

ARNOLD MEDIA LIMITED

TERMS OF SERVICE

V.7.1

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ARNOLD MEDIA LIMITED

TERMS OF SERVICE

ATTENTION: PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE SIGNING THE ORDER FORM AND ACCESSING AND USING THE SERVICE. YOUR SIGNATURE OF THE ORDER FORM AND/OR USE OF THE SERVICE CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS OF SERVICE.

1. DOCUMENTS FORMING PART OF THE AGREEMENT:

- 1.1 These Terms of Service (hereinafter: “**TOS**”) together with the signed Arnold Media Limited Order Form (hereinafter “**Order Form**”) and any future contracts, addendums, annexes, appendices, schedules, exhibits, forms or other documents signed between the Parties, constitute a binding agreement (hereinafter: “**Agreement**”) between Licensee and Licensor. The Licensor and the Licensee shall hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.
- 1.2 The Schedules to these TOS are hereby incorporated and form an integral and essential part of the Agreement:
 - Schedule A** – Data Processing Agreement (hereinafter: “**DPA**”);
 - Schedule B** – Service Level Agreement (hereinafter: “**SLA**”);
 - Schedule C** – Service Descriptions (hereinafter: “**Service Descriptions**”)
- 1.3 The provisions of these TOS apply, to the extent applicable, to each of the Schedules as well as to the Order Form.

2. DEFINITIONS:

- 2.1. “**Affiliate**” means any third parties who direct online and/or offline traffic to the online and/or offline properties of the Licensee which can be tracked and attributed to the affiliate and who are incentivized by the Licensee for such introductions and are permitted to access and utilize, but not further distribute, the Service.
- 2.2. “**Client**” or “**Licensee**” means the legal entity identified in the Order Form.
- 2.3. “**Confidential Information**” means any information or material which one Party (“**Disclosing Party**”) discloses to the other Party (“**Recipient**”), that has or could have commercial value or other utility in the business in which the Disclosing Party is engaged, and shall mean any data or information that is proprietary to the Disclosing Party, whether in tangible or intangible form, whenever and however disclosed, whether disclosed orally, in writing, or in electronic or machine readable form, and whether or not the information is expressly stated to be confidential or marked as such. Confidential Information shall include, but not be limited to: (a) all information relating to the Services and the Software including the concepts and ideas relating thereto, as well as the User Manual and Service Descriptions; (b) any technical information, IT systems, design methodology, evaluation methodology and criteria, invention, design, development, process, procedure, formula, improvement, technology or method; (c) any concepts, samples, notes, analyses, compilations, reports, data, know-how, works-in-progress, designs, drawings, research, developments, specifications, software, software documentation, software programs, source code, object code, flow charts, algorithms, coding sheets, routines, sub-routines, compilers, assemblers and databases; (d) any business or marketing strategies and plans, regulatory filings and correspondence, financial information, budgets, projections, operations, contract terms, employee details, licenses, prices, costs, customer and supplier lists and/or details, and all other material or information related to the Disclosing Party, or its business, financial or operating activities and which is not generally known to others engaged in similar businesses or activities; (e) trade secrets, patents and patent applications, inventions and improvements, whether patentable or not; (f) any other information that should reasonably be recognized as Confidential Information by the Parties. Confidential Information shall not include information that: (i) is or

becomes a part of the public domain without any breach by the Recipient of the terms of the Agreement; (ii) was in the Recipient's lawful possession prior to the date of disclosure and had not been obtained by the Recipient either directly or indirectly from the Disclosing Party; (iii) was lawfully disclosed to the Recipient by a third party who is in lawful possession thereof and under no obligation of confidence to the Disclosing Party; (iv) is independently developed by the Recipient without the use or benefit of the Disclosing Party's Confidential Information, as evidenced by its written records; or (v) is disclosed by the Recipient with the Disclosing Party's prior written approval.

- 2.4. **"Contractual Partners"** means Affiliates, consultants, agents and any other third parties engaged with Licensee and who in any way make use of the Service.
- 2.5. **"Derivative work"** means (a) for copyrightable or copyrighted material: a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute copyright infringement; (b) for patentable or patented material: any adaptation, addition, improvement, or combination based on a pre-existing work; and (c) for material subject to trade secret or protection or confidentiality obligations: any new material, information or data relating to and derived from such existing trade secret material or Confidential Information, including new material which may be protected by copyright, patent, trade secret or other proprietary rights.
- 2.6. **"Group Company"** means in respect of either Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party, including any affiliated company, joint venture or any other kind of undertaking in which the Party directly or indirectly holds an interest.
- 2.7. **"Licensor"** means Arnold Media Limited t/a NetRefer (C39896), of Level 3, Domestica Complex, Valley Road, Msida, MSD 9020, Malta.
- 2.8. **"Maintenance & Support"** means all software coding done to correct defects found during usage as well as to implement any Software Update or Upgrade. This also means any hosting maintenance which is required to retain or increase the confidentiality, integrity and availability of the Service throughout the Agreement Term.
- 2.9. **"Service"** means all or any portion of the Software and/or any supporting services required to deliver the features of functionality as described in the Service Descriptions, provisioned with the guaranteed uptime as defined within the Service Level Agreement.
- 2.10. **"Software"** means all or any portion of the Licensor's proprietary software code and software libraries, software components and any and all customizations, modifications, Updates and Upgrades, if any, thereto, as well as all or any portion of other products and/or services and/or programs and/or features which may be provided from time to time by the Licensor alone or in conjunction with the use of the Software by the Licensee.
- 2.11. **"Software Update"** means a patch, correction or other similar modification to the Service which may be issued by the Licensor during the Agreement Term.
- 2.12. **"Software Upgrade"** means a release of the Software containing material enhancements in features of functionality which Licensor may make commercially available to the Licensee during the Agreement Term and which may be subject to an additional cost.
- 2.13. **"User Manual"** means a manual containing essential information for the Licensee to make the best use of the Service, including information on the Service functions and capabilities, and the procedure for Service access and use.

3. GRANT OF LICENSE:

Pursuant to the terms of the Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-transferable, non-exclusive, non-assignable license to use the Service for Licensee's internal business purposes only, during the Agreement Term.

4. **LIMITATION ON USE:**

Licensee shall not, nor permit others to: (a) copy, modify, distribute, redistribute, sell, lease, assign, transfer, trade, rent, publish or sub-license the Service to any third party, whether in full or in part; (b) download or make any copies of the Service; (c) disassemble, reverse engineer or decompile any copies of the Service, whether in full or in part; (d) develop, produce, make, distribute, license or exploit any of the Service's Derivative Work; (e) allow third parties to access and/or use or utilise the Service, except for third parties specifically authorised in writing by Licensor; (f) use a single account given to the Licensee for the use of the Service for multiple business entities, unless specifically authorised in writing by the Licensor; (g) use the Service for any purpose except in the normal course of its business; (h) use the Service in violation of any applicable law or regulation, or for any illegal purpose or cause; (i) collect content or information or otherwise access Licensor's website or Service using automated means (such as harvesting bots, robots, spiders, scrapers or crawlers) without the Licensor's prior written consent; or (j) access the Service for benchmarking or other competitive purpose or solely for the purpose of monitoring its availability, performance or functionality.

5. **AFFILIATES:**

Licensee is solely responsible for Affiliate's access and use of the Service. The Licensee alone shall be liable to the Affiliate in respect of any matter related to, arising from, or in any way connected to use of the Software and/or Service, including, but not limited to, the administrating, monitoring and/or payment of any rewards using the Licensor's Software and/or Service which is at Licensee's sole discretion.

6. **THIRD-PARTY SERVICES, SITES AND PRODUCTS:**

Third-party services, sites and products are not under Licensor's control. Third-party services, sites and products are provided to Licensee only as a convenience, and the availability of any third-party service, site or product does not mean Licensor endorses, supports or warrants the third-party service, site or product. Licensor's website may include links to other websites, services, resources or products on the Internet that are owned and operated by online merchants and other third parties. Licensee acknowledges that Licensor is not responsible for the availability, content, legality, appropriateness or any other aspect of any third-party service, site or product. Licensee's use of third-party services, sites or products is at its own risk and subject to the terms of use and privacy policies of each such service, site or product. Licensor makes no guarantees and assumes no responsibility or liability of any type with respect to content, products and services provided by any third party.

7. **TERM:**

7.1. The Agreement shall enter into force on the Effective Date of the Order Form and, unless terminated earlier as provided herein, shall remain in force for the initial term set forth in the Order Form ("**Initial Term**").

7.2. Unless otherwise specified in the Order Form, at the end of the Initial Term, the Agreement shall automatically renew for further successive periods according to the Automatic Renewal Term in the Order Form ("**Renewal Term**"), unless either Party provides the other Party with written notice of non-renewal at least three (3) months prior to the end of the Initial Term. The Initial Term and any Renewal Term shall be collectively referred to as "**Agreement Term**".

8. **TERMINATION**

8.1. Either Party may terminate the Agreement at any time during the Renewal Term by providing the other Party with at least three (3) months' prior written notice of termination.

8.2. Licensee shall have the right to immediately terminate the Agreement during the Initial Term, or during the Renewal Term without the need to provide three (3) months' prior written notice, only in the following cases: (a) Licensor fails to comply with, or breaches, any term of the Agreement and such non-compliance or breach is not remedied within thirty (30) days of written notice of such non-compliance or breach by Licensee to the Licensor; (b) any representation made hereby by Licensor is materially false when delivered; (c) Licensor has committed, or is reasonably suspected of committing, any unlawful or fraudulent act; or (d) bankruptcy, involuntary

liquidation, or insolvency of either Party, as evidenced by written records. Termination pursuant to this clause 8.2 shall not release Licensee from its obligations to pay to Licensor all fees which accrued prior to such termination, including the System Decommissioning Fee. It is hereby agreed that Licensee's sole and exclusive remedy for termination pursuant to this clause 8.2 shall be to terminate the Agreement and receive a refund of any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement, if any, from the date of termination.

