

**applaud**

TERMS OF USE

# applaud

## Definitions

- **Additional Services:** means any time-and-materials services provided to You, such as consulting services, onboarding support which does not form part of your Subscription.
- **Add-On Services:** means additional services or functionality that may be added to your Subscription.
- **Agreement:** these Terms of Use and any Order Form.
- **Data:** the data inputted by you, or by us on your behalf or otherwise generated in respect to Your use of the Services.
- **Documentation:** any documentation made available to You by Applaud from time to time, at <https://support.applaudsolutions.com>.
- **Fees:** the fees payable by You to Applaud for the Services and your Subscription as detailed on your Order Form.
- **Initial Term:** the initial term of this Agreement, which shall commence on the Start Date.
- **Intellectual Property Rights:** all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and together with all renewals and extensions.
- **Minimum Specification:** means the specification which your systems are required to meet in order to use the Services, as revised from time to time.
- **Order Form:** your order for Services detailing the Fees relating to your Subscription or any Additional Services or Add-On Services and incorporating this Agreement.
- **Subscription:** means the Services to be provided to you under Professional Tier, Enterprise Tier or Essential Tier, as detailed in your Order Form and any Documentation.
- **Renewal Term:** the Initial Term and any subsequent terms described in clause 15.1.
- **Services:** the services provided by Applaud to You under this Agreement, as more particularly described in the Documentation and any Order Form and any updates.
- **Start Date:** the date we first make our Services available to you.
- **Term:** the Initial Term and any Renewal Term as detailed in any Order Form.
- **Third Party Software:** any third party proprietary software including any open source software incorporated in the Services.
- **User(s):** your employees and independent contractors or other third parties who you authorise to use the Services in accordance with this Agreement.
- **User License:** the license granted to a User to access the Services.
- **You or Your:** means the business detailed in your Order Form.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account any amendment, extension, or re-enactment and includes any subordinate, interim or provisional legislation for the time being in force made under it. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement. The details of your Subscription and your Order Form form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

## 1. SERVICES

- 1.1 This Agreement will operate as a framework agreement which defines the contractual terms and conditions under which Applaud will supply Services to You. Whilst this Agreement remains in force, the parties shall agree the provision of Services as set out in an Order Form which shall be governed by and be subject to, the terms and conditions of this Agreement. Your access to the Services will be immediately suspended in the event that you do not have an active Subscription for Services.
- 1.2 Variation to this Agreement or Prices. Applaud may make changes to this Agreement from time to time on reasonable advance notice to you of no less than 30 days. Any revised version of this Agreement shall automatically apply to any Renewal Term, Additional Services or any Add-On Services when purchased.
- 1.3 Terms of this Agreement. This Agreement shall commence on the Start Date when Services are made available to you and shall continue throughout any Initial Term and Renewal Term unless earlier terminated in accordance with the terms of this Agreement. Where detailed in an Order Form certain Services will only start following the payment of an applicable Fee.

