

## Arnold Media Limited

### Terms of Service V.7.3.1

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## Arnold Media Limited Terms of Service

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

### 1. Documents Forming Part of the Agreement

- 1.1 These Terms of Service (hereinafter: **"TOS"**) together with the signed Arnold Media Limited Order Form and any subsequent addendums thereto (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** – Add-ons, Integrations and API's (hereinafter: **"API"**).
- 1.3 The provisions of these TOS apply, to the extent applicable, to each of the Schedules as well as to the Order Form.
- 1.4 In the case of discrepancy between these TOS and the Order Form, the terms of the Order Form shall prevail.

### 2. Definitions

References to the singular include the plural and vice versa.

- 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 **"Bug"** means a feature or functionality that is not working in accordance with the latest description thereof in the User Documentation.
- 2.3 **"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 Service and the Software including the concepts, ideas and features relating thereto, as well as the User Documentation and this Agreement or any part thereof; (b) any technical information, 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 (including, but not limited to, staging and production (live environment), internal and client/user data), know-how, works-in-progress, designs, drawings, research, developments, specifications, software, software documentation, software programs, source code, object code, flow charts, algorithms, coding sheets, routines, sub-routines, compilers, assemblers and databases; (d) any 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.

- 2.4 “**Contractual Partners**” means any Affiliate, employee, consultant, agent and any other third party engaged with Licensee and who in any way makes use of the Service.
- 2.5 “**Derivative work**” means (a) for copyrightable or copyrighted material: a work that is based upon one or more pre-existing works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such a pre-existing work may be recast, transformed or adapted, and that, if prepared without authorization by the owner of the pre-existing work, would constitute copyright infringement; (b) for patentable or patented material: any adaptation, addition, improvement, or combination based on a pre-existing work; and (c) for material subject to trade secret or protection or confidentiality obligations: any new material, information or data relating to and derived from such existing trade secret material or Confidential Information, including new material which may be protected by copyright, patent, trade secret or other proprietary rights.
- 2.6 “**Group Company**” means in respect of either Party, any subsidiary or holding company from time to time of that Party, and any subsidiary from time to time of a holding company of that Party, including any affiliated company, joint venture or any other kind of undertaking in which the Party directly or indirectly holds an interest.
- 2.7 “**Intellectual Property Rights**” means any and all patents, inventions, copyrights, moral rights, trademarks, domain names, trade secrets, know-how, software, and any other form of intellectual property and/or proprietary rights recognized in any jurisdiction whether existing now or acquired hereafter including any application or right to apply for registration of any of these rights.
- 2.8 “**Licensee**” or “**Client**” means the legal entity identified in the Order Form.
- 2.9 “**Licensor**” or “**NetRefer**” means Arnold Media Limited t/a NetRefer (C39896), of Level 3, Domestica Complex, Valley Road, Msida, MSD 9020, Malta.
- 2.10 “**Maintenance & Support**” means all software coding done to correct Bugs 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.
- 2.11 “**Service**” means all or any portion of the Software and/or any supporting services, features and functions that are made accessible to the Licensee pursuant to the Order Form, as further explained in the User Documentation.
- 2.12 “**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 Licensor's other products and/or services and/or programs and/or features, and all Intellectual Property Rights therein.
- 2.13 “**Software Update**” means a patch, correction or other similar modification to the Service which may be issued by the Licensor during the Agreement Term.

- 2.14 **“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.
- 2.15 **“User Documentation”** means any user manual, knowledge base, release notes, training materials and any other related material provided or published by Licensor (printed or on-line), which provides an overview of the Software and/or Service features, capabilities and functionality and which assists the Licensee in using the Service.