- 8.3. Licensor shall have the right to immediately terminate the Agreement during the Initial Term, or during the Renewal Term without the need to provide three (3) months' prior written notice, only in the following cases: (a) Licensee fails to comply with, or breaches, any term of the Agreement (including failure to pay any fees in full on the due date) and such non-compliance or breach is not remedied within thirty (30) days of written notice of such non-compliance or breach by Licensor to the Licensee; (b) any representation made hereby by Licensee is materially false when delivered; (c) Licensee has committed, or is reasonably suspected of committing, any unlawful or fraudulent act; (d) bankruptcy, involuntary liquidation, or insolvency of either Party, as evidenced by written records; (e) Licensee refuses an Upgrade or Update issued by Licensor where such Upgrade or Update is required for legal and/or regulatory compliance or security enhancements; (f) Licensee refuses to accept any revisions to the Agreement which are required for legal and/or regulatory compliance or security enhancements; or (g) failure by Licensee to apply SSL certificates. Termination pursuant to this clause 8.3, shall not release Licensee from its obligations to pay to Licensor all fees, including the System Decommissioning Fee, for the entire duration of the Initial Term and, if the termination occurs during the Renewal Term, then a fee equal to three (3) months' prior notice and, in such event, Licensor may demand that the entire fees as aforesaid shall become immediately due and payable.
- 8.4. **Effect of Termination:** Upon expiration or termination of the Agreement for any reason whatsoever, (i) Licensee shall pay Licensor a System Decommissioning Fee (as detailed in clause 11 below); and (ii) Licensor shall have the right to immediately remove and/or terminate access of the Service, Software and related data from its own and/or from the Licensee's servers, as applicable.

9. FEES:

9.1 *General*

- 9.1.1 Licensee shall pay to the Licensor the fees set forth in the Order Form, as may be modified during the Agreement Term pursuant to any changes agreed upon by the Parties.
- 9.1.2 All sums payable under the Agreement shall be made in Euro (€) and are exclusive of VAT. Licensee shall be responsible for paying all use, sales, excise, value-added or other tax or governmental charges related to Licensee's use of the Service.
- 9.1.3 Licensor reserves the right to conduct credit checks and other similar due diligence inquiries with respect to prospective licensees and may refuse to enter into the Agreement with any party at its sole discretion.
- 9.1.4 Licensor may charge Licensee interest on any overdue amount at the rate of 8% per annum above the base rate for the time being of the European Central Bank, or the maximum rate permitted by law, if lower.
- 9.1.5 Failure by the Licensee to pay any amounts by the due date shall entitle Licensor, without prejudice to any other rights and remedies it may have, to immediately suspend and/or cancel Licensee's admin access to the Service without prior notice. A re-activation fee may be charged by Licensor at its sole discretion.
- 9.1.6 All fees are non-refundable, except as otherwise expressly stated in the Agreement.
- 9.1.7 It is expressly understood by the Parties that Licensor's duty pursuant to the Agreement is to make the Service available to Licensee during the Agreement Term. If Licensee chooses not to use the Service after Licensor has made them available, or if Licensee acts, or omits to act, in a way that prevents Licensor from making the Service available,

Licensee shall nevertheless be liable for all fees under the Agreement, regardless of whether Licensee has made any use of the Service.

9.2 **Project Fees**

- 9.2.1 Any requests by the Licensee for specific services, work, products or other projects, which are not expressly provided for in the Agreement, including, but not limited to, requests for reports, add-ons, data export/transfer, brand integration, support, transition/migration, retention and storage of data ("**Project**") shall be made in writing and submitted to the Licensor. Any such request is subject to Licensor's approval, at its sole discretion.
- 9.2.2 If the request is approved by Licensor, Licensor shall submit a written quote to Licensee, specifying the costs, payment terms and anticipated duration of the Project ("**Quote**"). Licensor shall use its best efforts to provide Licensee with a Quote within ten (10) business days of an approved request.
- 9.2.3 Licensee shall either accept or reject the Quote. If accepted, Licensee shall make a non-refundable, advance payment to the Licensor pursuant to the Quote, after which the Quote shall become an approved quote ("**Approved Quote**").
- 9.2.4 Any Quote which has not been accepted by the Licensee and/or in respect of which payment has not been received by Licensor pursuant to the Quote, shall automatically expire within thirty (30) days from the date of the Quote, unless an extension is agreed upon in writing by the Parties.
- 9.2.5 If at any time the Licensee acts or omits to act in a way that prevents or hinders Licensor from performing or continuing to perform the Project under the Approved Quote (including by being unresponsive to Licensor), Licensor shall have the right to discontinue the Project and cancel the Approved Quote, and no refund of fees paid pursuant to the Approved Quote shall be given. The aforesaid constitutes the sole and exclusive remedy of Licensor with respect to this clause 9.2.5.
- 9.2.6 If at any time the Licensor acts or omits to act in a way that prevents or hinders the performance or continuation of performance of the Project under the Approved Quote (including by being unresponsive to Licensee), Licensee shall have the right to discontinue the Project and cancel the Approved Quote, and a full refund of fees paid pursuant to the Approved Quote shall be given. The aforesaid constitutes the sole and exclusive remedy of Licensee with respect to this clause 9.2.6.
- 9.2.7 If the Project results in a change to the monthly fees stipulated in the Order Form, the Parties shall sign an Addendum to the Order Form. The Addendum shall expire unless signed and returned by both Parties within seven (7) days of the Addendum Date (as specified in the Addendum). No refund shall be given in the event that Licensee fails to sign the Addendum as aforesaid. Should Licensee thereafter renew its request for the Project to be executed, it shall be required to pay the fees again.
- 9.2.8 Where Licensee's request relates to performance of a Project after termination of the Agreement, including, but not limited to, a request for assistance in the transition from the Licensor's Service to alternative or substitute software and/or services elected by the Licensee, or a request by Licensee for Licensor to retain and/or store data beyond the retention periods specified in the DPA, the following provisions shall apply in addition to all of the foregoing provisions:
- 9.2.8.1 The request shall not be approved and the Project shall not commence until all outstanding fees under the Agreement, including the System Decommissioning Fee, have been paid in full by Licensee to Licensor.
- 9.2.8.2 In any event, the period for retention of the data by Licensor, pursuant to the DPA, shall commence immediately upon expiration of the Agreement Term.

10. SETUP:

- 10.1 Upon signing the Order Form and payment of the fees pursuant to the Order Form, the Parties shall commence the setup process.
- 10.2 Upon successful completion of the setup process, Licensor shall issue Licensee with a form, confirming that the setup process has been successfully completed and the Licensee is ready to go live ("**Setup Completion Form**").
- 10.3 Should Licensee not contest or dispute the Setup Completion Form within seven (7) days of receipt thereof, the Setup Completion Form shall be deemed to have been accepted and the setup process successfully completed.
- 10.4 The Setup Fee, as specified in the Order Form, will be paid in each case of re-engagement between the Parties after expiration or termination of the Agreement.

11. SYSTEM DECOMMISSIONING

- 11.1 Immediately upon expiration or termination of the Agreement for any reason, Licensee shall pay to Licensor a mandatory system decommissioning fee in the amount specified in the Order Form ("**System Decommissioning Fee**"). Any delay in payment of the System Decommissioning Fee shall be subject to interest, as specified in clause 9.1.4 above.
- 11.2 Licensor shall provide Licensee with an estimated time for completion of the System Decommissioning process based on the scope of data and the manpower required.
- 11.3 The System Decommissioning process shall not commence until all outstanding fees, including the System Decommissioning Fee, have been paid in full by Licensee to Licensor. Nevertheless, the period for retention of the data by Licensor, pursuant to the DPA, shall commence immediately upon expiration of the Agreement Term.
- 11.4 "**System Decommissioning**" entails the removal of DNS records, removal of CDN SSL property, Incapsula WAF removal, SSL certificates revocation, application and websites removal, removal of FTPS account used for media/microsite uploads, removal of SFTP account used for data transfer, removal of web services, creation of SFTP account to dump any data required by Licensee prior to applying data anonymization and removing Licensee database, and includes all or any of the following.
 - (i) removal of access to the Service from the NetRefer infrastructure and systems;
 - (ii) deletion of backup mechanisms;
 - (iii) sanitizations;
 - (iv) export of data from the Licensor's Service, in a secure and commonly used format of Licensor's choice. Such export shall include the following information:
 - Affiliate information/details;
 - Affiliate Payment details;
 - System User details;
 - Payments made to Affiliates;
 - Fixed sums adjustments;
 - Activity details (as sent by the Licensee to the Licensor on a daily basis);
 - Registrations (as sent by the Licensee to the Licensor on a daily basis); and
 - Marketing sources.

Any request by Licensee for the export of any data not expressly stated above, shall be considered a Project and be subject to clause 9.2 above.

12. RETURN OF DATA DURING RETENTION PERIODS:

Upon request by Licensee and provided such request is made within the data retention periods specified in the DPA, Licensor shall return to Licensee the Licensee's data, in consideration for a fee to be determined by Licensor based on the scope of data and the manpower required.

13. SOFTWARE UPGRADES AND UPDATES:

Licensor may, at its sole discretion, release a Software Upgrade and/or Update during the Agreement Term, at which time the former version of the Software will stand deprecated and become the deprecated version of the Software (hereinafter: "**Deprecated Version**"). For a period of six months following the deprecation (hereinafter: "**Deprecation Period**"), and provided it is still during the Agreement Term, the Licensor will use commercially reasonable efforts to support the Deprecated Version. The Licensor need not support the Deprecated Version after the Deprecation Period and shall bear no liability whatsoever (including with respect to performance, defects or non-compliance) with regards to the Deprecated Version.

14. MAINTENANCE & SUPPORT:

14.1. From time to time during the Agreement Term, Licensor shall provide Maintenance & Support to Licensee, as well as services to assist Licensee in the use of the Service, Software and any Software Updates and/or Upgrades. Such services may be provided by way of product assistance, release notes, knowledge base access or any other means determined by the Licensor. For every new Software Update and/or Upgrade, Licensor shall publish user documentation regarding the Service, the Software and/or Software Updates and/or Upgrades on its standard portal.

14.2. Any request by Licensee for maintenance or support not expressly stated above, in the Order Form or in the SLA, shall be considered a Project and be subject to clause 9.2 above.

15. OWNERSHIP:

Except for the rights explicitly granted to Licensee hereunder, Licensor shall retain all rights, title and interest in and to the Service and Software, including any and all enhancements, modifications, Upgrades, Updates and Derivative Works relating to, or deriving from, the Service and Software, and in all materials developed, used and provided to the Licensee under or in connection with the Agreement. Licensee agrees that the Service and Software may contain copyright, trademark and other proprietary notices included therein by Licensor, including a clearly visible phrase or logo in the form: "Powered by NetRefer" or any other similar form, and Licensee undertakes not to remove and/or conceal such notice.

