

Arnold Media Limited

Terms of Service V.7.2

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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 “**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 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, 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, ideas and features 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 questionnaires, 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.

- 2.3. **“Contractual Partners”** means Affiliates, consultants, agents and any other third parties engaged with Licensee and who in any way make use of the Service.
- 2.4. **“Derivative work”** means (a) for copyrightable or copyrighted material: a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute copyright infringement; (b) for patentable or patented material: any adaptation, addition, improvement, or combination based on a pre-existing work; and (c) for material subject to trade secret or protection or confidentiality obligations: any new material, information or data relating to and derived from such existing trade secret material or Confidential Information, including new material which may be protected by copyright, patent, trade secret or other proprietary rights.
- 2.5. **“Group Company”** means in respect of either Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party, including any affiliated company, joint venture or any other kind of undertaking in which the Party directly or indirectly holds an interest.
- 2.6. **“Licensee”** or **“Client”** means the legal entity identified in the Order Form.
- 2.7. **“Licensor”** or **“NetRefer”** 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 offered 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 it 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 as forming part of the System Decommissioning, shall be considered a Project and shall be subject to additional costs.

12. **RETURN OF DATA DURING RETENTION PERIODS:**

Upon request by Licensee and provided such request is in line with the data retention periods of the Licensor, the 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 THE 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 THE 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; (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 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 Licensee 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 these TOS relating to confidentiality, unless otherwise agreed in writing by the Parties.
- 22.2 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.
- 22.3 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.
- 22.4 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.
- 22.5 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.

- 22.6 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).
- 22.7 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.
- 22.8 Any Confidential Information disclosed or acquired hereunder 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.
- 22.9 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.
- 22.10 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.
- 22.11 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.
- 22.12 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 Confidential Information pursuant to clause 22.2 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.

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 Service and/or the Agreement, and 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, in promotional material, in a press release, in a 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:**

- 34.1 Licensor reserves the right to modify the provisions of the Agreement, or any part thereof, and any such changes shall automatically apply to any subsequent renewal term of the Agreement. Nevertheless, if any changes to the Agreement are required for legal, regulatory or security purposes, the changes shall automatically enter into effect thirty (30) days following written notification thereof to Licensee.
- 34.2 Subject to clause 34.1 above, any changes made to these TOS and/or any Schedule hereof, shall appear in an updated version of the TOS, available online at the link provided in the signed Order Form. For the sake of clarity – upon automatic renewal of the Agreement, the TOS version having the latest date shall be the applicable TOS that is binding on the Parties and shall supersede the previous version of the TOS.
- 34.3 Notwithstanding the above, Licensor may update the DPA from time to time, and shall provide notice to the Licensee of any such update, which shall become effective immediately.

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.

39. **HEADINGS:**

The headings herein are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

SCHEDULE A – DATA PROCESSING AGREEMENT

The Data Processing Agreement was last updated on 18th March 2022. The previous version of the DPA can be found here: <https://netrefer.com/DPA/>

A SIGNED COPY OF THIS DPA IS AVAILABLE UPON REQUEST

This Data Processing Agreement and its Annexes (“**DPA**”) reflects the parties’ agreement with respect to the processing of personal data by Arnold Media Limited t/a NetRefer on behalf of the Client, in connection with the Service under the Agreement.

This DPA is supplemental to, and forms an integral part of, the Agreement. In case of any conflict or inconsistency with the terms of the Agreement, this DPA will take precedence over the terms of the Agreement to the extent of such conflict or inconsistency.

The term of this DPA will follow the term of the Agreement.

Terms not otherwise defined in this DPA will have the meaning as set forth in the Agreement.

For transfers to non-EU controllers, the Standard Contractual Clauses set forth in this DPA below shall also apply.

