

TERMS OF SERVICE

Version: R6.1

ATTENTION: PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCESSING AND USING THE SOFTWARE AND/OR PRODUCTS. YOUR USE OF THE SOFTWARE AND/OR PRODUCTS CONSTITUTES YOUR ACCEPTANCE HEREOF.

These Terms of Service (hereinafter: “**TOS**”), together with the Data Processing Agreement (hereinafter: “**DPA**”), the NetRefer Order Form (hereinafter: “**Order Form**”), the Service Level Agreement (hereinafter: “**SLA**”), the product specific Terms & Conditions (hereinafter: “**T&C**”), as well as any future contracts, addendums, appendices, exhibits or other documents signed between the Parties (hereinafter, collectively referred to as “**this Agreement**”) form a binding contract between you (“**Licensee**”) and Arnold Media Limited (“**Licensor**”).

The provisions of these TOS apply, to the extent applicable, to each of the documents making up the Agreement and, in particular, to the TOS, DPA, Order Form, SLA, and T&C.

(The Licensor and the Licensee shall hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”).

1. Definitions:

- 1.1 “**Affiliate**” means any third parties who direct online and/or offline traffic to the online and/or offline properties of the Licensee which can be tracked and attributed to the affiliate and who are incentivized by the Licensee for such introductions and are permitted to access and utilize, but not further distribute, the Software.
- 1.2 “**Confidential Information**” means any proprietary or confidential information or material which one Party (“**Disclosing Party**”) discloses to the other Party (“**Recipient**”) pursuant to, or in connection with, this Agreement (whether orally, in writing or through any other medium and whether or not the information is expressly stated to be confidential or marked as such). Confidential Information shall include: (a) all information relating to the Products and/or the Software including the concepts and ideas relating thereto; (b) business, financial or operating information of the Disclosing Party, which information is of a secret or proprietary nature or is otherwise expressly stated by Disclosing Party to be confidential; (c) all technical and non-technical information, software programs, source code, object code, algorithms, data, drawings, trade secrets and know-how relating to the Disclosing Party’s business plans and strategies, products, services, customers, IT systems, design methodology, evaluation methodology and criteria, and manufacturing processes; and (d) all notes, memoranda, analyses, compilations, studies and other documents prepared by, for or on behalf of Disclosing Party and/or its employees and/or advisors. Confidential Information shall not include information that: (i) is or becomes a part of the public domain without any breach by the Recipient of the terms of this Agreement; (ii) is lawfully disclosed to the Recipient by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party; (iii) was in the Recipient’s lawful possession prior to the date of disclosure and had not been obtained by the Recipient either directly or indirectly from the Disclosing Party; or (iv) is independently developed by the Recipient without the use or benefit of the Disclosing Party’s Confidential Information, as evidenced by its written records. The non-disclosure provisions as set forth herein shall survive termination of this Agreement and shall remain in effect until the Confidential Information no longer qualifies as a trade secret.
- 1.3 “**Contractual Partners**” means Affiliates, consultants, agents and any other individuals or entities engaged with Licensee and who in any way make use of the Software and/or Products.
- 1.4 “**Derivative work**” means (a) for copyrightable or copyrighted material: a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment,

condensation, expansion, collection, compilation or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute copyright infringement; (b) for patentable or patented material: any adaptation, addition, improvement, or combination based on a pre-existing work; and (c) for material subject to trade secret or protection or confidentiality obligations: any new material, information or data relating to and derived from such existing trade secret material or Confidential Information, including new material which may be protected by copyright, patent, trade secret or other proprietary rights.