# applaud

- 1.4 Any dates quoted for delivery of Services are approximate only. Any services which are not detailed in your Subscription are out of scope and subject to additional charges.
  - 1.5 Support Services. Applaud will, as part of the Services, provide You with Applaud's standard customer support services and onboarding services as detailed in your Subscription. Applaud may amend its support services at its discretion from time to time.
  - 1.6 Updating Service. As part of its updating service Applaud shall provide error correction, patches, fixes and updates to the Services as generally made available to its customers. Where requested, you may be required to update your IT infrastructure in order to continue to comply with any required Minimum Specification for the Services. For the avoidance of doubt the cost of the updating service described in this clause is included in your Fees, but excludes any sum payable by You to ensure compatibility with the Services. Applaud shall have no liability whatsoever for any failure of your IT infrastructure to comply with the Minimum Specification.
  - 1.7 Service Improvements. You acknowledge that Applaud may change or modify the Services from time to time. Applaud shall only be required to provide You with reasonable notice of a change or modification to the Services in advance if the change of modification is material (and does not extend or enhance the functionality or architecture of the Services) or may substantially adversely affect Your use of the Services.
  - 1.8 Unless otherwise agreed in writing, You acknowledge that the Services have not been developed to meet Your individual requirements and that it is therefore Your responsibility to ensure that the facilities and functions of the Services as described in the Subscription Documentation meet Your requirements.
  - 1.9 Trial & Evaluation License. Where agreed in writing, we will provide you with 30 days access to certain Services for evaluation purposes within the restrictions as detailed in an applicable Evaluation Order Form. Access to these Services is limited to: (a) use in a test environment only and not in live production; (b) use during the Trial Period as detailed in the Order Form. Any services accessible under an Evaluation or Trial License may be terminated without notice, is provided "as is" without warranty of any kind.
- 2. ONBOARDING AND SUPPORT IN ACCESSING AND USING OUR SERVICES**
- 2.1 Following your Order Form for a Subscription, and payment being made we will contact you to provide you with the information you need to access and use our Services.
  - 2.2 Please refer to your Subscription Documentation for information and assistance around onboarding and accessing our Services. The support services provided as part of your Subscription are detailed in your Subscription Documentation. Full access to all of our online resources and FAQs is provided to all users. Any support requests or onboarding assistance requested which is outside the scope of your Subscription will be chargeable as Additional Services.
  - 2.3 Your responsibility to understand our Services and your use of them. You acknowledge and agree that whilst our Services are designed for ease of use, it is Your responsibility to ensure that any individuals involved in onboarding or accessing and using the Services are appropriately trained in the use of any applicable technology and understand and are familiar with the Services and any training materials or Documentation made available to you relating to them. In the event that we identify that any repeated requests for assistance are as a result of inadequate training either in respect to your own systems or our Services, this assistance will be provided as Additional Services, only at our discretion. You are solely responsible for ensuring that all users of the Services are appropriately trained in its use. Applaud shall have no responsibility to provide support if support issues are deemed by Applaud to be the result of misuse or lack of appropriate training by You in the use of Services.
  - 2.4 You acknowledge that where detailed in an Order Form, our provision of Services to you is based on your meeting applicable onboarding and service requirements ("Set Up Requirements") as detailed in the Subscription Documentation provided to you.
  - 2.5 In the event that you do not provide us with the information we require from you (and that information is accurate and complete in all respects) at each stage of the onboarding and set up process or otherwise comply with the Set Up

# applaud

Requirements, we will not be liable for Your inability to make use of the Services in whole or part, and any additional work required by us to support your onboarding, access to the Services or to otherwise assist in Set Up shall be chargeable (and provided at our discretion) as Additional Services at Applaud's standard rates then in force. Applaud is not liable for any delay or inability to use or access the Services in whole or part directly or indirectly caused by a delay by You or any third party or any failure to comply with your obligations under this Agreement.

- 2.6 Requesting and agreeing changes to the Services. If either party requests a change to the scope or execution of the Services or Services, Applaud shall, within a reasonable time, provide a written estimate to the Customer of: (a) the likely time required to implement the change; (b) any variations to Applaud's Fees arising from the change; (c) any other impact of the change on the terms of this Agreement.

### 3. LICENSE

- 3.1 Subject to You paying the appropriate Fees to Applaud, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Applaud hereby grants to You a personal, non-exclusive, non-transferable, non-sub-licensable, revocable right: (a) to permit Users to use the Services and the Documentation during the Term solely for Your business operations; and, (b) to access and use the Services and the Documentation within the limits of the Subscription you have purchased.

- 3.2 Limitations on Use. The rights provided under this Agreement are granted to You only, and shall not be considered granted to any subsidiary or holding company unless otherwise agreed in writing.

- 3.3 Exceeding the limits of your Subscription or Services. If Your use of the Services exceeds any Fair Use Policy limits detailed in any Subscription, Applaud shall be entitled to automatically increase its Fees applicable to your use or to increase your Fees to account for such additional use of the Services. You agree to pay any applicable increase in Fees for such charges within 30 days of receipt of invoice. If at any time it becomes apparent to Applaud that you have underpaid Fees, all Fees applicable to your actual historical use will be immediately payable to account for any shortfall. Applaud may audit your use of the Services at any time to ensure compliance with this Agreement. Applaud reserves the right at all times to monitor Your usage of the Services.

- 3.4 Where you amend your Subscription part way through any Term including by the addition of Add-On Services, such additional Fees as may be payable shall be pro-rated from the date of activation by Applaud for the remainder of the then current Term. You may not decrease the number of Users during any Subscription term. User numbers are subject to a minimum user base requirement.

