

# Arnold Media Limited

## Terms of Service V.7.5

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# Arnold Media Limited Terms of Service

THESE ARE THE TERMS OF SERVICE REFERENCED IN THE ORDER FORM. THE ORDER FORM IS A LEGALLY ENFORCEABLE CONTRACT BETWEEN NETREFER AND LICENSEE, AND THE REFERENCE TO THESE TERMS OF SERVICE IN THE ORDER FORM MEANS THAT THEY APPLY, AND ARE ENFORCEABLE, IN THE SAME WAY AS THEY WOULD IF THEY WERE INCLUDED IN THE ORDER FORM.

THEREFORE, 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.

In addition to these Terms of Service, please read our Privacy Policy, located at <https://netrefer.com/privacy-policy/>, as updated from time to time, for more information on our data collection, storage, and protection practices.

## 1. Introduction

- 1.1 These Terms of Service (“**TOS**”) together with the Order Form, including all documents referenced or incorporated therein, constitute a binding agreement between Licensee and NetRefer (“**Agreement**”). The Agreement governs NetRefer’s provision of the Service to Licensee, as well as Licensee’s access and use of the Service.
- 1.2 To the extent of any conflict or inconsistency between these TOS and the Order Form, the Order Form shall prevail.
- 1.3 The schedules attached to these TOS (“**Schedules**”) form an integral part of the Agreement and shall have the same force and effect as if set out in the body of these TOS. The clauses of these TOS shall apply to each of the Schedules hereto, unless otherwise expressly stated in a specific Schedule. To the extent that there is a conflict or inconsistency between the terms of any Schedule and the terms of these TOS, the terms of such Schedule shall govern with respect to such conflict or inconsistency only. The term of each Schedule will follow the term of the Agreement.
- 1.4 The Schedules comprise of:
  - Schedule A – Data Processing Agreement (“**DPA**”);
  - Schedule B – Service Level Agreement (“**SLA**”);
  - Schedule C – Add-ons, Integrations and API’s (“**API**”);
  - Schedule D – CoPilot AI – NetRefer’s Virtual Assistant (“**CoPilot AI**”).
- 1.5 In these TOS, any reference to the singular includes the plural and vice versa, to any gender includes all genders, and to any law, act or regulation includes any subsequent amendments, replacements, or enactments thereof.
- 1.6 The headings herein are for reference purposes only and shall not be deemed to limit or affect any of the provisions hereof.
- 1.7 Unless otherwise stated, all references to clauses in these TOS refer to clauses within the main body of these TOS, and references to clauses within any Schedule refer to clauses contained within that specific Schedule.

## 2. Definitions

- 2.1 “**Add-on/s**” means optional modules that enhance the Platform’s functionality, as indicated in the Order Form.
- 2.2 “**Add-ons Fee**” means the monthly fees payable by the Licensee for the Add-ons, as indicated in the Order Form and as may be updated from time to time by the Parties.

- 2.3 **"Affiliate"** means any third parties who direct online and/or offline traffic to the online and/or offline properties of Licensee which can be tracked and attributed to the affiliate and who are incentivized by Licensee for such introductions and are permitted to access and utilize, but not further distribute, the Service. Affiliates include also third parties authorised by Licensee to use the Service.
- 2.4 **"Agreement"** has the meaning set out in clause 1.1 above.
- 2.5 **"Automatic Renewal Term"** means each successive term of the Agreement after the end of the Initial Term, as indicated in the Order Form.
- 2.6 **"Billing Start Date"** means the date the billing of the Total Monthly Fee commences as indicated in the Order Form and as further described in clause 8.1.2 below.
- 2.7 **"Brand/s"** means any brands, trademarks, service marks, trade names, domain names and logotypes owned by Licensee.
- 2.8 **"Bug"** means a feature or functionality that is not working in accordance with the latest description thereof in the User Documentation.
- 2.9 **"Confidential Information"** means confidential information as defined in clause 21 below.
- 2.10 **"Contractual Partners"** means any Affiliate, employee, consultant, agent and any other third party engaged with Licensee and who in any way makes use of the Service, directly or indirectly and/or any third parties who provide or send data to the Platform on behalf of Licensee.
- 2.11 **"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.
- 2.12 **"Effective Date"** means the date on which the Agreement comes into force, as indicated in the Order Form.
- 2.13 **"Features"** means the Infrastructure and any services, features and functions that are made accessible to Licensee as part of the Service, and which may be modified, changed, altered, removed, or added from time to time by NetRefer at its sole discretion.
- 2.14 **"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.
- 2.15 **"Hosting Fee"** means the monthly fees payable by the Licensee for hosting services, as indicated in the Order Form and as may be updated from time to time by the Parties.
- 2.16 **"Infrastructure"** refers to the cloud infrastructure service composed of compute capacity, data storage, data transmission, network and related infrastructure services that are made available and managed by NetRefer's third party cloud infrastructure service provider.
- 2.17 **"Initial Term"** means the initial Agreement period starting on the Billing Start Date and continuing through the number of months indicated in the Order Form.
- 2.18 **"Intellectual Property Rights"** means any and all patents, inventions, copyrights, moral rights, trademarks, domain names, trade secrets, know-how, software, and any other form of intellectual property and/or proprietary rights recognized in any jurisdiction whether existing now or acquired hereafter including any application or right to apply for registration of any of these rights.