- 1.5 “**Group Company**” means in respect of either Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party, including any affiliated company, joint venture or any other kind of undertaking in which the Party directly or indirectly holds an interest.
 - 1.6 “**Products**” means the products listed in Schedule A hereto, as well as any other products and/or services and/or programs and/or features which may be provided from time to time by the Licensor alone or in conjunction with the use of the Software by the Licensee.
 - 1.7 “**Software**” means any of the Licensor's proprietary software applications and platforms, and any and all customizations, modifications, Updates and Upgrades, if any, thereto.
 - 1.8 “**Software Maintenance**” means all program coding done after initial Software deployment to correct defects found during usage as well as to implement any Update or Upgrade.
 - 1.9 “**Update**” means a patch, correction or other similar modification to the Software that the Licensor generally makes available to its licensees.
 - 1.10 “**Upgrade**” means a release of the Software containing material enhancements in features of functionality which is made commercially available by the Licensor after the coming into force of this Agreement.
2. **Grant of License:** Pursuant to the terms of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-transferable, non-exclusive, non-assignable worldwide license to use the Software and/or Products for Licensee’s internal business purposes only, during the term of this Agreement.
 3. **Upgrades and Updates:** Upon Licensor releasing an Upgrade and/or Update, the former version of the Software will stand deprecated and become the deprecated version of the Software (hereinafter: “**Deprecated Version**”). For a period of six months following the deprecation (hereinafter: “**Deprecation Period**”), the Licensor will use commercially reasonable efforts to support the Deprecated Version. The Licensor need not support the Deprecated Version after the Deprecation Period and shall bear no liability whatsoever (including with respect to performance, defects or non-compliance) with regards to the Deprecated Version. Updates/Upgrades are considered to be released upon notification to the Licensee.
 4. **Software Maintenance and Support:**

From time to time during the term of this Agreement, Licensor shall provide technical services to Licensee to assist Licensee in the use of the Software and any Updates and/or Upgrades thereto. Such services may be provided by way of release notes, knowledge base or any other means determined by the Licensor. For every new Update and/or Upgrade, Licensor shall publish user documentation regarding the Software and/or Updates and/or Upgrades on its standard portal.

Licensor shall provide ongoing Software Maintenance at no additional charge for the period of the validity of this Agreement on the latest version of the Software released by it. For the avoidance of doubt, the Licensor shall provide Software Maintenance also to Deprecated Versions only during the Deprecation Period. In addition, Licensor will provide the Licensee with Software support in accordance with the Service Level Agreement.

Any maintenance and/or support not explicitly stated herein as being provided at no charge, shall only be provided for an additional charge at the rates set forth in the Order Form.

5. **Affiliates:** The Licensee shall require each Affiliate to either accept or reject the applicable conditions of the Licensee which pertain to that specific Product and/or Software, by means of a click or other method requiring an action from the Affiliate. In the event that the Affiliate rejects the Licensee's conditions, the Licensee shall not allow such Affiliate to access and use the Product and/or Software. Licensee shall record and keep acceptance actions of Affiliates in a form that allows verification at a later date of such acceptances. For the avoidance of doubt, no relationship whatsoever is created between the Licensor and the Affiliate, and the Licensee alone shall be liable towards the Affiliate.
6. **Limitation on Use:** Licensee shall not, nor permit others to: (a) copy, modify, distribute, redistribute, sell, lease, assign, transfer, trade, rent, publish or sub-license the Software and/or Products to any third party, whether in full or in part; (b) download or make any copies of the Software and/or Products; (c) disassemble, reverse engineer or decompile any copies of the Software and/or Products, whether in full or in part; (d) develop, produce, make, distribute, license or exploit any of the Software's and/or Products' Derivative Work; (e) allow third parties to access and/or use or utilise the Software and/or Products, except for third parties specifically authorised in writing by Licensor; (f) use a single account given to the Licensee for the use of the Software and/or Products for multiple business entities, unless specifically authorised in writing by the Licensor; (g) use the Software and/or Products for any purpose except in the normal course of its business; (h) use the Software and/or Products for any illegal purpose or cause; (i) remove or attempt to remove any proprietary notice of Licensor; (j) collect content or information, or otherwise access Licensor's website or use the Licensor's Software, Product or other services using automated means (such as harvesting bots, robots, spiders, scrapers or crawlers) without the Licensor's prior written permission.
7. **Third-Party Sites and Products:** Third-party sites and products are not under Licensor's control. Third-party sites and products are provided to Licensee only as a convenience, and the availability of any third-party site or product does not mean Licensor endorses, supports or warrants the third-party site or product. Licensor's website may include links to other websites, services, resources or products on the Internet that are owned and operated by online merchants and other third parties. Licensee acknowledges that Licensor is not responsible for the availability, content, legality, appropriateness or any other aspect of any third-party site or product. Licensee's use of third-party sites or products is at its own risk and subject to the terms of use and privacy policies of each site or product. Licensor makes no guarantees and assumes no responsibility or liability of any type with respect to content, products and services provided by any third party.
8. **Term:** This Agreement shall enter into force on the Service Start Date and shall remain in force until the end of the Initial Term (as specified in the NetRefer Order Form) ("**Initial Term**"). At the end of the Initial Term, this Agreement shall be automatically renewed for further periods according to the Automatic Renewal Term in the Order Form ("**Renewal Term**"), unless either Party provides the other Party with written notice of non-renewal at least three (3) months prior to the end of the Initial Term or the then current Renewal Term, as applicable (except when due to a Fee and/or billing revision as stated in clause 9(b) below), or it is otherwise terminated as provided herein.
9. **Fees:**
 - (a) Licensee shall pay to the Licensor the fees as stipulated in the Order Form (hereinafter: "**Fees**") (as may be modified during the Initial Term and/or Renewal Term pursuant to a change in the Products and/or other services requested by Licensee). All Fees are stated exclusive of VAT and are non-refundable (except as provided in clause 10 below). Licensee shall be responsible for paying all use, sales, excise, value-added or other tax or governmental charges related to Licensee's use of the Software and/or Products.
 - (b) Licensor reserves the right to revise the Fees and/or billing practices for any subsequent Renewal Term by providing Licensee written notice of such increase at least sixty (60) days prior to the end of the then current term. In the event that Licensee does not accept the revised Fees and/or billing practices, it shall provide written notification to Licensor of such non-acceptance within thirty (30) days of receiving notification of the revised Fees and/or billing practices by Licensor, in which event either Party shall have the right to notify the other Party of non-renewal of this Agreement. For the avoidance of doubt, it is hereby clarified that failure by Licensee to provide Licensor with notice of non-acceptance as aforesaid, shall be deemed to constitute acceptance by the Licensee of the revised Fees and/or billing practices.

