

## General Terms and Conditions

### 1. Interpretation and Definitions

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

<b>Agreement</b>	these terms and conditions, including the Schedules and each Order Form.
<b>Aggregated Data</b>	information in an anonymous aggregated form generated by the Supplier from the Results (but excluding any Personal Data), Customer Materials and any other data received by Supplier or generated by the Customer in the course of the Supplier's provision of Services to the Customer.
<b>Appropriate Safeguards</b>	such legally enforceable mechanism for transfer of Personal Data as may be permitted under Data Protection Laws from time to time.
<b>Authorised User</b>	the Customer's employees, agents, independent contractors or other individuals authorised by the Customer to access and use the Services.
<b>Charges</b>	the fees for the Services as detailed in an Order Form.
<b>Commencement Date</b>	means the date set out in the Order Form.
<b>Confidential Information</b>	all confidential information (however recorded, preserved or disclosed) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, including the terms of this Agreement, any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party and any information or analysis derived from Confidential Information. Confidential Information shall exclude the Results and information which is: (a) generally available to the public (other than as a result of breach of confidentiality obligations); (b) available or which comes available to the receiving party on a non-confidential basis before disclosure; or (c) independently developed without access to such Confidential Information.
<b>Controller</b>	as defined in the applicable Data Protection Laws.
<b>Customer Marks</b>	logos (or other brand identity), trademarks or trade names provided by or used by the Customer.

<b>Customer Materials</b>	any materials, data, text, graphics, photos designs, domain names, documentation, processes and procedures, information, programs, User Content supplied by (or on behalf of) the Customer or Authorised Users to the Supplier or submitted to the Platform in connection with this Agreement.
<b>Data Protection Laws</b>	means, as applicable and binding on the parties or Services: (a) in the United Kingdom: (i) the Data Protection Act 2018 or (ii) the General Data Protection Regulation (Regulation 2016/679) (" <b>GDPR</b> ") and the Privacy and Electronic Communication Directive (Directive 2002/58/EC) and national legislation implementing or supplementing such legislation in the United Kingdom; (b) in member states of the European Union: the GDPR and all relevant member state laws or regulations giving effect to or corresponding with any of them.
<b>Data Subject</b>	as defined in the applicable Data Protection Laws.
<b>Disclosing Party</b>	a party to this Agreement which discloses or makes available directly or indirectly Confidential Information.
<b>Force Majeure Event</b>	any event outside the reasonable control of either party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, disaster or any action taken by a third party in relation to any third party software.
<b>Initial Term</b>	the initial term of this Agreement, as set out in the Order Form.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright (including source code) and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

<b>Losses</b>	all losses, liabilities, costs, expenses and damages.
<b>Optional Services</b>	means any optional services requested by the Customer and to be provided by the Supplier in addition to the Platform Subscription, as described in the Order Form.
<b>Order Form</b>	means a written order substantially in the same form as the Order Form appended as the cover to these terms and conditions, which is executed by the Customer and Supplier detailing the Services to be supplied by Supplier, the Term of supply, the Charges payable by Customer in respect of the Services and any special terms agreed by the Parties in respect of the Services.
<b>Personal Data</b>	as defined in the applicable Data Protection Laws.
<b>Personal Data Breach</b>	as defined in the applicable Data Protection Laws.
<b>Platform</b>	the Supplier's proprietary cloud-hosted platform "Give My View" (at givemyview.com or any other addresses as updated by the Supplier from time to time) and any associated webpage.
<b>Platform Subscription</b>	the Customer's subscription to use the Supplier's Platform during the Subscription Term, as described in the Order Form.
<b>Processor</b>	as defined in the applicable Data Protection Laws.
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in relation to the Supplier's performance of the Services under this Agreement.
<b>Public Networks</b>	a public communications network established and operated by a telecommunications provider, including the internet, wireless and mobile technologies.
<b>Renewal Period</b>	the renewal period of this Agreement, as set out in the Order Form.
<b>Representatives</b>	employees, workers, agents, officers, advisers and other representatives of that party including in the case of the Customer, the Authorised Users.
<b>Results</b>	the data, reports, insights, analysis, data visualisations, analytics, interpretations and statistics generated from the Customer's use of the Services or the Supplier's performance of the Services.
<b>Services</b>	means the Platform Subscription, Optional Services and ad hoc services as detailed in the Order Form.