1. Section I

Clause 1 - Purpose and scope

- (a) The purpose of these Standard Contractual Clauses (the Clauses) is to ensure compliance with Article 28(3) and (4) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.
- (b) The controllers and processors listed in Annex I have agreed to these Clauses in order to ensure compliance with Article 28(3) and (4) of Regulation (EU) 2016/679 and/or Article 29 (3) and (4) Regulation (EU) 2018/1725.
- (c) These Clauses apply to the processing of personal data as specified in Annex II.
- (d) Annexes I to IV are an integral part of the Clauses.
- (e) These Clauses are without prejudice to obligations to which the controller is subject by virtue of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.
- (f) These Clauses do not by themselves ensure compliance with obligations related to international transfers in accordance with Chapter V of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.

Clause 2 - Invariability of the Clauses

- (a) The Parties undertake not to modify the Clauses, except for adding information to the Annexes or updating information in them.
- (b) This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a broader contract, or from adding other clauses or additional safeguards provided that they do not directly or indirectly contradict the Clauses or detract from the fundamental rights or freedoms of data subjects.

Clause 3 – Interpretation

- (a) Where these Clauses use the terms defined in Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 respectively, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725 respectively.
- (c) These Clauses shall not be interpreted in a way that runs counter to the rights and obligations provided for in Regulation (EU) 2016/679 / Regulation (EU) 2018/1725 or in a way that prejudices the fundamental rights or freedoms of the data subjects.

Clause 4 – Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties existing at the time when these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 5 – Docking clause

- (a) Any entity that is not a Party to these Clauses may, with the agreement of all the Parties, accede to these Clauses at any time as a controller or a processor by completing the Annexes and signing Annex I.
- (b) Once the Annexes in (a) are completed and signed, the acceding entity shall be treated as a Party to these Clauses and have the rights and obligations of a controller or a processor, in accordance with its designation in Annex I.
- (c) The acceding entity shall have no rights or obligations resulting from these Clauses from the period prior to becoming a Party.

2. Section II – Obligations of the Parties

Clause 6 – Description of Processing(s)

The details of the processing operations, in particular the categories of personal data and the purposes of processing for which the personal data is processed on behalf of the controller, are specified in Annex II.

Clause 7 – Obligations of the Parties**7.1 Instructions**

- (a) The processor shall process personal data only on documented instructions from the controller, unless required to do so by Union or Member State law to which the processor is subject. In this case, the processor shall inform the controller of that legal requirement before processing, unless the law prohibits this on important grounds of public interest. Subsequent instructions may also be given by the controller throughout the duration of the processing of personal data. These instructions shall always be documented.
- (b) The processor shall immediately inform the controller if, in the processor's opinion, instructions given by the controller infringe Regulation (EU) 2016/679 / Regulation (EU) 2018/1725 or the applicable Union or Member State data protection provisions.
- (c) If the processor becomes aware that it cannot process personal data in accordance with the controller's Instructions due to a legal requirement under any applicable law, the processor will (i)

promptly notify the controller of that legal requirement to the extent permitted by the applicable law; and (ii) where necessary, cease all processing (other than merely storing and maintaining the security of the affected personal data) until such time as the controller issues new Instructions with which the processor is able to comply. If this provision is invoked, the processor will not be liable to the controller under the Agreement for any failure to provide the Service until such time as the controller issues new lawful Instructions with regard to the processing.

- (d) The parties agree that the Agreement (including this DPA), together with the controller's use of the Service in accordance with the Agreement, constitutes the controller's complete instructions to the processor in relation to the processing of personal data, so long as the controller may provide additional instructions during the term of the Agreement that are consistent with the Agreement, the nature and lawful use of the Service.
- (e) The controller shall ensure that the personal data which it supplies or discloses to the processor has been obtained fairly and lawfully.

7.2 Purpose limitation

The processor shall process the personal data only for the specific purpose(s) of the processing, as set out in Annex II, unless it receives further instructions from the controller.

7.3 Duration of the processing of Personal Data

Processing by the processor shall only take place for the duration specified in Annex II.