- 10. Termination by Licensee:** Licensee shall have the right to immediately terminate this Agreement in the following cases: (a) Licensor commits a material breach of this Agreement and/or fails to perform pursuant to this Agreement, and such breach or non-performance is not remedied within thirty (30) days of written notice of such breach or non-performance by Licensee to Licensor; or (b) Licensor becomes bankrupt or insolvent, as evidenced by written records. Termination pursuant to this clause 10 shall not release Licensee from its obligations to pay to Licensor all Fees which accrued prior to such termination. Licensee's sole and exclusive remedy shall be to terminate this Agreement and receive a refund of any Fees or pro-rata portion thereof paid by Licensee for any remaining period of this Agreement, if any, from the date of termination.
- 11. Termination by Licensor:** Licensor shall have the right to immediately terminate this Agreement in the following cases: (a) Licensee commits a material breach of this Agreement and/or fails to perform pursuant to this Agreement (such as failure to timely pay any of the Fees due), and such breach or non-performance is not remedied within thirty (30) days of written notice of such breach or non-performance by Licensor to Licensee; or (b) Licensee becomes bankrupt or insolvent, as evidenced by written records; or (c) Licensor becomes bankrupt or insolvent; or (d) Licensee refuses an Upgrade or Update issued by Licensor where such Upgrade or Update is required for legal and/or regulatory compliance or security enhancements; or (e) Licensee refuses to accept any revisions to this Agreement which are required for legal and/or regulatory compliance or security enhancements. Termination pursuant to (a) or (b) above shall not release Licensee from its obligations to pay to Licensor all Fees for the entire duration of the Initial Term or Renewal Term, as applicable, as if this Agreement had not terminated and had continued in full force and effect and, in such event, Licensor may demand that the entire Fees for the entire duration of the Initial Term or Renewal Term, as applicable, shall become immediately due and payable.
- 12. Post Termination:** Upon termination of this Agreement, for any reason whatsoever, Licensor shall have the right to immediately remove and/or terminate access of the Products and/or Software and related data from its own and/or from the Licensee's servers, as applicable. Subject to the provisions in the DPA and SLA, Licensor shall have no obligation to retain or store, and may delete, Licensee's data, unless otherwise agreed upon in writing by the Parties and provided Licensee pays Licensor an agreed upon data retention fee.
- 13. Compliance with Laws:** Each Party shall comply with all laws, regulations and other legal requirements applicable to its performance of this Agreement and shall obtain any permits or licenses necessary for its operations under this Agreement. Any responsibility, repercussions or fines incurred due to any use of the Products and/or Software by the other Party that leads to an infringement of any laws, regulations or other legal requirements lies solely with the Party in breach of this clause.
- 14. Mutual Warranties:** Each Party represents and warrants to the other that: (a) it has the full right, power and authority to enter into this Agreement; and (b) it operates legally, has all necessary governmental approvals for such operation and shall remain solely responsible for maintaining such approvals.
- 15. Limited Warranty:** Licensor warrants that the product description and features of the Software and/or the Products as provided in the user manual, are accurate in all material respects at the time of signing this Agreement and it shall take all reasonable steps in accordance with the provisions of this Agreement to correct any defect in the Software and/or Products. However, Licensor does not warrant that all defects can and will be corrected. In the event that any defect substantially affects the operation of the Software and/or Products, Licensor shall have the option to either repair or replace the Software and/or Products at its sole expense. Notwithstanding the foregoing, if in Licensor's sole discretion, correcting a defect which substantially affects the operation of the Software and/or Products is not possible or feasible, Licensor shall have the right to either (i) provide Licensee with a method to bypass such defect, provided that the functionality or ease of use of the Software and/or Products is not materially affected by any such method to bypass the defect; or (ii) allow the Licensee to terminate this Agreement, in which event Licensee's sole remedy shall be a refund of any Fees or pro-rata portion thereof paid by Licensee for any remaining period of this Agreement from the date of termination. In no event shall Licensor be liable for any incidental, consequential, punitive or other damages as a result of the aforesaid.

