

TheAppBuilder Ltd - Terms of Service

Thank you for choosing TheAppBuilder. These Terms of Service, together with the Services Order Form which refers to them, set out the terms and conditions on which TheAppBuilder Ltd provides its subscription software services and professional services. Please read this document carefully.

1. Definitions

1.1. Except to the extent expressly provided otherwise, in these Terms of Service:

"**Account**" means an account enabling a person to access and use the Hosted Services (allowing for different types of user, each with their own role and access privileges.)

"**Affiliate**" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"**Agreement**" means the agreement between the Provider and the Client for the provision of Services, comprising one or more Services Order Forms, these Terms of Service, and their respective annexes and schedules;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**CCN**" means a change control notice issued in accordance with clause 10;

"**CCN Consideration Period**" means the period of 10 Business Days following the receipt by a party of the relevant CCN from the other party;

"**Change**" means any change to the scope of the Services OR any change to the Agreement;

"**Charges**" means all of the amounts specified in the relevant Services Order Form for the Services;

"**Control**" means the legal power to control (directly or indirectly) the management of an entity (and "**Controlled**" should be construed accordingly);

"**Client**" means the person or entity identified as such on the Services Order Form;

"**Confidential Information**" means:

- (a) any information disclosed directly or indirectly by one party (the "**disclosing party**") to the other party (the "**recipient**") at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or

- (ii) should have been reasonably understood by the recipient to be confidential; and
- (b) the Client Data (which shall be the Confidential Information of the Client; and
- (c) the terms of the Agreement (which shall be the Confidential Information of the Provider);

"Client Data" means all content (including articles, documents, brochures, presentations, pictures, images, videos, audio visual works, other informational materials and any comments) uploaded to or stored on the Platform by the Client; transmitted by the Platform at the instigation of the Client; supplied by the Client to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Client;

"Client Indemnity Event" has the meaning given to it in clause 17.5;

"Client Contact(s)" means the person or persons identified as such in the Services Order Form, and any additional or replacement persons that may be appointed by the Client giving to the Provider written notice of the appointment;

"Client Personal Data" means any Personal Data that is processed by the Provider on behalf of the Client in the course of providing the Services;

"Client Systems" means the hardware and software systems of the Client that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Created App(s)" means any mobile software application(s) created by the Client, and/or any user in their use of the Hosted Services, with or without assistance from the Provider.

"Customization" means a customization of the Hosted Services, whether made through the development, configuration or integration of software, or otherwise;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data in force from time to time including, while it is in force and applicable to Client Personal Data, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679);

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Client. Documentation includes App Scope and Build Configuration documentation. Other Documents are shared from docs.theappbuilder.com which supplement training on the content management system (CMS);

"Effective Date" means the date expressed on a Services Order Form as "Agreement Effective Date" as completed on a hard-copy Services Order

Form or following the Client completing and submitting an online Services Order Form;

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under the Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means: i) the provision of the Platform to enable the Client to build, publish and edit/update Created Apps; such Platform being made available by the Provider to the Client as a subscription service via the Internet in accordance with this Agreement; and ii) the provision of such additional software service packs or modules, again as a subscription service via the internet, as may be specified in the relevant Services Order Form.

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Client or any person authorized by the Client to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Client or by any person authorized by the Client;
- (c) a failure of the Client to perform or observe any of its obligations in the Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specifications or descriptions for the Platform and Hosted Services set out in the Services Order Form and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or un-registrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Non-Employee User" means any User who is not an employee of the Client;

"Permitted Purpose" means the building of Created Apps on Supported Mobile Operating Systems and Devices to support the internal business purposes of the Client during the Term;

"Personal Data" has the meaning given to it in the Data Protection Laws;

"Platform" means the software platform developed and managed by the Provider and used by it to provide the Hosted Services, including the application and database software for the Hosted Services (including content management system), the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Professional Services" means professional services to be provided by the Provider to the Client, such as customization or configuration of the Platform, the development of Customizations, set-up or on-boarding services to enable the Client to access the Hosted Services, training or consultancy, design services, or the provision of user support not included within the Support Services

"Provider" means TheAppBuilder Ltd, a company incorporated in Northern Ireland (registration number NI603525) having its registered office at 405 Hollywood Road, Belfast BT4 2GU, Northern Ireland, UK;

"Provider Indemnity Event" has the meaning given to it in Clause 17.4;

"Project Manager" means the person or persons identified as such by the Provider in the Services Order Form, and any additional or replacement persons that may be appointed by the Provider giving to the Client written notice of the appointment;

"Services" means the Software Services and the Professional Services, in each case as described in the applicable Services Order Form;

"Services Order Form" means an online order form published by the Provider and completed and submitted by the Client, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating the Agreement by reference and specifying the particular Services to be provided;

"Support Description" means the support offering referred to in the Services Order Form;

"Software Services" means the provision of: i) the Hosted Services, ii) the Maintenance Services; and iii) the Support Services;

"Software Services Term" means either an Initial Software Services Term or a Software Services Renewal Term (in each case as defined in clause 3.1) during which the Software Services shall be supplied to the Client by the Provider;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training or consultancy services;

"Supported Web Browser" means the specific web browsers, and releases thereof, that the Provider agrees shall be supported and which are listed on the Provider's website and updated from time to time by the Provider;

"Supported Mobile Operating Systems and Devices" means specific mobile operating systems and mobile devices that the Provider agrees shall be supported and which are listed on the Provider's website and updated from time to time by the Provider;

"Update" means a hotfix, patch or minor version update to any Platform software;

"Upgrade" means a major version upgrade of any Platform software; and

"User" means any and all persons, whether or not employees of the Client, using the Platform and/or any Created App.