7.4 Security of Processing

- (a) The processor shall at least implement the technical and organisational measures specified in Annex III to ensure the security of the personal data. This includes protecting the data against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to the data (personal data breach). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the risks involved for the data subjects.
- (b) The processor shall grant access to the personal data undergoing processing to members of its personnel only to the extent strictly necessary for implementing, managing and monitoring of the contract. The processor shall ensure that persons authorised to process the personal data received have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (c) 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.
- (d) 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.
- (e) The controller is responsible for independently determining whether the data security provided for in the Service adequately meets its obligations under applicable data protection laws. The controller is also responsible for its secure use of the Service, including protecting the security of personal data in transit to and from the Service (including to securely backup or encrypt any such personal data).
- (f) Notwithstanding any provision to the contrary, the processor may modify or update the security measures in Annex III at its discretion provided that such modification or update does not result in a material degradation in the protection offered by the said security measures.

7.5 Sensitive Data

If the processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person's sex life or sexual orientation, or data relating to criminal convictions and offences ("sensitive data"), the processor shall apply specific restrictions and/or additional safeguards.

The controller agrees and warrants that if the transfer involves sensitive 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.

7.6 Documentation and Compliance

- (a) The Parties shall be able to demonstrate compliance with these Clauses.
- (b) The processor shall deal promptly and adequately with inquiries from the controller about the processing of data in accordance with these Clauses.
- (c) The processor shall make available to the controller all information necessary to demonstrate compliance with the obligations that are set out in these Clauses and stem directly from Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725. At the controller's request, the processor shall also permit and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or an audit, the controller may take into account relevant certifications held by the processor.
- (d) The controller may choose to conduct the audit by itself or mandate an independent auditor. Audits may also include inspections at the premises or physical facilities of the processor and shall, where appropriate, be carried out with reasonable notice.
- (e) The Parties shall make the information referred to in this Clause, including the results of any audits, available to the competent supervisory authority/ies on request.
- (f) All costs related to auditors' fees are to be borne by the controller.
- (g) In the event that the audit reveals any non-compliance by the processor with the provisions of this DPA 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.
- (h) 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.
- (i) Within the scope of the Agreement and in using the Service, the controller will be responsible for complying with all requirements that apply to it under applicable data protection laws with respect to its processing of personal data and the Instructions it issues to the processor.
- (j) In particular but without prejudice to the generality of the foregoing, the controller acknowledges and agrees that it will be solely responsible for: (i) the accuracy, quality, and legality of personal data and the means by which it acquired personal data; (ii) complying with all necessary transparency and lawfulness requirements under applicable data protection laws for the collection and use of the personal data, including obtaining any necessary consents and authorizations; (iii) ensuring it has the right to transfer, or provide access to, the personal data to the processor for processing in accordance with the terms of the Agreement (including this DPA); (iv) ensuring that its instructions to the processor regarding the processing of personal data comply with applicable laws, including data protection laws; and (v) complying with all laws (including data protection laws) applicable to any emails or other content created, sent or managed through the Service, including those relating to obtaining consents (where required) to send emails, the content of the emails and its email deployment practices.

7.7 Use of Sub-Processors

- (a) The processor has the controller's general authorisation for the engagement of sub-processors from an agreed list. The processor shall specifically inform in writing the controller of any intended changes of that list through the addition or replacement of sub-processors at least ten (10) days in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the concerned sub-processor(s). The processor shall provide the controller with the information necessary to enable the controller to exercise the right to object.
- If the controller does notify the processor of such an objection, the parties will discuss the controller's concerns in good faith with a view to achieving a commercially reasonable resolution. If no such resolution can be reached, the processor will, at its sole discretion, either not appoint the new sub-processor, or permit the controller to suspend or terminate the Agreement in accordance with the termination provisions of the Agreement without liability to either party (but without prejudice to any fees incurred by the controller prior to suspension or termination).
- (b) Where the processor engages a sub-processor for carrying out specific processing activities (on behalf of the controller), it shall do so by way of a contract which imposes on the sub-processor, in substance, the same data protection obligations as the ones imposed on the data processor in accordance with these Clauses. The processor shall ensure that the sub-processor complies with the obligations to which the processor is subject pursuant to these Clauses and to Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.
- (c) At the controller's request, the processor shall provide a copy of such a sub-processor agreement and any subsequent amendments to the controller. To the extent necessary to protect business secret or other confidential information, including personal data, the processor may redact the text of the agreement prior to sharing the copy.
- (d) The processor shall remain fully responsible to the controller for the performance of the sub-processor's obligations in accordance with its contract with the processor. The processor shall notify the controller of any failure by the sub-processor to fulfil its contractual obligations.
- (e) The processor shall agree a third party beneficiary clause with the sub-processor whereby - in the event the processor has factually disappeared, ceased to exist in law or has become insolvent - the controller shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