<b>Software</b>	means the cloud-hosted software or applications used by or on behalf of the Supplier to provide the Customer with the access to and use of the Platform as part of the Services.
<b>Specification</b>	the description of the Platform Subscription, as set out in an Order Form.
<b>Sub-processor</b>	means any agents, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of Protected Data.
<b>Supplier Materials</b>	any materials, designs, logos (or other brand identity), domain names, documentation, processes and procedures, information, programs, software and codes supplied by the Supplier to the Customer through the delivery of the Services or otherwise.
<b>Term</b>	the term of this Agreement as set out in the Order Form.
<b>Territory</b>	as set out in the Order Form.
<b>User Content</b>	means content submitted to the Platform or supplied to the Supplier by or on behalf of Authorised Users.
<b>VAT</b>	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.
<b>Working Days</b>	a day other than a Saturday or Sunday or bank or public holiday in England.

1.2. Unless the context otherwise expressly requires, references to:

- 1.2.1. **"including"** or **"includes"** shall be deemed to have the words "without limitation" inserted after them;
- 1.2.2. **"writing"** or **"written"** includes e-mail;
- 1.2.3. references to any applicable laws and to terms defined in such applicable laws shall be replaced with or incorporate (as the case may be) references to any applicable laws replacing, amending, extending, re-enacting or consolidating such applicable law and the equivalent terms defined in such applicable laws, once in force and applicable; and a reference to a law includes all subordinate legislation made under that law; and
- 1.2.4. a time shall be GMT or BST (as applicable).

1.3. Clause and Schedule headings do not affect the interpretation of this Agreement.

## **2. Rights of Use**

- 2.1. Subject to the terms of this Agreement, the Supplier hereby grants to the Customer and its Authorised User a non-exclusive, non-transferable and revocable licence:
  - 2.1.1. to use the Platform and the Results during the Subscription Term;
  - 2.1.2. to use the Supplier Materials during the Term,  
in each case, provided that:
    - 2.1.3. the Customer complies with the terms of this Agreement and procures that Authorised Users shall comply with the terms of this Agreement;
    - 2.1.4. the Customer shall be liable for all acts and omissions of any Authorised User and shall indemnify the Supplier against all Losses incurred or suffered by the Supplier, or for which the Supplier may become liable, arising out of any act or omission of any Authorised User;
    - 2.1.5. all Charges are paid on or before the due date;
    - 2.1.6. access to the Services is only in accordance with the agreed access detailed in an Order Form; and
    - 2.1.7. the Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform (whether or not by an Authorised User) and notify the Supplier promptly of any such unauthorised access or use.

## **3. The Services**

- 3.1. The Supplier shall:
  - 3.1.1. provide the Services with reasonable care and skill; and
  - 3.1.2. use its reasonable endeavours to make the Platform available in accordance with the Specifications in all material aspects.
- 3.2. If there is a breach of Clause 3.2, the Supplier shall use reasonable endeavours to rectify the impacted Services within a reasonable time period. To the maximum extent permitted by law, this Clause 3.3 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of Clause 3.2.
- 3.3. The Customer acknowledges that the Platform may be unavailable as a result of scheduled or emergency maintenance being undertaken at any time to preserve the security and reliable operation of the Platform.
- 3.4. The Supplier shall not be liable for the Platform being unavailable as a result of the circumstances under Clause 3.4.
- 3.5. In addition to making any changes to the Platform which may be necessary to provide the Platform to the full benefit of the Customer (as the Supplier may deem necessary in its sole discretion), the Supplier shall be entitled to:
  - 3.5.1. make changes to the Platform from time to time for the purpose of maintaining the security or performance or availability of the Platform; or