2. Framework and Formation of Contract Agreement and Term

- 2.1. The Agreement shall come into force on the Effective Date of the first Services Order Form agreed between the parties incorporating these Terms of Service and shall continue in force until terminated in accordance with its provisions.
- 2.2. The Agreement shall be a framework under which the parties may agree additional Services Order Forms from time to time (for example, governing Professional Services relating to a specific project, or for the addition of additional software modules such as service packs to an existing subscription for Software Services). The Agreement shall be deemed to incorporate all such Services Order Forms.
- 2.3. In the event of any conflict between the provisions of these Terms of Service and the provisions of any Services Order Form the provisions of the relevant Services Order Form shall prevail.

3. Software Services

- 3.1. The Software Services Term shall begin on the Effective Date and continue for the **"Initial Software Services Term"** described in the relevant Services Order Form. Thereafter it shall be automatically renewed for successive periods of the same duration of the Initial Software Services Term (each a **"Software Services Renewal Term"**), unless:

- (a) either party notifies the other party of termination, in writing, at least thirty (30) days before the end of the Initial Software Services Term or any Software Services Renewal Term, in which case the Software Services Term shall terminate upon the expiry of the applicable Initial Software Services Term or Software Services Renewal Term; or
 - (b) otherwise terminated in accordance with the provisions of this Agreement.
- 3.2. The Provider shall create an Account for the Client and provide to the Client login details for that Account on or promptly following the Effective Date.
- 3.3. During the Software Services Term the Provider shall:
 - (a) provide the Hosted Services to the Client in accordance with this clause 3;
 - (b) provide the Maintenance Services to the Client in accordance with Schedule 3 (Maintenance SLA); and
 - (c) provide the Support Services to the Client in accordance with the applicable Support Description, or if no Support Description is specified in the relevant Services Order Form, in accordance with Schedule 4 (Support SLA),in each case in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.
- 3.4. The Provider hereby grants to the Client a non-exclusive and non-transferable license to use the Hosted Services by means of a Supported Web Browser for the Permitted Purpose during the Software Services Term.
- 3.5. The license granted by the Provider to the Client under Clause 3.4 is subject to the following limitations:
 - (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Client or an Affiliate of the Client (subject to the provisions of Clause 3.6);and
 - (b) the Hosted Services must not be used at any point in time by more than the number of Users specified in the Services Order Form.
- 3.6. The Provider and the Client agree and acknowledge that the Provider shall have no contractual relation with any Non-Employee User. Accordingly, the Client shall procure that:
 - (a) non-Employee Users shall only use any Created App, and not the Platform itself, unless the Provider has granted prior written consent;
 - (b) each Non-Employee User shall at all times comply with the obligations imposed on the Client by this Agreement and relating to use of the Platform and/or any Created App, with appropriate assurance being in writing and in terms no less onerous than under the Agreement during

such Non-Employee User's use and access of the Platform and/or Created App. Such assurance shall be made available to the Provider for inspection upon reasonable request and shall include, but not be limited to each Non-Employee User acknowledging the following:

- (i) use of and access to any Created App (and/or the Platform where appropriate consent has been granted pursuant to clause 3.6(a), is licensed to the Non-Employee User, not sold;
- (ii) it obtains no ownership of any Created App and/or the Platform;
- (iii) it has no ownership of any Intellectual Property Rights in the Created App and/or the Platform, and that all such Intellectual Property Rights shall remain the property of the Provider or its licensors (except for any Intellectual Property Rights owned by any Non-Employee User in any Created App).

3.7. Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the license granted by the Provider to the Client under Clause 3.4 is subject to the following prohibitions:

- (a) the Client must not sub-license its right to access and use the Hosted Services;
- (b) the Client must not permit any unauthorized person to access or use the Hosted Services;
- (c) the Client must not use the Hosted Services to provide services to third parties;
- (d) the Client must not republish or redistribute any content or material from the Hosted Services; and
- (e) the Client must not make any alteration to the Platform.

3.8. The Client shall use reasonable endeavours, including reasonable security measures, appropriate to each type of User of the Hosted Services, to ensure that no unauthorized person may gain access to the Hosted Services.

3.9. The Client must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Client comply with Schedule 1 (Acceptable Use Policy).

3.10. The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.

3.11. The Client must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

3.12. The Client must not use the Hosted Services:

- (a) in any way that is unlawful, illegal, fraudulent or harmful; or

- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3.13. For the avoidance of doubt, the Client has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Software Services Term.

4. Professional Services

4.1. If the Client requests and the Provider agrees to perform any Professional Services, the parties shall set forth the details of such Professional Services in a Services Order Form which should typically address (or refer to documents which address) the following:

- (a) the description, scope, and estimated times for performance of the Professional Services, together with the specification for any particular deliverables;
- (b) the parties' respective obligations and responsibilities in relation to the Professional Services to be provided (and in particular any dependencies to be provided by the Client, such as access to its premises, systems or personnel);
- (c) the Charges payable by the Client for the Professional Services (if any – certain Professional Services may be offered by the Provider at its option without any additional Charges beyond those payable for the Software Services), together with a schedule of invoicing and payment;
- (d) any assumptions on which Charges, specifications or timings are based;
- (e) any specific provisions which will be applicable to the Services Order Form and which deviate from the standard position set out in these Terms of Service (for example, any particular treatment of the ownership and exploitation of Intellectual Property Rights).