7.8 International Transfers

- (a) Any transfer of data to a third country or an international organisation by the processor shall be done only on the basis of documented instructions from the controller or in order to fulfil a specific requirement under Union or Member State law to which the processor is subject and shall take place in compliance with Chapter V of Regulation (EU) 2016/679 or Regulation (EU) 2018/1725.
- (b) The controller agrees that where the processor engages a sub-processor in accordance with Clause 7.7. for carrying out specific processing activities (on behalf of the controller) and those processing activities involve a transfer of personal data within the meaning of Chapter V of Regulation (EU) 2016/679, the processor and the sub-processor can ensure compliance with Chapter V of Regulation (EU) 2016/679 by using standard contractual clauses adopted by the Commission in accordance with of Article 46(2) of Regulation (EU) 2016/679, provided the conditions for the use of those standard contractual clauses are met.

Clause 8 – Assistance to the Controller

- (a) The processor shall promptly notify the controller of any request it has received from the data subject. It shall not respond to the request itself, unless authorised to do so by the controller.

- (b) The processor shall assist the controller in fulfilling its obligations to respond to data subjects' requests to exercise their rights, taking into account the nature of the processing. In fulfilling its obligations in accordance with (a) and (b), the processor shall comply with the controller's instructions.
- The controller shall reimburse the processor for the commercially reasonable costs arising from this assistance.
- (c) In addition to the processor's obligation to assist the controller pursuant to Clause 8(b), the processor shall furthermore assist the controller in ensuring compliance with the following obligations, taking into account the nature of the data processing and the information available to the processor:
- (1) the obligation to carry out an assessment of the impact of the envisaged processing operations on the protection of personal data (a 'data protection impact assessment') where a type of processing is likely to result in a high risk to the rights and freedoms of natural persons;
 - (2) the obligation to consult the competent supervisory authority/ies prior to processing where a data protection impact assessment indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk;
 - (3) the obligation to ensure that personal data is accurate and up to date, by informing the controller without delay if the processor becomes aware that the personal data it is processing is inaccurate or has become outdated;
 - (4) the obligations in Article 32 Regulation (EU) 2016/679.
- (d) The Parties shall set out in Annex III the appropriate technical and organisational measures by which the processor is required to assist the controller in the application of this Clause as well as the scope and the extent of the assistance required.

Clause 9 – Notification of Personal Data Breach

In the event of a personal data breach, the processor shall cooperate with and assist the controller for the controller to comply with its obligations under Articles 33 and 34 Regulation (EU) 2016/679 or under Articles 34 and 35 Regulation (EU) 2018/1725, where applicable, taking into account the nature of processing and the information available to the processor.

9.1 Data breach concerning data processed by the controller

In the event of a personal data breach concerning data processed by the controller, the processor shall assist the controller:

- (a) in notifying the personal data breach to the competent supervisory authority/ies, without undue delay after the controller has become aware of it, where relevant (unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons);
- (b) in obtaining the following information which, pursuant to Article 33(3) Regulation (EU) 2016/679, shall be stated in the controller's notification, and must at least include:
 - (1) the nature of the personal data including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - (2) the likely consequences of the personal data breach;
 - (3) the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

- (c) in complying, pursuant to Article 34 Regulation (EU) 2016/679, with the obligation to communicate without undue delay the personal data breach to the data subject, when the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons.