- 2.19 **"License Fee"** means the monthly fees payable by the Licensee for the base system, Brands and/or Products, and excluding any Hosting Fee, Security Fee, Add-ons Fee, Support Fee and/or other fees, as indicated in the Order Form and as may be updated from time to time by the Parties.
- 2.20 **"Licensee"** or **"Client"** means the legal entity identified in the Order Form.
- 2.21 **"Licensor"** or **"NetRefer"** means Arnold Media Limited, trading as NetRefer (C39896), of Quantum Place, Triq ix-Xatt, Gzira, GZR 1020, Malta.
- 2.22 **"Maintenance"** means all software coding done to correct Bugs found during usage as well as to implement any Software Update or Upgrade. It includes also any hosting maintenance which is required to retain or increase the confidentiality, integrity and availability of the Service throughout the term of the Agreement.
- 2.23 **"Order Form"** means the NetRefer order form executed between NetRefer and Licensee, as may be updated or modified from time to time in an addendum or other written document signed by the Parties.
- 2.24 **"Party"** or **"Parties"** means Licensee and/or NetRefer, individually or collectively.
- 2.25 **"Platform"** means NetRefer's front-end web-based portals for Licensee and their Contractual Partners, the back-end software modules, management of all Licensee's specific data, and any APIs used to communicate with NetRefer's platform.
- 2.26 **"Product/s"** means any product category (including but not limited to, Sportsbook, Casino, Virtual Casino, Poker, Bingo, Lotto and Exchange) provided by the Licensee and integrated within the Service.
- 2.27 **"Schedules"** has the meaning set out in clause 1.3 above.
- 2.28 **"Security Fee"** means the monthly fees payable by the Licensee for security services such as ad-server, and admin & affiliate interface, as indicated in the Order Form.
- 2.29 **"Service"** means all or any portion of the Platform, Software and Features that are made accessible to Licensee, as further explained in the User Documentation.
- 2.30 **"Software"** means all or any portion of NetRefer's proprietary software code and software libraries, software components and any and all customizations, modifications, Updates and Upgrades thereto, if any, as well as all or any portion of NetRefer's other products and/or services and/or programs and/or features, and all Intellectual Property Rights therein.
- 2.31 **"Software Update"** means a patch, correction or other similar modification to the Service which may be issued by NetRefer during the term of the Agreement.
- 2.32 **"Software Upgrade"** means a release of the Software containing material enhancements in features or functionality which NetRefer may make commercially available to Licensee during the term of the Agreement and which may be subject to an additional cost.
- 2.33 **"Support Fee"** means the monthly fees payable by the Licensee for support services, as indicated in the Order Form.
- 2.34 **"Total Monthly Fee"** means the aggregate monthly amount payable by the Licensee, calculated as the sum of all individual recurring fees applicable to the Licensee, including the License Fee, Hosting Fee, Security Fee, Add-ons Fee, and Support Fee. The amount of the Total Monthly Fee is subject to change if additional Brand/s, Product/s, Add-ons, or any other services are required by the Licensee and/or if hosting allocations are upgraded or downgraded. Any such changes shall be set out in an addendum to the Order Form and signed by both Parties.
- 2.35 **"User Documentation"** means any user manual, knowledge base, release notes, training materials and any other related material provided or published by NetRefer (printed or on-line), which provides an overview of the Service features, capabilities and functionality and which assists Licensee in using the Service, as may be updated from time to time.

### 3. Grant of License

In accordance with the terms of the Agreement, NetRefer hereby grants to Licensee a non-transferable, non-exclusive, non-assignable license to use the Service for Licensee's internal business purposes only, throughout the term of the Agreement.

### 4. Limitation on Use

- 4.1 Licensee shall not, nor permit any Contractual Partner to: (a) copy, modify, distribute, redistribute, reproduce, duplicate, download, sell, lease, assign, transfer, trade, publish or otherwise exploit all or any part of the Service or the User Documentation; (b) disassemble, reverse engineer or decompile any copies of the Service, whether in full or in part; (c) develop, produce, make, distribute, license or exploit any of the Service's Derivative Work; (d) allow third parties to access and/or use the Service, except for those specifically authorised in writing by NetRefer; (e) use a single account given to Licensee for the Service for multiple business entities, unless specifically authorised in writing by NetRefer; (f) use the Service for any purpose other than in the normal course of its business; (g) use the Service in violation of any applicable law or regulation, or for any illegal or unauthorised purpose or cause; (h) systematically extract and/or re-utilise parts of the contents of the Service, collect content or information or otherwise access NetRefer's website or Service using automated means, such as periodic caching of information, harvesting bots, data mining, robots, spiders, scrapers, crawlers or similar data gathering and extraction tools to extract (whether once or many times) for re-utilisation of any parts of the Service without NetRefer's express written consent; (i) access the Service for benchmarking or other competitive purpose or solely for the purpose of monitoring its availability, performance or functionality; (j) use any unauthorized means to modify, reroute, or gain access to the Service or attempt to carry out these activities; (k) damage, disable, overburden or impair the Service or any network connected to the Service; or (l) use the Service beyond the feature allocation and amounts provided in that Service or in violation of NetRefer's Fair Usage as specified in clause 24 below.
- 4.2 NetRefer retains the right to immediately block, deactivate or otherwise prevent access to the Service upon infringement of any of the aforesaid.

### 5. Use of the Service

- 5.1 Licensee is solely liable for all matters related to, arising from, or in any way connected to its use of the Service, including, but not limited to, the administrating, monitoring and/or setting up of reward plans, and/or payment of any rewards using NetRefer's Service.
- 5.2 Licensee is solely liable and responsible for any data input, or data which is caused to be input by NetRefer on Licensee's behalf, as well as for all outcomes that may result directly or indirectly from such data input.
- 5.3 Any figures and amounts calculated are based on data sent to NetRefer, and NetRefer shall not be liable for any incorrect figures resulting from incorrect data being sent over.
- 5.4 The setup of rewards is entirely within Licensee's control, and NetRefer shall not be liable for any reward calculations which work as per configuration set wherein the functionality is working correctly.
- 5.5 During the term of the Agreement, Licensee's data, which includes data related to ad serving statistics and affiliate data that NetRefer collects directly, as well as data related to player registration, activity, adjustments and corrections to the activity that NetRefer obtains from Licensee, is accessible on the Platform for a rolling period of twenty four (24) months from the date it is published, after which it shall be made available to Licensee by submitting a request to NetRefer.
- 5.6 Licensee is solely liable to the Affiliate in respect of any matter related to, arising from, or in any way connected to the Affiliate's access and use of the Service, including, but not limited to, the administrating, monitoring and/or payment of any rewards using NetRefer's Service.