### 4. APPLAUD'S OBLIGATIONS

- 4.1 Warranty Applaud warrants that it will perform the Services substantially in accordance with the material terms of the Documentation and with reasonable skill and care.

- 4.2 The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Applaud's instructions, or modification or alteration of the Services by any party other than Applaud. If the Services do not conform with the foregoing warranty, Applaud will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or if reasonably practicable, provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the warranty set out in this clause. Notwithstanding the foregoing, Applaud: (a) does not warrant that Your use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by You through the Services will meet your requirements; and (b) 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 You acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 4.3 Applaud shall have no obligation to provide any services under this clause (and shall be entitled to charge you additional charges at its then current rates) where faults or support requests arise from: (a) misuse, incorrect or unauthorised use of the Services; (b) failure of Your IT infrastructure or any part of it; (c) use of the Services not in accordance with guidance provided by, or in combination with any equipment or software not approved by, Applaud; (d) any breach of Your obligations under this Agreement.

# applaud

4.4 The warranties, representations (and where applicable, warranties) set out in this clause are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, Applaud specifically denies any implied or express representation that the Services will be fit for any purpose or use other than that specifically stated by Applaud in writing in the Documentation.

## 5. INTEGRATION AND THIRD PARTY SERVICES

5.1 We offer services and functionality using third party developer tools such as application programming interfaces ("APIs") (our "Integration Services") These third party API terms and conditions contain restrictions on access, storage and use of information. We have no control over the content of third party sites or resources which we link to through our use of APIs and accept no liability or responsibility for them, your use or inability to use Integration Services, the web sites they link to or their contents, their accuracy or reliability or for any loss or damage (direct, indirect, special, consequential or otherwise) whatsoever that may arise from your use of any of them or the results obtained. Your use of our Integration Services is on an "as is" basis and without any warranty of any kind.

5.2 You acknowledge and agree that: (i) the use and availability of certain parts of our Services may be dependent on third-party product vendors and service providers, (ii) these third-party products and services may not operate in a reliable manner all of the time and they may impact on the way that our Services operate, and (iii) Applaud are not responsible for damages and losses due to the operation of these third-party products and services.

5.3 You should contact the third party with any questions about third-party products and services or any issues with them.

5.4 Third Party Software. Applaud shall provide any Third-Party Software to You under the standard licence terms provided by the relevant third party.

## 6. RESTRICTIONS OF USE AND ACCEPTABLE USE POLICY

6.1 You are responsible for any User's breach of this Agreement and undertake that each User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed regularly and that each User shall keep their password confidential. To the extent permissible by law, Applaud will not be liable for any loss that You, a User or any third party may incur as a result of any use or misuse of any username or password or any part of the Services, whether with or without Your knowledge.

6.2 You shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property; and Applaud reserves the right, without liability to You, to disable Your access to Services as a result of a breach of the provisions of this clause.

6.3 Except to the extent expressly permitted under this Agreement and to the maximum extent permitted by law, you shall not: (a) (i) attempt to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or; (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or (c) use the Services and/or Documentation to provide services to third parties or offer any part of the Services for sale or distribution over any other medium; or (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to anyone except the Users; or (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation; or (f) permit any third party to benefit from the use or functionality of the Services.

## 7. YOUR OBLIGATIONS

(a) You shall: (a) provide Applaud with all necessary and timely co-operation in relation to this Agreement; including all necessary access to such information as may be required by Applaud in order to render the Services, including but not limited to, Data and documentation requested for the provision of the Services (and ensure that such information and data is accurate in all material respects). Applaud is not liable for any inability to use the Services in whole or part directly or indirectly caused by You or any third party; (b) appoint an individual who shall have the authority to contractually bind

# applaud

You on matters relating to the Services; (c) be responsible for procuring any third party co-operation reasonably required for the receipt of Services and shall be responsible (at your own cost) for ensuring that Your IT infrastructure complies with the relevant specifications to use the Services provided by Applaud, including the Minimum Specification, as amended from time to time; (d) comply with all applicable laws and regulations with respect to your activities under this Agreement and in your use of the Services;