9.2 Data breach concerning data processed by the processor

In the event of a personal data breach concerning data processed by the processor, the processor shall notify the controller without undue delay after the processor having become aware of the breach. Such notification shall contain, at least:

- (a) a description of the nature of the breach (including, where possible, the categories and approximate number of data subjects and data records concerned);
- (b) the details of a contact point where more information concerning the personal data breach can be obtained;
- (c) its likely consequences and the measures taken or proposed to be taken to address the breach, including to mitigate its possible adverse effects.

Where, and insofar as, it is not possible to provide all this information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

The Parties shall set out in Annex III all other elements to be provided by the processor when assisting the controller in the compliance with the controller's obligations under Articles 33 and 34 of Regulation (EU) 2016/679.

9.3 Liability

- (a) 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.
- (b) 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 where it has acted outside or contrary to lawful written instructions of the controller.
- (c) The controller shall be liable for damages to data subjects which are caused by the processing of personal data which is not compliant with GDPR and which are not caused by the processor's acts or omissions.
- (d) Except as specifically stated in this clause above and to the extent permitted by GDPR, the liability of processor and controller are as defined in the TOS.

3. Section III – Final Provisions

Clause 10 – Non-compliance with the Clauses and termination

- (a) Without prejudice to any provisions of Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725, in the event that the processor is in breach of its obligations under these Clauses, the controller may instruct the processor to suspend the processing of personal data until the latter complies with these Clauses or the contract is terminated. The processor shall promptly inform the controller in case it is unable to comply with these Clauses, for whatever reason.

- (b) The controller shall be entitled to terminate the contract insofar as it concerns processing of personal data in accordance with these Clauses if:
 - (1) the processing of personal data by the processor has been suspended by the controller pursuant to point (a) and if compliance with these Clauses is not restored within a reasonable time and in any event within one month following suspension;
 - (2) the processor is in substantial or persistent breach of these Clauses or its obligations under Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725;
 - (3) the processor fails to comply with a binding decision of a competent court or the competent supervisory authority/ies regarding its obligations pursuant to these Clauses or to Regulation (EU) 2016/679 and/or Regulation (EU) 2018/1725.
 - (c) The processor shall be entitled to terminate the contract insofar as it concerns processing of personal data under these Clauses where, after having informed the controller that its instructions infringe applicable legal requirements in accordance with Clause 7.1 (b), the controller insists on compliance with the instructions.
 - (d) Following termination of the contract, the processor shall, at the choice of the controller, delete all personal data processed on behalf of the controller and certify to the controller that it has done so, or, return all the personal data to the controller and delete existing copies unless Union or Member State law requires storage of the personal data. Until the data is deleted or returned, the processor shall continue to ensure compliance with these Clauses.
 - (e) 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.
 - (f) If any provision of this DPA is held invalid or otherwise unenforceable, such provision shall be deemed to be severed from the DPA and the enforceability of the remaining provisions shall not be impaired thereby.
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Annex I – List of parties

Controller

Company Name, Address, Email and Tel. of Company:	As set out in the Order Form
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Processor

Company Name:	Arnold Media Limited t/a NetRefer
Address:	Level 3, Domestica Complex, Valley Road, Msida, MSD 9020, Malta
Email:	dpo@netrefer.com
Tel:	+356 2767 3337
Name:	Dexter Cutajar
Title:	Head of Commercial

Annex II – Description of the processing

Categories of data subjects whose personal data is processed

- (i) Prospects, clients, end-users, business partners, suppliers and vendors of NetRefer;
- (ii) Employees or contact persons of NetRefer's prospects, clients, end-users, business partners, suppliers and vendors;
- (iii) Clients' users / affiliates authorised to use the Services.

Categories of personal data processed

A. PMP

General Personal Data

- (i) Device Data (IP, UserAgentString)
- (ii) User Data
 - a. ID, Username, First Name, Last Name, Title, Date of Birth
 - b. Email address
 - c. Mobile Number, Telephone Number
 - d. Skype, Messenger
 - e. Address, City, Postal Code, Country
- (iii) Payments (IBAN)

Sensitive Data

- (iv) Gender - We may receive the Gender with the player Data Transfer.