### 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

- 4.1 Licensee shall not, nor permit any Contractual Partner to: (a) copy, modify, distribute, redistribute, reproduce, duplicate, download, copy, sell, lease, assign, transfer, trade, publish or otherwise exploit all or any part of the Service or the User Documentation; (b) disassemble, reverse engineer or decompile any copies of the Service or Software, whether in full or in part; (c) develop, produce, make, distribute, license or exploit any of the Service’s Derivative Work; (d) allow third parties to access and/or use or utilise the Service, except for third parties specifically authorised in writing by Licensor; (e) 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; (f) use the Service for any purpose except in the normal course of its business; (g) use the Service in violation of any applicable law or regulation, or for any illegal or unauthorised purpose or cause; (h) systematically extract and/or re-utilise parts of the contents of the Service, collect content or information or otherwise access Licensor’s website or Service using automated means, such as periodic caching of information, harvesting bots, data mining, robots, spiders, scrapers, crawlers or similar data gathering and extraction tools to extract (whether once or many times) for re-utilisation of any parts of the Service without Licensor’s express written consent; (i) access the Service for benchmarking or other competitive purpose or solely for the purpose of monitoring its availability, performance or functionality; (j) use any unauthorized means to modify, reroute, or gain access to the Service or attempt to carry out these activities; (k) damage, disable, overburden or impair the Service (or any network connected to the Service); or (l) use the Service beyond the features allocation and amounts provided in that Service or in violation of Licensor’s Fair Usage (as specified in clause 26 below).
- 4.2 Licensor retains the right to immediately block, deactivate or otherwise prevent access to the Services upon infringement of any of the aforesaid.

### 5. Affiliates

Licensee alone is responsible for Affiliate’s access and use of the Service and shall be solely liable to the Affiliate in respect of any matter related to, arising from, or in any way connected to use of the 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. The Licensee shall be responsible for its Affiliate’s compliance with this Agreement. Breach of any provision of this Agreement by any Affiliate shall be deemed a breach thereof by the Licensee, and the Licensee shall be liable hereunder with respect to such breach as if Licensee itself had breached this Agreement.

## 6. Licensee

- 6.1 Licensee shall be solely liable in respect of any matter related to, arising from, or in any way connected to use of the Service, including, but not limited to, the administrating, monitoring and/or setting up of reward plans, and/or payment of any rewards using the Licensor's Software and/or Service. Licensee is solely responsible for how it uses the Software and the Service, provided it is not in conflict with any term of this Agreement. Furthermore, Licensee shall be solely liable and responsible for any data input, or data which is caused to be input by the Licensor on Licensee's behalf, as well as for all outcomes that may result directly or indirectly from such data input.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 The Licensee is responsible for:
- data accuracy pertaining to the affiliate details;
  - maintaining any terms and conditions presented by the Licensee to Affiliates ("**Affiliate Terms and Conditions**") and for communicating any changes as required;
  - including any processing information provided by Licensor in the Affiliate Terms and Conditions, as applicable;
  - maintaining any and all languages required for the Affiliate Terms and Conditions and any respective versions;
  - assigning the roles and privileges and determining what features shall be visible and accessible to which of its employees and ensuring that such access is required for the fulfilment of such employee's duties. The Licensee undertakes to only provide access where clear grounds exist for such access.

## 7. 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.



## 8. Term and Termination

- 8.1 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**”).
- 8.2 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 or unless the Parties sign a new Order Form. The Initial Term and/or any Renewal Term shall be referred to as “**Agreement Term**”.
- 8.3 Either Party may terminate the Agreement at any time during a Renewal Term by providing the other Party with at least three (3) months’ prior written notice of termination.
- 8.4 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 the Licensor, as evidenced by written records. Termination pursuant to this clause 8.4 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 8.4 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.
- 8.5 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 the Licensee, as evidenced by written records; (e) Licensee refuses to accept any revisions to the Agreement or any Upgrade or Update, which are required for legal, regulatory, security and/or infrastructural purposes, or to ensure or improve optimal functioning of the Service; or (f) failure by Licensee to apply SSL certificates as further described herein below. Termination pursuant to this clause 8.5 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 sum equal to three (3) months’ fees pursuant to the Order Form (as updated by any addendum) and, in such event, Licensor may demand that the entire fees as aforesaid shall become immediately due and payable.
- 8.6 **Effect of Termination:**  
Upon expiration or termination of the Agreement for any reason whatsoever:
- 8.6.1 Licensor shall obfuscate and anonymize all personal data and delete any backups, decommission the NetRefer system, switch off all related technical services, and remove all access to the NetRefer application both externally and internally; and
- 8.6.2 Licensee shall remove all NetRefer integrations from its systems, such as login and sign up iframes; remove any pixels redirecting to NetRefer; remove any tracking technologies

linking to or directing to NetRefer; remove any references and links to NetRefer sites; inform any 3rd party integrators that linked to the NetRefer platform of this termination of agreement; and store and protect any data generated through the NetRefer system as required to fulfil legal and commercial obligations.

