

REMAKE PLATFORM TERMS AND CONDITIONS

These Terms and Conditions and are entered between the Company and Customer and are incorporated into and govern the Order Form.

1. DEFINITIONS AND INTERPRETATION

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

Acceptable Usage Policy	means the Company's acceptance usage policy as updated from time to time in relation to use of the Platform by Customer and its End Users as available at https://remake.video/acceptableusagepolicy/ ;
Affiliate	means in respect of a party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party from time to time (subsidiary and holding company having the meaning given in section 1159 of the Companies Act 2006);
Agreement	means these Terms and Conditions and the Order Form;
Applicable Law	means any (a) legislation (including statute, statutory instrument, treaty, regulation, order, rules, directive, by-law, decree), common law and regulatory requirements; and (b) mandatory directions, codes, guidelines and requirements of any regulator having legal effect;
ARD	means the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50 EEC and consolidated in Council Directive 2001/23/EEC);
Asset	means the visual media uploaded to the Platform for use on the Platform;
Business Day	means any day which is not a Saturday, Sunday or public holiday in England;
Business Hour	means any hour within Normal Business Hours;
Company	means ReMake Technology Limited, and company incorporated and registered in England and Wales with number 12836471 whose registered office is at Acre House, 11/15 William Road, London, United Kingdom, NW1 3ER;
Company Personnel	means any and all persons and/or entities engaged by the Company in connection with the provision of the Platform Materials and/or the performance of the Services, including employees, subcontractors and/or agents of the Company or any of its subcontractors;
Company Representative	means the Company's representative as identified in the 'Parties' Representatives' section of the Order Form;
Confidential Information	means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which

REMAKE

	ought reasonably be considered to be confidential, including but not limited to the Platform Documentation;
Contract Year	means the 12-month period starting on the Start Date, and each subsequent 12 month period during the Term;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change in Control shall be construed accordingly;
Customer	means the entity identified as the 'Customer' in the Order Form;
Customer Materials	means: (i) all data, information, Assets and other materials which are uploaded to the Platform by Customer pursuant to the Agreement; and (ii) all Third Party Materials (if applicable);
Customer Representative	means Customer's representative as identified in the Customer Representative section of the Order Form;
End User	means any individual users that are authorised by or on behalf of Customer (including those users authorised by the Company at Customer's request) to use the Platform through the use of a unique username and password as required by the Platform Documentation. Users may include Customer's employees, representatives and third-party suppliers and agencies.
Fees	means: (i) the fees payable by Customer to the Company under this Agreement as set out in the Order Form; and (ii) any additional fees otherwise payable by Customer pursuant to clauses 4.6(b), Error! Reference source not found. , 5.3 and/or 6.6(b);
Final ReMake	means any amended version of the Asset as modified using the Platform and any Library Materials, and subsequently exported from the Platform in any manner;
Force Majeure Event	means an event beyond the reasonable control of the relevant party, including flood, fire, explosion, the elements, epidemic, disease, war, civil commotion, terrorist activity, shortage of raw materials, power or fuel, breakdown of plant or machinery, computer, software and hardware failure, or any failure in a communications network;
Infringing Material	has the meaning given in clause 12.4;
Initial Term	means the period from the Start Date set out in the 'Initial Term' section of the Order Form;
Intellectual Property Rights	patents, trade marks, service marks, trade names, design rights, copyright, database rights, rights in know-how and other intellectual property rights or equivalent forms of protection of whatever nature arising anywhere in the world, whether registered or unregistered and including applications for the grant of any such rights;
Library Materials	means materials owned or licensed by the Company and made available to Customer by the Company as standard features of the Platform for incorporation into the Assets

REMAKE

including but not limited to fonts, colours, plugins and logos, and listed as such in the Platform Documentation;

Normal Business Hours	means 9.00 am to 5.00 pm local United Kingdom time on a Business Day;
Onboarding Services	means, in respect of an Order Form, the initial configuration and implementation services relating to an Order Form that are required in order to make the Platform Materials available to Customer, as such services are defined in the 'Onboarding Services' section of the Order Form;
Operational Services	has the meaning given for each Subscription Type paragraph 3 (Operating Modes) of Schedule 1;
Order Form	means the document headed 'REMAKE ORDER FORM' executed by the parties;
Personal Data	has the meaning given in clause 10.1(e);
Platform	means the Company's proprietary hosted video editing software platform, ReMake, as the same is further described in Schedule 1 (Platform Description);
Platform Documentation	means the operating manuals, user instruction manuals, technical literature, Acceptable Usage Policy, and other related supporting materials relating to the Platform, (each as updated by the Company from time to time) available at https://www.remake.video/platformdocumentation ;
Platform Credentials	has the meaning given in clause 4.3(a);
Platform Materials	means collectively the Platform and the Platform Documentation;
Renewal Term	means a period of twelve calendar months unless otherwise specified in the Order Form;
Services	means collectively, the Operational Services, the Onboarding Services and the Support Services;
Special Terms	means (if applicable) any terms set out in the Order Form expressly described as 'Special Terms';
Start Date	means the date set out as the 'Start Date' on the Order Form;
Subscription Type	means the Platform subscription type chosen by Customer and indicated in the Order Form;
Support Services	has the meaning given in Schedule 2 (Support Services);
Term	means the Initial Term together with any Renewal Terms;
Terms and Conditions	means these terms and conditions, including the schedules and appendices attached to these terms and conditions;

REMAKE

- Third Party Materials** means any materials owned by a third party (including but not limited to fonts, colours, plugins and logos) which are not part of the Library Materials and which are incorporated into an Asset:
- (A) prior to such Asset being uploaded to the Platform;
 - (B) in the course of Customer's use of the Platform; or
 - (C) by the Company in accordance with Customer's written instructions;
- TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time;
- Unauthorised Use Claim** has the meaning given in clause 12.5;
- Upload Limitations** means the limitations in regard to duration, size and type of Assets laid out in the Platform Documentation; and
- Virus** means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.
- 1.8 The words "include" or "including" shall be construed without limitation to the words following.
- 1.9 A reference to a "party" means Customer or the Company (as applicable) and "parties" means both of them.