4.2. In performing the Professional Services, the Provider will

- (a) use reasonable endeavours to meet agreed timetable (provided that time shall not be of the essence of performance of any of the Provider's obligations under this Agreement)
- (b) perform the Professional Services with reasonable skill and care using suitably skilled personnel;
- (c) comply with the Client's internal policies and procedures relating to activities conducted at the Client's premises, provided such policies and procedures have been provided to the Provider in advance and are referred to in the relevant Services Order Form; and
- (d) take reasonable steps to keep the Client apprised of the progress of the Professional Services and of any delays which are reasonably anticipated by the Provider.

- 4.3. If in performing any Professional Services the Provider develops any Customization:
- (a) all Intellectual Property Rights in the Customization shall, as between the parties, be the exclusive property of the Provider;
 - (b) the Customization shall, once delivered, form part of the Platform (and the Client's rights to use the Customization shall be governed by Clause3).

5. Client obligations

- 5.1. Save to the extent that the parties have agreed otherwise in writing, the Client must provide to the Provider, or procure for the Provider, such:
- (a) co-operation, support and advice;
 - (b) Client Data and other information as may reasonably be required by the Provider for the purpose of performance of the Services;
 - (c) governmental, legal and regulatory licenses, consents and permits, as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.
- 5.2. The Client must provide to the Provider, or procure for the Provider, such access to the Client's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under the Agreement. (For the sake of clarity, in most cases, the Provider only needs access to a suitable Wi-Fi network for a project kick-off meeting.)
- 5.3. The Client shall be solely responsible for its actions and the actions of the Users while using the Platform. The Client shall (and shall procure that any and all Users shall) not attempt to duplicate, modify or distribute any portion of the Platform; not reverse engineer, decompile, disassemble, or adapt any portion of the Platform, except as specifically permitted by this Agreement and/or applicable law; not attempt to obtain, or assist others in obtaining, unauthorised access to the Platform; not remove any proprietary notices from the Platform; and abide by all local and international laws and regulations applicable to the Client's use of the Platform.
- 5.4. If the performance of any of the Provider's obligations under the Agreement is prevented or delayed by any act or omission on the part of the Client, by any failure by the Client to perform any relevant obligation, or by the failure of any assumption identified in the Services Order Form, subject to the same being brought to the notice of the Client:
- (a) the Provider will be relieved from the performance of its obligations to the extent they are prevented or delayed as a result; and
 - (b) if as a result the Provider incurs additional time or costs in performing the Services, the Provider may invoice the Client for any agreed

additional time at its standard rates and/or for the relevant costs at the same time as the Provider next invoices the Client for any Fees payable under the Agreement.

6. Client Systems

- 6.1. The Client shall ensure that the Client Systems comply, and continue to comply during the Term, with any requirements published by the Provider in all material respects, subject to any changes agreed in writing by the Provider.

7. Client Data

- 7.1. The Client hereby grants to the Provider for the duration of the Term a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 7.2. The Client warrants to the Provider that the Client Data when used by the Provider in accordance with the Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 7.3. The Client accepts that it is its responsibility to maintain a back-up copy of the Client Data that is uploaded onto the Platform, and that, in the circumstances where the Client accidentally deletes from the Platform some or all of the Client Data in error, that it is its responsibility to reload the data back onto the Platform.
- 7.4. The Provider shall also create a back-up copy of the Client Data at least daily, and shall use reasonable endeavours to ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the backup was taken.
- 7.5. In the circumstances where it is clear to both parties that the Provider has accidentally deleted some or all of the Client Data from the Platform in error, then, the Provider shall use all reasonable endeavours to restore to the Platform within a reasonable time (typically within 5 hours) the Client Data stored in any back-up copy created and stored by the Provider in accordance with Clause 10.4. The Client acknowledges that this process will overwrite the Client Data stored on the Platform prior to the restoration.

8. No assignment of Intellectual Property Rights

- 8.1. Nothing in the Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Client, or from the Client to the Provider.

9. Governance and Management

- 9.1. The Provider shall appoint a Project Manager to act as the designated project manager responsible for ensuring that the Provider's obligations under this Agreement are performed properly. The Client shall likewise appoint a Client Contact responsible for ensuring that the Client's obligations under this Agreement are performed properly.
- 9.2. The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in the Agreement will be given by a Project Manager to a Client Contact and the Client:
 - (a) may treat all such instructions as the fully authorized instructions of the Provider; and
 - (b) may decline to comply with any other instructions in relation to that subject matter.
- 9.3. The Client shall ensure that all instructions given by the Client in relation to the matters contemplated in the Agreement will be given by a Client Contact to a Project Manager, and the Provider:
 - (a) may treat all such instructions as the fully authorized instructions of the Client; and
 - (b) may decline to comply with any other instructions from someone other than a Client Contact in relation to that subject matter.
- 9.4. The Project Manager and Client Contact shall hold management meetings at each party's offices, by telephone conference or using internet-based conferencing facilities:
 - (a) at least once every six months during the Term; and
 - (b) at the reasonable request of either party.
- 9.5. A party requesting a management meeting shall give to the other party at least 10 Business Days' written notice of the meeting.
- 9.6. The purpose of the management meetings shall be for the Provider and Client to jointly review the use of the Hosted Services and any Created Apps, discuss possible and planned enhancements to the Hosted Services, and agree and record any relevant action points arising.