## 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 in writing 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. Any withholding taxes which may arise on amounts paid by the Licensee to the Licensor are not to be deducted from the amount paid to the Licensor but are instead to be paid directly by the Licensee and at their additional expense. The full amount invoiced by the Licensor will therefore still have to be settled by the Licensee to the Licensor.
- 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, beyond those provided to the Licensee under the Order Form, including, but not limited to, requests for reports, add-ons, brand/product integration or decommissioning, support, data export/transfer, transition/migration, retention and storage of data, and implementation of SSL renewal certificate ("**Project**") shall be made in writing and submitted to 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, 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 Upon expiration or termination of the Agreement for any reason, the Licensor may decommission the Service ("**System Decommissioning**"). System Decommissioning entails the removal of DNS records, removal of CDN SSL property, WAF removal, SSL certificates revocation, application and websites removal, removal of FTPS account used for media/microsite uploads, removal of SFTP account used for data transfer, removal of web services, 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.
- 11.2 The Licensee shall pay the 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.
- 11.3 Should the Licensee require Standard Data Export or Advanced Data Export (as specified below), it shall notify the Licensor thereof prior to termination of the Agreement. No export is possible after the System Decommissioning. Standard Data Export and/or Advanced Data Export shall not be provided unless all outstanding fees, including the System Decommissioning Fee, have been paid in full by Licensee to Licensor. Nevertheless, the period for retention of the data by Licensor, pursuant to the DPA, shall commence immediately upon expiration or termination of the Agreement Term.
- 11.4 "**Standard Data Export**" shall mean the 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.
- 11.5 "**Advanced Data Export**" shall mean the export of any data beyond the scope of the Standard Data Export and shall be subject to additional charges.
- 11.6 Should the Licensee request a Standard Data Export or an Advanced Data Export pursuant to the above, Licensor shall provide Licensee with an estimated time for completion of the export based on the scope of data and the manpower required.

## 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, Bugs or non-compliance) with regards to the Deprecated Version.

## 14. Maintenance & Support

- 14.1 From time to time during the Agreement Term, Licensor may 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, User Documentation 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 provided for in the Order Form, shall be considered a Project and be subject to clause 9.2 above.

## 15. Ownership

- 15.1 Except for the rights explicitly granted to Licensee hereunder, Licensor shall own and retain all right, title and interest in and to (a) the Service and the Software, including any and all improvements, enhancements, modifications, Upgrades, Updates and Derivative Works relating to, or deriving from, the Service and Software, (b) any software, applications, inventions or other technology developed as part of the Service or Software, (c) any and all User Documentation and any copies thereof, and (d) all Intellectual Property Rights embodied within the foregoing. Except for the limited license and use rights granted hereunder, Licensee shall not assert any right, title or interest in or to any of the foregoing.
- 15.2 Licensee's profile and materials uploaded to the Service remain the Intellectual Property Rights of the Licensee, and the Licensor shall not assert any right, title or interest in or to any of the foregoing.
- 15.3 Except as expressly provided under this Agreement, Licensee shall have no rights to use the NetRefer trademarks, logos, domain names, or other brand features. Licensee agrees that the Service 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.
- 15.4 Notwithstanding anything to the contrary, Licensor will be free to collect, develop, create, extract, compile, synthesize, analyze and commercialize statistics, benchmarks, measures and other information based on "Aggregated Data." "**Aggregated Data**" means Licensee data that is: (i)

anonymized by removing any personal or other information so the data is in no way attributable to a specific customer or any individual; (ii) combined with the other data; and (iii) presented in a way which does not reveal the Licensee's or any individual's identity.

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

## 16. User Content

Licensor does not screen user-generated content or information on the Service and does not give any assurance as to its accuracy or completeness. Users of the Service are expressly asked not to publish any defamatory, misleading or offensive content or any content which infringes any other party's intellectual property rights (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.

## 17. Mutual Warranties

- 17.1 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.
- 17.2 Any liability, repercussions or fines incurred due to a violation by either Party of this clause 17.1 lies solely with the Party in breach of this clause.