REMAKE

- 1.10 References to clauses and schedules are to the clauses and schedules of the Agreement; references to paragraphs are to paragraphs of the relevant schedule to the Agreement.
- 1.11 The schedules form part of this Agreement and shall have effect as if set out in full in the body of these Terms and Conditions and any reference to the Agreement shall include the schedules.
- 1.12 In the event and only to the extent of any conflict between the clauses of these Terms and Conditions, the schedules of these Terms and Conditions and the terms of the Order Form, the following order of precedence shall apply: firstly, (where applicable) any Special Terms section in the Order Form; secondly, the clauses of these Terms and Conditions; thirdly, the schedules of these Terms and Conditions; and fourthly, the terms of the Order Form other than any Special Terms section (if applicable).

2. COMMENCEMENT AND TERM

- 2.1 The Agreement shall commence on the Start Date and shall continue for the Initial Term.
- 2.2 At the end of the Initial Term, the Agreement shall automatically continue for successive Renewal Terms subject to earlier termination in accordance with the terms of the Agreement.
- 2.3 Either party may terminate the Agreement at the end of the then-current Initial Term or Renewal Term by giving at least thirty (30) days' prior written notice to the other party.

3. LICENCES AND IPR OWNERSHIP

- 3.1 All Intellectual Property Rights in the Platform Materials and Library Materials shall belong to and remain the property of the Company or its licensors (as applicable). All Intellectual Property Rights in any modifications to the Platform Materials or Library Materials, whether made by or on behalf of the Company independently of the Agreement, pursuant to its terms or otherwise in the course of the Agreement, shall belong to and remain the property of the Company or its licensors (as applicable).
- 3.2 As between the Company and Customer, all Intellectual Property Rights in the Customer Materials shall be owned by Customer or Customer's licensors (as applicable).
- 3.3 Subject to payment by Customer of the Fees and the terms of the Agreement, the Company hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable and revocable licence during the Term for Customer and its End Users to use the Platform Materials solely as follows:
 - (a) to remotely access and use the Platform in accordance with the Platform Documentation for the internal business purposes of Customer subject to any additional restrictions or limitations contained in the Order Form;
 - (b) to make and use only such number of copies of the Platform Documentation as is reasonably necessary for Customer's use of the Platform in accordance with the Agreement (provided that such copies and the media on which they are stored shall be the property of the Company and Customer shall ensure that all such copies bear the Company's proprietary notices).
- 3.4 Subject to payment by Customer of the Fees and the terms of the Agreement, the Company hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, perpetual

REMAKE

licence for Customer and its End Users to use the Library Materials as incorporated into any Final ReMake solely to the extent necessary to display the Final ReMake to third parties.

- 3.5 the Company and its licensors reserve any and all rights (including Intellectual Property Rights) in and to the Platform Materials and Library Materials other than the limited licence rights expressly granted in the Agreement. For the avoidance of doubt and without limitation, the licences granted under clause 3.3 or 3.4 do not permit Customer to:
- (a) grant any sub-licence to the Platform Materials or Library Materials to any person; or
 - (b) use itself or grant any sub-licence to the object code or source code of the Platform, which shall remain hosted by or on behalf of the Company at all times.
- 3.6 Customer shall ensure that all End Users are aware of Customer's obligations under this Agreement and comply with the applicable terms of the Agreement (including the Acceptable Usage Policy) at all times when using the Platform Materials.
- 3.7 Customer shall be responsible for all acts and omissions of End Users during their usage of the Platform Materials and any such act or omission that would breach the terms of the Agreement had the same been undertaken by Customer shall be deemed to be a breach by Customer of the relevant provision(s) of the Agreement.
- 3.8 Except to the extent such activities are either expressly agreed by the parties or otherwise prohibited from being restricted by Applicable Law, Customer shall not, and shall procure that no party to which Customer grants access to the Platform Materials shall:
- (a) copy, reproduce, publish, distribute, redistribute, broadcast, transmit, modify, adapt, edit, abstract, create derivative works of, store, archive, publicly display, sell or in any way commercially exploit any part of the Platform Materials;
 - (b) copy, frame or mirror any part of the Platform;
 - (c) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms in the Platform or the software (or any part of it) that is used to provide the Platform;
 - (d) observe, study or test the functioning of the underlying software (or any part of it) that is used to provide the Platform;
 - (e) access the Platform to copy its features, functions or graphics to develop a competing platform or software;
 - (f) use, or authorise or permit any other person to use, the Platform Materials in any manner which infringes any law or regulation or which infringes the rights of any third party under the laws of any jurisdiction;
 - (g) post, link to or transmit, or allow posting, linking or transmission by any third party through the Platform, any material, which is unlawful, threatening, libellous or otherwise tortious, abusive, malicious, defamatory, obscene, pornographic, or that contains a Virus or other hostile computer program, or which constitutes, or encourages the commission of, a criminal offence, or which infringes any right of any person which may subsist;

REMAKE

- (h) use the Platform or allow the transfer, transmission, export, or re-export, of the Platform or portion thereof, in violation of any applicable export control laws or regulations;
- (i) use the Platform Materials for any purpose which is reasonably likely to bring the business of the Company into disrepute;
- (j) interfere or attempt to interfere with the integrity of the Platform Materials; or
- (k) attempt to gain access to third-party data contained on the Platform.

3.9 In respect of the Platform, Customer grants or shall procure the granting to the Company and the Company's Affiliates during the Term a limited, world-wide, non-exclusive, non-transferable, non-sublicensable (save to the Company's subcontractors) licence to use the Customer Materials (including any trade marks or other Intellectual Property Rights subsisting therein), solely to the extent necessary for the Company and the Company's Affiliates to provide the Platform for use by Customer and its End Users and such related uses reasonably required by the Company to discharge its obligations under the Agreement.