10. Change control

- 10.1. The provisions of this Clause 10 apply to each Change requested by a party.
- 10.2. Either party may request a Change at any time.
- 10.3. A party requesting a Change shall provide to the other party a completed CCN in the form specified in Schedule 5 (Form of CCN).
- 10.4. A party in receipt of a CCN may:
- (a) accept the CCN, in which case that party must countersign the CCN and return it to the other party before the end of the CCN Consideration Period;
 - (b) reject the CCN, in which case that party must inform the other party of this rejection before the end of the CCN Consideration Period; or
 - (c) issue an amended CCN to the other party before the end of the CCN Consideration Period, in which case this Clause 14 will re-apply with respect to the amended CCN.
- 10.5. A proposed Change will not take effect until such time as a CCN recording the Change has been signed by or on behalf of each party.

11. Charges

- 11.1. The Provider shall invoice the Charges to the Client and the Client shall pay the Charges to the Provider in accordance with this Agreement, and as further detailed on the given Services Order Form.
- 11.2. Charges for Software Services, unless agreed otherwise in writing between the parties, shall be payable in advance at the intervals set out in the Services Order Form.
- 11.3. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, other taxes, levies, fees or duties applicable under any legal acts or imposed by tax authorities which will be added to those amounts, displayed separately on any invoice, and payable by the Client to the Provider.
- 11.4. The Provider may elect to vary certain parts or elements of the Services from time to time, and the associated element of the Charges, by giving to the Client not less than 30 days' written notice of the variation. If the Client does not accept the variation, then it shall notify the Provider before the effective date of the variation and will be entitled to terminate the Agreement on the effective date of the variation. The Client's continued use of the Services, or any part or element thereof, after the effective date of variations shall indicate its consent to the variations.

12. Expenses

- 12.1. Where noted in the Services Order Form, the Client shall reimburse the Provider in respect of any reasonably incurred Expenses.
- 12.2. The Provider shall retain evidence of Expenses incurred, during the Term and for a period of 90 days following the end of the Term.
- 12.3. Within 10 Business Days following receipt of a written request from the Client to do so, the Provider shall supply to the Client such copies of the evidence for the Expenses in the possession or control of the Provider as the Client may reasonably specify in that written request.

13. Payments

- 13.1. The Provider shall issue invoices for the Charges to the Client on or after the invoicing dates set out in the Services Order Form.
- 13.2. Unless agreed otherwise and stated on the Services Order Form, the Client must pay the Charges to the Provider within the period of 30 days following the receipt of an invoice issued in accordance with this Clause 13.
- 13.3. The Client must pay the Charges by direct debit, bank transfer or cheque, using such payment details as are notified by the Provider to the Client from time to time.
- 13.4. If the Client does not pay any amount due to the Provider under the Agreement, the Provider may, after giving 14 days written notice to the Client:
 - (a) suspend the provision of any or all of its Services until such time as the sum is paid in full; and/or
 - (b) charge the Client interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month) or claim interest and statutory compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

14. Confidentiality obligations

- 14.1. Each party shall, in relation to any Confidential Information of the other party which it receives:
 - (a) keep the Confidential Information strictly confidential;
 - (b) not disclose the Confidential Information to any person without the disclosing party's prior written consent;
 - (c) use the same degree of care to protect the confidentiality of the Confidential Information as the recipient uses to protect its own

confidential information of a similar nature, being at least a reasonable degree of care;

- (d) act in good faith at all times in relation to the Confidential Information; and
- (e) not use the Confidential Information for any purpose other than performance of the recipient's obligations and exercise of the recipient's rights under the Agreement.

14.2. Notwithstanding Clause 14.1, the recipient may disclose the Confidential Information to those of its officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information for the purposes of performance the recipient's obligations or exercising the recipient's rights under the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information.

14.3. This Clause 14 imposes no obligations upon either party with respect to Confidential Information that:

- (a) is known to the recipient before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the recipient; or
- (c) is obtained by the recipient from a third party in circumstances where the recipient has no reason to believe that there has been a breach of an obligation of confidentiality.

14.4. The restrictions in this Clause 14 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognized stock exchange.

14.5. The provisions of this Clause 14 shall continue in force indefinitely following the termination of the Agreement.

15. Publicity

15.1. Unless agreed otherwise in writing,

- (a) the Provider may refer to the Client's name, and any Created App, for promotional and marketing purposes (provided that the Provider does not disclose any of the Client's Confidential Information), and
- (b) the Client will assist the Provider in contributing to such promotional video, case study and/or client reference as the Provider may reasonably

require, provided that the Provider shall act at all times in good faith and not to bring the Client's reputation in any way into disrepute.

15.2. Nothing in this Clause 15 shall be construed as limiting the obligations of the parties under Clause 14.

16. Data protection

16.1. Each party shall comply with its obligations under Data Protection Laws with respect to the processing of Client Personal Data and other Personal Data processed in connection with the Agreement.

16.2. The parties agree that Schedule 6 (Data processing information) sets out the types of Personal Data that will be processed by the Provider on behalf of the Client, the categories of data subjects to whom those Personal Data relate and the purposes of that processing.

16.3. The Provider shall only process the Client Personal Data during the Software Services Term and for such a period after that time as is reasonably required to comply with the Client's instructions for the return and/or deletion of the Client Personal Data after the provision of the Services pursuant to Clause 16.12, subject to the other provisions of this Clause 16.

16.4. The Provider shall only process the Client Personal Data on the documented instructions of the Client (including with regard to transfers of the Client Personal Data to any place outside the European Economic Area), as set out in the Agreement or any other document agreed by the parties in writing. If the Client indicates on the Services Order Form that it wishes to use one of the optional third party tools, this shall be deemed to be an instruction from the Client to process and/or transfer the Client Personal Data outside the European Economic Area as set out in Part 6 of Schedule 6 (Data processing information).