B. NON-PMP

General Personal Data

- (i) User Data
 - a. ID, Username, First Name, Last Name, Title, Date of Birth
 - b. Email address
 - c. Mobile Number, Telephone Number
 - d. Skype, Messenger
 - e. Address, City, Postal Code, Country

Sensitive Data

- (ii) N/A

Nature of the processing

NetRefer will process personal data as necessary to perform the Services pursuant to the Agreement and as further instructed by the Client in its use of the Services.

Purpose(s) for which the personal data is processed on behalf of the controller

NetRefer will process personal data as necessary to perform the Services pursuant to the Agreement and as further instructed by the Client in its use of the Services.

Duration of the processing

NetRefer will process personal data for the duration of the Agreement, unless a longer period is required by applicable laws and regulations. NetRefer shall return the Client’s data by enabling the Client to export its data as set forth in the Agreement, and shall anonymise the data or, at the Client’s request, delete the data.

For processing by (sub-) processors, also specify subject matter, nature and duration of the processing

PMP

Data Types	Grounds for Processing	Duration
Affiliate sign up data	Account management and providing access to the Affiliate Management System.	Duration of the Agreement, unless otherwise required by applicable laws.
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	<p>Generation of statistics, performance metrics and KPIs for</p> <ul style="list-style-type: none"> • Affiliate management • Affiliate performance • Rewarding • Financial reporting • Benchmarking 	
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NON-PMP

Data Types	Grounds for Processing	Duration
All data within the systems	<p>For the purposes of executing the Client's instructions, and affecting system and infrastructure maintenance, software updates and upgrades.</p>	<p>Duration of the Agreement, unless otherwise required by applicable laws.</p>

Annex III – Technical measures including technical and organisational measures to ensure the security of the data

Security layers and methodologies applied at infrastructure layer:

Network Edge Traffic Monitoring & Mitigation

Simulated & Vetted through Penetration Testing

- **DDoS protection**

Zero-second DDoS Mitigation SLA automatically drops network-layer attacks at the edge and responds to application-layer attacks within seconds to minimize any downtime.
- **Improved performance**

Performance enhancements through Akamai content delivery network, such as advanced offloading capabilities, to improve website performance even when under attack.
- **Automatic API inspection**

Web Application Protector performs automatic inspection for JSON and XML traffic for attacks using the same signatures as traditional web traffic.
- **Precise detection**

Through evaluation of changing attack patterns on the Akamai platform and updating detection logic, Web Application Protector provides precise threat identification without the requirement to manage security policies.
- **Control bot traffic**

Stop noisy bots and prevent large volumes of automatic traffic from overwhelming NetRefer applications and the infrastructure holistically.
- **Detect threats out of the box**

Akamai interacts with 1.3 billion devices and harvests 130 TB of threat data every single day, discovers new threat vectors as they evolve, and continuously updates WAF rules. Akamai WAF detection logic is so advanced that it often catches zero-day attacks.
- **Keep protection current**

Web Application Firewall leverages insights gained from hundreds of Akamai security experts and the latest machine learning algorithms to keep protections current. With automatic rule updates, you don't need to keep track of the latest security threats yourself.
- **Automated updates**

Leveraging visibility into the latest attacks on the largest online organizations, Akamai continuously and transparently updates Web Application Protector security protections to save you time and effort.

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

Systems Security Access Controls

- Managed Azure Active Directory Services (Internal Access)
- Enforced Group Policies (e.g. Password complexity / Failed Login Attempts) Matthew Pwd complexity/Forgot PWD PMP
- Maintain list of personnel (High-Level system privileges / least privileges) Azure Ok , PMP Platform (NYD)
- Quarterly User Access Review (NYD)

Application Security (Operating Systems / Hosting)

- Quarterly Security Risk Assessment using Netcraft
- New release deployment cycle
- 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 (Internal)
- External Threats to the site
- Physical Intrusion (Internal)

Business Continuity Plan

- High Availability Approach
- Testing of Ad serving application
- Offsite backups of application binary files / configs / media files / scripts
- Multiple ISP providers
- RTO 30 minutes
- RPO last 6 minutes

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).