## 18. Limited Warranty

- 18.1 Licensor warrants that the Software and the Service, when used in accordance with this Agreement and the User Documentation, shall perform substantially in accordance with the SLA during the Agreement Term.
- 18.2 In the event that the Software and the Service do not comply with the foregoing warranty during the Agreement Term, then Licensor's sole obligation and the Licensee's exclusive remedy shall be Service Credits as set forth in the SLA and, in the absence of a specific remedy set out in the SLA, then Licensor's sole obligation and Licensee's exclusive remedy shall be for Licensor to make commercially reasonable efforts to correct such non-compliance by repairing or replacing the Software and/or Service at its sole expense.
- 18.3 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.
- 18.4 This limited warranty does not cover any Bug, 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; (iv) use of the Software and/or Service in a manner that is inconsistent with this Agreement; and/or (v) use of the Software and/or Service in combination with software, services, programs or other products not supplied by Licensor.

## 19. Disclaimer of Warranties

- 19.1 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH 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.
- 19.2 Licensee understands and agrees that Licensor uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage and related infrastructure and technology required to operate the Service, and Licensor shall not be held liable for any event, act or omission on their part.

## 20. 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 21, 22 AND 23 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 API.

## **21. Indemnification by Licensor**

- 21.1 Licensor shall indemnify Licensee against any third party claim that the Service directly infringes any patent, copyright, trademark or trade secret owned or controlled by the third party; provided however, that: (a) Licensee notifies Licensor in writing of any such claim within ten (10) days of becoming aware thereof; (b) Licensor shall have sole control of the defence of any such claim and all negotiations for its settlement or compromise; (c) Licensee shall cooperate fully with Licensor to facilitate the settlement or defence of such claim; and (d) Licensee has not contributed in any way to the infringement, inter alia by way of (i) modification of the Service or any part thereof; (ii) use of the Service not in accordance with the Agreement or for purposes not intended by Licensor; (ii) integration of the Service or any use of the Service in combination with any other system, equipment or software not provided or approved by the Licensor; (iii) failure to use the most current release of the Software made available to Licensee, where use of such release could have avoided the infringement or alleged infringement.
- 21.2 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.
- 21.3 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.

## **22. Indemnification by Licensee**

- 22.1 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' (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.



22.2 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.

## 23. Confidentiality

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 The Recipient undertakes that it has the necessary data governance, security and privacy controls, and access management in place to ensure that it will hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party, with at least the same degree of care that it uses to protect its own Confidential Information (but in no event less than a reasonable standard of care) but with respect to Personal Data, as defined in the General Data Protection Regulation (EU) 2016/679 ("GDPR"), with at least the same degree of care required by GDPR.
- 23.6 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).
- 23.7 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.
- 23.8 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.
- 23.9 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.
- 23.10 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.
- 23.11 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.
- 23.12 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 23.2 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.

## 24. Personal Data

- 24.1 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.

- 24.2 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.
- 24.3 The Licensor shall provide the Licensee with an initial username and password allowing access to the Service by the Licensee. The Licensee will thereafter be able to create further usernames and passwords for each staff member that the Licensee designates as authorised to access the Service.
- 24.4 The Licensee is solely responsible for the appropriate protection and use of its and its staff members' 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.

## 25. Security and Data Protection

- 25.1 The application of a valid SSL certificate is mandatory for all interfaces and sites making up the Service offered by the Licensor. The Licensee shall renew the SSL certificate annually and shall send the updated SSL certificate to the Licensor at least fifteen (15) working days prior to expiration of the current SSL certificate for implementation as a Project. Failure to apply or renew the SSL certificates as aforesaid, shall absolve the Licensor of any loss of traffic and/or of any data breaches which may occur when data is in transit and/or of any inability to access the Service. The Licensor, at its sole discretion, shall have the right to block Licensee's access to the Service and/or terminate the Agreement.
- 25.2 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.

## 26. Fair Usage

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

## 27. 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.

## 28. 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.

## 29. Non-Solicitation

- 29.1 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.
- 29.2 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.
- 29.3 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.
- 29.4 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.

## 30. Anti-Bribery & Anti-Modern Slavery

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

other Party whether under this Agreement or any other agreement or potential agreement between Licensor and Licensee.

### **31. 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.

### **32. Relationship of Parties**

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

### **33. Severability**

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

### **34. No Waiver**

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

### **35. Entire Agreement**

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

### **36. Counterparts**

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

### **37. Changes to Agreement**

37.1 Licensor reserves the right to modify the provisions of these TOS, which will be available in an updated version of these TOS. Such revised terms shall automatically apply to any Renewal Term of



the current Order Form or to any new Order Form signed between the Parties, or when Licensee signs its consent to the revised terms, whichever comes first.