16.5. Notwithstanding any other provision of the Agreement, the Provider may process the Client Personal Data other than on the documented instructions of the Client if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Client of the legal requirement before processing, unless the relevant law prohibits such information.

16.6. The Provider shall ensure that persons authorised to process the Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

16.7. The Provider and the Client shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Client Personal Data, including those measures specified in Part 4 of Schedule 6 (Data processing information).

16.8. The Provider must not engage any third party to process the Client Personal Data without the prior written authorisation of the Client. The Provider is

hereby given general authorisation by the Client, as at the Effective Date, to engage third parties falling within the processor categories specified in Part 5 of Schedule 6 (Data processing information) to process the Client Personal Data. The Provider shall inform the Client at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Client objects to any such changes, then the Client may terminate this Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Client of the intended changes. The Provider shall ensure that each third party processor is subject to legal obligations that are equivalent to those imposed on the Provider by this Clause 16.

- 16.9. The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Client with the fulfilment of the Client's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws with respect to Client Personal Data.
- 16.10. The Provider shall assist the Client in ensuring compliance with the Client's obligations relating to the security of processing of Personal Data, notification of Personal Data breaches to the supervisory authority, communication of Personal Data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws, to the extent that such obligations relate to Client Personal Data.
- 16.11. The Provider shall make available to the Client all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 16 and the Data Protection Laws.
- 16.12. The Provider shall, at the choice of the Client, delete or return all of the Client Personal Data to the Client after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 16.13. The Provider shall allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client in respect of the compliance of the Provider's processing of Client Personal Data with the Data Protection Laws and this Clause 16. The Provider may charge the Client at its standard charge-out rates for any work performed by the Provider at the request of the Client pursuant to this Clause 16.13.
- 16.14. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

17. Warranties

- 17.1. The Provider and the Client warrants as to each other (each a "party" and together, the "parties") that:
- (a) each party has the legal right and authority to enter into the Agreement and to perform its obligations under this Agreement; and
 - (b) each party will comply with all applicable legal and regulatory requirements applying to the exercise of the party's rights and the fulfilment of the party's obligations under this Agreement.
- 17.2. The Provider warrants to the Client that:
- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
 - (b) the Platform will incorporate security features reflecting the requirements of good industry practice; and
 - (c) the Services will be provided with good industry practice.
- 17.3. The Provider warrants to the Client that the Services, when used by the Client in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 17.4. The Provider warrants to the Client that the Services, to its reasonable knowledge and belief, when used by the Client in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law, and that if the use of the Services by the Client in accordance with this Agreement infringes any third party's Intellectual Property Rights (a "**Provider Indemnity Event**"), the Provider will at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Client the right to use the Hosted Services in accordance with this Agreement.
- 17.5. The Client warrants to the Provider that its use of the Services will not infringe any third party Intellectual Property Rights and shall undertake all reasonable endeavours to inform the Provider within a reasonable time of such an event (a "**Client Indemnity Event**").
- 17.6. All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

18. Acknowledgements and warranty limitations

- 18.1. The Client acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this

Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

- 18.2. The Client acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 18.3. The Client acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 18.4. The Client acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Client will not give rise to any legal liability on the part of the Client or any other person.

19. Indemnities

- 19.1. The Provider shall indemnify and shall keep indemnified the Client against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Client and arising directly or indirectly as a result of a Provider Indemnity Event.
- 19.2. The Client shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of a Client Indemnity Event.
- 19.3. If either party (the "**indemnified party**") is entitled to be indemnified by the other party (the "**indemnifying party**") under this clause 19, the indemnified party must:
- (a) upon becoming aware of an actual or potential Client or Provider Indemnity Event (as applicable), notify the indemnifying party;
 - (b) provide to the indemnifying party all such assistance as may be reasonably requested by the indemnifying party in relation to the Indemnity Event;
 - (c) allow the indemnifying party the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Indemnity Event; and

- (d) not admit liability to any third party about the Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Indemnity Event without the prior written consent of the indemnifying party,

and the indemnifying party's obligations to indemnify the Provider under this clause 19 shall not apply unless the indemnified party complies with the requirements of this clause 19.3.

19.4. The indemnity protection set out in this Clause 19 shall not be subject to the limitations and exclusions of liability set out in Clause 20 of the Agreement.

20. Limitations and exclusions of liability

20.1. Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

20.2. The limitations and exclusions of liability set out in this Clause 20 and elsewhere in this Agreement:

- (a) are subject to Clause 20.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

20.3. Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

20.4. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

20.5. The Provider shall not be liable to the Client in respect of any loss or corruption of any data, except to the extent caused by the Provider's breach of its obligations under Clause 14 (confidentiality) or Clause 16 (data protection).

20.6. Neither party shall be liable to the other party in respect of any loss of use or production.

20.7. Neither party shall be liable to the other party in respect of any economic losses, including loss of business, revenue, income, goodwill, reputation, contracts, opportunities, use of money or anticipated savings.