16. MUTUAL WARRANTIES:

16.1. Each Party represents and warrants to the other that: (a) it has the full right, power and authority to enter into the Agreement; (b) it operates legally; (c) the performance of the Agreement does not violate the laws of any jurisdiction by which it is bound; and (c) it has all the necessary approvals, permits and licenses required for its operations under the Agreement and shall remain solely responsible for maintaining such approvals, permits and licenses throughout the Agreement Term.

16.2. Any liability, repercussions or fines incurred due to a violation by either Party of clause 16.1 above lies solely with the Party in breach of this clause.

17. LIMITED WARRANTY:

17.1 Licensor warrants that the Software and the Service, when used in accordance with the User Manual, shall perform substantially in accordance with the SLA and Service Descriptions during the Agreement Term.

17.2 In the event that the Software and the Service do not comply with the foregoing warranty during the Agreement Term, then Licensor shall make commercially reasonable efforts to correct such non-compliance by repairing or replacing the Software and/or Service at its sole expense. Notwithstanding the foregoing, if in Licensor's sole discretion, repair or replacement of the Software and/or Service is not possible or feasible, Licensor shall have the right to either (i) provide Licensee with a method to bypass such defect, provided that the functionality or ease of use of the Software and/or Service is not materially affected by any such method to bypass the defect; or (ii) allow the Licensee to terminate the Agreement, in which event Licensee's sole remedy shall be a refund of any license fees or pro-rata portion thereof paid by Licensee for any remaining

period of the Agreement from the date of termination. Licensor does not warrant that all defects can and will be corrected.

17.3 This clause states the entire liability and obligation of Licensor, and the sole and exclusive remedy of Licensee, in the event that the Software and/or the Service does not comply with the foregoing warranty. In no event shall Licensor be liable for any incidental, consequential, punitive or other damages as a result of the aforesaid.

17.4 This limited warranty does not cover any damage, malfunction, failure or defect of the Software and/or the Service resulting from (i) the acts or omissions of non-Licensor personnel; (ii) accident, abuse, misuse, misapplication, theft, vandalism, fire, water or other peril; (iii) modifications, alterations or additions not authorized by Licensor; and/or (iv) use of the Software and/or Service in combination with software, services, programs or other products not supplied by Licensor.

18. DISCLAIMER OF WARRANTIES:

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN CLAUSE 17 ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SOFTWARE AND THE SERVICE ARE PROVIDED "AS IS" WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT THAT THE SERVICE, THE SOFTWARE, THE OPERATION OF THE SERVICE OR OF THE SOFTWARE, OR ANY RELATED SERVICES WILL MEET LICENSEE'S REQUIREMENTS OR THAT IT WILL BE UNINTERRUPTED OR ERROR-FREE. ALL THIRD-PARTY SOFTWARE IS PROVIDED WITHOUT WARRANTY OF ANY KIND AND THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE RISK WITH RESPECT TO ITS QUALITY AND PERFORMANCE.

19. LIMITATION OF LIABILITY:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR GROUP COMPANIES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS; LOSS OF BUSINESS, BUSINESS INTERRUPTION; LOST BUSINESS OPPORTUNITY; LOSS, CORRUPTION OR NON-AVAILABILITY OF DATA; OR ANY OTHER COMMERCIAL OR PECUNIARY DAMAGES OR LOSSES, ARISING OUT OF OR RELATED TO THE AGREEMENT OR ANY PART THEREOF, OR ARISING OUT OF OR RELATED TO LICENSEE'S USE OF OR INABILITY TO USE THE SOFTWARE AND/OR SERVICE AND/OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE SOFTWARE AND/OR SERVICE, OR ARISING OUT OF OR RELATED IN ANY WAY TO ANY THIRD PARTY PARTNER OR PROVIDER OF EITHER PARTY; HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES .

UNLESS OTHERWISE MORE NARROWLY LIMITED IN THIS AGREEMENT, AND EXCEPT WITH RESPECT TO CLAUSES 20, 21 AND 22 BELOW, THE CUMULATIVE, AGGREGATE LIABILITY OF EACH PARTY AND ALL OF ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS AND GROUP COMPANIES TO THE OTHER PARTY OR ANY THIRD PARTY IN RESPECT OF CLAIMS OR ACTIONS RELATING TO OR ARISING FROM THIS AGREEMENT, SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE TOTAL AMOUNT OF ONLY THE **MONTHLY LICENSE FEE** (AS SUCH TERM APPEARS IN THE ORDER FORM, AND EXCLUDING ALL OTHER FEES) ACTUALLY PAID BY THE LICENSEE TO THE LICENSOR DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

THE PARTIES ACKNOWLEDGE THAT LICENSOR HAS ENTERED INTO THE AGREEMENT AND SET ITS FEES IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK AND FORM AN ESSENTIAL BASIS OF THE AGREEMENT BETWEEN LICENSEE AND THE LICENSOR. LICENSOR SHALL NOT BE ABLE TO PROVIDE THE SERVICE ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THE AGREEMENT WILL SURVIVE AND APPLY EVEN IF PORTIONS OF THE AGREEMENT ARE FOUND TO HAVE FAILED THEIR ESSENTIAL PURPOSE.

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

20. INDEMNIFICATION BY LICENSOR:

- 20.1 Licensor shall indemnify Licensee against any third party claim that the Service directly infringes any patent, copyright, trademark or trade secret owned or controlled by the third party; provided however, that: (a) Licensee notifies Licensor in writing of any such claim within ten (10) days of becoming aware thereof; (b) Licensor shall have sole control of the defence of any such claim and all negotiations for its settlement or compromise; (c) Licensee shall cooperate fully with Licensor to facilitate the settlement or defence of such claim; and (d) Licensee has not contributed in any way to the infringement, inter alia by way of (i) modification of the Service or any part thereof; (ii) use of the Service not in accordance with the Agreement or for purposes not intended by Licensor; (ii) integration of the Service or any use of the Service in combination with any other system, equipment or software not provided or approved by the Licensor; (iii) failure to use the most current release of the Software made available to Licensee, where use of such release could have avoided the infringement or alleged infringement.
- 20.2 In addition, in the event an injunction or order shall be obtained against Licensee's use of the Service by reason of any such infringement allegation or if, in Licensor's sole opinion, the Service is likely to become the subject of a claim of infringement or violation of any existing patent, copyright, trademark, trade secret, or other proprietary right of a third party, Licensor may, without in any way limiting the foregoing, in Licensor's sole discretion and at Licensor's expense either: (a) procure for Licensee the right to continue using the Service; (b) replace or modify the Service so that it becomes non-infringing, but only if the modification or replacement does not, in Licensor's reasonable sole opinion, adversely affect the functional performance or specifications for the Service or its use by Licensee; or (c) if neither (a) nor (b) above is practical, terminate the Agreement and refund to Licensee any fees or pro-rata portion thereof paid by Licensee for any remaining period of the Agreement, if any, from the date of termination.
- 20.3 INDEMNIFICATION BY LICENSOR AS AFORESAID IS LIMITED TO THE AMOUNT FINALLY AWARDED IN A FINAL JUDGMENT BY A COURT OR AGREED UPON BY LICENSOR IN A SETTLEMENT. IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY LICENSEE. THE FOREGOING STATES LICENSOR'S ENTIRE LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INDEMNIFICATION FOR PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT.

21. INDEMNIFICATION BY LICENSEE:

- 21.1 Licensee shall indemnify Licensor and its directors, officers, employees, agents and Group Companies from and against any claims, actions, proceedings, damages, liabilities, losses, costs and expenses arising out of or otherwise relating to Licensee's and/or its Group Companies' and/or Contractual Partners' and/or Affiliates' (i) use or misuse of the Service; (ii) breach of any term, condition or warranty under the Agreement; or (iii) negligence, wilful misconduct or failure to comply with applicable law; provided however, that: (a) Licensor promptly notifies Licensor in writing of any such claim upon becoming aware thereof; (b) Licensee shall have sole control of the defence of any action on such claim and all negotiations for its settlement or compromise; and (c) Licensor shall cooperate fully with Licensor to facilitate the settlement or defence of such claim.
- 21.2 INDEMNIFICATION BY LICENSEE AS AFORESAID IS LIMITED TO THE AMOUNT FINALLY AWARDED IN A FINAL JUDGMENT BY A COURT OR AGREED UPON BY LICENSEE IN A SETTLEMENT. IN NO EVENT SHALL LICENSEE BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS OR GOODWILL) SUFFERED OR INCURRED BY LICENSOR. THE FOREGOING STATES LICENSEE'S ENTIRE LIABILITY, AND LICENSOR'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INDEMNIFICATION PURSUANT TO THIS CLAUSE.

22. CONFIDENTIALITY:

- 22.1 The Parties agree that any non-disclosure agreement that may previously have been executed between the Parties is hereby replaced in its entirety with the provisions of this TOS relating to confidentiality.
- 22.2 The Parties agree not to use each other's Confidential Information for any purpose other than for purposes of the Agreement and not to use or exploit the other Party's Confidential Information for its own purposes or benefit.
- 22.3 The Parties will not disclose or make available the other Party's Confidential Information, in whole or in part, to any third parties, except to those of its officers, directors, employees, financial or legal advisers who have a reasonable need to know such Confidential Information for purposes of the Agreement, provided that such individuals are advised of the confidentiality provisions of the Agreement and are bound by obligations of confidence no less stringent than those contained herein.
- 22.4 The Recipient will hold and maintain the Confidential Information with at least the same degree of care that it uses to protect its own Confidential Information (but in no event less than a reasonable standard of care) but with respect to Personal Data, as defined in the General Data Protection Regulation (EU) 2016/679 ("GDPR"), with at least the same degree of care required by GDPR.
- 22.5 The Recipient shall not, without the prior written consent of the Disclosing Party, directly or indirectly, copy, reproduce, adapt, divulge, disclose, publish, confirm, deny, distribute, reduce to writing, transfer or otherwise record or disclose any of the Confidential Information of the Disclosing Party, or take or remove from the Disclosing Party's premises or from any secure electronic information systems or hardware any Confidential Information (nor authorise or permit others to do any of the aforesaid). For the sake of clarity, it is hereby expressly stated and acknowledged that the Recipient is prohibited from sharing with a competitor of the Disclosing Party or with any other third party, any features or information of the Disclosing Party, including the Service, the Software and/or other documentation, and from showing or giving access thereto.
- 22.6 Despite any provision of the Agreement to the contrary, Recipient may disclose Confidential Information as required by law, regulation, court order or other legal process; provided, however, that immediately upon receipt of such disclosure requirement, to the extent it is legally permitted to do so, Recipient shall notify Disclosing Party of the impending disclosure to allow Disclosing Party an opportunity to take appropriate legal measures to preserve the confidentiality of the Confidential Information.
- 22.7 Any Confidential Information disclosed or acquired hereunder shall remain the sole property of the Disclosing Party. Nothing in the Agreement shall be construed as granting or conferring any rights to such Confidential Information on the other Party or granting to the Recipient any right or license under any patent, copyright, trademark or other intellectual property right. Any modifications and improvements made by the Recipient shall be the sole property of the Disclosing Party.
- 22.8 Upon request from the Disclosing Party, Recipient shall (i) immediately return, or at Disclosing Party's direction, destroy, all copies, records, documents, materials, notes and derivatives in whatever form containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information; (ii) erase all of the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and (iii) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that the Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation.
- 22.9 In the event that, contrary to the provisions of the Agreement, Confidential Information has been disclosed to a third party, or may be disclosed to a third party or it is reasonably assumed shall be disclosed to a third party, the Recipient shall immediately notify the Disclosing Party thereof and

shall promptly provide Disclosing Party with the names and titles of all of those individuals who have/shall have access to the Confidential Information, the names and titles of all of those individuals so disclosing the Confidential Information, as well any other information which Disclosing Party may request.