This limited warranty is void if failure of the Software and/or Product has resulted from (i) the acts or omissions of non-Licensor personnel; (ii) accident, abuse, misuse, misapplication, theft, vandalism, fire, water or other peril; and (iii) modifications, alterations or additions not authorized by Licensor.

- 16. No Other Warranties:** EXCEPT FOR THE FOREGOING AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE AND PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE PRODUCTS, THE SOFTWARE, THE OPERATION OF THE SOFTWARE, OR ANY RELATED SOFTWARE SERVICES WILL MEET LICENSEE'S REQUIREMENTS OR THAT IT WILL BE UNINTERRUPTED OR ERROR-FREE.
- 17. Limitation of Liability:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT WITH RESPECT TO CLAUSES 18, 19 AND 20 BELOW, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR GROUP COMPANIES BE LIABLE FOR ANY (A) INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS; BUSINESS INTERRUPTION; LOST BUSINESS OPPORTUNITY; LOSS, CORRUPTION OR NON-AVAILABILITY OF DATA; OR ANY OTHER COMMERCIAL OR PECUNIARY DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY PART THEREOF, OR ARISING OUT OF OR RELATED TO LICENSEE'S USE OF OR INABILITY TO USE THE SOFTWARE AND/OR PRODUCTS AND/OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE SOFTWARE OR PRODUCTS, OR ARISING OUT OF OR RELATED IN ANY WAY TO ANY THIRD PARTY PARTNER OR PROVIDER OF EITHER PARTY; HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY EITHER PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST EITHER PARTY MORE THAN ONE (1) YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

WITHOUT LIMITING THE GENERAL EXCLUSION OF LIABILITY AS PROVIDED HEREIN, THE CUMULATIVE, AGGREGATE LIABILITY OF EACH PARTY AND ALL OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS AND GROUP COMPANIES TO THE OTHER PARTY OR ANY THIRD PARTY IN RESPECT OF CLAIMS, WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, MISREPRESENTATION, TORT, QUASI-TORT OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL ANNUAL FEE (AS SPECIFIED IN THE ORDER FORM) PAID BY THE LICENSEE DURING THE COURSE OF THE CURRENT TERM OF THIS AGREEMENT DURING WHICH THE EVENT GIVING RISE TO THE LIABILITY OCCURS.

FOR THE AVOIDANCE OF DOUBT, THIS LIMITATION OF LIABILITY CLAUSE SHALL APPLY, TO THE EXTENT LEGALLY PERMITTED, TO EACH OF THE DOCUMENTS MAKING UP THE AGREEMENT AND, IN PARTICULAR, THE TOS, DPA, ORDER FORM, SLA, AND T&C.