- 3.5.2. make changes to the Services in order to comply with all applicable laws, statute, regulation, order, regulatory policy, guidance or industry code in any jurisdiction.
- 3.6. Any changes to the Services requested by the Customer must be agreed in writing between the parties, and may be subject to additional Charges.
- 3.7. The Customer may create a link to the Platform from another website without the Supplier's prior written consent provided that:
  - 3.7.1. no such link:
    - 3.7.1.1. creates a frame or any other browser or border environment around the content of the Platform;
    - 3.7.1.2. implies that the Supplier endorses the Customer's products or services or any of the products or services of, or available through, the website on which the Customer places a link to the Platform;
    - 3.7.1.3. displays any of the trade marks or logos used on the Platform without the Supplier's permission or that of the owner of such trade marks or logos; or
    - 3.7.1.4. is placed on a website that itself breaches the terms of this Agreement or the Supplier's policies; and
  - 3.7.2. the Supplier reserves the right to require the Customer to immediately remove any link to the Platform at any time, and the Customer shall immediately comply with any request by the Supplier to remove any such link.
- 3.8. The Customer acknowledges that Results or any other content generated from the Customer's use of the Services or as part of Supplier's performance of the Services is not intended to amount to advice on which the Customer should rely. The Customer agrees to obtain professional or specialist advice before taking, or refraining from, any action on the basis of the Results or any other content generated from the Services.

#### **4. Customer Obligations**

- 4.1. The Customer shall:
  - 4.1.1. promptly provide the Supplier with all necessary co-operation and access to such information, documentation and data as may reasonably be required by the Supplier in order to provide the Services;
  - 4.1.2. be responsible for necessary arrangement to enable its Authorised Users to access the Platform and use the Services;
  - 4.1.3. ensure that its Authorised Users shall comply with (i) the terms of this Agreement and (ii) any policies that the Supplier may implement from time to time (as published on the Platform or otherwise communicated to the Customer by the Supplier);
  - 4.1.4. be responsible for complying with all applicable laws and regulations (as updated and amended from time to time) and for obtaining and maintaining any necessary licences (including import licences), permits, notifications, authorisations, consents or certifications required in connection with this Agreement and its use of the Services. The Customer

shall be responsible for any customs duties, clearance charges, taxes and other amounts payable;

- 4.1.5. carry out all other Customer responsibilities and perform all its obligations set out in this Agreement in a timely and efficient manner. The Supplier shall not be liable for any delay in the delivery of the Services which is caused by the Customer's failure to comply with its obligations under this Agreement;
- 4.1.6. appoint the Customer Representative to serve as primary contact for the Supplier and inform the Supplier of a change to the Customer Representative;
- 4.1.7. not make any representation, warranty, guarantee or other commitment or statement relating to the Services, the Platform and the Results other than those expressly set out in this Agreement or as agreed in writing between the parties from time to time; and
- 4.1.8. If the Customer becomes aware that an Authorised User's use of the Platform or the Services breaches the terms of this Agreement or the Supplier's policies, the Customer shall:
  - 4.1.8.1. notify Supplier in writing as soon as it becomes aware of Authorised User's breach;
  - 4.1.8.2. remove any offensive or infringing User Content; and
  - 4.1.8.3. suspend the relevant Authorised User's access to the Platform and the Services,

for so long as the relevant breach remains unremedied without prior notice to the relevant Authorised User.

- 4.2. The Customer warrants and undertakes that it shall, and procure that each Authorised User shall:
  - 4.2.1. keep the Customer's log in details secure, confidential and for the purpose of accessing the Platform and using the Services in accordance with the terms of this Agreement only;
  - 4.2.2. not use the Platform or the Services:
    - 4.2.2.1. for any purpose that is unlawful under any applicable law or prohibited by this Agreement;
    - 4.2.2.2. to commit any act of fraud;
    - 4.2.2.3. to distribute any virus, trojan, malwares or any similar malicious codes;
    - 4.2.2.4. for purposes of promoting unsolicited advertising or sending spam;
    - 4.2.2.5. to simulate communications from the Supplier or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');
    - 4.2.2.6. in any manner that disrupts the operations, business, equipment, websites or systems of the Supplier or any other person or entity (including any denial of service and similar attacks);
    - 4.2.2.7. in any manner that harms or may endanger minors or any other person;