- 22.10 The Parties agree that the Disclosing Party will suffer irreparable damage if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of the Agreement, and that damages alone would not be an adequate remedy for the breach of any of the provisions of the Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to seek the granting of injunctive or equitable relief, without the need to prove actual damages, concerning any threatened or actual breach of any of the provisions of the Agreement.
- 22.11 The non-disclosure provisions of the Agreement shall survive termination of the Agreement and the Recipient's duty to hold in confidence the Confidential Information shall remain in effect until the Confidential Information no longer qualifies as a trade secret. Notwithstanding anything to the contrary herein, each Party's rights and obligations with respect to Personal Data under the Agreement shall survive the expiration or termination of the Agreement for the period of time required under applicable international, federal, state and/or local law.

23. PERSONAL DATA:

- 23.1 Each Party undertakes to comply with its obligations under relevant applicable data protection laws, as well as its obligations under the DPA. To the extent that Personal Data, as defined in the General Data Protection Regulation (EU) 2016/679 ("GDPR"), is processed using the Service, the Parties acknowledge that the Licensor is a data processor and the Licensee is a data controller and the Parties shall comply with their respective statutory data protection obligations. The Licensor shall provide adequate security for the processing of the data in line with good business practice. Licensor shall not use Personal Data processed under the Agreement for any purposes other than for carrying out its obligations under the Agreement, for improvement of systems setup, troubleshooting the Service, or in the normal operation of the Service.
- 23.2 All Personal Data as well as any Licensee employee data required for the fulfilment of the Agreement (such as employee details for access to any auxiliary support systems such as ticketing systems) shall be retained as per the Data Retention Policy included in the DPA.
- 23.3 The Licensor shall provide the Licensee with an initial user name and password allowing access to the Service by the Licensee. The Licensee will thereafter be able to create further user names and passwords for each staff member that the Licensee designates as authorised to access the Service. The Licensee is solely responsible for the security of the user names and passwords issued to Licensee's staff members.

24. SECURITY AND DATA PROTECTION:

- 24.1 The application of SSL certificates is mandatory for all interfaces and sites making up the Service offered by the Licensor for the purpose of compliance with Data Protection Laws (as defined in the DPA). Failure to apply such certificates by the Licensee shall give Licensor the right to immediately terminate the Agreement, and/or will result in Licensor being absolved of any data breaches which may occur when data is in transit.
- 24.2 It is the sole obligation and responsibility of Licensee to ensure (and put in place all necessary measures to ensure) that any login details provided or created for the purpose of accessing the Service are kept confidential, safe and secure at all times. Any unauthorised use of Licensee's accounts resulting from failure to adequately protect login information shall be the sole responsibility of the Licensee, and Licensee shall remain solely responsible and liable for all activity and conduct occurring under Licensee's account credentials whether such activity and/or conduct was undertaken by Licensee or not. It is the Licensee's obligation to inform Licensor immediately if it suspects illegal or unauthorised use of its accounts.

25. FORCE MAJEURE:

Neither Party shall be held liable for any damages (regardless of their nature), for any delay or failure in the performance of any part of the Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its reasonable control and without the fault or negligence of the delayed or non-performing Party. The affected Party will notify the other Party in writing promptly following the commencement of any such cause that would affect its performance. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Party receives notice under this clause, the non-affected Party will have the right, without any liability to the other Party, to terminate the Agreement.

26. PUBLICITY:

Licensor may publicly disclose on its website, promotional material, in a press release, public statement or otherwise, that the Licensee is a user of the Service.

27. NON-SOLICITATION:

27.1 During the Agreement Term and for a period of one (1) year following its termination, Licensee shall not solicit, recruit, induce, or attempt to recruit or induce any employee of Licensor or any individual who was an employee of Licensor at any time during such one (1) year period.

27.2 Licensee acknowledges that breach of this clause shall result in the Licensor incurring substantial economic damages and losses in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Licensor of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof.

27.3 Accordingly, in lieu of actual damages for such breach, the Licensee agrees that liquidated damages may be assessed and recovered by the Licensor as against the Licensee in the event of such breach and without the Licensor being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore, the Licensee shall be liable to the Licensor for payment of liquidated damages in the amount of €25,000.00 for each breach of this clause.

27.4 Such liquidated damages represent estimated actual damages to the Licensor and are not intended as a penalty. The Licensee shall pay the liquidated damages to the Licensor within five (5) days of notice from the Licensor.

28. ASSIGNMENT:

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

29. RELATIONSHIP OF PARTIES:

The Parties are independent contractors and neither Party is an agent, partner or employee of the other. No relationship of franchise, partners, joint ventures, principal and agent, master and servant is established hereby between the Parties. Neither Party has the authority to bind the other Party or to incur any obligation on the other Party's behalf.

30. SEVERABILITY:

If any provision of the Agreement is held invalid or otherwise unenforceable, such provision shall be deemed to be severed from the Agreement and the enforceability of the remaining provisions shall not be impaired thereby.

31. NO WAIVER:

A failure by any Party to exercise any right provided for herein or pursue any remedy shall not be deemed a waiver of such or other right hereunder on any other occasion.

32. ENTIRE AGREEMENT:

The Agreement embodies the entire agreement and understanding of the Parties with respect to the matters contemplated hereby and supersedes and renders null and void all other prior versions, contracts, agreements, understandings or representations by or among the Parties, written or oral, with respect to the subject matters hereof, and may not be modified except in writing and signed by both Parties.

33. COUNTERPARTS:

The Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

34. CHANGES TO AGREEMENT:

Licensor reserves the right to modify the provisions of the Agreement, or any part thereof, including any Schedule or part thereof, upon notice in writing to the Licensee. Such changes shall automatically apply to any subsequent renewal term of the Agreement. However, if such changes are required for legal, regulatory or security purposes, the changes shall enter into effect thirty (30) days following written notification thereof to Licensee and, should Licensee not agree to such changes, Licensee's sole recourse shall be to terminate this Agreement.

35. NOTICES:

All notices sent pursuant to the Agreement shall be in writing and sent by electronic mail or by registered mail to the Parties' respective addresses set forth in the Order Form. A registered letter shall be deemed as having arrived at its destination following 72 hours from its dispatch by post; an email shall be deemed as duly received upon receipt of delivery.

36. ELECTRONIC SIGNATURES:

Unless otherwise agreed in writing by the Parties, the electronic signature of a Party to the Agreement shall be as valid as an original signature of such Party and shall be effective to bind such Party to the Agreement. The Parties agree that any electronically signed document (including the Agreement) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the Parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither Party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually-signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e-mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

37. OBLIGATIONS THAT SURVIVE TERMINATION:

Both Parties recognize and agree that the following clauses shall survive the cancellation, termination or expiration of the Agreement: clause 15 (Ownership), clause 19 (Limitation of Liability), clause 22 (Confidentiality), clause 23 (Personal Data), clause 27 (Non-Solicitation) and clause 38 (Governing Law and Jurisdiction).

38. GOVERNING LAW AND JURISDICTION:

The Agreement shall be governed by and construed in accordance with the laws of Malta. The Parties hereby agree that any dispute, controversy or claim arising out of or in connection with the Agreement shall be referred and submitted to arbitration in Malta in accordance with the rules of the Malta Arbitration Centre, as in force on the date on which such dispute, controversy or claim arises, except that in a matter relating to unpaid fees for services rendered, Licensor shall have the option to either refer the matter to arbitration or to the Maltese Courts, at its option, and in both cases is entitled to make recourse to any Court, in any jurisdiction, for the issuance of precautionary and/or interim measures to secure its claims.

SCHEDULE A - DATA PROCESSING AGREEMENT

1. INTRODUCTION

- 1.1 This NetRefer Data Processing Agreement (“**DPA**” or “**Data Processing Agreement**”) reflects the Parties’ agreement with respect to the terms governing the Processing of Personal Data in accordance with the Data Protection Laws and constitutes an integral part of the NetRefer Terms of Service (“**TOS**”). This DPA will control with respect to the subject matter herein in the event of any conflict with the TOS.
- 1.2 In all cases, Licensor (“**Processor**”), or a third party acting on behalf of Processor, acts as the Processor of Personal Data, and Licensee (“**Controller**”) remains Controller of Personal Data as per the Data Protection Laws. The term of this DPA shall run concurrently to the term of the Order Form.
- 1.3 Terms not otherwise defined herein shall have the meaning as set forth in the TOS.
- 1.4 This DPA includes the following Appendices:
 - (i) Security layers and methodologies applied at infrastructure layer, attached hereto as **Appendix A**.
 - (ii) Security mechanisms for the protection of data access at Application layer, attached hereto as **Appendix B**.
 - (iii) Security processes at an operational layer, attached hereto as **Appendix C**.
 - (iv) Processing Activities, attached hereto as **Appendix D**.
 - (v) Contact details of the Data Processor, attached hereto as **Appendix E**.
 - (vi) List of Sub-Processors, as may be updated from time to time, referred to as **Appendix F**, and which is accessible by clicking on the hyperlink provided.