- 5.7 Licensee shall obtain consent from the Affiliate when manually entering or amending the Affiliate details, and Licensee shall be liable for any GDPR or other penalties resulting from non-compliance.
- 5.8 Licensee shall ensure that the Affiliates use the Service strictly in accordance with the provisions of this Agreement. Breach of any provision of this Agreement by any Affiliate shall be deemed a breach thereof by Licensee, and Licensee shall be liable hereunder with respect to such breach as if Licensee itself had breached this Agreement.
- 5.9 Licensee shall ensure that the Affiliates' actions and usage relating in any way to the Service are in line with Licensee's internal policies and legal requirements, including but not limited to, Affiliates' own marketing strategies and the outcomes and/or results and/or legal implications of such strategies.
- 5.10 Licensee shall ensure that the Affiliates use the Service in accordance with applicable laws, orders and regulations in force from time to time and as may be established by the relevant authority that is empowered by law to regulate the business operations of the Affiliate. Licensee undertakes and agrees to require each of its Affiliates to be in possession of all relevant permissions, approvals, certifications, permits and licenses required under applicable law, necessary for each such Affiliate to operate its business and required for each such Affiliate to operate through the Platform and to avail itself of the Service and, upon request by NetRefer, Licensee shall provide NetRefer with proof of such documentation. In the event that any of the said permissions, approvals, certifications, permits or licenses are withdrawn, cancelled, suspended or in any other manner made inoperative by the relevant authorities, Licensee shall notify NetRefer immediately upon becoming aware thereof.
- 5.11 Licensee is responsible for:
- data accuracy pertaining to the Affiliate's details;
  - maintaining and updating any terms and conditions presented by Licensee to Affiliates ("**Affiliate Terms and Conditions**") and for communicating any changes as required;
  - including any processing information provided by NetRefer in the Affiliate Terms and Conditions, as applicable;
  - maintaining any and all languages required for the Affiliate Terms and Conditions and any respective versions;
  - 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. Licensee undertakes to only provide access where clear grounds exist for such access.
- 5.12 If any acts or omissions of an Affiliate result in, or in NetRefer's sole discretion may result in, damage, harm or interference to NetRefer or any of its clients, NetRefer reserves the right to immediately suspend or block access to the Affiliate platform.

## 6. Third-Party Services, Sites and Products

Third-party services, sites and products are not under NetRefer'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 NetRefer endorses, supports or warrants the third-party service, site or product. NetRefer'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 NetRefer 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. NetRefer makes no guarantees and assumes no responsibility or liability of any type with respect to content, products and services offered by any third party.

## 7. Term and Termination

- 7.1 The Agreement shall commence on the Effective Date and shall continue in effect for the duration of the Initial Term. At the end of the Initial Term, the Agreement shall automatically renew for successive periods according to the Automatic Renewal Term indicated in the Order Form (each, a “**Renewal Term**”).
- 7.2 Either Party may terminate the Agreement at the end of the Initial Term or any Renewal Term by providing written notice of termination at least three (3) months prior to the end of the Initial Term or the then current Renewal Term.
- 7.3 At the end of the Initial Term or Renewal Term, as applicable, the Parties may sign a new Order Form, in which event the Parties shall be deemed to have entered into a new Agreement and a new Initial Term will commence.
- 7.4 Termination by Licensee prior to the end of the Initial or Renewal Term, as aforesaid (except as expressly permitted under clause 7.6 below), does not release Licensee from its obligation to pay all fees for the remainder of the Initial or Renewal Term, as applicable. Fees will be calculated based on the most recent fees payable prior to such termination. Any previously granted discounts will be revoked, and Licensee will be required to pay the full, undiscounted fees for the remaining period. Upon Licensee giving notice of early termination, all fees, including the System Decommissioning Fee, for the entire Initial Term or Renewal Term, as applicable, shall become immediately due and payable in full.
- 7.5 The following terms apply during each Renewal Term:
- 7.5.1 Any discount granted during the Initial Term or any previous Renewal Term (if any) will automatically expire at the end of such Initial or Renewal Term and will not apply during any subsequent Renewal Term.
  - 7.5.2 The monthly fees may be increased automatically by up to 30% at any time during each Renewal Term at NetRefer's sole discretion.
  - 7.5.3 Any updated TOS published by NetRefer at any time during a Renewal Term shall automatically apply to that Renewal Term.
- 7.6 Notwithstanding the above, Licensee shall have the right to immediately terminate the Agreement only in the following cases: (a) NetRefer 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 NetRefer; (b) any representation made hereby by NetRefer is materially false when delivered; (c) NetRefer has committed, or is reasonably suspected of committing, any unlawful or fraudulent act; or (d) NetRefer becomes bankrupt, insolvent, or undergoes involuntary liquidation, as evidenced by written records. Termination pursuant to this clause 7.6 shall not release Licensee from its obligations to pay to NetRefer all fees which accrued prior to such termination. It is hereby agreed that Licensee's sole and exclusive remedy for termination pursuant to this clause 7.6 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.
- 7.7 NetRefer shall have the right to immediately terminate the Agreement 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 NetRefer to 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) Licensee becomes bankrupt, insolvent, or undergoes involuntary liquidation, as evidenced by written records; (e) Licensee refuses to accept any modifications to the Service or any Upgrade or Update, which are required for legal, regulatory, security and/or infrastructural purposes, or to ensure or improve optimal functioning of the Service; (f) failure by Licensee to apply SSL certificates as further described herein below; (g) failure by Licensee to comply with clause 23.2 regarding DDoS attacks; or (h) any use of the Service by Licensee negatively impacts NetRefer and/or its clients. Termination pursuant to this

clause 7.7 does not release Licensee from its obligation to pay to NetRefer all fees, including the System Decommissioning Fee, for the entire Initial Term or Renewal Term, as applicable, which shall become immediately due and payable in full.

- 7.8 Effect of Termination. Upon expiration or termination of the Agreement for any reason whatsoever:
- 7.8.1 NetRefer shall decommission the Service (as further described in clause 10 below), obfuscate and anonymize all personal data and delete any backups, disable all related technical services, and revoke all access to the Service both externally and internally; and
  - 7.8.2 Licensee shall remove all NetRefer integrations from its systems (such as login and sign up iframes); delete any pixels redirecting to NetRefer; remove any tracking technologies linking to or directing to NetRefer; remove any references and links to NetRefer sites; inform any third party integrators that linked to the Platform of such termination; and store and protect any data generated through the NetRefer system in compliance with applicable legal and commercial obligations.