- 18. Indemnification by Licensor:** Licensor shall indemnify Licensee against any third party claim that the Software and/or Products infringes any patent, copyright, trademark or trade secret owned or controlled by the third party; provided however, that: (a) Licensee promptly notifies Licensor in writing of any such claim; (b) Licensor shall have sole control of the defence of any action on such claim and all negotiations for its settlement or compromise; (c) Licensee shall cooperate fully with Licensor to facilitate the settlement or defence of such claim; and (d) Licensee has not contributed in any way to the infringement, inter alia by way of (i) modifying the Products and/or Software, improper use or improper integration, or (ii) use of the Products and/or Software or any component thereof in combination with any other system, equipment or software not provided or approved by the Licensor.

In addition, in the event an injunction or order shall be obtained against Licensee's use of the Software and/or Products by reason of any such infringement allegation or if, in Licensor's sole opinion, the Software and/or Products is likely to become the subject of a claim of infringement or violation of any existing patent, copyright, trademark, trade secret, or other proprietary right of a third party, Licensor may, without in any way limiting the foregoing, in Licensor's sole discretion and at Licensor's expense either: (a) procure for Licensee the right to continue using the Software and/or Products; (b) replace or modify the Software and/or Products so that it becomes non-infringing, but only if the modification or replacement does not, in Licensor's reasonable sole opinion, adversely affect the functional performance or specifications for the Software and/or Products or its use by Licensee; or (c) if neither (a) nor (b) above is practical, terminate this Agreement and refund to Licensee any Fees or pro-rata portion thereof paid

by Licensee for any remaining period of this Agreement, if any, from the date of termination. In no event shall Licensee be liable to Licensor for any charges after the date that Licensee no longer uses the Software and/or Products because of actual or claimed infringement.

INDEMNIFICATION BY LICENSOR AS AFORESAID IS LIMITED TO THE AMOUNT FINALLY AWARDED IN A FINAL JUDGMENT BY A COURT OR AGREED UPON BY LICENSOR IN A SETTLEMENT. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY LICENSEE. THE FOREGOING STATES LICENSOR'S ENTIRE LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INDEMNIFICATION FOR PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT.

19. Indemnification by Licensee: Licensee shall indemnify and hold the Licensor and its directors, officers, employees, agents and Group Companies harmless from and against any claims, actions, proceedings, damages, liabilities and costs arising out of or otherwise relating to Licensee's and/or Contractual Partners' (i) improper use of the Software or Products and/or (ii) breach of any term, condition or obligation under this Agreement.

20. Intellectual Property Rights: Except for the rights explicitly granted to Licensee hereunder, Licensor shall retain all rights, title and interest in and to the Products and/or Software, including any and all enhancements, modifications, Upgrades, Updates and Derivative Works relating to, or deriving from, the Products and/or Software, and in all materials developed, used and provided to the Licensee under this Agreement including, without limitation, all or any part of proprietary methods, algorithms, source code, object code, protocols, systems architecture, menu structures, database schemas, documentation text, interfaces, inventions, formulae, processes, designs and discoveries, whether patentable or not. Licensee agrees that the Products and/or Software shall bear all copyright, trademark and other proprietary notices included therein by Licensor. Licensee agrees that such notice shall include a clearly visible phrase or logo in the form: "Powered by NetRefer" or any other similar form.

ANY USE OR DISCLOSURE OF THE PRODUCTS AND/OR SOFTWARE, OR OF ITS ALGORITHMS, PROTOCOLS OR INTERFACES, OTHER THAN IN STRICT ACCORDANCE WITH THIS AGREEMENT, MAY BE ACTIONABLE AS A VIOLATION OF LICENSOR'S COPYRIGHT, PATENT, TRADE SECRET OR OTHER RIGHTS AND MAY BE SUBJECT TO CIVIL AND/OR CRIMINAL ACTION IN MULTIPLE JURISDICTIONS.

The Parties agree that ordinary remedies may not be sufficient in case of a violation by the Licensee of any of the Licensor's intellectual property rights, whether copyright, patent, trademark, trade secret or otherwise, and that in such case the Licensor shall be entitled, in addition to any other right available at law, to seek an injunctive relief against the Licensee.