- 4.2.2.8. in connection with any service, use or purpose where the failure of the Services (or any part) may endanger the health or life of any person or cause damage or loss to any tangible property or the environment;
  - 4.2.2.9. to promote any unlawful activity;
  - 4.2.2.10. to represent or suggest that the Supplier endorses any other business, product or service unless the Supplier has separately agreed to do so in writing;
  - 4.2.2.11. to gain unauthorised access to or use of any computers, data, systems, accounts or networks of any person;
  - 4.2.2.12. in any manner which may impair any other person's use of the Platform, the Services or use of any other services provided by the Supplier to any other person;
  - 4.2.2.13. to attempt to circumvent any security controls or mechanisms;
  - 4.2.2.14. to attempt to circumvent any password or user authentication methods of any person;
  - 4.2.2.15. in any manner inconsistent with this Agreement or other policies provided by the Supplier from time to time;
  - 4.2.2.16. in any manner which does not comply with the provisions relating to Intellectual Property Rights contained in our Agreement.
- 4.2.3. ensure that any Customer Materials and User Content shall at all times be:
- 4.2.3.1. submitted lawfully and without infringement of any Intellectual Property Rights of any person;
  - 4.2.3.2. free of virus, trojan, malwares or any similar malicious codes;
  - 4.2.3.3. factually accurate;
  - 4.2.3.4. provided with the necessary consent of any third party;
  - 4.2.3.5. not defamatory or likely to give rise to an allegation of defamation;
  - 4.2.3.6. not obscene, seditious, vulgar, pornographic, sexually explicit, discriminatory or deceptive;
  - 4.2.3.7. not abusive, threatening, offensive, harassing or invasive of privacy;
  - 4.2.3.8. not racist, sexist or xenophobic;
  - 4.2.3.9. not liable to offend religious sentiments or deeply held beliefs; and
  - 4.2.3.10. unlikely to cause offence, embarrassment or annoyance to any person.
- 4.3. The Supplier shall not be held liable for any breach of this Agreement to the extent that such breach is caused by the Customer's breach of this Clause 4.

## **5. Charging and invoicing**

- 5.1. The Customer shall pay the Charges to the Supplier in accordance with the Order Form and this Clause 5, without entitlement to set-off, counterclaim, abatement or other similar deduction to withhold payment of any amount due to the Supplier. The Customer agrees that the payment for the Charges is non-refundable.
- 5.2. Subject to a bona fide dispute, the Customer shall make payment to the Supplier of each invoice within [six weeks] of the date of the invoice.
- 5.3. All fees, charges and other payments to be made by the Customer are exclusive of VAT and all other relevant taxes, for which the Customer shall be responsible. Unless stated otherwise in an Order Form, all Charges shall be paid in pound sterling (£/GBP).
- 5.4. If any sum is not paid on or before the due date under this Agreement, without prejudice to any other remedies that the Supplier may have under this Agreement, the Customer shall pay the Supplier interest on the outstanding amount until payment is received in full and cleared funds at a rate equal to 5% above the Bank of England base rate from time to time in force, until the date actual payment is received. Such interest shall be compounded monthly.
- 5.5. The Supplier shall be entitled to increase the Charges for the Platform Subscription and Optional Services at any time by giving notice to the Customer not less than [six weeks] prior to the end date of the Initial Term or of any Renewal Period thereafter.. The Customer may terminate this Agreement at any time by giving 4 weeks' notice.
- 5.6. If the Customer wishes to dispute an invoice, the basis of that dispute together with any supporting evidence must be sent to the Supplier in writing within ten (10) Working Days of the date of invoice. The parties shall work together in good faith to resolve such dispute. In the event that the parties are unable to resolve the dispute within ten (10) Working Days then the provisions of Clause 16 shall apply.

## **6. Intellectual property rights**

- 6.1. Each Party owns all Intellectual Property Rights owned or controlled by it or licensed to it prior to or outside this Agreement but required for the purposes of this Agreement.
- 6.2. All Intellectual Property Rights in the Software, Platform, the Services, Supplier Materials, Aggregated Data and all other Intellectual Property Rights arising out of the performance of the Supplier's obligations under this Agreement ("**Supplier IPRs**") are, and shall remain, the property of the Supplier or its licensors. The Customer acquires no rights in or to such Supplier IPRs other than those rights expressly granted by this Agreement. To the extent that the Customer or any Authorised User generates any derivative works from Supplier IPRs or otherwise acquires any Intellectual Property Rights in the Software, Platform, Aggregated Data or any other part of the Services, the Customer shall assign, or procure the assignment of, such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier or such third party as the Supplier may elect. The Customer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this Clause 6.1.
- 6.3. The Customer shall promptly report to the Supplier any infringement of the Supplier IPRs that comes to its attention. Without prejudice to the generality of the foregoing, the Customer shall

ensure that each Authorised User, prior to use of the Platform, the Services and the Supplier Materials, is made aware that Platform, the Services and the Supplier Materials are proprietary to the Supplier.