## 8. Fees

### 8.1 General

- 8.1.1 As of the Billing Start Date, Licensee shall pay to NetRefer the fees indicated in the Order Form, as may be updated pursuant to any modifications agreed upon in writing by the Parties.
- 8.1.2 For new clients only: The Billing Start Date is aligned with the estimated go-live date in the Onboarding Project Plan, attached to the Order Form. No changes will be made to the Billing Start Date due to delays outside of NetRefer's control. Full cooperation of Licensee and associated third parties (such as data providers) is required throughout onboarding to ensure delivery within the estimated timelines set out in the Onboarding Project Plan. However, if the Service goes live prior to such date, the Billing Start Date will automatically be brought forward to coincide with the go-live date, and the End of the Initial Term indicated in the Order Form will likewise automatically be brought forward to correspond with such date.
- 8.1.3 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. Any withholding taxes which may arise on amounts paid by Licensee to NetRefer are not to be deducted from the amount paid to NetRefer but are instead to be paid directly by Licensee and at their additional expense. The full amount invoiced by NetRefer will therefore still have to be settled by Licensee to NetRefer.
- 8.1.4 NetRefer 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.
- 8.1.5 NetRefer may charge Licensee interest on any late payments at the rate of 8% plus the European Central Bank (ECB) reference rate, or the maximum rate permitted by law, if lower.
- 8.1.6 Failure by Licensee to pay any amounts by the due date shall entitle NetRefer, without prejudice to any other rights and remedies it may have, to immediately suspend and/or cancel Licensee's access to all or any part of the Service, including tracking and ad-serving, without prior notice. NetRefer shall not be liable for any loss or damage caused to Licensee or any third party as a result of such suspension or cancellation. A re-activation fee may be charged by NetRefer at its sole discretion.
- 8.1.7 Furthermore, should Licensee fail to make payment and fail to remedy this breach within thirty (30) days of notice thereof by NetRefer, NetRefer shall have the right to terminate the Agreement and/or take legal action against Licensee, while all costs and expenses,

including but not limited to, attorney's fees, court costs, collection agency fees, and any other charges, shall be borne by Licensee.

- 8.1.8 NetRefer reserves the right to cancel any discount previously agreed with or offered to Licensee under the Order Form if Licensee fails to pay any amounts by the due date.
- 8.1.9 All fees are non-refundable, except as otherwise expressly stated in the Agreement.
- 8.1.10 It is expressly understood by the Parties that NetRefer's duty pursuant to the Agreement is to make the Service available to Licensee. If Licensee elects not to use the Service after it has been made available by NetRefer, or if Licensee's actions or inactions prevent NetRefer from providing the Service, Licensee shall nonetheless be liable for all fees under the Agreement, regardless of whether Licensee has made any use of the Service.
- 8.1.11 In the event that Licensee has paid a security deposit to NetRefer, then, upon termination of the Agreement, any outstanding fees and charges owed to NetRefer (including System Decommissioning Fee) shall be deducted from the security deposit, and the remaining deposit amount, if any, shall be refunded to Licensee.

## **8.2 License Fee**

- 8.2.1 The License Fee shall apply to the original number of Brands and/or Products at the time of the Effective Date. Any decommissioning of Brands and/or Products requested by Licensee shall have no effect on the License Fee during the term of the Agreement. However, Licensee shall be required to pay a one-time Brand/Product decommissioning fee, to be quoted by NetRefer, for the labour incurred in the decommissioning. Any additional Brands/Products requested by Licensee are subject to additional monthly charges upon being deployed on the live environment, at which time the License Fee shall increase as indicated in the Order Form. In addition, Licensee shall be required to pay a one-time Brand/Product integration fee, to be quoted by NetRefer, for the labour incurred.

## **8.3 Hosting Fee**

- 8.3.1 This clause 8.3.1 applies to Licensees with multiple hosting bundles, as indicated in the Order Form:
  - (a) The minimum monthly charge for hosting services is as specified in Bundle 1 of the Order Form. If Licensee exceeds any of the hosting parameters (RPM, DNS, CDN, or Data Storage) in any particular month, Licensee will automatically be moved to the following Bundle level for such particular month. If Licensee exceeds any of the Bundle 3 (or Bundle 2 if only two bundles are specified in the Order Form) hosting parameters in any particular month, it will pay the difference according to the Additional Unit Costs indicated in the Order Form. Since billing is done in advance according to the specified Billing Cycle, the difference will be charged on a monthly in arrears basis. Any decrease in the original hosting allocation, as existing at the time of the Effective Date, shall have no effect on the hosting fee during the term of the Agreement. Any increase in the hosting allocation is subject to additional monthly charges to be quoted by NetRefer.
  - (b) Notwithstanding the above, if Licensee exceeds any of the hosting parameters of Bundle 3 (or Bundle 2 if only two bundles are specified in the Order Form) for more than two consecutive months, NetRefer shall have the right to suspend service and/or to terminate the Agreement with immediate effect. Any such suspension and/or termination shall not release Licensee from its obligation to pay the full fees for the remainder of the Agreement term.
- 8.3.2 This clause 8.3.2 applies to Licensees with one base bundle, as indicated in the Order Form:

- (a) The minimum monthly charge for hosting services is as specified in the Base Bundle. If Licensee exceeds any of the hosting parameters (RPM, DNS, CDN, or Data Storage) in any particular month, it will pay the difference according to the Additional Unit Costs indicated in the Order Form. Since billing is done in advance according to the specified Billing Cycle, the difference will be charged on a monthly in arrears basis. Any decrease in the original hosting allocation, as existing at the time of the Effective Date, shall have no effect on the hosting fee during the term of the Agreement. Any increase in the hosting allocation is subject to additional monthly charges to be quoted by NetRefer.
- (b) Notwithstanding the above, if Licensee exceeds any of the hosting parameters of the Base Bundle for more than two consecutive months, NetRefer shall have the right to suspend service and/or to terminate the Agreement with immediate effect. Any such suspension and/or termination shall not release Licensee from its obligation to pay the full fees for the remainder of the Agreement term.

#### 8.4 Security Fee

- 8.4.1 Any additional ad-server and admin & affiliate Interface requested by Licensee beyond the amount allocated in the Order Form and requiring an additional SSL certificate, is subject to NetRefer's approval and price quote. It is agreed that NetRefer may in its sole discretion, during the Agreement term, implement additional chargeable security measures, as may be required by law or best practices.

#### 8.5 Add-ons Fee

- 8.5.1 Any additional Add-ons requested by Licensee and not expressly described in the Order Form, are subject to additional monthly charges upon being deployed on the live environment and a one-time integration fee, all subject to NetRefer's approval and price quote. Should Licensee request the removal of any Add-on, it shall be required to pay a one-time Add-on decommissioning fee, to be quoted by NetRefer, for the labour incurred in the decommissioning. NetRefer may at any time, at its sole discretion, add, change, remove or cease to offer any Add-ons. In the case of removing or ceasing to offer any Add-on that has been provided to the Licensee, the monthly fee payable for such Add-on (if payable) shall no longer be charged.

#### 8.6 Support Fee

- 8.6.1 NetRefer provides both billable and non-billable support hours during the term of the Agreement, as follows:
  - 8.6.1.1 **Billable support hours** refer to the standard support hours provided by NetRefer to Licensee, which are used when raising support tickets for tasks that are not related to Bugs. Any billable hours exceeding the monthly allocation specified in the Order Form will be charged at the rate set forth therein, in fifteen (15) minute increments.