4. PROVISION OF THE PLATFORM

4.1 Customer acknowledges and agrees that:

- (a) the Platform is provided by the Company on a remotely hosted basis, with all access to the Platform by Customer and its End Users via the internet, as further described in the Platform Documentation;
- (b) the Platform may be hosted by the Company using a third party hoster or hosters that the Company may from time to time engage;
- (c) the Platform is a multi-tenanted Platform that serves multiple customers, including but not limited to the Company's other customers and the customers of the Company's partners; and
- (d) while the primary hosting location of the Platform may refer to a specific geographic region in an Order Form, some aspects of the Platform may nonetheless be hosted inside and/or outside of the European Economic Area.

4.2 the Company agrees that the Platform will:

- (a) materially comply with the description of the Platform set out in Schedule 1; and
- (b) materially comply with the Platform Documentation, as the same may be updated by the Company from time to time.

4.3 the Company shall make available to Customer:

- (a) login details, password or other form of access credentials required by Customer's End Users to access the Platform ("**Platform Credentials**"); and
- (b) login details, password or other form of access credentials required by Customer to access the Platform and provide the first-line technical support to Customer's End Users as further described in Schedule 2 (Support Services).

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- 4.4 the Company will use all reasonable endeavours to ensure the Platform is available during the Term in accordance with paragraph **Error! Reference source not found.** of Schedule 2 (Support Services), but the Company does not warrant or represent that access to the Platform will be uninterrupted or error free.
- 4.5 Customer shall:
- (a) ensure that the number of End Users using the Platform does not exceed the permitted number as may be set out in the Order Form;
 - (b) keep confidential and, except as provided for in this Agreement, not share with any third party any Platform Credentials;
 - (c) not allow End Users to use the Support Services as a means of obtaining services from the Company which are not provided under the Subscription Type selected by Customer;
 - (d) not allow Platform Credentials to be shared between multiple End Users, and take steps to monitor and prevent the same;
 - (e) maintain reasonable security measures to prevent unauthorised access to the Platform via the Platform Credentials and the IT systems of Customer and its End Users;
 - (f) keep a complete and accurate record of the End Users permitted to use the Platform and produce such record to the Company on request from time to time; and
 - (g) notify the Company as soon as it becomes aware of any unauthorised access or use of the Platform by any person.
- 4.6 the Company reserves the right to monitor usage by all End Users during the term of the Agreement for the purpose of (among others) ensuring compliance with the terms of the Agreement. If any such monitoring reveals that any Platform Credentials have been provided to an individual that is not an End User (including the sharing of Platform Credentials between multiple End Users where this is not permitted), the Company may in its discretion immediately:
- (a) disable access to such End Users; and/or
 - (b) invoice Customer additional Fees to cover the unauthorised use of the Platform, determined as an amount equal to the Fees which the Company would have levied (in accordance with the Fees section of the Order Form) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 7.9, from such date to the date of payment.
- 4.7 Without prejudice to the Company's rights pursuant to clause 13, the Company may immediately suspend Customer's or any End User's access to the Platform if the Company, acting reasonably, determines:
- (a) Customer and/or its End Users are in breach of the Acceptable Usage Policy;
 - (b) Platform Credentials have been provided to an individual who is not an End User (including the sharing of Platform Credentials between multiple End Users); or

REMAKE

- (c) Customer is in breach of the terms of the Agreement and such breach has had (or is reasonably likely to have) a serious adverse impact on:
 - (A) the performance of the Platform or the Company's IT systems;
 - (B) the security of the Platform or the Company's IT systems and the security of the Company's other customers and their data; and/or
 - (C) The Company's Intellectual Property Rights.

4.8 The Company shall notify Customer of any such suspension pursuant to clause 4.6, and the same shall continue until the factors giving rise to the suspension have been remedied to the Company's reasonable satisfaction. Such suspension shall not place the Company in breach of its obligations to provide the Platform in accordance with the Agreement and shall not relieve Customer from paying the Fees in accordance with the terms of the Agreement. the Company shall use reasonable endeavours to provide Customer with such information it is aware of to expedite the remedy the factors giving rise to the suspension.

4.9 The Company does not warrant or represent that the Platform will be compatible or interoperable with any software, hardware or service other than as expressly set out in the Platform Documentation or the Order Form.

4.10 The Company shall back up Customer Materials once each day during the Term. In the event of any loss of or corruption to Customer Materials, Customer may request the restoration of Customer Materials from the latest back-up of Customer Materials and the Company shall respond to such request in accordance with the procedures for the provision of Support Services described in Schedule 2.

4.11 Clause 4.10 sets out Customer's sole and exclusive remedy for any loss of or corruption of Customer Materials. the Company shall remain liable for any breach of its obligations in clause 4.10 subject to the provisions of clause 11.3.

5. ASSETS

5.1 Customer shall submit Assets to the Platform in accordance with the Upload Limitations and the Platform Documentation.

5.2 The Company shall notify Customer of any Asset which has not been submitted in accordance with the Upload Limitations and the Platform Documentation ("**Non-Compliant Asset**") and] shall not be obliged to convert the Non-Compliant Asset or make it available for editing on the Platform.

5.3 If Customer wishes to proceed to use the Non-Compliant Asset on the Platform and the Company (in its sole discretion) agrees to such use, Customer shall pay any additional Fees determined by the Company by reference to the additional expense of processing the Non-Compliant Asset.

6. PROVISION OF THE SERVICES

6.1 The Company shall provide the Onboarding Services as described in relevant Order Form.

6.2 During the Term the Company shall provide the Support Services in accordance with Schedule 2 from such date as is notified by the Company to Customer.

