in conjunction with the Services shall comply in all respects, including in terms of its collection, storage and processing, with Data Protection Legislation; and
 - 5.2. instructions given by it to the Supplier in respect of Personal Data shall at all times be in accordance with Data Protection Legislation.
6. The Supplier shall inform the Customer without undue delay if the Supplier believes that a processing instruction infringes Data Protection Legislation, provided that to the maximum extent permitted by applicable law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, liabilities, costs, expenses and damages arising from or in connection with any processing in accordance with the Customer's unlawful processing instructions.

Schedule 2 – Service Levels

Qualifying Events	Service To Which The Service Level Applies	Description	Service Level	Service Credits
Availability	Saas Services	'Available' means the Services shall be available 24 hours a day, 7 days a week, less any planned maintenance or under downtime permitted under Clause 4.2 of the Agreement.	The services shall be available 99% of the time, each calendar month.	N/A
Ticket first response time	Support Services	The time taken by the Supplier to first respond to a ticket raised by the Customer, measured as the time elapsed between the receipt of the ticket and the first recorded non-automated response in the Supplier's ticketing system. Tickets can be submitted either by emailing support@clayton.io or using the Platform's live chat.	The requests received shall in each calendar month shall be responded within 1 business day.	N/A

The Supplier may review the Service Levels from time to time and the parties will act reasonably in agreeing to any changes to the Service Levels.

Schedule 3 – List of Sub-processors

Name	Description / Purpose	Location Of The Processing
Amazon Web Services	Cloud computing platform	EU
Amplitude	Product analytics	US
Intercom	Customer messaging, product tours and support	US
ActiveCampaign	Email delivery service provider	US

Schedule 4 – Increased Usage Rates

The below rates may be subject to change for future Renewal Periods on prior notice to the Customer.

Limit	Excess Rate
Additional minutes (in excess of Fair Use Limit)	£0.05/minute
Additional Developers	See Order Form