Examples of billable hours include queries regarding Reward Plans and End-of-Month follow-ups, queries related to Custom Reports/XML Feeds, and verification of Affiliate Payments/Rewards.
  - 8.6.1.2 **Non-billable support hours** cover support provided by NetRefer when a Bug is identified or where the problem originates from NetRefer's side. In such instances, Licensee will not be charged for the time spent addressing the issue.

## 8.7 Additional Projects

- 8.7.1 Any requests by Licensee for specific services, work, products, support, or other projects, beyond those provided to Licensee under the Order Form, including, but not limited to, requests for reports, Add-ons, Brand/Product integration or decommissioning, support, data export/transfer, transition/migration, retention and storage of data, and implementation of SSL renewal certificate ("**Project**") shall be made in writing and submitted to NetRefer. Any such request is subject to NetRefer's approval, at its sole discretion.
- 8.7.2 If the request is approved by NetRefer, NetRefer shall submit a written quote to Licensee, specifying the costs, payment terms and anticipated duration of the Project if applicable ("**Quote**"). NetRefer shall use its best efforts to provide Licensee with a Quote within ten (10) business days of an approved request.
- 8.7.3 Licensee shall either accept or reject the Quote. If accepted, Licensee shall make a non-refundable, advance payment to NetRefer pursuant to the Quote, after which the Quote shall become an approved quote ("**Approved Quote**").
- 8.7.4 Any Quote which has not been accepted by Licensee and/or in respect of which payment has not been received by NetRefer 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.
- 8.7.5 If at any time Licensee's actions or inactions prevent NetRefer from performing or continuing to perform the Project under the Approved Quote (including by being unresponsive to NetRefer), NetRefer 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 NetRefer with respect to this clause 8.7.5.
- 8.7.6 If at any time NetRefer's actions or inactions prevent 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 8.7.6.
- 8.7.7 If the Project results in a change to any of the provisions of the Order Form, the Parties shall sign an addendum to the Order Form. 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.
- 8.7.8 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 NetRefer's Service to alternative or substitute software and/or services elected by Licensee, or a request by Licensee for NetRefer 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:
- 8.7.8.1 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 NetRefer.
- 8.7.8.2 Nevertheless, the period for retention of the data by NetRefer, pursuant to the DPA, shall commence immediately upon expiration or termination of the Agreement.

## 9. Setup

- 9.1 The setup process includes the initial setup of the Service and commences once a new client has signed the Order Form and paid the applicable setup fee specified therein. The setup process shall not commence until full payment of the first invoice has been received by NetRefer. If payment is not made within 10 days of the invoice date, NetRefer reserves the right to cancel the Order Form.
- 9.2 NetRefer allocates a specified number of setup support hours, as indicated in the Order Form, for the setup of the Service for new clients. Any additional hours required due to delays beyond NetRefer's control will be subject to additional charges, as indicated in the Order Form, billed in fifteen (15) minute increments.
- 9.3 Upon successful completion of the setup process, NetRefer shall issue Licensee with a form, confirming that the setup process has been successfully completed and Licensee is ready to go live ("**Setup Completion Form**").
- 9.4 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.
- 9.5 The setup fee will be paid in each case of re-engagement between the Parties after expiration or termination of the Agreement.

## 10. System Decommissioning

- 10.1 Upon expiration or termination of the Agreement for any reason, NetRefer shall decommission the Service ("**System Decommissioning**"). System Decommissioning entails the removal of DNS records, removal of CDN SSL property, 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, removal of access to any NetRefer APIs, and removing Licensee database, and includes all or any of the following:
  - (i) removal of access to the Service;
  - (ii) deletion of backup mechanisms;
  - (iii) sanitizations.
- 10.2 Except as expressly stated in herein, upon termination or expiration of the Agreement for any reason, Licensee shall pay to NetRefer 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 8.1.5 above.
- 10.3 Should Licensee require Standard Data Export or Advanced Data Export (as specified below), it shall notify NetRefer thereof prior to termination of the Agreement. No export is possible after the System Decommissioning. Standard Data Export and/or Advanced Data Export shall not be provided unless all outstanding fees, including the System Decommissioning Fee, have been paid in full by Licensee to NetRefer. Nevertheless, the period for retention of the data by NetRefer, pursuant to the DPA, shall commence immediately upon expiration or termination of the Agreement.
- 10.4 "**Standard Data Export**" shall mean the export of data from NetRefer's Service, in a secure and commonly used format of NetRefer'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 Licensee to NetRefer on a daily basis);
  - Registrations (as sent by Licensee to NetRefer on a daily basis); and
  - Marketing sources.
- 10.5 “**Advanced Data Export**” shall mean the export of any data beyond the scope of the Standard Data Export and shall be subject to additional charges.
- 10.6 Should Licensee request a Standard Data Export or an Advanced Data Export pursuant to the above, NetRefer shall provide Licensee with an estimated time for completion of the export based on the scope of data and the manpower required.

## 11. Software Upgrades and Updates

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

## 12. Maintenance

From time to time during the term of the Agreement, NetRefer may provide Maintenance to Licensee, as well as services to assist Licensee in the use of any part of the Service and any Software Updates and/or Upgrades. Such services may be provided by way of product assistance, User Documentation or any other means determined by NetRefer. For every new Software Update and/or Upgrade, NetRefer shall publish User Documentation on its standard portal.

## 13. Ownership

- 13.1 Except for the rights explicitly granted to Licensee under this Agreement, NetRefer shall own and retain all right, title and interest in and to (a) the Service or any part thereof, including any and all improvements, enhancements, modifications, Software Updates, Software Upgrades, and Derivative Works relating to, or deriving from, the Service or any part thereof; (b) any software, applications, inventions or other technology developed as part of the Service; (c) any and all User Documentation and any copies thereof; and (d) all Intellectual Property Rights embodied within the foregoing. Except for the limited license and use rights granted in this Agreement, Licensee shall not assert any right, title or interest in or to any of the foregoing.
- 13.2 Licensee’s profile and materials uploaded to the Service remain the Intellectual Property Rights of Licensee, and NetRefer shall not assert any right, title or interest in or to any of the foregoing.
- 13.3 Except as expressly provided under this Agreement, Licensee shall have no rights to use the NetRefer trademarks, logos, domain names, or other Brand features. Licensee agrees that the Service or any part thereof may contain copyright, trademark and other proprietary notices included therein by NetRefer, 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.
- 13.4 Notwithstanding anything to the contrary, NetRefer will be free to collect, develop, create, extract, compile, synthesize, analyse and commercialize statistics, benchmarks, measures and other information based on “Aggregated Data.” “**Aggregated Data**” means Licensee data that is: (i) anonymized by removing any personal or other information so the data is in no way attributable to a

specific customer or any individual; (ii) combined with the other data; and (iii) presented in a way which does not reveal Licensee's or any individual's identity.