REMAKE

- 6.3 The Company shall provide all Services with reasonable care and skill.
- 6.4 Where the parties agree in writing that the Services are to be provided by the Company personnel at locations other than such personnel's usual place of work, Customer shall (unless otherwise agreed between the parties) reimburse the Company any reasonable travel expenses incurred by the Company in providing the Services in the relevant locations, provided that:
- (a) those expenses are approved in advance and in writing by Customer; and
 - (b) incurred in accordance with the Company's travel and expenses policy in effect from time to time.
- 6.5 Customer shall:
- (a) co-operate with the Company in all matters relating to the Services;
 - (b) appoint a manager for the Services, such person as identified in the Order Form; and
 - (c) provide to the Company in a timely manner all documents, information, items and materials in any form as may be reasonably required by the Company in connection with the Services and ensure that they are accurate and complete.
- 6.6 If the Company's performance of the Services is prevented or delayed by any act or omission of Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Company may at its option:
- (a) extend of time to perform its obligations equal to the delay caused by Customer; and/or
 - (b) charge additional Fees in accordance with the Company's then-current rate card (as notified by the Company to Customer from time to time) equal to the duration of the delay and/or for the additional Services that need to be performed as a result of such delay caused by Customer.

7. FEES

- 7.1 Customer shall pay the Fees to the Company in accordance with this clause 7.
- 7.2 Any and all expenses, costs and charges incurred by Customer in the performance of its obligations under the Agreement shall be paid by Customer unless the Company has expressly agreed beforehand in writing to pay such expenses, costs and charges.
- 7.3 Customer shall be solely responsible for all costs relating to the use of any Third Party Materials (where applicable) in connection with the Assets.
- 7.4 In respect of each Order Form, the Company will invoice Customer:
- (a) monthly in advance for all licence Fees relating to the Platform (which shall be inclusive of Fees for the Support Services);
 - (b) in advance for all Fees for the Onboarding Services;
 - (c) monthly in arrears for all additional Fees related to published Final ReMakes; and,

REMAKE

- (d) monthly in arrears for all other Fees due in accordance with this Agreement.
- 7.5 Customer shall pay the full amount invoiced to it by the Company within 30 days of the date of invoice.
- 7.6 All amounts due under the Agreement shall be paid by Customer to the Company in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). To the extent amounts are subject to withholding tax as required by law, Customer will reimburse the Company in full for any such withheld amounts. the Company shall provide Customer with reasonable assistance as it may require to recover the same.
- 7.7 The Fees are exclusive of VAT, which shall be payable by Customer in addition to the Fees.
- 7.8 Customer shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, resale or other distribution of the Platform Materials.
- 7.9 If Customer fails to make any payment due to the Company under the Agreement by the due date for payment, then, without limiting the Company's remedies under clause 13, Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.
- 7.10 The Fees are fixed for the Initial Term. the Company may revise the Fees on an annual basis with effect from each anniversary of the Initial Term, provided that the Provider gives Customer written notice of each such increase no later than 30 days prior to the expiry of the then-current Initial Term or Renewal Term.

8. WARRANTIES AND REPRESENTATIONS

- 8.1 Customer warrants to the Company that:
 - (a) it has the right, power and authority to grant to the Company the rights (if any) in the Customer Materials (including any applicable Third Party Materials) as required for the Company and the Company's Personnel to use the Customer Materials to comply with the Company's obligations under this Agreement; and
 - (b) it will comply with all laws and regulations applicable to Customer's use (and the use by its End Users) of the Platform.
- 8.2 Customer acknowledges and agrees that:
 - (a) the Platform has not been prepared to meet Customer's individual requirements and that it cannot be tested in every operating environment so as to produce software which is error free or operates without interruption; and
 - (b) it is Customer's responsibility to ensure the facilities and functions of the Platform meet Customer's requirements.
- 8.3 Each party warrants and represents to the other party that:

REMAKE

- (a) it has obtained and shall continue to maintain in effect all rights, licences, approvals, consents and authorisations to enter into, and comply with the terms of, the Agreement; and
- (b) without affecting its other obligations under the Agreement, it shall comply with all Applicable Law in the performance of its obligations under the Agreement.

8.4 All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by Applicable Law.

9. CONFIDENTIALITY

9.1 Each party may have access to Confidential Information of the other party under the Agreement. A party's Confidential Information shall not include information that:

- (a) is or becomes publicly known through no act or omission of the receiving party; or
- (b) was in the other party's lawful possession prior to the disclosure; or
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Agreement.

9.3 Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.

9.4 This clause 9 shall survive termination of the Agreement for any reason.

10. DATA PROTECTION

10.1 For the purposes of this clause 10 the following terms shall have the following meanings:

- (a) **"Data Protection Legislation"** means the Data Protection Act 2018 and, unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and thereafter any successor legislation to the GDPR or the Data Protection Act 2018;
- (b) **"Data Subject"**, **"personal data"**, **"Processor"**, **"Processing"**, and **"Controller"** have the meanings given to those terms under the relevant Data Protection Legislation;
- (c) **"DP Sub-processor"** has the meaning given in clause 10.6;
- (d) **"GDPR"** means the General Data Protection Regulation ((EU) 2016/679);