- 20.8. Neither party shall be liable to the other party in respect of any loss of, or damage to any database or software.
- 20.9. Neither party shall be liable to the other party in respect of any damages relating to the procurement by the Client of any substitute and/or replacement products or services.
- 20.10. Neither party shall be liable to the other party in respect of any special, incidental, indirect or consequential loss or damage.
- 20.11. The liability of the Provider under the Agreement in respect of any event or series of related events shall not exceed the greater of:
- (a) £50,000; and
 - (b) 150% of the total amount paid and payable by the Client to the Provider under the Agreement in the 12 months' period immediately preceding the event or events giving rise to the claim.
- 20.12. The liability of the Client under the Agreement in respect of any event or series of related events shall not exceed £200,000.
- 20.13. The limitations of liability set out in this Clause 20 shall not apply in respect of any indemnities given by either party under this Agreement
- 20.14. The Client agrees and acknowledges that it is in a better position than the Provider to foresee and evaluate any potential damage or loss which the Client may suffer in connection with the Platform, that the Provider cannot adequately insure its potential liability to the Client and that the Charges payable by the Client have been calculated on the basis that the Provider shall exclude liability in accordance with the provisions of this clause 20.
- 20.15. Each provision of this clause 20 shall be construed separately and shall continue and survive even if for any reason one or other of those provisions is held invalid or unenforceable in any circumstances.

21. Force Majeure Event

- 21.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 21.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
- (a) promptly notify the other; and

- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

- 21.3. The party claiming a Force Majeure Event shall take all action that is reasonable under the circumstances to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder.
- 21.4. Either party may terminate this Agreement in the event that a Force Majeure Event has occurred preventing either party from performing or continuing to perform its obligations for a period of more than one month.
- 21.5. Neither party may rely upon this clause 21 and may not be relieved of the performance of any of its obligations under this Agreement if a Force Majeure Event is proven reasonably by the other party to be caused by the deliberate, direct or indirect instigation of the party so intending to rely upon this clause as aforesaid.

22. Termination

- 22.1. Either party may terminate the Agreement (together with all Services Order Forms incorporated in it) or any Services Order Form for convenience by giving to the other party no less than 30 days' written notice of termination, provided that no such termination may take effect in relation to any Software Services until the end of the then-current Software Services Term. This means that Professional Services may be terminated on no less than 30 days' notice at any time, but Software Services will if terminated continue until the end of the then-current Software Services Term or as specified in the Service Order Form.
- 22.2. Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of the Agreement, and the breach is not remediable;
 - (b) the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
 - (c) the other party persistently breaches the Agreement (irrespective of whether such breaches collectively constitute a material breach);
 - (d) the parties are unable to agree such variations to the Agreement as are necessary to remedy any non-compliance with Data Protection Laws under the process set out in Clause 16.14.
- 22.3. Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:

- (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of the other party under the Agreement); or
- (d) if that other party is an individual:
- (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

22.4. The Provider may terminate the Agreement immediately by giving written notice to the Client if:

- (a) any amount due to be paid by the Client to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Provider has given to the Client at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 22.4.

22.5. Termination of the Agreement under any of clauses 22.2, 22.3 or 22.4 shall give rise to the automatic termination of all Services Order Forms comprised in the Agreement.

23. Effects of termination

23.1. Upon the termination of this Agreement, all of the provisions of the Agreement shall cease to have effect, save that the following provisions of the Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): 1, 8, 12.2, 13.1, 13.2, 14, 16, 19, 20, 23, 24, 33, 34 and 35.

- 23.2. Except to the extent that the Agreement expressly provide otherwise, the termination of the Agreement shall not affect the accrued rights of either party.
- 23.3. Any and all licenses granted by the Provider to the Client will terminate with immediate effect.
- 23.4. Client Data will no longer be retained in the Platform and/or any Created App (save to the extent that the Provider is obliged to retain the same by operation of any law or regulatory body).
- 23.5. Within 30 days following the termination of the Agreement for any reason, and without prejudice to the parties' other legal rights:
- (a) the Client must pay to the Provider any Charges in respect of Services provided to the Client before the termination of the Agreement; and
 - (b) the Provider must refund to the Client any Charges paid by the Client to the Provider in respect of Services that were to be provided to the Client after the termination of the Agreement,

24. Non-solicitation of personnel

- 24.1. The Client must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Agreement.
- 24.2. The Provider must not, without the prior written consent of the Client, either during the Term or within the period of 6 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of the Client who has been involved in any way in the negotiation or performance of the Agreement.

25. Notices

- 25.1. Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 25.2. Any notice given by either party under this Agreement must either be sent by email or by recorded signed-for post using the relevant contact details set out in the Services Order Form.
- 25.3. The addressee and contact details set out in the Services Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 25.
- 25.4. A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

25.5. A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:

- (a) at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent);
- (b) in the case of notices sent by post, 48 hours after posting.

26. Subcontracting

26.1. Subject to clause 16.8, the Provider may subcontract to any reputable third party hosting business the hosting of the Platform. It may also subcontract any of its other obligations under the Agreement, such as software development. However, the Provider shall in all cases remain responsible to the Client for the performance of any subcontracted obligations.

27. Assignment

27.1. The Provider must not assign, transfer or otherwise deal with the Provider's contractual rights and/or obligations under this Agreement without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed, providing that the Provider may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Provider or to any successor to all or a substantial part of the business of the Provider from time to time.

27.2. The Client must not assign, transfer or otherwise deal with the Client's contractual rights and/or obligations under this Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed, providing that the Client may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Client or to any successor to all or a substantial part of the business of the Client from time to time.

28. No waivers

28.1. No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

28.2. No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

29. Severability

29.1. If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

29.2. If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

30. Third party rights

30.1. The Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

30.2. The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

31. Variation

31.1. The Provider may by written notice amend and update these Terms of Service from time to time, and shall endeavour to give the Client reasonable notice of any proposed changes and the opportunity to discuss those changes prior to their implementation if they will place the Client at any material disadvantage.