- 13.5 If Licensee or any of its Contractual Partners provide NetRefer with any ideas, suggestion(s), enhancement requests, feedback and/or recommendation(s) regarding any part of the Service and/or the User Documentation, including without limitation, new and/or improved features or functionality relating thereto ("**Feedback**"), NetRefer is free to use and disclose such Feedback without any obligation to Licensee or such Contractual Partner and to incorporate it into the Service or any existing or future products or features.

## 14. User Content

NetRefer does not screen user-generated content or information on the Service and does not give any assurance as to its accuracy or completeness. Users of the Service are expressly asked not to publish any defamatory, misleading or offensive content or any content which infringes any other party's Intellectual Property Rights (e.g. copyright). Any such content is contrary to NetRefer's policy and NetRefer 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 NetRefer in relation to any liability NetRefer may suffer as a result of any such content.

## 15. Mutual Warranties

- 15.1 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 (d) it has, and upon request shall provide proof thereof to the other Party, 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 term of the Agreement.
- 15.2 Any liability, repercussions or fines incurred due to a violation by either Party of clause 15.1 lies solely with the Party in breach of this clause.

## 16. Limited Warranty & Remedy

- 16.1 NetRefer warrants that the Service, when used in accordance with this Agreement and the User Documentation, shall perform substantially in accordance with the Uptime Standard contained in the SLA (clause 4 of Schedule B) during the Agreement term. In the event that the Service does not comply with the foregoing warranty during the Agreement term, then NetRefer's sole obligation and Licensee's exclusive remedy shall be Service Credits as set forth in the SLA.
- 16.2 In the absence of a specific remedy set out in the Agreement, then NetRefer's sole obligation and Licensee's exclusive remedy shall be for NetRefer to make commercially reasonable efforts to correct such non-compliance by repairing or replacing such part of the Service at its sole expense.
- 16.3 This clause 16 states the entire liability and obligation of NetRefer, and the sole and exclusive remedy of Licensee, in the event that the Service does not comply with the foregoing warranty. In no event shall NetRefer be liable for any incidental, consequential, punitive or other damages as a result of the aforesaid.
- 16.4 This limited warranty does not cover any Bug, damage, malfunction, failure or defect of the Service or any part thereof, resulting from (i) the acts or omissions of non-NetRefer personnel; (ii) accident, abuse, misuse, misapplication, theft, vandalism, fire, water or other peril; (iii) modifications, alterations or additions not authorized by NetRefer; (iv) use of the Service or any part thereof in a manner that is inconsistent with this Agreement; and/or (v) use of the Service or any part thereof in combination with software, services, programs or other products not supplied by NetRefer.

## 17. Disclaimer of Warranties

- 17.1 EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICE IS 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. NETREFER DOES NOT WARRANT THAT THE SERVICE (OR ANY PART THEREOF), THE OPERATION OF THE SERVICE, OR ANY RELATED SERVICES OR FEATURES WILL MEET LICENSEE'S REQUIREMENTS OR THAT THEY WILL BE UNINTERRUPTED OR ERROR-FREE.
- 17.2 Licensee understands and agrees that NetRefer uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage and related infrastructure and technology required to operate the Service, and NetRefer shall not be held liable for any event, act or omission on their part.

## 18. 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 THE SERVICE, AND/OR TO LICENSEE'S USE OF OR INABILITY TO USE THE SERVICE AND/OR ANY PART THEREOF AND/OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE 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 .

IN ANY EVENT, UNLESS OTHERWISE SPECIFIED IN THE AGREEMENT AND EXCEPT FOR AMOUNTS OWED TO NETREFER BY LICENSEE AS SET FORTH IN THE ORDER FORM, THE AGREEMENT OR ANY OTHER DOCUMENT, 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 THE AGREEMENT, SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE TOTAL AMOUNT OF ONLY THE **LICENSE FEE** ACTUALLY PAID OR PAYABLE BY LICENSEE TO NETREFER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. THE LIMITATIONS OF LIABILITY UNDER THIS CLAUSE SHALL NOT APPLY TO ANY OBLIGATIONS AND LIABILITIES ARISING FROM VIOLATIONS BY EITHER PARTY OF CLAUSES 19, 20 or 21 OF THE AGREEMENT.

THE PARTIES ACKNOWLEDGE THAT NETREFER 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 NETREFER. NETREFER 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, TO THESE TOS INCLUDING ITS SCHEDULES, AND THE ORDER FORM.

## 19. Indemnification by NetRefer

- 19.1 NetRefer 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 NetRefer in writing of any such claim within ten (10) days of becoming aware thereof; (b) NetRefer shall have sole control of the defence of any such claim and all negotiations for its settlement or compromise; (c) Licensee shall reasonably cooperate with NetRefer 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 NetRefer; (iii) integration of the Service or any use of the Service in combination with any other system, equipment or software not provided or approved by NetRefer; (iv) 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.
- 19.2 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 NetRefer's sole opinion, the Service is likely to become the subject of a claim of infringement or violation of patent, copyright, trademark, trade secret, or other proprietary right of a third party, NetRefer may, at its sole discretion and 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 NetRefer's reasonable sole opinion, adversely affect the functional performance or specifications of 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.
- 19.3 INDEMNIFICATION BY NETREFER AS AFORESAID IS LIMITED TO THE AMOUNT FINALLY AWARDED IN A FINAL JUDGMENT BY A COURT OR AGREED UPON BY NETREFER IN A SETTLEMENT. IN NO EVENT SHALL NETREFER 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 NETREFER'S ENTIRE LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INDEMNIFICATION FOR PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INFRINGEMENT.

## 20. Indemnification by Licensee

- 20.1 Licensee shall indemnify NetRefer 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' (i) negligence, wilful misconduct, use or misuse of, or relating to, the Service; (ii) breach of any term, condition or warranty under the Agreement; or (iii) violation or failure to comply with any applicable law, regulation or directives; provided however, that: (a) NetRefer promptly notifies Licensee 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) NetRefer shall reasonably cooperate with Licensee to facilitate the settlement or defence of such claim.
- 20.2 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 NETREFER. THE FOREGOING STATES LICENSEE'S ENTIRE LIABILITY, AND NETREFER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INDEMNIFICATION PURSUANT TO THIS CLAUSE.