21. Confidentiality: The Parties agree to hold each other's Confidential Information in confidence during the term and after termination of this Agreement. The Parties agree not to use each other's Confidential Information for any purpose other than the implementation of this Agreement and not to disclose the Confidential Information to any third party, except to those of its officers, directors, employees, financial or legal advisers who have a reasonable need to know such Confidential Information for purposes of implementing this Agreement, provided that such individuals are advised of the confidentiality provisions of this Agreement and agree to maintain the confidentiality of the Confidential Information. For the sake of clarity, it is hereby expressly stated and acknowledged that the Recipient is prohibited from sharing with a competitor of the Disclosing Party or with any other third party, any features or information of the Disclosing Party's Products and/or Software and/or other documentation, and from showing or giving access thereto. Each Party agrees to use the same degree of care that it uses to protect its own Confidential Information of a similar nature and value but in no event less than a reasonable standard of care. Despite any provision of this Agreement to the contrary, Recipient may disclose Confidential Information as required by law, regulation, court order or other legal process; provided, however, that immediately upon receipt of such disclosure requirement, to the extent it is legally permitted to do so, Recipient shall notify Disclosing Party of the impending disclosure to allow Disclosing Party an opportunity to take appropriate legal measures to protect the Confidential Information. Upon request from the Disclosing Party, Recipient shall immediately return, or at Disclosing Party's direction destroy, all documents, papers or records in whatever form containing Confidential Information.

- 22. Personal Data:** Each Party undertakes to comply with its obligations under relevant applicable data protection laws. To the extent that personal data is processed using the Software and/or Products, the Parties acknowledge that the Licensor is a data processor and the Licensee is a data controller and the Parties shall comply with their respective statutory data protection obligations. The Licensor shall provide adequate security for the processing of the data in line with good business practice. Licensor shall not use personal data processed under this Agreement for any purposes other than for carrying out its obligations under this Agreement, for improvement of systems setup, troubleshooting the Software and/or Products, or in the normal operation of the Software and/or Products.

All personal data as well as any Licensee employee data required for the fulfilment of this Agreement (such as employee details for access to any auxiliary support systems such as ticketing systems) shall be retained as per the Data Retention Policy included in the DPA.

The Licensor shall provide the Licensee with an initial user name and password allowing access to the Software and/or Products by the Licensee. The Licensee will thereafter be able to create further user names and passwords for each staff member that the Licensee designates as authorised to access the Software and/or Products. The Licensee is solely responsible for the security of the user names and passwords issued to Licensee's staff members.

- 23. Security and Data Protection:** The application of SSL certificates is mandatory for all interfaces and sites making up the Products and services offered by the Licensor for the purpose of compliance with the Data Protection Laws (as defined in the DPA). Refusal to apply such certificates by the Licensee shall result in Licensor being absolved of any data breaches which may occur when data is in transit.

It is the sole obligation and responsibility of Licensee to ensure (and put in place all necessary measures to ensure) that any login details provided or created for the purpose of accessing Licensor's systems are kept confidential, safe and secure at all times. Any unauthorised use of Licensee's accounts resulting from failure to adequately protect login information shall be the sole responsibility of the Licensee, and Licensee shall remain solely responsible and liable for all activity and conduct occurring under Licensee's account credentials whether such activity and/or conduct was undertaken by Licensee or not. It is the Licensee's obligation to inform Licensor immediately if it suspects illegal or unauthorised use of its accounts.

- 24. Publicity:** Licensor may publicly disclose on its website, promotional material, in a press release, public statement or otherwise, that the Licensee is a user of the Software and/or Products.

- 25. Non-Solicitation:** During the term of this Agreement and for a period of one (1) year following its termination, Licensee shall not solicit, induce, hire or engage any employee of Licensor, or in any other way interfere with Licensor's contractual or employment relations with any of its employees, nor will Licensee hire or engage any individual who was an employee of Licensor at any time during such one (1) year period.

- 26. Assignment:** Licensee shall not assign, license, sub-license or otherwise transfer any of its rights or obligations under this Agreement, in whole or in part, including to any person or Group Company, whether by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of the Licensor. Any attempt to assign this Agreement by Licensee without such consent will be null and void and of no force and effect.