Security processes at an operational layer

- 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 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.

Annex IV – List of approved sub-processors

Processing of Personal Data

Personal data may be shared with one or more of the following sub-processors:

Name	Website	Description
Akamai Technologies (reseller -ITWay)	https://www.akamai.com/	Edge Security (Web Application Firewall + DDoS)
Atlassian	https://www.atlassian.com/	Provider of Jira Software, used for provisioning customer support
Barracuda Sentinel (reseller - Chrisons)	https://www.barracuda.com/	Email Security with deep AI integration with Office 365
DreamFactory Software (trading name of Integrate.io, Inc)	https://www.dreamfactory.com/	Automated generation of API's
Google Analytics	https://support.google.com/?hl=en-GB	User Flow Tracking within Admin/Affiliate platforms
IP2Location	https://www.ip2location.com/	Geographical identification by IP Address
Mailchimp	https://mailchimp.com/	Email marketing
Microsoft Azure	https://azure.microsoft.com/en-us/	Infrastructure Hosting
Ping Identity	https://www.pingidentity.com/en.html	Authentication and Authorisation of the System
Pingdom (Solarwinds)	https://www.solarwinds.com/pingdom	URL Availability and Uptime Monitoring
Xero	https://www.xero.com/	Payments infrastructure
Zoho Site24x7	https://www.site24x7.com/	Server and Cloud Monitoring

For transfers to non-EU controllers, the following will also apply:

STANDARD CONTRACTUAL CLAUSES

1. Section I

Clause 1 - Purpose and scope

- (a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) for the transfer of personal data to a third country.
- (b) The Parties:
 - (i) the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter "entity/ies") transferring the personal data, as listed in Annex I.A. (hereinafter each "data exporter"), and
 - (ii) the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A. (hereinafter each "data importer").have agreed to these standard contractual clauses (hereinafter: "Clauses").
- (c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.
- (d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

Clause 2 – Effect and Invariability of the Clauses

- (a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46 (2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.
- (b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

Clause 3 – Third-party beneficiaries

- (a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:
 - (i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;

- (ii) Clause 8 - Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);
 - (iii) Clause 9 - Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);
 - (iv) Clause 12 - Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);
 - (v) Clause 13;
 - (vi) Clause 15.1(c), (d) and (e);
 - (vii) Clause 16(e);
 - (viii) Clause 18 - Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.
- (b) Paragraph (a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

Clause 4 – Interpretation

- (a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.
- (b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.
- (c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

Clause 5 – Hierarchy

In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

Clause 6 – Description of the transfer(s)

The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.

Clause 7 – Docking clause

- (a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.
- (b) Once it has completed the Appendix and signed Annex I.A, the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.
- (c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.

2. Section II – Obligations of the Parties

Clause 8 – Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 Instructions

- (a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.
- (b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.
- (c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.
- (d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

8.2 Security of Processing

- (a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter “personal data breach”). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.
- (b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph (a). In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.
- (c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.3 Documentation and Compliance

- (a) The Parties shall be able to demonstrate compliance with these Clauses.
- (b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

Clause 9 – N/A

Clause 10 – Data subject rights

The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

Clause 11 – Redress

- (a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

Clause 12 - Liability

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.
- (c) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.
- (d) The Parties agree that if one Party is held liable under paragraph (c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its / their responsibility for the damage.
- (e) The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

Clause 13 – N/A

3. Section III – Local laws and obligations in case of access by public authorities

Clause 14 – Local laws and practices affecting compliance with the Clauses

- (a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.
- (b) The Parties declare that in providing the warranty in paragraph (a), they have taken due account in particular of the following elements:
 - (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward

- transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
- (ii) the laws and practices of the third country of destination– including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards;
 - (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- (c) The data importer warrants that, in carrying out the assessment under paragraph (b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
 - (d) The Parties agree to document the assessment under paragraph (b) and make it available to the competent supervisory authority on request.
 - (e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph (a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph (a).
 - (f) Following a notification pursuant to paragraph (e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

Clause 15 – Obligations of the data importer in case of access by public authorities

15.1 Notification

- (a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
 - (i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- (b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver

of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.