- 6.4. Save where expressly agreed in writing by the parties, the Customer acknowledges and accepts that nothing in this Agreement shall prevent or restrict the Supplier from exploiting or licensing any of the Supplier IPRs to any third party.
- 6.5. The Supplier may use any feedback and suggestions provided by the Customer or any Authorised User for improvement relating to its services, including the Services, without charge or limitation (“**Feedback**”). The Customer hereby assigns (or shall procure the assignment) of all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment or future Intellectual Property Rights) to the Supplier at the time such Feedback is first provided to the Supplier.
- 6.6. The Customer agrees that the Supplier has the right to create Aggregated Data pursuant to its provision of Services to the Customer..
- 6.7. The Customer hereby waives (and shall ensure all relevant third parties, including Authorised Users, have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to the Supplier under this Agreement.

## **7. Licence to use Customer Marks and Customer Materials**

- 7.1. The Customer hereby grants the Supplier with a non-exclusive, worldwide, royalty free, perpetual and sub-licensable licence to use:
  - 7.1.1. the Results, to the extent necessary to provide the Services or perform its obligations under this Agreement;
  - 7.1.2. Customer Materials and Customer Marks to the extent necessary to provide the Services or perform its obligations under this Agreement; and
  - 7.1.3. Customer Marks and Customer’s name, the fact that the Supplier works with the Customer and what Services they provide to the Customer in its marketing and promotional material (whether digital or paper format). Any additional information including case studies or press releases must have the Customer's prior written consent,.

## **8. Data protection**

- 8.1. The parties agree that the Customer is a Controller and the Supplier is a Processor for the purposes of processing Protected Data pursuant to this Agreement.
- 8.2. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall:
  - 8.2.1. ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws;
  - 8.2.2. warrant that all Protected Data provided by the Customer to the Supplier pursuant to this Agreement shall comply in all respects with applicable Data Protection Laws; and

- 8.2.3. to the extent applicable under Data Protection Laws, obtain and maintain all appropriate registrations and consents (as applicable) required in order to allow the Customer to process the Protected Data.

Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

- 8.3. The Supplier shall process Protected Data in compliance with the obligations placed on it under applicable Data Protection Laws.

- 8.4. The Supplier shall:

- 8.4.1. only process Protected Data in accordance with this Agreement, except to the extent:

- 8.4.1.1. that alternative processing instructions are agreed between the Parties in writing; or

- 8.4.1.2. otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interests);

- 8.4.2. without prejudice to Clause 14.4.6, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the Parties have agreed appropriate amended instructions which are not infringing;

- 8.4.3. taking into account the state of technical development and the nature of processing, implement and maintain appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access;

- 8.4.4. take reasonable steps to ensure the reliability of its Representatives who have access to Protected Data and ensure that such Protected Data shall only be accessible by its Representatives to the extent they need to know or require access to properly perform their duties in relation to this Agreement;

- 8.4.5. remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-processor as if they were its own;

- 8.4.6. ensure that all persons authorised by the Supplier or any Sub-processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential;

- 8.4.7. at the Customer's cost and taking into account the nature of the processing and information available to the Supplier, provide the Customer with such cooperation and assistance as the Customer reasonably requires in ensuring compliance with:

- 8.4.7.1. the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection laws); and

- 8.4.7.2. insofar as such cooperation and assistance is possible, the Customer's obligations to respond to requests for exercising the Data Subjects' rights

under Chapter III of the GDPR and any similar obligations under applicable Data Protection laws) in respect of any Protected Data;