## 21. Confidentiality

- 21.1 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 these TOS relating to confidentiality, unless otherwise expressly agreed in writing by the Parties.
- 21.2 "Confidential Information" means any information or material which one Party ("**Disclosing Party**") discloses to the other Party ("**Recipient**"), whether prior to, during or after execution of the Agreement and whether or not specifically related to the Services and/or the Agreement, 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, which is not generally known to others engaged in similar businesses or activities, or that should reasonably be recognized as confidential by the Parties. The aforesaid shall be deemed "Confidential Information" regardless of whether it is disclosed orally, in writing, or in electronic or machine-readable form, and regardless of whether it is identified by Disclosing Party as 'confidential' or not.
- 21.3 Confidential Information includes, but is not limited to: (a) all information relating to the Service or any part thereof, including the concepts, ideas and features relating thereto, as well as the User Documentation and this Agreement or any part thereof; (b) any technical information, invention, design, development, design, process, procedure, formula, improvement, technology or method; (c) any questionnaires, concepts, samples, notes, analyses, compilations, reports, data (including, but not limited to, staging and production (live environment), internal and client/user 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 financial information, budgets, projections, operations, licenses, contract terms, prices, costs, customer and supplier lists and/or details, employee details, referral information, business or marketing strategies and plans, regulatory filings and correspondence; (e) trade secrets, patents and patent applications, inventions and improvements, whether patentable or not; and (f) Personal Data, as defined in the General Data Protection Regulation of the European Union ("GDPR").
- 21.4 Confidential Information excludes information that: (i) is or becomes a part of the public domain without any breach by the Recipient of the terms of this clause 21; (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.
- 21.5 Each Party may be provided with, have access to or be exposed to, directly or indirectly, Confidential Information of the other Party. The Parties agree to use each other's Confidential Information only for the purpose for which it was intended and not to use or exploit the other Party's Confidential Information for its own purposes or benefit.
- 21.6 The Parties shall not give access to, 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 ("**Representatives**") who have a reasonable need to know such Confidential Information, provided that such Representatives are advised of the confidentiality provisions herein and agree to be bound by obligations of confidence no less stringent than those contained herein. The Recipient shall be liable for confidentiality breaches by its Representatives.
- 21.7 The Recipient undertakes that it has the necessary data governance, security and privacy controls, and access management in place to ensure that it will hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party, 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, with at least the same degree of care required by GDPR.

- 21.8 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).
- 21.9 Despite any provision of this clause 21 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.
- 21.10 Any Confidential Information disclosed or acquired shall remain the sole property of the Disclosing Party. Nothing herein 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.
- 21.11 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.
- 21.12 In the event that, contrary to the provisions of this clause 21, 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 or may 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.
- 21.13 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 this clause 21, and that damages alone would not be an adequate remedy for the breach of any of the provisions of this clause 21. 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 this clause 21.
- 21.14 The non-disclosure and non-use obligations under this clause 21 shall survive termination of the Agreement and shall remain in effect until the particular information no longer qualifies as Confidential Information as defined above. 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.

## **22. Data Protection**

- 22.1 Each Party undertakes to comply with its obligations under relevant applicable data protection laws, as well as its obligations under the DPA (Schedule A) attached hereto. 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 NetRefer is a data processor and Licensee is a data

controller and the Parties shall comply with their respective statutory data protection obligations. NetRefer shall provide adequate security for the processing of the data in line with good business practice. NetRefer 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.

- 22.2 If Licensee is located in a country outside the European Economic Area for which the European Commission has not issued an adequacy decision, Licensee's use of the Service pursuant to this Agreement is further governed by the Standard Contractual Clauses of the European Commission in the form of Module 4 (Transfer from a Processor to a Controller), which are attached to the DPA below.
- 22.3 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 retention periods included in the DPA.

## 23. Security

- 23.1 **SSL Certificate:** The application of a valid SSL certificate is mandatory for all interfaces and sites making up the Service offered by NetRefer. Licensee shall renew the SSL certificate annually and shall send the updated SSL certificate to NetRefer at least fifteen (15) working days prior to expiration of the current SSL certificate for implementation as a Project. Failure to apply or renew the SSL certificates as aforesaid, shall absolve NetRefer of all liability for any loss of traffic and/or of any data breaches which may occur when data is in transit and/or of any inability to access the Service. NetRefer, at its sole discretion, shall have the right to block Licensee's access to the Service and/or terminate the Agreement.
- 23.2 **DDoS Protection:** NetRefer will take reasonable measures to protect against Distributed Denial of Service (DDoS) attacks. However, Licensee is required to implement proactive measures and cooperate in defending against DDoS attacks and preventing other disruptions to the Service. This includes promptly following NetRefer's instructions regarding actions to be taken in each specific case and providing NetRefer with accurate information regarding location of operation and the market(s) in which it operates. Failure to comply with these measures and follow NetRefer's instructions within the time specified by NetRefer, will constitute a material breach of the Agreement by Licensee, and will give NetRefer the right to take any action it may deem necessary, including blocking URL's to protect the integrity of the NetRefer IT infrastructure estate, and terminating the Agreement.
- 23.3 **Username & Passwords:** NetRefer shall provide Licensee with an initial username and password allowing access to the Service by Licensee. Licensee will thereafter be able to create further usernames and passwords for each staff member that Licensee designates as authorised to access the Service. Licensee is solely responsible for the appropriate protection and use of its and its staff members' usernames, passwords, tokens or devices being used for authentication to any services being offered by NetRefer. NetRefer 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.
- 23.4 **Login Details:** 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 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 Licensee's obligation to inform NetRefer immediately if it suspects illegal or unauthorised use of its accounts.

## 24. Fair Usage

- 24.1 NetRefer's priority to its clients is to keep the Service available, which requires each Licensee and its Contractual Partners to use the Service fairly and reasonably so as not to affect its access or use ("**Fair Usage**"). The Service includes broad access to a variety of resources such as bandwidth, API requests and storage, the overuse or misuse of which would affect the stability of the Service. Fair usage will be considered the processing of a reasonable number of requests or processed transactions, at NetRefer's sole and reasonable discretion.
- 24.2 If NetRefer determines that Licensee's or any of the Contractual Partners' use of the Service is in violation of this Fair Usage, in its sole reasonable discretion, it may take unilateral action regarding Licensee's or Contractual Partner's use of the Service including, but not limited to, immediately blocking, deactivating or otherwise preventing access to the Service, and/or limiting the frequency of access to the Service and/or limiting the number of processed requests through the Service in order to bring usage in line with this Fair Usage. NetRefer also reserves the right to invoice Licensee for use of the Service in violation of this Fair Usage. Licensee understands, acknowledges and agrees that NetRefer will have no liability to Licensee or any of its Contractual Partners for enforcing this Fair Usage and enforcement will not affect Licensee's obligations under this Agreement, which includes the payment of fees for the Service.