- (c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- (d) The data importer agrees to preserve the information pursuant to paragraphs (a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.
- (e) Paragraphs (a) to (c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

- (a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).
- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

4. Section IV – Final provisions

Clause 16 – Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.
- (b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).
- (c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:
 - (i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;
 - (ii) the data importer is in substantial or persistent breach of these Clauses; or

- (iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

- (d) Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.
- (e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

Clause 17 – Governing law

These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of Malta.

Clause 18 – Choice of forum and jurisdiction

Any dispute arising from these Clauses shall be resolved by the courts of Malta.

Appendix

Annex I

A. List of parties

Data importer

Company Name, Address, Email and Tel. of Company:	As set out in the Order Form
Role:	Controller

Data exporter

Company Name:	Arnold Media Limited t/a NetRefer
Address:	Level 3, Domestica Complex, Valley Road, Msida, MSD 9020, Malta
Email:	dpo@netrefer.com
Tel:	+356 2767 3337
Name:	Dexter Cutajar
Title:	Head of Commercial
Role:	Processor

B. Description of the transfer

Categories of data subjects whose personal data is transferred

- (i) Prospects, clients, end-users, business partners, suppliers and vendors of NetRefer;
- (ii) Employees or contact persons of NetRefer's prospects, clients, end-users, business partners, suppliers and vendors;
- (iii) Clients' users / affiliates authorised to use the Services.

Categories of personal data transferred

A. PMP

General Personal Data

- (i) Device Data (IP, UserAgentString)
- (ii) User Data
 - a. ID, Username, First Name, Last Name, Title, Date of Birth
 - b. Email address
 - c. Mobile Number, Telephone Number
 - d. Skype, Messenger
 - e. Address, City, Postal Code, Country
- (iii) Payments (IBAN)

Sensitive Data

- (iv) Gender - We may receive the Gender with the player Data Transfer.

B. NON-PMP

General Personal Data

- (i) User Data
 - a. ID, Username, First Name, Last Name, Title, Date of Birth
 - b. Email address
 - c. Mobile Number, Telephone Number
 - d. Skype, Messenger
 - e. Address, City, Postal Code, Country

Sensitive Data

- (ii) N/A

Frequency of the transfer

Personal data may be continuously transferred throughout the term of the Agreement.

Nature of the processing

NetRefer will process personal data as necessary to perform the Services pursuant to the Agreement and as further instructed by the Client in its use of the Services.

Purpose(s) of the data transfer and further processing

NetRefer will process personal data as necessary to perform the Services pursuant to the Agreement and as further instructed by the Client in its use of the Services.

Period for which personal data will be retained or, if that is not possible, the criteria used to determine that period

NetRefer will retain personal data for the duration of the Agreement, unless otherwise specified in the Agreement or a longer retention period is required by applicable laws and regulations. NetRefer shall return the Client’s data by enabling the Client to export its data as set forth in the Agreement, and shall anonymise the data or, at the Client’s request, delete the data.

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

PMP

Data Types	Grounds for Processing	Duration
Affiliate sign up data	Account management and providing access to the Affiliate Management System.	Duration of the Agreement, unless otherwise required by applicable laws.
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 • Benchmarking 	
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NON-PMP

Data Types	Grounds for Processing	Duration
All data within the systems	For the purposes of executing the Client’s instructions, and affecting system and infrastructure maintenance, software updates and upgrades.	Duration of the Agreement, unless otherwise required by applicable laws.

-----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

Licensors 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 charges 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-----