- 8.4.8. make available to the Customer such information that it is in its possession or control as is necessary to demonstrate the Supplier's compliance with this Clause 8, and at the Customer's cost, allow for and contribute to audits of the Supplier's processing of Protected Data;
  - 8.4.9. notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data; and
  - 8.4.10. at the Customer's cost and option, either delete or return to the Customer all Protected Data at the end of the provision of the Services, unless applicable law requires the Supplier to retain such Protected Data.
- 8.5. The Customer hereby authorises:
- 8.5.1. the appointment of the Sub-processors listed in Schedule 1. The Supplier shall give the Customer at least thirty (30) days' prior written notice of any change to its Sub-processors. If the Customer objects to any new Sub-processors, the Customer shall have the right to terminate this Agreement by giving the Supplier ninety (90) days' prior written notice from the date of the Supplier's notice; and
  - 8.5.2. the Supplier to transfer Protected Data to countries outside the United Kingdom or the European Economic Area, provided that such transfer:
    - 8.5.2.1. is pursuant to a written contract, including equivalent obligation on the receipt in respect such Personal Data;
    - 8.5.2.2. is effected by way of Appropriate Safeguards; and
    - 8.5.2.3. otherwise complies with Data Protection Laws and the terms of this Agreement.
- 8.6. The Customer shall indemnify the Supplier in respect of any costs, losses, expenses, damages or claims arising out of or in connection with the Customer's breach of clause 8.2.1.

## 9. Confidentiality

- 9.1. Each party shall keep the other party's Confidential Information confidential for the duration of this Agreement and, subject to Clause 9.3 below, for a period of twenty four (24) months following its expiry or termination, and shall not:
  - 9.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement ("**Permitted Purpose**"); or
  - 9.1.2. disclose such Confidential Information (in whole or in part) to any third party, except to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that (to the extent it is legally permitted to do so), it gives the other party as much notice, along with details of the Confidential Information which is the subject, of such disclosure as possible.

- 9.2. A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 9.2.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 9.2.2. at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause.
- 9.3. On termination (or expiry) of this Agreement, each party shall be entitled to retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by applicable laws or applicable governmental or regulatory authority.
- 9.4. Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

## **10. Warranties**

- 10.1. Subject to the remainder of this Clause 10, the Supplier warrants and represents to the Customer that it owns or has obtained all necessary rights or licences (as applicable) in and to Software, the Platform and Supplier Materials as necessary to grant the Customer access to the Platform to receive the Services as set out in this Agreement.
- 10.2. The warranties under Clause 10.1 shall not apply to the extent that any error in the Services arises as a result of:
- 10.2.1. incorrect operation or use of the Platform or Optional Services by the Customer or any Authorised User;
  - 10.2.2. use of any of the Services other than for the purposes for which it is intended;
  - 10.2.3. use of the Platform with other software or services or on equipment with which it is incompatible;
  - 10.2.4. in respect of the Platform, any act by any third party (including hacking or the introduction of any virus or malicious code);
  - 10.2.5. any modification of Platform or Optional Services (other than that undertaken by the Supplier or at its direction); or
  - 10.2.6. any breach of our Agreement by the Customer (or by any of its Representatives).
- 10.3. The sole remedies for breach of the warranties in Clause 10.1 are set out in Clause 12.
- 10.4. The Customer warrants and represents to the Supplier that:
- 10.4.1. it owns or has obtained all necessary rights or licenses (as applicable) in and to the Customer Materials and Customer Marks necessary to perform its obligations and grant the licences set out in this Agreement and the Supplier's use of the Customer Materials and Customer Marks in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party;
  - 10.4.2. it is not, and during the Term it will not be, receiving the Services as a (non-business) consumer; and

- 10.4.3. it will use the Services, Supplier Materials and Results only in accordance with this Agreement.
- 10.5. Each party warrants that it has full capacity and authority to enter into this Agreement and that those signing this Agreement are duly authorised to bind the party for whom they sign.

## **11. Use of the Platform**

- 11.1. The Platform may be subject to delays, interruptions, errors or other problems resulting from use of the Public Networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that the Supplier shall have no liability for any such delays, interruptions, errors or other problems.
- 11.2. The Supplier provides the Platform on an “as-is” basis. Save for the express warranties set out in this Clause 10.1 and 10.4 all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care. Without limitation, the Supplier specifically denies any implied or express representation that the Services may be used or provided:
- 11.2.1. in conjunction with any hardware items, software (including operating systems), any third party services; or
- 11.2.2. uninterrupted or error-free.