2. DEFINITIONS

- 2.1 “**Controller**”, “**Data Subject**”, “**Personal Data**”, “**Processing**”, “**Processor**”, “**Special Categories of Data**” and “**Supervisory Authority**” shall have the same meaning as in the GDPR;
- 2.2 “**Data Protection Laws**” means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR, and all other applicable laws and regulations relating to the Processing of Personal Data and privacy;
- 2.3 “**GDPR**” means EU General Data Protection Regulation 2016/679;
- 2.4 “**Sub-Processor**” means any processor engaged by the Processor or by any other sub-processor of the Processor who agrees to receive from the Processor or from any other sub-processor of the

Processor Personal Data exclusively intended for Processing activities to be carried out on behalf of the Processor after the transfer in accordance with his instructions;

- 2.5 **“Technical and Organisational Security Measures”** means those measures aimed at protecting Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the Processing involves the transmission of Personal Data over a network, and against all other unlawful forms of processing.

3. SCOPE AND RESPONSIBILITY

- 3.1 Processor shall process Personal Data on behalf of Controller. Controller and Processor shall be separately responsible for conforming with such statutory data protection regulations as are applicable to them.
- 3.2 Based on this responsibility, Controller shall be entitled to demand support towards the rectification, deletion, blocking and making available of Personal Data during the term of the TOS in accordance with the further specifications of such agreement on return and deletion of Personal Data.
- 3.3 The regulations of this DPA shall equally apply if testing or maintenance of automatic processes or of Processing equipment is performed on behalf of Controller, and access to Personal Data in such context cannot be excluded.
- 3.4 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Controller and the Processor shall implement appropriate Technical and Organisational Security Measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

4. OBLIGATIONS OF PROCESSOR

- 4.1 Processor shall collect, process and use Personal Data only within the scope of Controller’s instructions and for the fulfilment of the services contracted. If the Processor thinks that an instruction of the Controller infringes the Data Protection Laws or other data protection provisions, the Processor shall inform the Controller and reserves the right to refuse executing such instruction.
- 4.2 Within the Processor’s area of responsibility, Processor shall structure Processor’s internal corporate organisation to ensure compliance with the specific requirements of the protection of Personal Data. Processor shall take the appropriate Technical and Organisational Security Measures to adequately protect Controller’s Personal Data against misuse and loss in accordance with the requirements of the Data Protection Laws. Such measures hereunder shall include, but not be limited to:
- a) the prevention of unauthorised persons from gaining access to Personal Data Processing systems (physical access control);
 - b) the prevention of Personal Data Processing systems from being used without authorisation (logical access control);
 - c) ensuring that persons entitled to use a Personal Data Processing system gain access only to such Personal Data as they are entitled to accessing in accordance with their access rights, and that, in the course of Processing or use and after storage, Personal Data cannot be read, copied, modified or deleted without authorisation (data access control);
 - d) ensuring that Personal Data cannot be read, copied, modified or deleted without authorisation during electronic transmission, transport or storage on storage media, and that the target entities for any transfer of Personal Data by means of data transmission facilities can be established and verified (data transfer control);
 - e) ensuring the establishment of an audit trail to document whether and by whom Personal Data have been entered into, modified in, or removed from Personal Data Processing systems (entry control);

- f) ensuring that Personal Data is processed solely in accordance with the Processing activities stipulated in Appendix D attached hereto;
 - g) ensuring that Personal Data are protected against accidental destruction or loss (availability control).
- 4.3 Processor and each of its Sub-Processors shall take reasonable steps to ensure the reliability of any employee, agent or contractor who may have access to the Controller's Personal Data. Processor shall ensure that any personnel or Sub-Processors entrusted by the Processor with Processing Controller's Personal Data have undertaken to comply with the principle of data secrecy in accordance with the Data Protection Laws and have been duly instructed on the protective regulations of the Data Protection Laws. The undertaking to secrecy shall continue after the termination of the above-entitled activities.
- 4.4 Processor shall, without undue delay, inform Controller in case of a serious interruption of operations or violations by the Processor or persons employed by it of provisions to protect Personal Data or of terms specified in this DPA. In such an event, Processor shall implement the measures necessary to secure the Personal Data and to mitigate potential adverse effects on the Data Subjects and shall agree upon the same with Controller without undue delay. Processor shall support Controller in fulfilling Controller's disclosure obligations.
- 4.5 The Controller shall retain title as to any carrier media provided to Processor as well as any copies or reproductions thereof. Processor shall store such media safely and protect them against unauthorised access by third parties for the amount of time specified within the Data Retention Policy.
- 4.6 Processor shall, upon Controller's request, provide without undue delay to Controller all information on Controller's Personal Data and information. Processor shall be obliged to securely delete any data based on an instruction issued by Controller on a case-by-case basis. Where Controller so decides, Processor shall hand over such data to Controller or store it on Controller's behalf as per the Data Retention Policy issued by the Processor.
- 4.7 The Processor shall promptly notify the Controller about:
- (a) any legally binding request for disclosure of the Personal Data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation; and
 - (b) any accidental or unauthorised access; and
 - (c) any request received directly from the Data Subjects without responding to that request, unless it has been otherwise authorised to do so by the Controller.
- 4.8 The Processor shall deal without undue delay with all inquiries from the Controller relating to its Processing of the Personal Data subject to this DPA and shall abide by the advice of the Supervisory Authority with regard to the Processing of the Personal Data transferred.
- 4.9 The Processor will ensure that in case of Sub-Processors, the Processing services by the Sub-Processor will be carried out in accordance with the Data Protection Laws.
- 4.10 The Processor shall promptly inform the Controller of any terminated employees with access credentials to the Controller's internal or data systems, in order for the Controller to block access and take the necessary security precautions.
- 4.11 The Processor shall provide the Controller with all information necessary to demonstrate compliance with this DPA and the Data Protection Laws upon request.
- 4.12 The Processor shall ensure that any Personal Data shall be disclosed only when necessary, to authorised personnel who are duly bound by confidentiality agreements.

5. OBLIGATIONS OF CONTROLLER

- 5.1 Controller shall inform Processor without undue delay and comprehensively about any errors or irregularities related to statutory provisions on the Processing of Personal Data detected during a verification of the results of such Processing.

- 5.2 Controller shall be responsible for notifying Data Subjects of a data breach or for a request from the Data Subject themselves or for a corresponding provision of an otherwise applicable national data protection law.
- 5.3 Controller shall, upon termination or expiration of the TOS and by way of issuing an instruction, stipulate, within a reasonable period of time set by Processor, the reasonable measures to return data carrier media or to delete stored data. In the case of no instructions being issued within 30 days, the Processor will anonymize the Personal Data and retain it in accordance with the Data Retention Policy. Non-personal data shall be retained by Processor in accordance with its commercial requirements.
- 5.4 Any additional cost arising in connection with the return or deletion of Personal Data after the termination or expiration of the TOS shall be borne by Controller.
- 5.5 The Controller agrees and warrants that it will ensure compliance with the security measures and security processes defined by the Processor.
- 5.6 The Controller shall ensure that the Personal Data which it supplies or discloses to the Processor has been obtained fairly and lawfully. The Controller agrees and warrants that if the transfer involves Special Categories of Data, the data has been collected with the Data Subject's explicit and recorded consent resulting from a specific action as silence or inaction do not constitute consent.
- 5.7 The Controller shall ensure (and put in place all necessary measures to ensure) that any login details provided or created for the purpose of accessing Processor's systems are kept confidential, safe and secure at all times.
- 5.8 The Controller shall promptly inform the Processor of any terminated employees with access credentials to the Processors' internal or data systems, in order for the Processor to block access and take the necessary security precautions.

6. ENQUIRIES BY DATA SUBJECTS TO CONTROLLER

- 6.1 Where Controller, based upon applicable Data Protection Laws, is obliged to provide information to an individual about the collection, Processing or use of its Personal Data, Processor shall assist Controller in making this information available, provided that:
 - (a) Controller has instructed Processor in writing to do so, and
 - (b) Controller reimburses Processor for the costs arising from this assistance.
- 6.2 Where a Data Subject requests the Processor to correct, delete or block Personal Data, Processor shall refer such Data Subject to the Controller and notify the Controller of such requests.
- 6.3 Processor must notify Controller of a Data Subject's request regarding the exercise of the Data Subject's right.

7. SUB-PROCESSORS

- 7.1 Processor shall be entitled to subcontract Processor's obligations for the fulfilment of the Processing services to the Sub-Processors and third parties that are listed in Appendix F, as may be amended from time to time.
- 7.2 If the Processor updates the Sub-Processors listed in Appendix F, the Processor must notify the Controller thereof in writing (email to the email address(es) on record in Processor's account information for Controller is sufficient) and the Controller shall have the right to object thereto within 14 days after being notified. The objection must be based on reasonable grounds (e.g. if the Controller proves that significant risks for the protection of its Personal Data exist at the Sub-Processor). If the Processor and Controller are unable to resolve such objection, the Controller may terminate the Agreement, as described in the TOS.
- 7.3 Processor remains liable for the acts and omissions of its Sub-Processor.

8. DATA RETENTION POLICY

- 8.1 This data retention policy is the Processor's established protocol for retaining information for operational or regulatory compliance needs.
- 8.2 The scope of this document is limited to data in relation to the systems provided by the Processor to the Controller and communication between these two parties.
- 8.3 For the duration of the Agreement (as defined in the TOS), the data provided to the Processor will be retained and processed for the performance of, and in line with, the Agreement. This data may include Personal Data which is used to provide the Processing activities referred to in Appendix D and for the fulfilment of the TOS. Upon termination of the Agreement, the Controller may request the Processor to return and/or delete any Personal Data that it retains. Unless such request is received, the Processor reserves the right to retain the Personal Data for the integrity of data within the systems and/or for statistical purposes, where such Personal Data shall be archived in an aggregated and obfuscated form to preserve the anonymity of the Data Subject.
- 8.4 The retention periods are based on the legitimate interest of the Processor. Should the relevant interest, legislation, laws or regulation be updated or modified, the retention periods shall be adjusted accordingly for the purpose of compliance.

9. TRANSFER OF PERSONAL DATA

- 9.1 The Processor shall not transfer any Personal Data processed on behalf of the Controller to a third country outside the EEA without prior consent of the Controller.
- 9.2 The Parties shall ensure that, to the extent that any Personal Data is transferred to a third country outside the EEA that has not received a binding adequacy decision by the European Commission, such transfer shall be subject to an appropriate transfer mechanism that provides an adequate level of data protection in accordance with the Data Protection Laws.