REMAKE

- (e) **“Personal Data”** means the personal data to be processed by the Company in connection with the Order Form; and
 - (f) **“Third Party Hosting Provider”** means the applicable third party provider of hosting services engaged by the Company to host the Platform, as identified in the Platform Documentation (as updated by the Company from time to time).
- 10.2 Each party shall in relation to the Processing of Personal Data, comply with its obligations under the Data Protection Legislation.
- 10.3 Each of the parties acknowledges and agrees that for the purposes of the Data Protection Legislation, Customer is the Controller and the Company is the Processor in relation to the Processing by the Company of any Personal Data.
- 10.4 The Company shall:
- (a) only Process the Personal Data: (i) in accordance with Customer’s written instructions (as set out in the Order Form); or (ii) if required to do so by Data Protection Legislation to which the Company is subject, subject to the Company informing Customer of such legal requirement in advance of the transfer;
 - (b) be permitted to transfer Personal Data to an international organisation or any country that is not within the United Kingdom or the European Economic Area provided that if such country is not recognised as providing an adequate level of protection for the purposes of the Data Protection Legislation then the Company shall first put in place appropriate safeguards as required by the Data Protection Legislation to ensure the lawfulness of such transfer;
 - (c) only disclose the Personal Data to its personnel who are bound by contractual or statutory confidentiality obligations in relation to the Personal Data;
 - (d) implement appropriate technical and organisational measures to ensure the security of the Personal Data;
 - (e) taking into account the nature of the Processing, the Company shall assist Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Customer’s obligation to respond to requests for exercising a Data Subject’s rights under Chapter III of the GDPR (or equivalent or implementing legislation);
 - (f) taking into account the nature of Processing and the information available to the Company, the Company will at Customer’s request assist Customer in complying with Customer’s obligations under Articles 32-36 of the GDPR (or equivalent or implementing legislation), in each case only to the extent that Customer’s request relates to the Processing of Personal Data by the Company pursuant to the Order Form;
 - (g) make available to Customer all information necessary to demonstrate compliance with the Company’s obligations laid down in clause 10, and shall allow for and contribute to audits in relation to the same, including inspections, conducted by Customer or another auditor mandated by Customer provided that any audit and/or inspection in respect of security measures in relation to the Third Party Hosting Provider and/or its physical data centres shall be limited to the Company requesting an audit report produced by the Third Party Hosting Provider’s independent third party auditors. Any onsite audit or inspection shall be conducted during Normal Business Hours on at least seven (7) days’ notice (unless such audit is for reasons of non-compliance with agreed security requirements) and Customer shall use its best endeavours to minimise disruption to the Company’s business. Prior to any audit or inspection, Customer’s

REMAKE

- auditors shall be required to sign a confidentiality agreement with the Company which contains confidentiality provisions equivalent to those set out in the Agreement;
- (h) notify Customer if the Company believes any of Customer's instructions relating to Processing Personal Data breaches any Data Protection Legislation; and
 - (i) when the Company ceases to provide services relating to the processing of Personal Data pursuant to the Agreement:
 - (A) at Customer's option (and provided that Customer notifies the Company of such option within 60 days of termination of the Agreement for any reason), delete or return to Customer all Personal Data in the Company's possession or control that relates to the Agreement and the Company shall comply with any such request within 30 days of the applicable request; and
 - (B) subject to clause (A) promptly and in any event within 90 days of the termination of the Agreement for any reason delete all copies of the Personal Data in the Company's possession or control that relates to the Agreement except insofar as the Company is required by Applicable Law to continue to store such copies..
- 10.5 The description of Processing activities under the Order Form shall be as set out in the Platform Documentation.
- 10.6 Customer hereby:
- (a) acknowledges and agrees that the Company may use those third party sub-processors engaged by the Company as listed in the Platform Documentation (and as updated in accordance with clause 10.7) and any additional third party sub-processors specified in the Order Form; and
 - (b) gives the Company general written authorisation to appoint and use additional sub-processors in connection with the Processing of Personal Data under the Order Form, (each a "**DP Sub-processor**").
- 10.7 Customer acknowledges and agrees that the Company may update the list of sub-processors engaged by the Company identified in the Platform Documentation from time to time provided that the Company will update such list to reflect the addition or replacement of any sub-processor at least thirty (30) days before such change takes effect thereby giving Customer the opportunity to object). the Company remains responsible and liable to Customer for the performance of its DP Sub-processors in relation to the Processing of Personal Data.
- 10.8 Customer acknowledges and agrees that the Third Party Hosting Provider (as the Company's sub-processor) may use those sub-processors identified in the Platform Documentation (as such list is updated from time to time provided that the Third Party Hosting Provider will update such list to reflect the addition or replacement of any sub-processor at least thirty (30) days before such change takes effect thereby giving Customer the opportunity to object).
- 10.9 The Company will enter into a written agreement with each of its DP Sub-processors which includes obligations that are materially equivalent to those obligations on the Company in this clause 10.
- 10.10 Customer warrants that:

REMAKE

- (a) it has provided (or will provide) all necessary notices to Data Subjects whose Personal Data comprises part of the Personal Data processed by or on behalf of the Company in connection with the Order Form; and
- (b) it has (or will have) one or more valid grounds for the Company's (and any of the Company's DP Sub-processors') Processing of the Personal Data in accordance with the Order Form, so that the Company's Processing of the Personal Data in accordance with the Order Form will comply with the Data Protection Legislation.

10.11 Except where explicitly dealt with to the contrary in the Order Form, Customer shall reimburse the Company's reasonable costs (calculated using the Company's then current rate card) and expenses in relation to its compliance with clauses 10.4(e), 10.4(f), 10.4(g) and 10.4(i).

11. LIMITATION OF LIABILITY

11.1 Nothing in the Agreement excludes or limits the liability of:

- (a) either party for death or personal injury caused by the negligence of such party, for fraud or fraudulent misrepresentation, or in respect of any other liability which cannot by law be limited or excluded; or
- (b) Customer for any breach of clause 3, 7 and/or 16; or
- (c) Customer under clause 12.7.

11.2 Subject to clause 11.1, neither party shall be liable to other party for:

- (a) any loss, whether direct or indirect, of business, profits, revenue, anticipated savings, loss of or depletion of goodwill, loss of or corruption to data (except as set out in clause 4.11); or
- (b) compensatory or restitutionary payments to any third party (other than in respect of Third Party Claims and Unauthorised Use Claims); or
- (c) any indirect or consequential loss or damage,

in each case, however arising, whether in contract, tort (including negligence), breach of statutory duty or otherwise, and whether or not either party was aware of the possibility of such loss arising.