## **12. Anti-Bribery and other policies**

- 12.1. Both parties shall:
- 12.1.1. comply with all applicable laws, statutes relating to anti-bribery and anti-corruption, including the Bribery Act 2010; and
- 12.1.2. not engage in any activity, practice or conduct that would breach applicable law or constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 12.2. The Supplier shall comply with the Customer’s anti bribery, modern slavery and prevention of evasion of tax policy which are displayed on the Customer’s website.

## **13. Indemnities**

- 13.1. The Customer shall indemnify and keep indemnified the Supplier against all Losses suffered or incurred by the Supplier arising out of or in connection with:
- 13.1.1. any claim made against the Supplier alleging infringement of a third party’s Intellectual Property Rights arising out of the Supplier’s use of Customer Materials or Customer Marks save to the extent that such is a result of the Supplier’s use of the Customer Materials not in accordance with this Agreement;
- 13.1.2. the Customer’s (or its Authorised Users’) use of the Services not in accordance with this Agreement;

- 13.1.3. non-compliance by the Customer with the Data Protection Laws or its obligations under Clause 8; and
- 13.1.4. processing of Protected Data carried out by the Supplier or any Sub-processor pursuant to any unlawful processing instruction that infringes any Data Protection Laws.

#### **14. Limitation of liability**

- 14.1. This Clause 14 sets out the entire liability of the Supplier (including any liability for the acts or omissions of its Representatives and including any settlements) to the Customer and its Authorised Users in respect of any breach of this Agreement, any representation, statement or tortious act or omissions (including negligence) arising under or in connection with this Agreement or any other liability to the Customer and its Authorised Users whatsoever.
- 14.2. Nothing in this Agreement limits or excludes the liability of either party for:
  - 14.2.1. death or personal injury resulting from negligence;
  - 14.2.2. any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; or
  - 14.2.3. any other liability which is incapable of being excluded or limited by law.
- 14.3. Subject to Clause 14.2, the Supplier's total aggregate liability of all other Losses whether arising from contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (including all non-contractual liability) shall in no event exceed the amount of Charges paid by the Customer to the Supplier in the 12-month period immediately preceding the first incident giving rise to any claim under this Agreement.
- 14.4. Subject to Clause 14.2 except where expressly stated in this Agreement the Supplier shall not have any liability to the Customer whether arising from contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement (including all non-contractual liability) for any:
  - 14.4.1. loss of profits;
  - 14.4.2. loss of or anticipated savings;
  - 14.4.3. loss of revenue;
  - 14.4.4. loss or damage to reputation or goodwill;
  - 14.4.5. loss of opportunity;
  - 14.4.6. any Losses arising from or in connection with any processing by the Supplier or Sub-processor pursuant to any unlawful processing instruction given by the Customer that infringes Data Protection Laws;and in each case whether direct, indirect, special or consequential loss or damage; or
  - 14.4.7. for any other indirect, special or consequential loss or damage.

## **15. Commencement and duration**

15.1. This Agreement shall commence on the Commencement Date and continue for the Term, unless terminated earlier in accordance with Clauses 5.5, 8.5.1, 16 or 23.2.

## **16. Termination and suspension**

16.1. Without prejudice to any rights or remedies that have accrued under this Agreement, either party may at any time terminate this Agreement (or any part thereof) with immediate effect by giving written notice to the other party if:

- 16.1.1. the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Working Days after being notified in writing to do so;
- 16.1.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 16.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 16.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

16.2. Without prejudice to any rights or remedies that have accrued under this Agreement, the Supplier may at any time terminate this Agreement or suspend the Customer's access to the Services, in whole or in part:

- 16.2.1. with immediate effect by giving written notice to the Customer if:
  - 16.2.1.1. the Customer is in breach of any applicable law;
  - 16.2.1.2. the Customer is in breach of its warranties under Clause 10.4;
  - 16.2.1.3. any undisputed amount due under this Agreement is outstanding for thirty (30) Working Days following the applicable due date to make such payment;
  - 16.2.1.4. in the Supplier's reasonable opinion, the security or integrity of the Platform has been, or may be, compromised or is otherwise at risk;
  - 16.2.1.5. in the Supplier's reasonable opinion, there has been any misuse of the Platform or the Services or there has been a breach of this Agreement by the Customer or its Authorised Users, including breaches of Clause 4.2; or
  - 16.2.1.6. as required by a regulatory authority.