31.2. Subject to Clause 31.1, the Agreement may not be varied except by means of a written document signed by or on behalf of each party, without prejudice to the requirements of Clause 10 relating to Change Control.

32. Entire agreement

32.1. The Agreement shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

32.2. Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

33. Law and jurisdiction

33.1. The Agreement shall be governed by and construed in accordance with the law of England and Wales.

33.2. Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales.

34. Interpretation

34.1. In the Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

- (b) any subordinate legislation made under that statute or statutory provision.

34.2. The Clause headings do not affect the interpretation of this Agreement.

34.3. References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

34.4. In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

35. Dispute resolution

35.1. The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation. If reasonable efforts to resolve any dispute fail, then each party shall refer the matter to a nominated senior manager.

35.2. If the dispute is not resolved within 14 days of the reference to senior management in accordance with clause 35.1, the parties will attempt to resolve the dispute by mediation before exercising any remedy available at law or equity.

Schedule 1 (Acceptable Use Policy)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- (a) the use of the website at www.TheAppBuilder.com, any successor website, and the services available on that website or any successor website (the "**Services**"); and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any Client for the Services and any individual User of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to TheAppBuilder Ltd (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.
- 1.5 You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorized by you, must not:
- (a) be libellous or maliciously false;
 - (b) be obscene or indecent;

- (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
 - (d) infringe any right of confidence, right of privacy or right under data protection legislation;
 - (e) constitute negligent advice or contain any negligent statement;
 - (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
 - (g) be in contempt of any court, or in breach of any court order;
 - (h) constitute a breach of racial or religious hatred or discrimination legislation;
 - (i) be blasphemous;
 - (j) constitute a breach of official secrets legislation; or
 - (k) constitute a breach of any contractual obligation owed to any person.
- 3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question.
- 4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.
- 4.3 Content must not be pornographic or sexually explicit.

5. Factual accuracy

- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6. Negligent advice

- 6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.
- 6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7. Etiquette

- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the Internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content does not duplicate other content available through the Services.
- 7.8 You must ensure that Content is appropriately categorized.
- 7.9 You should use appropriate and informative titles for all Content.
- 7.10 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

- 8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.
- 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.
- 8.4 You must not use the Services to promote or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar letters, schemes or programs.

9. Gambling

- 9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity. (Online voting to award good practice is excluded from this.)

10. Monitoring

- 10.1 You acknowledge that we do not actively monitor the Content or the use of the Services.

11. Data mining

- 11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12. Hyperlinks

- 12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

13. Harmful software

- 13.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 13.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

Schedule 2 (Availability SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use all reasonable endeavours to ensure that the uptime for the Hosted Services is at least 99.9% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.

3. Service credits

- 3.1 In respect of each calendar month during which the Hosted Services uptime is less than the commitment specified in Paragraph 2.1, the Client shall earn service credits in accordance with the provisions of this Part 3.
- 3.2 The service credits earned by the Client shall be calculated as 5% of the total monthly fee for each complete hour that the service was unavailable, minus the downtime permitted by this Schedule. The service credits in any one calendar month will be capped at 50% of the total monthly fee.
- 3.3 The Provider shall deduct an amount equal to the service credits due to the Client under this Part 3 from amounts invoiced in respect of the Charges for the Hosted Services. All remaining service credits shall be deducted from each invoice issued following the reporting of the relevant failure to meet the uptime commitment, until such time as the service credits are exhausted.
- 3.4 Service credits shall be the sole remedy of the Client in relation to any failure by the Provider to meet the uptime guarantee in Paragraph 2.1, except where the failure amounts to a material breach of the Agreement.
- 3.5 Upon the termination of the Agreement, the Client's entitlement to service credits shall immediately cease, save that service credits earned by the Client shall be offset against any amounts invoiced by the Provider in respect of Hosted Services following such termination.

4. Exceptions

- 4.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Paragraph 2.1:
 - (a) a Force Majeure Event;

- (b) a fault or failure of the internet or any public telecommunications network;
- (c) a fault or failure of the Client's computer systems or networks;
- (d) any breach by the Client of the Agreement; or
- (e) scheduled maintenance carried out in accordance with the Agreement.

Schedule 3 (Maintenance SLA)

1. Introduction

- 1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

2. Scheduled Maintenance Services

- 2.1 The Provider shall use all reasonable endeavours to give to the Client at least 3 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.
- 2.2 The Provider shall use all reasonable endeavours to ensure that scheduled Maintenance Services are kept to a minimum and to carry out such work during periods of lower usage of the Platform and Hosted Services.

3. Updates

- 3.1 The Provider shall use all reasonable endeavours to give to the Client written notice of the application of any security Update to the Platform and at least 3 Business Days' prior written notice of the application of any non-security Update to the Platform.
- 3.2 The Provider shall apply Updates to the Platform as follows:
- (a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
 - (b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
 - (c) other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Client or agreed by the parties from time to time.

4. Upgrades

- 4.1 The Provider shall produce Upgrades at least once in each calendar year during the Term.
- 4.2 The Provider shall give to the Client at least 3 Business Days' prior written notice of the application of an Upgrade to the Platform.
- 4.3 The Provider shall apply each Upgrade to the Platform within any period notified by the Provider to the Client or agreed by the parties in writing.