- (b) carry out all other of Your responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, Applaud may adjust any agreed timetable or delivery schedule as reasonably necessary.
- (c) Access to Features Some features within the Services require a connection to secure services provided by Applaud and third parties. You agree to allow a secure connection between these Services and your Users (and their devices).
- (d) Safeguarding and Security be solely responsible for procuring and maintaining your network connections and telecommunications links from its systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet;
- (e) operate best practice and ensure appropriate security precautions are taken in connection with its use of the Services. You are responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard Your IT infrastructure, including operating firewalls and virus checks and implementing effective and appropriate data security in respect to the provision and receipt of Services.
- (f) Uploading Content Whenever you make use of a feature that allows you to upload content to our Services, you must comply with the content standards set out in this Agreement (or as otherwise provided to you by us). Any content you upload to our Services will be considered non-confidential and non-proprietary. You retain all of your ownership rights in your content, but you grant us a non-exclusive licence to use, store, edit, reproduce, modify and copy that content for the purpose of providing the Services.
- (g) Ensuring that your use of our Services meets any required standards. You must: (i) ensure that any content uploaded by You and all activities You carry out through the Services and any subsequent agreement with any users of your services complies with all applicable local legislation; (ii) ensure that any content uploaded by You to the Services is true, accurate, current and complete and ensure that you maintain and promptly update this information if it changes; (iii) not use the Services or our other services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously; (iii) not infringe our intellectual property rights or those of any third party in relation to Your use of the Services; (iv) not use the Services in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users.
- (h) We have the right to remove any content you make available through the Services, without liability, if, in our opinion, that content does not comply with the standards set by us. We may suspend or terminate our agreement with you or any access to the Services, without liability, if in our opinion You are not complying with the spirit of this agreement or operate in a way which fails to uphold the highest standards of customer care.

## 8. DATA AND DATA PROTECTION

- 8.1 Your Data. You shall own all rights, title and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.
- 8.2 Applaud shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Data as amended from time to time by Applaud in its sole discretion.
- 8.3 Applaud acknowledges that all intellectual property and other proprietary rights in all data generated from the use by You of the Services (the "Service Data") are owned and shall continue to be owned by You.



# applaud

8.4 You grant to Applaud a non-exclusive, perpetual, irrevocable, royalty free license to use any data generated from Your use of the Services ("Service Data") and any Data (provided that such data is anonymised) for the purpose of: (a) statistical analysis and monitoring, querying and analysing such data for the purpose of providing the Services and improving the quality of services Applaud provides to its customers; (b) exercising its rights and fulfilling its other obligations under this Agreement; (c) complying with any applicable governmental or regulatory requirements; and/or (d) any other commercial purposes of Applaud.

8.5 The parties acknowledge that if Applaud processes any personal data on Your behalf when performing its obligations under this agreement, You are the controller and Applaud is the processor for the purposes of the Data Protection Legislation. Schedule 1 sets out the obligations of the parties in respect to the processing of personal data.

## 9. SUSPENSION OF SERVICES

9.1 Applaud may suspend Services without liability if: (a) Applaud reasonably believes that the Services are being used in breach of the Agreement and You do not remedy the failure within fourteen days of Applaud's written notice to You describing the breach; (b) You don't co-operate with Applaud's reasonable investigation of any suspected violation of the Agreement; (c) there is an attack on the Services or the Services are accessed by or manipulated by a third party without Applaud's consent; (d) Applaud is required by law to suspend the Services or Your access to the Services; or (e) there is another event for which Applaud reasonably believe that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers.

9.2 Applaud will use reasonable endeavours to give You advance notice of a suspension under this Clause 9, unless Applaud determines in its reasonable commercial judgement that an immediate suspension is necessary to protect Applaud or its customers from imminent and significant operational or security risk.

9.3 For the avoidance of doubt, any suspension of Services, unless caused directly by Applaud, shall not suspend Your obligation to pay any Fees.

## 10. CHARGES AND PAYMENT

10.1 You shall pay the Fees to Applaud in accordance with this clause 10, subject to any other payment terms detailed in your Order Form, or as otherwise agreed between the parties.

10.2 You shall provide to Applaud relevant valid, up-to-date and complete contact and billing details and Applaud shall invoice You on the Start Date for the Fees payable or your Subscription and the applicable Initial Term, as detailed in your Order Form.