16.3. Termination of this Agreement or suspension of the Customer's access to the Services, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination or suspension.

- 16.4. The Charges shall remain payable during any period of suspension notwithstanding that the Customer or its Authorised Users may not have access to the Services. In relation to suspension under Clause 16.2.1.3, access to the Services will be restored promptly after the Supplier receives the relevant payment in full and cleared funds.
- 16.5. On termination of this Agreement for any reason, the Customer's access to the Platform shall be terminated and the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied or work completed, but for which no invoice has been submitted, and the Customer shall pay these invoices in accordance with Clause 5.2.
- 16.6. Clauses 6 (*Intellectual Property Rights*), 7 (*Licence to use Customer Marks and Customer Materials*), 8 (*Data protection*), 9 (*Confidentiality*), 13 (*Indemnities*), 14 (*Limitation of liability*), 19 (*Entire agreement*), 21 (*Severance*), 22 (*Third party rights*), 24 (*Notices*) and 25 (*Governing law and jurisdiction*) shall survive expiry or termination of this Agreement.

## **17. Assignment and novation**

- 17.1. The Customer shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier.
- 17.2. The Supplier may assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement provided it gives written notice of such to the Customer as soon as reasonably practicable after such has occurred.

## **18. Waiver**

- 18.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

## **19. Entire agreement**

- 19.1. This Agreement constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 19.2. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.

## **20. Variation**

- 20.1. Subject to the Supplier's right to vary this Agreement in accordance with Clauses 3.6 and 5.5, no other variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **21. Severance**

- 21.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent

required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

## **22. Third-party rights**

22.1. No person other than a party to this Agreement shall have any rights (including any rights under the Contracts (Rights of Third Parties) Act 1999) to enforce any term of this Agreement.

## **23. Force majeure**

23.1. Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event.

23.2. If a Force Majeure Event prevents or delays the Supplier or the Customer in their respective performance of a material part of their obligations under this Agreement for a period exceeding thirty (30) days (or such other period as may be agreed between the parties), either party may terminate this Agreement immediately on written notice to the other. Where this is the case, the Customer shall not be obliged to pay any Charges to the extent the Supplier was unable to perform Services after the date the Force Majeure Event first occurred.

## **24. Notices**

24.1. Any notice required to be given pursuant to this Agreement shall be in writing and served on the Representative in accordance with the details provided in an Order Form, or any other address as either party notifies to the other in writing from time to time.

24.2. A notice shall be deemed to have been received:

24.2.1. if delivered personally, at the time of delivery; or

24.2.2. in the case of pre-paid first class post, three (3) Working Days (or five (5) Working Days if to an address outside the country of posting) from the date of posting; or

24.2.3. in the case of email (including in the case of any invoice sent by email by the Supplier), at the time the email entered the intended recipient's information systems

24.2.3.1. on the same Working Day if the email is sent between 09:00 – 17:00 on a Working Day; or

24.2.3.2. on the next Working Day if the email is sent outside the hours specified in Clause 24.2.3.1,

provided that no error message indicating failure to deliver has been received by the sender.

## **25. Governing law and jurisdiction**

25.1. This Agreement shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

## **Schedule 1 Data processing details**

1. **Subject-matter of processing:**  
To gather the answers to the Customer's surveys which are created by the Customer and published on the Platform.
2. **Duration of the processing:**  
The Term of this Agreement.
3. **Nature and purpose of the processing:**  
The processing is provided as part of the Services that the Supplier provides to the Customer under this Agreement.
4. **Type of Personal Data:**  
Names, email addresses, postal addresses, phone numbers
5. **Categories of Data Subjects:**  
Members of public who provide answers to the Customer's surveys which are created by the Customer and published on the Platform.