Schedule 4 (Support SLA)

1. Introduction

- 1.1 This Schedule 4 sets out the service levels applicable to the Support Services.
- 1.2 Mobile technology is a fast-moving area. The Provider will endeavour to support the most commonly used mobile operating systems (OS) and mobile devices. The list of Supported Mobile Operating Systems and Devices is always available and regularly updated by the Provider on its website. It is acknowledged that this list is subject to change over time as new versions of each operating systems and device hardware becomes prominent in the market. The Provider's general rule is to support the latest two major versions of mobile OS, however, this is tempered with market realities, and so an OS that fails to gain any significant market share may not be supported.
- 1.3 The Provider will provide regular technology updates for both Apple and Android operating systems.

2. Helpdesk

- 2.1 The Provider shall make available to the Client a helpdesk in accordance with the provisions of this Schedule 4.
- 2.2 The Client may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Client must not use the helpdesk for any other purpose.
- 2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and, where applicable, using the Provider's web-based ticketing system.
- 2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.
- 2.5 The Client shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

- 3.1 Issues raised through the Support Services shall be categorized as follows:
 - (a) critical: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
 - (b) serious: a core function of the Hosted Services is significantly impaired;
 - (c) moderate: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
 - (d) minor: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.

- 3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.
- 3.3 The Provider shall use all reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:
- (a) critical: 2 Business Hours;
 - (b) serious: 4 Business Hours;
 - (c) moderate: 1 Business Day; and
 - (d) minor: 5 Business Days.
- 3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): [an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request].
- 3.5 The Provider shall use all reasonable endeavours to resolve issues raised through the Support Services promptly, or where further investigation is required, agree a workaround with the Client, and in any case in accordance with the following targeted time periods:
- (a) critical: 4 Business Hours;
 - (b) serious: 8 Business Hours;
 - (c) moderate: 4 Business Days; and
 - (d) minor: 10 Business Days or by agreement (typically next release of the Platform).

4. Provision of Support Services

- 4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

- 5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed more than any amount that may be specified in the Services Order Form then:
- (a) the Provider will cease to have an obligation to provide Support Services to the Client during the remainder of that period; and
 - (b) the Provider may agree to provide Support Services to the Client during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.
- 5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

- (a) the improper use of the Hosted Services by the Client; or
- (b) any alteration to the Hosted Services made without the prior consent of the Provider.

5.3 The Provider will not be obliged to diagnose and rectify any fault in the Platform resulting from:

- (a) any modifications made by any person other than the Provider;
- (b) minor defects which do not significantly affect or impair the use of the Platform;
- (c) any incorrect or improper use of the Platform, or any use of the Platform for any purpose for which it was not designed;
- (d) an issue has been reported only on devices which are not currently supported by the Provider
- (e) the Client has prevented the Provider from performing required maintenance and update tasks;
- (f) the failure by the Client to implement recommendations in respect of any solutions to faults previously advised by the Provider; or
- (g) in a situation where the Client is in breach of its contract with the Provider for any reason (e.g. late payment of fees).

Schedule 5 (Form of CCN)

1. Introduction

Title of Change: *[insert title]*

CCN number: *[insert number]*

Change proposed by: *[insert individual name(s)]*

Date of issue of CCN: *[insert date]*

Summary details of proposed Change: *[insert details]*

2. Change details

[Insert full details of proposed Change]

3. Impact of Change

Impact upon resources: *[insert details]*

Impact upon timetable: *[insert details]*

Impact upon Charges: *[insert details]*

Other effects of Change: *[insert details]*

4. Agreement to Change

The parties have indicated their acceptance of the Change described in this CCN by signing below.

SIGNED BY *[[individual name]* on *[.....]*, the Provider / *[individual name]* on *[.....]*, duly authorized for and on behalf of the Provider]:.....

SIGNED BY *[[individual name]* on *[.....]*, the Client / *[individual name]* on *[.....]*, duly authorized for and on behalf of the Client]:.....

Schedule 6 (data processing information)

1. Categories of data subject

- Client's staff
- Client's customers if and to the extent that the Client allows its customers to use the Created App(s)

2. Types of Personal Data

- contact details: emails and phone numbers
- role
- postal business addresses
- usernames and passwords
- unique identifiers relating to User devices (to the extent that the Client has opted to use push notification tools and Users have opted to allow notifications)
- tracking/analytics/usage data relating to Users (to the extent that the Client has opted to use usage statistics tools)
- Personal Data that may be contained within Client Data

3. Purposes of processing

- To provide the Services that the Client has requested the Provider to provide in the Agreement.
- To provide Client staff with access to the content managed within the Platform.
- To provide Client staff with access to other Client systems where the Platform acts as a portal and authenticate Users onto other software of the Client.
- To provide Users with push notifications relating to the Created App(s) where the Client has opted to use push notification tools and where the User has opted to allow notifications.
- To collect usage statistics relating to the Created App(s) where the Client has opted to use usage statistics tools.

4. Security measures for Personal Data

The Provider is ISO27001 accredited and has achieved Cyber Essentials certification, meaning that the Provider implements the security measures required in order to achieve such accreditation and certification.

The Platform is subject to regular penetration tested by an external body to ensure it has an appropriate level of control against intrusion.

The Platform meets and exceeds the L1 Mobile Application Security Verification Standard (MASVS).

5. Sub-processors of Personal Data

The Provider uses the following category of third party processors in connection with the processing of Client Personal Data:

- Platform hosting service providers

6. Transfers outside the European Economic Area

If and to the extent that any Personal Data will be transferred outside the European Economic Area and processed by the Provider as data processor or by a sub-processor for the Provider the parties shall enter into the Standard Contractual Clauses (Processors) for the purposes of Article 26(2) of Directive 94/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.