10.3 If Applaud has not received payment within 30 days after the due date for any Fees, then without prejudice to any other rights and remedies of Applaud: (a) Applaud may, without liability to You, on 2 days advance notice, disable Your account and suspend access to all or part of the Services and Applaud shall be under no obligation to provide any or all of the Services while the invoice(s) concerned, any interest, administrative and legal costs of collecting payment and any further sums payable, remain unpaid; and (b) interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Lloyds TSB at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.4 All amounts and fees stated or referred to in this Agreement: (a) are non-cancellable and non-refundable; (b) are exclusive of applicable tax, which shall be added to Applaud's invoice(s) at the appropriate rate.

10.5 Applaud shall be entitled to increase the Fees payable for Services at the start of each Renewal Term, on ninety days' prior written notice to You. In the event that You do not agree to such increase, you may terminate this Agreement at the end of the then-current Renewal Term. In the event that you do not notify Applaud that you object to any increase, the Renewal Term shall be extended and include the increase in Fees accordingly.

## 11. PROPRIETARY RIGHTS

11.1 You acknowledge and agree that Applaud and/or its licensors are the sole and exclusive owners of all intellectual property and other proprietary rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

# applaud

- 11.2 Subject to Clause 13, if any claim is brought against You that the normal use or possession of the Services in accordance with this Agreement infringes the intellectual property rights of a third party in the UK, Applaud shall indemnify You for any amounts awarded against You in judgment or settlement of such claims provided that: (a) You immediately notify Applaud in writing of any such claim of which You become aware and provide Applaud with reasonable co-operation in the defence and settlement of such claim; (b) You do not make any admission as to liability or compromise or agree any settlement of any claim without the prior written consent of Applaud; (c) Applaud is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, Applaud may procure the right for You to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to You without any additional liability or obligation to pay liquidated damages or other additional costs to You.
- 11.4 In no event shall Applaud, its employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on: (a) a modification of the Services or Documentation by anyone other than Applaud; or (b) Your use of the Services or Documentation in a manner contrary to the instructions given to You by Applaud; or (c) Your use of the Services or Documentation after notice of the alleged or actual infringement from Applaud or any appropriate authority.
- 11.5 The foregoing states Your sole and exclusive rights and remedies, and Applaud's (including Applaud's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided that to the extent practicable and permitted by law, the receiving party shall promptly notify the disclosing party in advance of such requested disclosure and provide the disclosing party with an opportunity to object to such request.
- 12.2 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.
- 12.3 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.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, provided that such party has taken reasonable steps to protect and avoid the loss, destruction, alteration or disclosure of such Confidential Information.
- 12.5 You acknowledge that details of the Services, and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, constitute Applaud's Confidential Information.
- 12.6 Applaud acknowledges that Your Data is Your Confidential Information.
- 12.7 This clause 12 shall survive termination of this Agreement, however arising.



# applaud

**13. INDEMNITY** You shall defend, indemnify and hold harmless Applaud against claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: (i) Your or any User's use of the Services and/or Documentation; or (ii) Your collection, use, processing and/or transfer of any Data, Service Data or other personal data; or (iii) any claim of any of any kind including legal fees arising from any claim, demand or action alleging that any use you make of the Services is contrary to any law, code or regulation in any country.

13.1 Applaud's indemnity if Services infringe any third party IP / Applaud breaches DPA 2018. Applaud shall, subject to clause 14.4, defend You against any claim that: (a) the Services infringe any United Kingdom patent effective as of the Start Date, UK copyright, trade mark, or right of confidentiality; (b) Applaud have breached the Data Protection Act 2018, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that: (i) Applaud is given prompt notice of any such claim; (ii) You provide reasonable co-operation to Applaud in the defence and settlement of such claim, at Applaud's expense; and (iii) Applaud is given sole authority to defend or settle the claim. In the defence or settlement of any claim, Applaud may procure the right for You to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, and Applaud are unable, after best efforts, to procure for You the right to continue using the Services or to provide functionally equivalent Services, terminate this agreement on 14 Business Days' notice without further liability to You.

13.2 Exclusions to Applaud's IP and Data Protection Indemnity. In no event shall Applaud, its employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than Applaud; or (b) Your use of the Services in a manner contrary to the instructions given to the Customer by Applaud; or (c) Your use of the Services after notice of the alleged or actual infringement from Applaud or any appropriate authority.