10. DUTIES TO INFORM, ADDITIONAL TERMS

- 10.1 Where Controller's Personal Data becomes subject to search and seizure, an attachment order, confiscation during bankruptcy or insolvency proceedings, or similar events or measures by third parties while being processed, Processor shall inform Controller without undue delay. Processor shall, without undue delay, notify to all pertinent parties in such action, that any Personal Data affected thereby is in Controller's sole property and area of responsibility, that Personal Data is at Controller's sole disposition, and that Controller is the responsible body in the sense of the Data Protection Laws.
- 10.2 Where individual regulations of this DPA are invalid or unenforceable, the validity and enforceability of the other regulations of this DPA shall not be affected.

11. RETURN OR DESTRUCTION OF PERSONAL DATA

- 11.1 Upon termination of this Data Processing Agreement and upon the Controller's written request, the Processor shall either delete or return all Personal Data to the Controller. Unless otherwise stated by the Controller in the decommissioning process, the Processor reserves the right to retain the data for integrity of data within the systems and for statistical purposes, where such data shall be archived in an aggregated and obfuscated state to preserve the anonymity of the Data Subject.
- 11.2 Where applicable, the Processor shall notify all relevant third parties supporting its own Processing of the Personal Data of the termination of the Data Processing Agreement and shall ensure that all such third parties either destroy the Personal Data or return the Personal Data to the Controller, at the discretion of the Controller.

12. AUDIT OBLIGATIONS

- 12.1 The Processor shall endeavour to carry out an audit of compliance through a penetration test, the results of which may be shared with the Controller upon request.

- 12.2 In the case where an audit of the Processor is required by the Controller for the fulfilment of a legal requirement:
- (a) Controller shall have the right to access the Processor's premises to audit compliance by the Processor of the provisions of this Data Processing Agreement. If a third party is to conduct such audit, the audit needs to be conducted by a third -party auditor agreed upon by both Parties.
 - (b) Any audits are to take place during the Processor's normal business hours, and upon reasonable and prior written notice.
 - (c) All costs related to auditors' fees are to be borne by the Controller.
 - (d) The Processor shall fully cooperate with the Controller and/or the designated third party and shall provide the Controller and/or third party with any access, information and documents reasonably requested.
- 12.3 In the event that the audit reveals any non-compliance by the Processor with the provisions of this Data Protection Agreement or any national or European Data Protection Laws and regulations, the Processor shall without undue delay implement the necessary corrective measures, at its own expense.

13. LIABILITY

- 13.1 A Data Subject who has suffered material or non-material damage as a result of an infringement of GDPR or this DPA, may receive compensation from the Controller or Processor for the damage suffered.
- 13.2 The Processor shall be liable for the damage caused by the Processing of Personal Data only where it has not complied with obligations of GDPR specifically directed to processors or with this DPA or where it has acted outside or contrary to lawful written instructions of the Controller.
- 13.3 The Controller shall be liable for damages to Data Subjects which are caused by the Processing of Personal Data which is not compliant with the Data Protection Laws and which are not caused by the Processor's acts or omissions.
- 13.4 Except as specifically stated in this clause above, the liability of Processor and Controller are as defined in the TOS.

14. MISCELLANEOUS PROVISIONS

This Data Processing Agreement contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements or understandings, written or oral, with respect to the same subject matter still in force between the Parties.

The Processor reserves the right to change and update this DPA at any time, provided that:

- (i) Changes are in compliance with European and local laws and regulations; and
- (ii) Written notice is provided to the Controller.

Appendix A: Security layers and methodologies applied at infrastructure layer

Network Edge Traffic Monitoring & Mitigation

Simulated & Vetted through Penetration Testing

- Comprehensive traffic monitoring

- Multi-layered Approach
 - Network-level packet scanning
 - Server-level anomaly detection
- Constant Learning Patterns
- Automated Mitigation
- On-Edge Packet Analysis
- DDoS protection
- Load Balancing Mechanisms
- Performance Caching Techniques
- Web Application Firewall

Perimeter Network Security – Firewall

- Enforced Policy
- Restriction of services
- Last rule set to DROP unwanted packets
- Restrict inbound UDP traffic
- Up-to-date software revisions
- Service packs and patching
- Access Log (Default Retention Policy – Overwrite)
- Change Log (Default Retention Policy – Overwrite)
- Authorized Approval of any changes or maintenances

Remote Access Methods

- L2TP/IPSec tunnel VPN protocol
- Data Encrypted in transit
- Access Log (Default Retention Policy – Overwrite)
- Change Log (Default Retention Policy – Overwrite)
- Management Approval

Network Routers & Switches

- Up-to-date software versions
- Out-of-band connectivity not permitted
- 2-factor Auth for in-band access routers
- NAT translations logs (Default Retention Policy – Overwrite)
- Access Log (Default Retention Policy – Overwrite)
- Change Log (Default Retention Policy – Overwrite)

Systems Security Access Controls

- Managed Active Directory Services
- Enforced Group Policies (e.g. Password complexity / Failed Login Attempts)
- Maintain list of personnel (High-Level system privileges / least privileges)
- Quarterly User Access Review

Application Security (Operating Systems / Hosting)

- Quarterly Security Risk Assessment using Netcraft
- New release deployment cycle is assessed using ZAP

- High Vulnerabilities Review Process
- Monthly Patching Maintenance (Only applicable and approved updates)
- Real-time Virus Protection (Across all servers and on user workstations)
- Servers hardening prior to presenting on the network
- Formal process for securely wiping data

Incident Response (Internal Procedures to report on the below scenarios)

- Suspected Security Vulnerabilities
- Network Intrusion
- Data/Information Theft
- Unauthorised Data Access
- Equipment Theft
- External Threats to the site
- Physical Intrusion

Business Continuity Plan

- High Availability Approach
- Geographically independent environment to act as Disaster Recovery
- Quarterly testing of Ad serving application
- Offsite backups of application binary files / configs / media files / scripts
- Documented Process of invoking DR
- Multiple ISP providers
- RTO 30 minutes
- RPO last minute

Appendix B: Security mechanisms for the protection of data access at application layer

- All authentication communication for all application entry points is handled over secure communication;
- Authorisation is built around a role -based access control extended through a privilege framework;
- All application data is protected adopting the least privilege principle using encryption, data masking and obfuscation as supporting mechanisms where applicable;
- Application level auditing is implemented throughout which is also strengthened via database level auditing for data sets requiring complete DML traceability where applicable.

It is the responsibility of the Controller to conduct a due diligence and implement any additional safeguards as required for systems provided by NetRefer which the Controller is accessing, operating as well as hosting (acting as a Processor).

Appendix C: Security processes at an operational layer

- All NetRefer employees are required to sign non-disclosure agreements upon employment.
- All NetRefer employees pass through a criminal background and reference check prior to being employed.
- All NetRefer employees are given an overview of the GDPR upon joining and subsequently a refresher on an annual basis.

- All NetRefer partners & suppliers go through a due diligence process from both an operational and security perspective.
- NetRefer partners & suppliers are required to sign non-disclosure agreements.
- All company policies and processes are reviewed by the Governance, Risk and Compliance department to ensure both cohesiveness and compliance to security standards and regulatory compliance prior to being deployed.
- All company policies and processes are reviewed and audited annually by the Governance, Risk and Compliance department to ensure compliance.
- Processes are in place to ensure penetration testing is carried out on a regular basis by an independent 3rd party.
- NetRefer employs the least privilege principle across all its systems including internal ones.
- NetRefer has processes in place to ensure regular security patching of all systems.
- NetRefer has systems and processes in place for the monitoring of critical functions.
- NetRefer has a clean desk policy and shredding policies.
- NetRefer has strict policies for communication of credentials.
- NetRefer has automated policies preventing the use of mass storage devices such as USBs or external hard disks.
- NetRefer implements hard disk encryption on all company laptops and machines.
- NetRefer has in place manual processes to cater for the right of access, portability and right to be forgotten which are triggered upon request via the customer portal.
- NetRefer has in place internal processes to ensure adherence to its Data Retention Policy.

Appendix D: Processing Activities

Data Types	Grounds for Processing
Affiliate sign up data	Account management and providing access to the Affiliate Management System.
Affiliate Managers sign up data	Account Management and providing access to the Administration interface of the Performance Marketing Platform.
Customer Registration data	Used to associate the player with the affiliate and verify the acquisition of the customer for the purpose of calculating the affiliate rewards.
Transactional Activity	Processed and aggregated for the purpose of calculating the affiliate rewards.
Affiliate payment information	Processed for the purpose of generating the payment files for affiliates.
Marketing media views and clicks	Processed for the purpose of <ul style="list-style-type: none"> ▪ tracking, media, campaign and affiliate performance. ▪ Linking a customer to an affiliate ▪ Rewarding affiliates
Affiliate, Customer, Views, Clicks and rewards	Generation of statistics, performance metrics and KPIs for <ul style="list-style-type: none"> ▪ Affiliate management ▪ Affiliate performance ▪ Rewarding ▪ Financial reporting

	<ul style="list-style-type: none"> ▪ Benchmarking
All data within the systems	For the purposes of executing the Controller’s instructions, and affecting system and infrastructure maintenance, software updates and upgrades.
Controller’s Employee basic data	For the purpose of providing credentials to internal NetRefer support tools and mechanisms.

Appendix E: Contact details of the Data Processor

NetRefer monitors compliance with its data protection policies and procedures and has procedures to address privacy-related complaints and disputes. In this regard, individuals may address their data protection related concerns by contacting NetRefer on dpo@netrefer.com or +356 2767 3337.

NetRefer shall respond to all inquiries, concerns and/or complaints about its personal information handling practices.

The regulatory body in Malta responsible for the handling of personal information is the Office of the Information and Data Protection Commissioner. For more information, please visit <https://idpc.org.mt/en/Pages/Home.aspx>

Every privacy-related complaint will be acknowledged, recorded and investigated, and the results of the investigation will be provided. If a complaint is found to be justified, appropriate measures will be taken including, if necessary, amending our privacy policies and procedures.

Appendix F: Sub-Processors

Please click on [Appendix F](#) to access the list of Sub-Processors used by NetRefer.

-----END OF SCHEDULE A -----

SCHEDULE B - SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) defines the services, primary roles, and responsibilities of each Party; the methods for delivery of support services; the process for issue resolution; the limitations of service support levels, and the anticipated frequency and measurements (metrics) that will be applied against specific systems. The measurements determine performance and reliability impact (whether performance meets or exceeds expectations).