- 27. Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of Malta. The Parties shall endeavour to resolve amicably any dispute, controversy or claim arising out of or in connection with this Agreement. In case of failure to reach an amicable settlement, the Parties hereby agree that the dispute shall be referred and submitted to arbitration in Malta in accordance with the rules of the Malta Arbitration Centre, as in force on the date on which such dispute, controversy or claim arises. The number of arbitrators shall be one (1) and shall be appointed by agreement between the Parties. Should the Parties not agree on the person who shall be appointed as arbitrator within fifteen (15) days from the date on which either of the Parties may refer the dispute, controversy or claim to arbitration, the arbitrator shall be appointed by the Malta Arbitration Centre. The language to be used in the arbitral proceedings shall be English.

- 28. Relationship of Parties:** The Parties are independent contractors and neither Party is an agent, partner or employee of the other. No relationship of franchise, partners, joint ventures, principal and agent,

master and servant is established hereby between the Parties. Neither Party has the authority to bind the other Party or to incur any obligation on the other Party's behalf.

29. **Severability:** If any provision of this Agreement is held invalid or otherwise unenforceable, such provision shall be deemed to be severed from this Agreement and the enforceability of the remaining provisions shall not be impaired thereby.
30. **No Waiver:** A failure by any Party to exercise any right provided for herein or pursue any remedy shall not be deemed a waiver of such or other right hereunder on any other occasion.
31. **Entire Agreement:** This Agreement embodies the entire agreement and understanding of the Parties with respect to the matters contemplated hereby and supersedes and renders null and void all other prior versions, contracts, agreements, understandings or representations by or among the Parties, written or oral, with respect to the subject matters hereof, and may not be modified except in writing and signed by both Parties.
32. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.
33. **Changes to TOS:** Licensor may at any time change the provisions of these TOS (except with respect to Fees and billing practices) upon notice to Licensee. Any such changes will become effective no earlier than fourteen (14) days after Licensee has been notified. Licensee's continued use of the Software and/or Products after such date constitutes Licensee's acceptance of the revised TOS. The date these TOS were last revised shall be indicated at the top of this page.
34. **Notices:** All notices sent pursuant to this Agreement shall be in writing and sent by electronic mail, by fax (with confirmation of receipt) or by registered mail to the Parties' respective addresses set forth in the Order Form. A registered letter shall be deemed as having arrived at its destination following 72 hours from its dispatch by post; a fax or email shall be deemed as duly received upon receipt of delivery.
35. **Electronic Signatures:** Unless otherwise agreed in writing by the Parties, the electronic signature of a Party to this Agreement shall be as valid as an original signature of such Party and shall be effective to bind such Party to this Agreement. The Parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the Parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither Party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.
36. **Force Majeure:** Neither Party shall be held responsible for any delay or failure in the performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing Party. The affected Party will notify the other Party in writing promptly following the commencement of any such cause that would affect its performance. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Party receives notice under this clause, the non-affected Party will have the right, without any liability to the other Party, to terminate this Agreement.
37. **Obligations that Survive Termination:** The Parties recognize and agree that their obligations under clauses 17, 20, 21, 22, 25 and 27 hereof survive the cancellation, termination or expiration of this Agreement.

Schedule A to the TOS

Product Descriptions

Performance Marketing Platform

DESCRIPTION OF SOFTWARE

The Software provided to the Licensee enables partners to manage their online partner program. The aim of the Software is to provide the Licensee with the ability to professionally manage all aspects of their partner offering.

The Software is broken down into three main components:

1. Partner Module
2. Administration Module
3. Media Server Module

1. Partner Module

This module provides a Partner with the means to manage accounts, choose media and run reports regarding his partner activities.

2. Administration Module

This module provides the Partner Program Manager and his team to manage partners with regards to their accounts, commission plans, payments and email notification. It also provides the ability to run various reports against single or multiple partners, media and websites.

There are also various other Administrator settings that allows the automating of various tasks as well as managing the overall system.

3. Media Server Module

This module serves all the media dynamically from the Licensee's server so that all media is controlled and managed by the Licensee. All media is tracked and recorded for accurate reporting and statistics. Media can be served either as a single instance or can be served as multiple instances within a rotation group based on weightings.

Performance Marketing Intelligence

DESCRIPTION OF SOFTWARE

The Software provided enables the Licensee to visualise how their partners are performing, their trends, costs and determine who is providing business value. These are achieved through a set of reports and dashboards with industry standard KPIs.

The software is a combination of:

- Industry Standard KPIs and Metrics
- Interactive trend visualization
- Machine learning and forecasting
- Visual and Interactive Dashboards