## 25. Force Majeure

- 25.1 Neither Party shall be liable to the other Party for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make previously owed payments to the other Party hereunder) when and to the extent such failure or delay is caused by or results from an event beyond the control of the Party, including an act of God, fire, flood, earthquake, explosion, war, embargo, government order, riot or other civil unrest, or other similar causes beyond its reasonable control ("**Force Majeure**").
- 25.2 The Party prevented from carrying out its obligations ("**Affected Party**") will promptly notify the other Party in writing of an event of Force Majeure upon it being foreseen by, or becoming known to, the Affected Party.
- 25.3 If the Affected Party's performance is delayed for a period exceeding thirty (30) days from the date of notice, the other Party will have the right, without any liability to the other Party, to terminate the Agreement.
- 25.4 For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either Party to make a profit or avoid a financial loss; (b) changes in market prices or conditions, or (c) a Party's financial inability to perform its obligations hereunder.

## 26. Publicity

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

## 27. Non-Solicitation

- 27.1 During the term of the Agreement 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 NetRefer or any individual who was an employee of NetRefer at any time during such one (1) year period.
- 27.2 Licensee acknowledges that breach of this clause shall result in NetRefer incurring substantial economic damages and losses in amounts which are impossible to compute and ascertain with

certainty as a basis for recovery by NetRefer 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, Licensee agrees that liquidated damages may be assessed and recovered by NetRefer as against Licensee in the event of such breach and without NetRefer being required to present any evidence of the amount or character of actual damages sustained by reason thereof; and Licensee shall be liable to NetRefer 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 NetRefer and are not intended as a penalty. Licensee shall pay the liquidated damages to NetRefer within five (5) days of notice from NetRefer.

## **28. Anti-Bribery & Anti-Modern Slavery**

- 28.1 The Parties shall comply with all applicable anti-money laundering, anti-modern slavery, anti-bribery, and anti-corruption laws and regulations and shall not assist or contribute to any act or omission violating such laws and regulations.
- 28.2 Each Party represents and warrants that it conducts its business in an ethical, legal and responsible manner, consistent with zero-tolerance of slavery and human trafficking.
- 28.3 Each Party represents and warrants that it, or any person acting on its behalf, has not and will not: (i) offer or agree to give any person working for or engaged by the other Party any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement or any other agreement or potential agreement between NetRefer and Licensee; nor (ii) offer or agree to give any third party any gift or other consideration which could act as an inducement or a reward for any act or failure to act for the benefit or perceived benefit of the other Party whether under this Agreement or any other agreement or potential agreement between NetRefer and Licensee.

## **29. Changes to Service**

- 29.1 NetRefer shall notify Licensee of any material changes made to the Service or any part thereof during the term of the Agreement. Should Licensee not agree to such changes, it shall inform NetRefer thereof within ten (10) days, in which case NetRefer may either retain the current Service for Licensee for the remainder of the then current term of the Agreement, or allow Licensee to terminate the Agreement.
- 29.2 Notwithstanding the aforesaid, if any changes to the Service are required for legal, regulatory, security, or infrastructural purposes, or in order to ensure or improve optimal functioning of the Service, or for the purpose of adding or removing Features and/or functionalities, then the changes shall automatically enter into effect fifteen (15) days following written notification thereof to Licensee. It is clarified that any changes pursuant to this clause 29.2 shall not entitle Licensee to early termination of the Agreement.

## **30. Update of these TOS and its Schedules**

- 30.1 NetRefer reserves the right to update these TOS at any time by publishing the revised version on its website: <https://netrefer.com/tos-agreements/>.
- 30.2 Unless expressly stated otherwise, the updated TOS will take effect immediately upon publication and will govern the Agreement between the Parties.
- 30.3 Notwithstanding the foregoing, and except where an update is required pursuant to clause 29.2 above, if Licensee is within the Initial Term of the Agreement on the date of the updated TOS, the previous version of the TOS shall continue to apply for the remainder of the Initial Term, unless

otherwise agreed in writing by the Parties. Upon expiry of the Initial Term, the updated TOS shall apply.

- 30.4 If the Parties execute a deed of novation for the transfer of the Agreement by Licensee to a transferee, then the latest version of the TOS shall apply and shall govern the Agreement with the transferee even if the Agreement is in its Initial Term.
- 30.5 Notwithstanding the above, it is agreed that NetRefer may update and/or modify any of the Schedules of the TOS at any time during the term of the Agreement. Such updates and/or modifications shall take effect immediately upon NetRefer giving notice thereof to the Licensee.

## **31. Assignment**

- 31.1 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 NetRefer. Any attempt to assign the Agreement by Licensee without such consent will be null and void and of no force and effect.
- 31.2 The Parties may mutually agree to add a third party as a party to the Agreement, in which case a joinder shall be executed by such third party and the Parties.

## **32. 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.

## **33. 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.

## **34. 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 on any other occasion.

## **35. 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.

## **36. 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.

## 37. 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.

## 38. Electronic Signatures

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. Any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

## 39. Obligations that Survive Termination

Both Parties recognize and agree that the following clauses shall survive the cancellation, termination or expiration of the Agreement: clause 13 (Ownership), clause 18 (Limitation of Liability), clauses 19 and 20 (Indemnification), clause 21 (Confidentiality), clause 27 (Non-Solicitation) and clause 40 (Governing Law and Jurisdiction).

## 40. 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, NetRefer 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.

## SCHEDULES

The Schedules are available at the following links:

**Schedule A - Data Processing Agreement:** <https://netrefer.com/data-processing-agreement>

**Schedule B - Service Level Agreement:** <https://netrefer.com/service-level-agreement>

**Schedule C - Add-ons, Integrations and APIs:** <https://netrefer.com/add-ons-integrations-and-apis>

**Schedule D - CoPilot AI - NetRefer's Virtual Assistant:** <https://netrefer.com/copilot-ai-netrefer-virtual-assistant>