13.3 The foregoing states each party's sole and exclusive rights and remedies, and each party's (including that party's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **14. LIMITATION OF LIABILITY**

14.1 This clause 14 sets out the entire financial liability of Applaud (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of: (a) any breach of this Agreement and any support services; (b) any use made by You of the Services and Documentation or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

14.2 Except as expressly and specifically provided in this agreement: (a) You assume sole responsibility for results obtained from the use of the services and the documentation by You, and for conclusions drawn from such use, reliance on any results and any action taken. Applaud shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Applaud by You in connection with the services, or any actions taken by Applaud at Your direction; (b) 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, disclaimed and excluded from this agreement including, without limitation, any warranties of title, merchantability, or fitness for a particular use or purpose; and (c) the Services and the Documentation are provided to You on an "as is" basis.

14.3 Nothing in this Agreement excludes the liability of either party: (a) for death or personal injury caused by Applaud's negligence; or, (b) for fraud or fraudulent misrepresentation.

14.4 Subject to clause 14.1 and clause 14.3: (a) to the maximum extent permitted by law, Applaud 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 and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, punitive, exemplary or consequential loss, costs, damages, charges or expenses however arising under or relating to this agreement, even if Applaud has been advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.; and (b) Applaud's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total amount of Fees paid by You to Applaud during the 6 months immediately preceding the date on which the claim arose. As the Fees for the service properly reflect the delineation of risk between the parties, each party

# applaud

agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

- 14.5 Under no circumstances shall Applaud be responsible or liable for any harm caused by the transmission, through the Services, of a computer virus, or other computer code or programming device that might be used to access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of Your software, hardware, data or property.
- 14.6 Under no circumstances shall Applaud be responsible or liable for: (a) any inaccuracy, error or delay in, or omission of any data or information entered into the Services by You or any third party; (b) any error or delay in the transmission of such data or information; or (c) any interruption in any such data or information (d) Your reliance on any data or information generated by the Software or Services.

## 15. TERM AND TERMINATION

- 15.1 This Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Start Date and shall continue through the Initial Term and (unless otherwise stated in your Order Form) thereafter, this Agreement shall be automatically renewed for successive rolling periods of twelve months (each a Renewal Term).
- 15.2 No less than 30 days prior to the end of the Initial Term or any Renewal Term, Applaud shall raise and issue an invoice to you, payable in advance (on 30 day payment terms) for Services to be provided during the subsequent Renewal Term.
- 15.3 This Agreement shall automatically renew following the Initial Term or a Renewal Term in accordance with clause 15.1, unless: (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or 30 days before any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial or Renewal Term; or (b) otherwise terminated in accordance with the provisions of this Agreement.
- 15.4 The Initial Term together with any subsequent Renewal Terms shall constitute “the Term”,
- 15.5 Without affecting any other rights that it may be entitled to, either party may terminate this Agreement without liability to the other if: (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or (b) the other party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business.
- 15.6 Without affecting any other rights that it may be entitled to, Applaud may terminate the Agreement for breach if: (a) payment of any invoiced amount (except to the extent such invoice is disputed in good faith) or Fee payable is overdue and following notification to You, You do not pay the overdue amount within seven Business Days of a written notice from Applaud; (b) You breach the acceptable use policy in clause 4.
- 15.7 You may terminate this Agreement at will on 30 days’ notice in writing. On termination under this clause 15.5, all fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to Applaud under this Agreement shall be immediately due and payable to Applaud.
- 15.8 On termination of this Agreement for any reason unless otherwise agreed between the parties in writing in advance: (a) (except in the case of termination in accordance with clause 15.1(a) in which case access to the Services shall continue until the end of the then current Initial Term or Renewal Term) all licences and access to the Services granted under this Agreement shall immediately terminate and the method of access supplied to You will automatically expire and the Services will cease to operate immediately; and (b) Applaud may destroy or otherwise dispose of any of Your Data in its possession unless Applaud receives, no later than 10 business days after the effective date of the termination of this Agreement, a written request for the delivery to You of the then most recent back-up of Your Data. This will be delivered to You within 30 days of its receipt of such a written request, provided that You have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination); and (c) the accrued