11.3 Subject to clauses 11.1, 11.2 and 11.4, each party's total aggregate liability to the other party under or in connection with the Agreement whether under contract, tort (including negligence), breach of statutory duty or otherwise, shall not in any Contract Year exceed 100% of the Fees paid by Customer to the Company in that Contract Year.

11.4 Subject to clause 11.1, the parties agree that the limitations described in clause 11.3 shall not apply to:

- (a) a breach by either party of clause 9 (*Confidentiality*); or
- (b) The Company's indemnification obligations in clause 12.

REMAKE

12. INDEMNITIES

- 12.1 If either party becomes aware of any claim or potential claim that use by Customer and/or its End Users in accordance with the Agreement and the Acceptable Use Policy of the Platform Materials and/or Library Materials as incorporated in a Final ReMake infringes or make unauthorised use of a third party's Intellectual Property Rights ("**Third Party Claim**"), that party will immediately notify the other in writing specifying the particulars of the alleged infringement or unauthorised use.
- 12.2 The Company shall indemnify Customer and hold Customer harmless from and against all losses, liability, costs, damages, fines or expenses (including reasonable legal costs) either awarded against Customer by a court of competent jurisdiction in connection with the Third Party Claim or agreed to be settled by the Company ("**Customer Losses**") provided that, in relation to any Third Party Claim, Customer shall:
- (a) not make any admission of liability, agreement or compromise in relation to the Third Party Claim without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed; and
 - (b) provide the Company and its professional advisors with such information and assistance as it or they may from time to time reasonably request in relation to the defence and/or settlement of the Third Party Claim, at the Company's reasonable cost.
- 12.3 The indemnity in clause 12.2 shall not apply to the extent that the Third Party Claim in question arises as a result of:
- (a) the use of the Platform Materials or Library Materials by Customer other than in accordance with the terms of the Agreement;
 - (b) the products, software, services or other materials with which Customer has bundled, combined or otherwise integrated the Platform Materials or Final ReMakes;
 - (c) any modification of the Platform Materials or Final ReMakes by anyone other than the Company;
 - (d) any Intellectual Property Right of Customer or Customer's licensors;
 - (e) any breach of the Agreement by Customer;
 - (f) failing to notify the Company in writing in accordance with clause 12.1 and such delay increases the Customer Losses incurred; and/or
 - (g) Customer failing to comply with clause 12.2 and such failure increases the Customer Losses incurred.
- 12.4 Customer shall, and shall procure that:
- (a) the Customer Materials do not breach Applicable Law;
 - (b) use of the Customer Materials by Customer, its End Users, the Company and/or the Company's Personnel as contemplated by this Agreement does not result in any infringement of any third party Intellectual Property Rights; and

REMAKE

- (c) the Customer Materials do not contain any material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous,

(together “**Infringing Material**”).

12.5 If either party becomes aware of any claim or potential claim relating to:

- (a) any Infringing Material; and/or
- (b) any claim or potential claim made by any third party as a result of or in connection with any use of the Platform Materials, the Library Materials and/or the Services by Customer and/or its End Users in breach of the Agreement and/or the Acceptable Use Policy,

(“**Unauthorised Use Claim**”), that party will immediately notify the other in writing specifying the particulars of the alleged infringement or unauthorised use.

12.6 The Company shall have the right to remove any Infringing Material from the Platform without the need to further consult Customer. Where this clause 12.6 applies, the Company shall be relieved from any obligations to make the Infringing Material available to Customer in conjunction with the Platform Materials.

12.7 Customer shall indemnify, and keep the Company and its Affiliates, indemnified at all times from and against any and all losses, claims, liability, costs, damages, fines or expenses (including reasonable legal costs) that are incurred, suffered or threatened against the Company and its Affiliates arising out of or in connection with any Unauthorised Use Claim (“**Company Losses**”).

12.8 In relation to any Unauthorised Use Claim, the Company shall:

- (a) not make any admission of liability, agreement or compromise in relation to the Unauthorised Use Claim without the prior written consent of Customer, such consent not to be unreasonably withheld or delayed; and
- (b) provide Customer and its professional advisors with such information and assistance as it or they may from time to time reasonably request in relation to the defence and/or settlement of the Unauthorised Use Claim, at Customer’s reasonable cost.

12.9 Customer shall not settle any Unauthorised Use Claim without the consent of the Company (not to be unreasonably withheld or delayed) and provided always that such settlement releases the Company of all liability in connection to the Unauthorised Use Claim.

12.10 The indemnity in clause 12.7 shall not apply to the extent that the Unauthorised Use Claim in question arises as a result of:

- (a) a breach of the Agreement by the Company;
- (b) The Company failing to notify Customer in writing in accordance with clause 12.5 and such delay increases the Company Losses incurred; and/or
- (c) The Company failing to comply with clause 12.8 and such failure increases the Company Losses incurred.

REMAKE

13. TERMINATION

13.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits any material breach of the Agreement which has not been remedied within 30 days from receipt of a written notice specifying in reasonable detail the nature of the breach and requiring it to remedy such breach;
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party;
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets;
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action as (b)-(f) in any jurisdiction in consequence of debt.

13.2 Without prejudice to any other rights or remedies to which the Company may be entitled, the Company may terminate the Agreement with immediate effect by giving written notice to Customer if:

- (a) Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) Customer repeatedly breaches the Acceptable Usage Policy;
- (c) there is a change in Control of Customer involving an entity that the Company regards as a competitor; or
- (d) Customer breaches clause 3.3.