1. DEFINITIONS:

For purposes of this SLA, the following terms shall have the meanings ascribed to them in this Section 1. Capitalized terms used herein and not defined in this Section 1 shall have the meanings set forth in the Terms of Service (“TOS”).

“Business Hours” -	means 08:30 to 17:30 (CEST) not including Saturday, Sunday or local Public Holidays. Local Public Holidays relate to Malta.
“Defect” -	means an underlying cause of one or more Incidents, that has been replicated by the Licensor and classified as a Defect.
“Downtime” -	means time that the Service is not available which is not Scheduled Downtime.
“First Response” -	means the time that elapses between the initiation of a communication by the Licensee notifying an Incident to the Licensor’s Service Desk, and the acknowledgement of the Incident by the Licensor’s Support Agent.
“Incident” -	means any event which is not part of the standard operation of the Service which is caused due to configuration and/or database issues and causes an interruption to the use of the Service.
“Maintenance Window” -	means a prescribed time period which is provided to the Licensee in preparation for Scheduled Downtime.
“NetRefer Backlog” -	means a list maintained by the Licensor containing new features, changes to existing features, incident fixes, infrastructure changes, or other activities relating to the Service.
“Resolution” -	means an action that will resolve an Incident or a Defect resulting in the Incident or Defect being closed.
“Scheduled Downtime” -	means scheduled non-emergency or emergency maintenance on Hardware, Software or related equipment. Save for release deployments or emergency maintenance, all scheduled downtime must be scheduled during the Maintenance Window.
“Service Credits” -	means the percentage of monthly fee to be credited to the Licensee in relation to issues of Network Uptime and Content Delivery Network services.
“SLA One (1)” -	refers to an issue that causes a catastrophic production problem which may severely impact the Licensee’s production systems causing direct financial losses to the Licensee’s business.
“SLA Two (2)” -	refers to an issue that causes a problem where the Licensee's system is functioning but in a severely reduced capacity. The issue is causing significant impact to portions of the Licensee's business operations and productivity. The system is exposed to potential loss or interruption of service.
“SLA Three (3)” -	refers to an issue that is a medium-to-low impact problem which involves partial non-critical functionality loss, and which impairs some operations but allows the Licensee to continue to function. This may be a minor issue with

limited loss or impact to the functionality of the Licensee's operation and issues in which there is an easy circumvention or avoidance by the Licensee.

- “SLA Four (4)”** - refers to very minor issues with no impact on the quality, performance or functionality of the Service.
- “Time to Resolution”** - means the time that elapses between the First Response and the successful implementation of a Resolution by the Licensor.
- “Workaround”** - means, in relation to an Incident, a temporary solution to the Incident which enables the Licensee to use the Service.

2. SCOPE OF SLA:

This SLA applies only to the Service described in the TOS and to Statements of Work or other documents expressly stated by Licensor to be subject to this SLA. Notwithstanding the above, the Licensor shall not be bound by the terms of this SLA in any of the following circumstances:

- Failure by the Licensee to fulfil its obligations under the Agreement or any part thereof (including outstanding fees owed by Licensee).
- Failure by the Licensee to make appropriate support personnel available as needed to resolve technical issues.
- Information or data received from the Licensee or its representative is inaccurate, incomplete or not supplied in a timely manner.
- Incomplete or incorrect system configuration by the Licensee (e.g. changes made to system settings).
- Failure, misconfiguration or incompatibility of third-party vendors (e.g. vendor data transfer, third party ad serving).
- DNS problems beyond the control of the Licensee or Licensor.
- Licensor being unable to verify service restoration with the Licensee.
- Security breaches which occur when all reasonable precautions have been undertaken.
- Factors outside of Licensor’s reasonable control, including any force majeure event or Internet access or related problems.
- Any errors, omissions, delays or failures caused by Licensee or any third party outside of Licensor’s reasonable control.

3. RESPONSIBILITIES:

3.1 Licensee’s Obligations

- 3.1.1 Ensure that the Software is used as intended under the TOS.
- 3.1.2 Notify the Licensor of issues or problems in a timely manner, providing as much details as possible.
- 3.1.3 Provide detailed information/data and collaborate with Licensor to escalate, diagnose and resolve issues in an accurate and timely manner.
- 3.1.4 Ensure that all sensitive access to the Software, including web access, API’s and feeds is monitored and managed and that no unauthorised use of or access to the Software is permitted.
- 3.1.5 Ensure that any changes to the data transfer process or file formats are immediately notified to Licensor.
- 3.1.6 Where Licensor is retrieving data from the Licensee, the Licensee needs to ensure that username and password access is supplied and maintained and that any changes are immediately notified to Licensor.

3.1.7 Ensure that all data required for the Software to function is captured, recorded and sent to Licensor correctly and as per agreed schedules in accordance with the specific knowledge base guidelines.

3.2 Licensor's Obligations

- 3.2.1 Perform maintenance of servers to ensure Software performs at an acceptable level.
- 3.2.2 Ensure security of all infrastructures to the best of its ability and industry standards.
- 3.2.3 Inform the Licensee of any changes, restarts or Scheduled Downtime that could affect the performance of the Software.
- 3.2.4 Inform the Licensee of any Software Update or Upgrade at least 7 days in advance, and release notes to accompany such Software Update or Upgrade.
- 3.2.5 Perform QA testing relating to Software Updates and Upgrades.
- 3.2.6 Ensure that emails are relayed to the correct specified server.
- 3.2.7 Responsible for all third-party relationships that are related to the hosting of Licensee systems.

4. SERVICE AVAILABILITY:

4.1 99.9% Network Uptime Standard

The network will be deemed available if the networking components are available and responding to monitoring tools as designed and in a non-degraded manner.

In the event of a failure to provide the aforesaid Network Uptime Standard, the duration of such periods will be considered Downtime and the Licensee will accrue Service Credits based on the following metrics:

Monthly Cumulative Downtime (in % of availability)	Service Credits (% of monthly fee)
>= 99.8 and < 99.9	1
>= 99.7 and < 99.8	2
>= 99.5 and < 99.7	3
>= 99.3 and < 99.5	4
>= 99.0 and < 99.3	5
>= 98.9 and < 99.0	10
>= 98.2 and < 98.9	15
< 98.2	20

The aforesaid Service Credits shall be the sole and exclusive remedy available to Licensee in the event of failure by Licensor to provide the aforesaid Network Uptime Standard. Such remedy shall only be available to Eligible Licensees (Licensees whose accounts with Licensor are in good standing and who are not in breach of the Agreement).

4.2 Network Uptime Exemptions

The following items or situations are exempt from the Network Uptime Standard:

- Unavailability of Software during Scheduled Downtime or any other agreed-to scheduled downtime activity.
- Unavailability of Software due to Licensee modifications to content, system, staging and/or omissions which are not performed in accordance with Licensor's standard application operation.

- Attacks (i.e. hacks, denial of service attacks, viruses) by third parties, and other acts not caused by Licensor, provided that Licensor makes every reasonable effort to maintain current versions of Software patches.
- Events of force majeure, including acts of war, god, fire, earthquake, flood, embargo, riot, sabotage, labour dispute, government act, or failure of the Internet.

5. CONTENT DELIVERY NETWORK (CDN) SERVICES:

- 5.1 Licensor warrants 99.9% CDN service availability to deliver content on the Internet.
- 5.2 CDN service availability means the ability to redirect and deliver the requested Licensee content in approved formats to the Internet from a Content Distribution Centre. This will be measured at the Content Distribution Centres. The Content Distribution Centres will be measured for service up-time in delivering the Licensee content from the successfully configured endpoints.
- 5.3 If the CDN service suffers a sustained packet loss in excess of fifty percent (50%), this issue will be classified as SLA Two (2), and Licensee will accrue Service Credits based on the following metrics:

Monthly Cumulative Downtime (% of availability)	Service Credits (% of monthly fee)
>= 99.8 and < 99.9	1
>= 99.7 and < 99.8	2
>= 99.5 and < 99.7	3
>= 99.3 and < 99.5	4
>= 99.0 and < 99.3	5
>= 98.9 and < 99.0	10
>= 98.2 and < 98.9	15
< 98.2	20

- 5.4 Licensor reserves the right to switch access / delivery from a CDN service to a standard Web hosting service in the event that a fix is not immediately possible. Once a fix has been made, the service will be reverted to the CDN service.

The aforesaid Service Credits shall be the sole and exclusive remedy available to Licensee in the event of a CDN service issue, as described above. Such remedy shall only be available to Eligible Licensees (Licensees whose accounts with Licensor are in good standing and who are not in breach of the Agreement).

6. SERVICE LEVEL WARRANTY:

- 6.1 The Service Credits described in Sections 4 and 5 above shall be the sole and exclusive remedy available to Licensee for failure by Licensor to meet the aforesaid Network Uptime Standard and/or the aforesaid CDN service availability. Such remedy shall only be available to Eligible Licensees (Licensees whose accounts with Licensor are in good standing and who are not in breach of the Agreement). Nevertheless, should the Monthly Cumulative Downtime be below 98.2% in any three consecutive months, this shall constitute a breach of the Agreement by Licensor, and Licensee's sole and exclusive remedy shall be as specified in the TOS.
- 6.2 For the avoidance of doubt, it is hereby clarified that any other issues relating to the performance or failure of the Service shall be subject to the Limited Warranty provided in the TOS.

7. SERVICE CREDITS:

Service Credits are accumulated monthly with Monthly Cumulative Downtime being reset at the beginning of each calendar month. The Service Credit percentage, which only applies to the monthly fee

for the application in which the Downtime occurred, will not exceed the monthly fee actually paid by Licensee to Licensor.

To apply for a Service Credit under this Service Level Agreement, the Licensee must submit a request to acctmgt@netrefer.com, **within 30 days** of the end of the applicable month with a reference to "SLA Service Credit". The request must include the dates and times of the Downtime for which Service Credit is being requested, and any additional documentation that demonstrates the claimed Downtime. Any approved Service Credits will be applied to the Licensee's billing during the billing cycle following the month in which the claim was approved. Any accrued Service Credits shall be forfeited should the above procedure not be followed.

8. RESPONSE TIME, WORKAROUND AND RESOLUTION:

The following are the Incident (non-defect) classifications and their corresponding response time, workaround and resolution time:

Service Level	First response	Workaround	Time to Resolution	Coverage
Critical (SLA 1)	1 hour	4 hours	15 days	24/7
High (SLA 2)	2 hours	12 hours	15 days	Business Hours
Medium (SLA 3)	8 hours	N/A	4 weeks	Business Hours
Low (SLA 4)	16 hours	N/A	6 weeks	Business Hours

Any Incident that is identified to be a Defect will have the above workaround timeframes, however the time to resolution will be governed by the Licensor through the Netrefer Backlog.