# applaud

rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

- 15.9 Termination of an individual Order Form shall not terminate the agreement. Termination of an Order Form in accordance with this clause shall have the effect that the terminated Order Form shall be severed from the agreement, which shall otherwise remain in full force and effect.
- 15.10 The parties may following termination agree a 30 day transition period for Services to continue, subject to the payment of an agreed fee in advance to Applaud.
- 15.11 If this Agreement is terminated prior to the end of the Initial Term or any Renewal Term, other than for material breach by Applaud under clause 14.3, all fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to Applaud under this Agreement shall be immediately due and payable to Applaud.
- 16. MARKETING** You allow Applaud to publish You as a customer of Applaud for marketing purposes and to use Your then current trade mark logo and name on the Applaud web site. Applaud may from time to time collaborate with You to produce and publish customer comments, endorsements, case studies and other instances of advocacy, for the purposes of marketing, which You have the right to amend and / or approve before publication. Applaud will make reasonable efforts to inform You when and where the publications occur. Whilst Applaud will use its best endeavours to ensure best practice, Applaud cannot be held liable for any inaccuracies or errors in either Applaud marketing materials or third-party marketing materials.
- 17. NON-SOLICITATION** The Customer shall not, without the prior written consent of Applaud, at any time from the date of the Agreement to the expiry of six (6) months after its termination, solicit or entice away from Applaud or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Applaud.
- 18. FORCE MAJEURE**  
Applaud shall have no liability to You 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, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Applaud or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Applaud's or sub-contractors for so long as said cause persists, provided that You are notified of such an event and its expected duration.
- 19. GENERAL**
- 19.1 No variation or modification of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).
- 19.2 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.
- 19.3 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.
- 19.4 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. 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.
- 19.5 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party

# applaud

to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

- 19.6 You shall not, without the prior written consent of Applaud, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Applaud 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.
- 19.7 Nothing in this Agreement is intended to or shall operate to create a partnership, joint venture, agency, franchise or employment relationship 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).
- 19.8 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).
- 19.9 Each of the provisions of clauses 6.4 through 6.8, 8.2, and 10 through 20 shall survive any termination or expiration of this Agreement in accordance with their terms.
- 19.10 This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

## 20. NOTICES

- 20.1 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 address set out in this Agreement, or such other address as may have been notified by that party for such purposes as set out in this Agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at 9am on the first day following delivery. Where Applaud is required under this Agreement to give You any notice in writing, Applaud may give this notice by letter or by email.

## 21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 21.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Schedule 1 – Data Processing Obligations

Data Protection Legislation: means the data privacy laws applicable to the processing services provided by the Parties to each other, including, where applicable, the Directive 95/46/EC, as amended or replaced by any subsequent regulation, directive or other legal instrument of the European Union including by the GDPR or similar law, the Privacy and Electronic Communications Regulations 2003 or the e-Privacy Regulation 2017, or the applicable data privacy laws of any other relevant jurisdiction, including the DPA, and all applicable formal or informal guidance, rules, requirements, directions, guidelines, recommendations, advice, codes of practice, policies, measures or publications of the Information Commissioner's Office, other relevant regulator, and/or relevant industry body in each case in any relevant jurisdiction;

The personal data may be transferred or stored outside the EEA or the country where You and the Users are located in order to carry out the Services and Applaud's other obligations under this agreement.

You will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Applaud for the duration and purposes of this agreement so that Applaud may lawfully use, process and transfer the personal data in accordance with this agreement on Your behalf.

Applaud shall, in relation to any personal data processed in connection with the performance by Applaud of its obligations under this agreement: (a) process that personal data only on Your documented written instructions unless Applaud is required by the laws of any member of the European Union or by the laws of the European Union applicable to Applaud and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws). Where Applaud is relying on Applicable Laws as the basis for processing personal data, Applaud shall promptly notify You of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Applaud from so notifying You; (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled: (i) You or Applaud has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) Applaud complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) Applaud complies with reasonable instructions notified to it in advance by You with respect to the processing of the personal data; (c) assist You, at Your cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (d) notify You without undue delay on becoming aware of a personal data breach; (e) at the written direction of You, delete or return personal data and copies thereof to You on termination of the agreement unless required by Applicable Law to store the personal data; and (f) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and immediately inform You if, in the opinion of Applaud, an instruction infringes the Data Protection Legislation.

Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

You consent to Applaud appointing third party's as a third-party processor of personal data under this agreement. Applaud confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule 1 and in either case which Applaud confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.

Either party may, at any time on not less than 30 days' notice, revise this Schedule 1 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).