13.3 On termination of the Agreement for any reason:

REMAKE

- (a) except as otherwise set out in the Agreement, each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- (b) The Company shall return or delete in accordance with clause 10.4(i) any Personal Data processed by the Company pursuant to the Agreement;
- (c) except as provided for in clause (b), the Company shall for a period of 30 days from the date of termination make available for download by Customer a full copy of the latest back-up of Customer Materials maintained by the Company and, following such 30-day period, the Company shall destroy as soon as reasonably practicable all copies of such data in its possession or control except to the extent strictly necessary to comply with the Company's legal or regulatory obligations;
- (d) Customer shall immediately pay all Fees incurred prior to the date of termination; and
- (e) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14. EMPLOYMENT

14.1 The parties do not anticipate that:

- (a) the commencement or the termination of the Agreement; and/or
- (b) the commencement or the termination of any Services provided under the Agreement, will give rise to a relevant transfer under TUPE (or any legislation deriving from the ARD). If any employee or former employee of Customer and/or its Affiliates claims that there has been a relevant transfer under TUPE (or any legislation deriving from the ARD), and that their employment should have transferred to the Company, or a Company Affiliate as a result, then Customer must fully indemnify, defend and keep the Company and its Affiliates fully indemnified from and against all losses, damages, costs, expenses and liabilities (including legal and other professional costs and expenses) suffered or incurred by the Company and any Company Affiliate arising from such claim.

14.2 During the Term and for six (6) months afterwards, each party will not (and will ensure that each of its Affiliates do not), whether on its own account or on behalf of any other person, firm or undertaking, either directly or indirectly knowingly employ, solicit, entice away, offer employment to or engage the services of an employee of the other party and/or the other party's Affiliates with whom it or its Affiliate (as the case may be) had contact as a result of the Agreement.

15. FORCE MAJEURE

15.1 Notwithstanding any other provision of the Agreement, neither party shall have any liability to the other party for the performance of its obligations under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement by a Force Majeure Event.

15.2 As soon as reasonably practicable after becoming aware of a Force Majeure Event the party affected by the Force Majeure Event shall notify the other party, providing reasonable details of the Force Majeure Event, its impact on that party's obligations under the Agreement and its

REMAKE

anticipated duration. If the period of delay or non-performance continues for six months or longer, the party not affected may terminate the Agreement by giving 30 days' written notice to the other party.

15.3 Nothing in this clause 15 shall relieve Customer from its obligations to pay the Fees as described in the Agreement.

16. COMPLIANCE

16.1 Each party shall comply with all Applicable Law relating to anti-bribery and anti-corruption from time to time, including but not limited to the Bribery Act 2010 as in effect from time to time in the United Kingdom, and the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C §§ 78dd-1 et seq. ("**Relevant Requirements**").

16.2 Each party shall:

- (a) not commit any act or omission which causes or could cause the other party and/or its Affiliates to breach, or commit an offence under, any Relevant Requirements;
- (b) have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Agreement and the steps it takes to comply with this clause.

16.3 Each party shall ensure that any person associated with it who is performing activities in connection with the Agreement ("**Associated Person**") is required to abide by terms equivalent to those agreed to by it in this clause ("**Anti-Bribery Commitment**"). Each party shall be responsible for the observance and performance by such Associated Persons of the Anti-Bribery Commitment and shall be directly liable to the other party for any breach by Associated Persons of that commitment.

17. ASSIGNMENT

17.1 Save as set out in clauses 17.2 and 17.3, neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

17.2 The Company shall have the right to subcontract the exercise of its rights and performance of its obligations under the Agreement to third parties.

17.3 The Company shall have the right to assign, novate or otherwise transfer any of its rights and/or obligations under the Agreement to:

- (a) an Affiliate, as part of a bona fide restructuring or amalgamation; or
- (b) any person as part of a sale of its business or a substantial part thereof.

REMAKE

18. NO PARTNERSHIP OR AGENCY

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

19. THIRD PARTY RIGHTS

19.1 The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 for any party other than the parties to the Agreement (and if applicable their successors and permitted assigns) to enforce any terms of the Agreement.

19.2 The Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

19.3 Each party acknowledges that, in entering into the Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) (**'Representation'**) other than as expressly set out in the Agreement.

19.4 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

20. ENTIRE AGREEMENT

20.1 The Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

20.2 Each party acknowledges that, in entering into the Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) (**"Representation"**) other than as expressly set out in the Agreement.

20.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

21. VARIATIONS

No variation or waiver of or failure to exercise any rights or obligations under the Agreement shall be valid unless in writing signed by or on behalf of the parties.

22. NOTICES

22.1 Subject to clause 22.2 any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or by email to the other party at its address set out in the Order Form (or such other address as may have been notified by that party for such purposes).

REMAKE

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. Notices sent by email shall be deemed to have been received at the time the email enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.

23. FURTHER ASSURANCE

23.1 Each party will at the request of the other party at its own costs do (or procure others to do) everything necessary to give the other the full benefit of the Agreement.

24. DISPUTE RESOLUTION

24.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:

- (a) the dispute shall be referred, by either party, first to Customer's Representative and the Company's Representative for resolution;
- (b) if the dispute cannot be resolved by the representatives referred to in clause 24.1(a) within 14 days after the Dispute has been referred to them, either party may give notice to the other party in writing (**Dispute Notice**) that a Dispute has arisen;
- (c) within seven days of the date of the Dispute Notice, each party shall refer the dispute to Customer's Chief Executive Officer and the Company's Chief Operating Officer for resolution; and
- (d) if the representatives referred to in clause 24.1(c) are unable, or fail, to resolve the dispute within 21 days of the date of the Dispute Notice, or within 14 days of the reference to such representatives pursuant to clause 24.1(c), either party may refer the dispute to mediation, and the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR Notice**) to the other party requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start no later than 28 days after the date of the ADR Notice. If the dispute is not settled by mediation within 14 days of commencement of the mediation or within such further period as the parties may agree in writing, either party may commence court proceedings in relation to the dispute.

24.2 Nothing in this clause 24 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

25. GOVERNING LAW AND JURISDICTION

25.1 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

REMAKE

- 25.2 The parties irrevocably agree that, except as provided in clause 24, the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – PLATFORM DESCRIPTION

1. INTRODUCTION

- 1.1 ReMake is a cloud-based software-as-a-service platform that enables automated editing and rendering of text and graphics within static and video media.