9. SUPPORT FEE

9.1 **Billable** - Billable hours are the standard support hours provided by the Licensor to the Licensee and are utilised when raising support tickets for tasks which cannot be performed by the Licensee or for product / data related queries. All Billable hours used in excess of the free monthly hours allocated in the Order Form, are charged at the rate specified in the Order Form (refer to Order Form Section I – Support Fee).

Examples of Billable Hours - Reward Plan Queries, End of Month Scheduling / End of Month follow up, Queries related to Custom Reports / XML Feeds, Check Affiliate Payments/Rewards, etc.

9.2 **Directly Billable** - Directly-billable hours refer to requests made by the Licensee for tasks that can be performed directly by the Licensee, but are instead raised as support tickets for the Licensor to complete. Such hours are charged at the rate specified in the Order Form (refer to Order Form Section I – Support Fee).

Examples of Directly-Billable Hours - Creation of Reward Plans, Re-Import Data, Retagging Customers, etc.

9.3 **Non-Billable** - Non-billable hours relate to support hours provided by the Licensor when a defect is identified or where a problem is caused from the Licensor's end. In such instances the Licensee will not incur any charged for the time utilised.

10. HANDLING OF SUPPORT REQUESTS:

Support requests can be submitted by logging a ticket on the [NetRefer Service Desk](#) or by contacting NetRefer Support directly by telephone on +356 2767 3337. All requests are logged onto the NetRefer issue tracking system.

Once logged, a unique ticket number is created and the request is routed to a NetRefer First Line Product Support Team Member. Licensee will receive an automatic email response upon logging a ticket. The email will contain the ticket number as well as a link for accessing the ticket and monitoring its progress. This ticket number should be used in all correspondence relating to the support request.

The First Line Product Support Team Member will investigate and escalate Licensee's issue as needed to resolve the issue as quickly as possible. Due to the vast and complex nature of the Software, it may be necessary to involve Licensor's technical teams to investigate and resolve a particular problem.

11. HOW TO CONTACT THE NETREFER PRODUCT SUPPORT TEAM:

When contacting the NetRefer Product Support Team, Licensee should have the following information ready:

- a technical person on behalf of Licensee who is able to assist if necessary;
- a detailed description of the issue, including screenshots where applicable;
- severity of the issue in relation to its impact on Licensee's business.

11.1 *Submit via Web*

Licensee may submit a request for assistance by logging into [NetRefer Service Desk](#). The information listed above is required for submitting issues online. This capability allows Licensee to insert all the pertinent information into the ticket, assists in reducing problem resolution time, and ensures accuracy of any data or information relayed.

11.2 *Incident Recording by Telephone*

All SLA One (1) Incidents must be logged promptly in the NetRefer Service Desk followed by a telephone call.

11.3 *After Hours Support*

After Business Hours, Licensor will use commercially reasonable efforts to respond within one hour, by telephone, to service calls which Licensee specifies to be SLA One (1). An appropriately skilled support engineer from Licensee's end must be available to work together with Licensor's technical support staff during the entire time of performing support services after Business Hours.

11.4 *Escalation Levels*

After Business Hours support requests for SLA One (1) Incidents are to be made via telephone. The call is received by the Client Services Manager, who will contact the emergency team (on call 24/7) to resolve the issue. If required, the Client Services Manager will escalate the issue internally. Once issue is resolved, an incident report will be shared with the Licensee (if applicable).

12. RESOLUTION MANAGEMENT:

Step 1:

- Ticket or request is received by NetRefer Product Support Team.
- Licensee will receive an email acknowledging receipt of the support request with a ticket number. This is done automatically if submitted by the Licensee via the ticket system.

- NetRefer Product Support Team Member will investigate the request and determine its complexity and whether it needs to be escalated. The support request will then be categorised according to the SLA Levels.
- Once the ticket has been routed to the relevant Team Member, the issue will be further investigated, and a course of action determined.
- Should the request be classified as a SLA One (1) / SLA Two (2) Defect requiring development, Licensor shall endeavour to provide a temporary fix as per such SLA. For SLA Three (3) / SLA Four (4) Defects, the request shall be placed in the NetRefer Backlog to be fixed within a future release. Should the functionality be working as intended, the request shall be classified as a feature request to be implemented at Licensor's discretion.

Step 2:

- Initial and Ongoing Response Times will apply according to the SLA levels. Should the SLA Level be One or Two, the support request will receive immediate attention at the highest levels.
- Throughout an SLA One (1), the NetRefer Emergency Team will be assembled to work on the problem as required.
- Should a full resolution to the problem not be possible immediately, then the NetRefer Support Team will work to get the system to an "operational" level in order to start processing requests.

Step 3:

- Once any major issue/s has/have been resolved or a temporary work-around achieved, a full Incident Report will be compiled by the NetRefer Support Team to determine the causes of the issue/s and what was done to resolve it.
- If a temporary work-around was achieved, the NetRefer Support Team will draft an immediate plan of action to resolve the issue/s fully so that it does not occur again. This plan will be communicated to the Licensee with the relevant timelines and deliverables.
- Where the issues require co-operation with the Licensee's resources, a joint task force will be established to resolve the issue/s and a formal project plan issued with the appointment of the relevant senior personnel to manage the resources on both sides.
- At all times, Licensor will provide the relevant support and escalation in order to resolve any issue/s caused by or within the Service, so that the Licensee may feel confident that it is receiving the necessary attention to keep its business operational.

-----END OF SCHEDULE B-----

SCHEDULE C - SERVICE DESCRIPTIONS

Performance Marketing Platform (PMP)

- The Licensee is responsible for obtaining consent from the Affiliate when manually entering or amending the Affiliate details, and the Licensee shall be liable for any GDPR or other penalties ensuing from non-compliance.
- The Licensee, as data controller, is responsible for data accuracy pertaining to the affiliate details.
- The Licensee, as data controller, is responsible for maintaining any terms and conditions presented by the Licensee to Affiliates ("**Affiliate Terms and Conditions**") and for communicating any changes as required.
- The Licensee, as data controller, is responsible for including any processing information provided by Licensor in the Affiliate Terms and Conditions, as applicable.
- The Licensee, as data controller, is responsible for maintaining any and all languages required for the Affiliate Terms and Conditions and any respective versions.
- The Licensee, as data controller, is responsible for assigning the roles and privileges and determining what features shall be visible and accessible to which of its employees and ensuring that such access is required for the fulfilment of such employee's duties. The Licensee undertakes to only provide access where clear grounds exist for such access.
- Licensee is responsible for the appropriate protection and use of its username, password, token or device being used for authentication to any services being offered by Licensor. Licensor shall not be held liable for any damage resulting from Licensee's failure to comply with this security obligation or to keep its credential set safe.
- Licensee may not use the PMP for any illegal or unauthorized purpose. Licensee must not, in the use of the PMP, violate any laws in its jurisdiction (including but not limited to copyright laws).
- Licensor does not screen user-generated content or information on the PMP and does not give any assurance as to its accuracy or completeness. Users of the PMP are expressly asked not to publish any defamatory, misleading or offensive content or any content which infringes any other party's intellectual property rights (eg. copyright). Any such content is contrary to Licensor's policy and Licensor does not accept liability in respect of such content. The user responsible will be personally liable for any damages or other liability arising therefrom, and Licensee agrees to indemnify Licensor in relation to any liability Licensor may suffer as a result of any such content.
- The PMP and this website or any portion of the PMP or the website may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without Licensor's express written consent. Licensee may not systematically extract and/or re-utilise parts of the contents of the PMP without Licensor's express written consent. In particular, Licensee may not utilise any data mining, robots, or similar data gathering and extraction tools to extract (whether once or many times) for re-utilisation of any parts of the PMP without Licensor's express written consent.
- Licensor claims no intellectual property rights over the material Licensee provides to the PMP. Licensee's profile and the materials uploaded remain its own.
- Licensee understands and agrees that Licensor uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage and related technology required to run the PMP, and Licensor shall not be held liable for any event, act or omission on their part.
- Licensee understands and agrees that any figures and amounts calculated are based on the data being sent to Licensor and that Licensor cannot be held responsible for any incorrect figures resulting from incorrect data being sent over.

- Licensee understands that the set up of rewards is entirely within its control and that Licensor cannot be held responsible for any reward calculations which work as per configuration set wherein the functionality is working correctly.

Add-Ons, Integrations and APIs

- With regards to add-ons and integrations, Licensor as the data processor is only responsible for receiving the data and displaying it correctly.
- Integration of the PMP with 3rd party applications using APIs provided by Licensor, require technical skill. Licensee understands that errors or defects in the integration may cause loss or corruption of data. Licensee must ensure that it uses the services of technically skilled persons for the integration. Licensee agrees that Licensor is not liable for any loss or corruption of data caused due to error or defects in the integration.
- Licensee must not try to access any functionality that is not exposed in the documentation for the API. Licensee understands and agrees that Licensor will not be liable for the consequences of accessing or using any unexposed functionality of the API.
- Licensor, at its discretion, may cease providing the current version of the API either as a result of discontinuation of the API or upgradation of the API to a newer version. In both cases, the current version of the API will stand deprecated and become the deprecated version of the API (hereinafter "Deprecated Version"). When Licensor decides to deprecate the current version of the API, Licensee will be informed of such deprecation. For a period of six months following announcement of deprecation (hereinafter the "Deprecation Period"), Licensor will use commercially reasonable efforts to support the Deprecated Version. Licensee understands and agrees that Licensor is not obliged to provide the features of the newer version in the Deprecated Version. Licensor need not support the Deprecated Version after the Deprecation Period.
- Licensor in its discretion may cease supporting the Deprecated Version during the Deprecation Period if i) Licensor is required to do so by law, or ii) Licensee has breached any provision of this Schedule or the Agreement, or iii) Licensor determines that supporting the API is likely to result in a security risk to Licensor.
- Licensor may prescribe usage limits, including limits on the number of calls, number of records per call, bandwidth usage and frequency of calls. Licensee is required to adhere to the usage limits prescribed by Licensor in order to avail uninterrupted service. Licensee understands and agrees that Licensor may restrict an activity if Licensee reaches the usage limit corresponding to such activity and that an API call may either fail or be partially executed if the usage limits are reached before or during an API call.

-----END OF SCHEDULE C -----