2. REMAKE

- 2.1 The Platform includes the following functionality and enables the Customer to:

- (a) Upload video files for use in the platform;
- (b) View uploaded video files;
- (c) Specify modifications to selected text and graphics within these video files;
- (d) Render out new video files including the chosen amendments;
- (e) View edited files;
- (f) Download or publish edited files; and,
- (g) Manage users' access privileges.

3. CUSTOMER RESPONSIBILITIES

- 3.1 In addition to any obligations of the Customer described in the Agreement and the applicable Order Form, the following additional responsibilities and dependencies apply when using the Platform:
- (a) the Customer needs to procure internet connectivity for all End Users who wish to access the Platform;
 - (b) each End User must use their individual Platform Credentials; and
 - (c) each End User must comply with the Acceptable Use Policy.

SCHEDULE 2 – SUPPORT SERVICES

1. INCORPORATION AND INTERPRETATION

- 1.1 This Schedule sets out the terms and conditions under which the Company will provide the Support Services.
- 1.2 In addition to the definitions set out in Section 1.1 of the Agreement, the following terms shall be defined as set out below:

Available	means the Platform is operating in its hosted environment in material compliance with the Platform Documentation and is responding to requests received from the applicable remote website performance and availability monitoring tool used by the Company (and “ Availability ” shall be construed accordingly).
Availability Service Level	means the Service Level set out in paragraph 5.1 of this Schedule 2 that sets out the minimum percentage of time during a Measurement Period excluding Permitted Downtime during which the Platform must be Available.
Correction	has the meaning given in paragraph 4.3 of this Schedule 2.
Fault	means a reproducible fault or error in the Platform which hinders or prevents an End User from using the functionality of the Platform.
Fault Classification	has the meaning given in paragraph 4.2 of this Schedule 2.
Initial Response	means following submission of a Fault Report by Customer the initial response from the Company to Customer acknowledging the Fault Report and confirming the applicable Fault Classification.
Measurement Period	means a whole calendar year during the Term.
Permitted Downtime	means the times when the Platform is not Available for use due to (i) maintenance by the Company which is notified by the Company to Customer in advance; and (ii) emergency maintenance required to address any urgent security update(s).
Service Levels	means the Availability Service Levels and the Initial Response Service Levels.
Support Services	means the maintenance and support services to be provided by the Company in accordance with this Schedule.
Target Initial Response Time	means the applicable target time listed in paragraph 4.2 of this Schedule for the Company to deliver an Initial Response to Customer, measured from the point a Fault Report is submitted by Customer to the Company

REMAKE

2. SUPPORT SERVICES

2.1 The Company will provide the Support Services in accordance with the Service Levels.

2.2 The Support Services shall comprise the following:

- (a) operating and maintaining the Platform; and,
- (b) operating the Company helpdesk;

3. PLATFORM SUPPORT SERVICES

3.1 In providing the Support Services to Customer the Company shall:

- (a) monitor the performance of the Platform except during Permitted Downtime, to ensure that the Platform is operational and Available in accordance with the Service Levels;
- (b) ensure that Faults are responded to and diagnosed within the applicable notification times (under paragraph 5.1 of this Schedule) and use reasonable endeavours to resolve Faults in accordance with paragraph 4.3 of this Schedule;
- (c) establish the Company helpdesk to enable the Company to fulfil its commitments relating to the classification, acknowledgment and resolution of Faults as described in this Schedule.

4. FAULT IDENTIFICATION AND RESOLUTION

4.1 In the event that Customer identifies a Fault in the Platform, Customer shall submit a report describing the Fault as concisely and clearly as possible (a “**Fault Report**”) via email to the Company helpdesk.

4.2 Within the applicable Target Initial Response Time, the Company shall:

- (a) assign a fault classification to the Fault in accordance with the criteria in the table below (a “**Fault Classification**”);

Fault Classification	Description
Priority 1	Platform is unresponsive. Customer and/or its End Users are unable to access interface. Where a workaround is available and implemented the bug will be downgraded to Priority 2 or 3 and be responded to within those timelines.
Priority 2	Major functional or major cosmetic defect in the Platform which impacts the majority of the functionality of the Platform. Where a workaround is available and implemented the bug will be downgraded to Priority 3 and be responded to within those timelines.
Priority 3	All elements of the Platform can function, however there are minor cosmetic defects with no functional impact and with no impact on Customer and/or its End Users’ use of the Platform.

REMAKE

and

- (b) provide an Initial Response by notifying Customer of the Fault Classification in response to the Customer's Fault Report.

4.3 Following the assignment of a Fault Classification, the Company shall use reasonable endeavours to resolve the Fault by producing a repair or workaround for the Platform (a "**Correction**") as soon as reasonably practicable. Such Correction may take the form of:

- (a) an updated version of the Platform; or
- (b) a reasonable work-around and accompanying instructions to Customer which if followed, will prevent the Fault from re-occurring.

4.4 The Company shall inform the Customer once the updated version of the Platform is available, or when the workaround is available.

5. SERVICE LEVELS

5.1 The Service Levels are as follows:

Fault Classification	Target Initial Response Time
Priority 1	Within 2 Hours
Priority 2	Within 1 Business Day
Priority 3	Within 5 Business Days
Availability Service Level	
99.5%	

5.2 The Company shall be relieved of its failure to meet the Service Levels in respect of any Fault to the extent that such Fault is caused by:

- (a) any breach of the Agreement by Customer and/or any End User, including any use of the Platform other than in accordance with the Platform Documentation;
- (b) any suspension of Customer's and/or any End User's access to the Platform;
- (c) deficiencies, bugs or errors in any data uploaded to the Platform by Customer and/or any End User;
- (d) any failure due to any internet connectivity or any telecommunications network;
- (e) any failure by any subcontractor of the Company (including the Third Party Hosting Provider); and/or
- (f) The Company following any instructions given by Customer and/or any End User.