- 37.2 Nevertheless, if any changes to the TOS are required for legal, regulatory security, or infrastructural purposes, or to ensure or improve optimal functioning of the Service, the changes shall automatically enter into effect fifteen (15) days following written notification thereof to Licensee.
- 37.3 Notwithstanding the above, Licensor may update Schedules A and B and C of these TOS as required, and shall provide notice to the Licensee of any such update, which shall become effective immediately.

## 38. 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.

## 39. 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.

## 40. 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 20 (Limitation of Liability), clause 23 (Confidentiality), clause 24 (Personal Data), clause 29 (Non-Solicitation) and clause 41 (Governing Law and Jurisdiction).

## 41. 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.

## **42. 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.

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## Schedule A - Data Processing Agreement

### 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.**

### 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.

## 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.

## 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.
-

## Annex I – List of parties

### Controller

Name, Address, Contact Details: As set out in any applicable Order Form

### Processor

Name: Arnold Media Limited t/a NetRefer

Address: Quantum Place, Triq ix-Xatt, Gzira, GZR 1020, Malta

Email: [dpo@netrefer.com](mailto:dpo@netrefer.com)

Tel: +356 2767 3337

Signature and accession date: The Parties agree that execution of the Order Form by the controller and the processor shall constitute execution of these Clauses by both parties as of the Effective Date specified in the Order Form.

## 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) Controller's users / affiliates authorised to use the Service.

### Categories of personal data processed

#### 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
  - f. Passwords
- (iii) Payments (IBAN)

#### Sensitive Data

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

### Nature of the processing

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

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

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

### 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 controller's data by enabling the controller to export its data as set forth in the Agreement, and shall anonymise the data or, at the controller's request, delete the data.



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

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.	
Client's Player Registration data	Used to associate the player with the affiliate and verify the acquisition of the player 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"> <li>• Tracking, media, campaign, and affiliate performance</li> <li>• Linking a customer to an affiliate</li> <li>• Rewarding affiliates</li> </ul>	Duration of the Agreement, unless otherwise required by applicable laws.
Affiliate, Customer, Views, Clicks and rewards	Generation of statistics, performance metrics and KPIs for <ul style="list-style-type: none"> <li>• Affiliate management</li> <li>• Affiliate performance</li> <li>• Rewarding</li> <li>• Financial reporting</li> <li>• Benchmarking</li> </ul>	
All data within the systems	For the purposes of executing the controller's instructions, and affecting system and infrastructure maintenance, software updates and upgrades.	Duration of the Agreement, unless otherwise required by applicable laws.

## 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 Simulation Tests**  
A DDoS (Distributed Denial of Service) simulation test is a proactive security measure used to assess NetRefer's readiness to withstand and mitigate DDoS attacks.
- **Penetration Testing**  
Penetration Testing is a security assessment conducted by cybersecurity professionals to evaluate the security of the system, network, or application. During a Pen Test, authorized simulated attacks are performed to identify vulnerabilities that malicious hackers could exploit. The objective is to uncover weaknesses in the system's defences and provide recommendations for improving security measures to protect against real-world threats.
- **Rate Limiting Capabilities**  
Rate limiting capabilities are control measures that help prevent abuse, protect against attacks, and ensure fair usage of resources. When a user exceeds the defined limits, the system may restrict further access or take other actions to maintain stability and security.
- **System Updates**  
System updates refer to the process of installing patches, fixes, or upgrades to software, operating systems, or firmware to improve functionality, enhance security, or address known issues. These updates are released periodically by software vendors or device manufacturers to keep systems up-to-date and protected against emerging threats and vulnerabilities. System updates can include bug fixes, performance improvements, new features, and security enhancements, and they are essential for maintaining the stability, reliability, and security.
- **Multi Factor Authentication**  
MFA adds an extra layer of security beyond just a username and password. This significantly reduces the risk of unauthorized access, as it becomes much harder for attackers to compromise accounts through methods like phishing, brute force attacks, or stolen credentials.
- **Virtual Private Networks**  
VPNs create secure, encrypted connections over the internet, allowing remote users to access a private network as if they were physically present in the same location. VPNs authenticate users and encrypt data to ensure secure remote access.

#### 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
- Change Log
- Authorized Approval of any changes or maintenances

#### Remote Access Methods

- L2TP/IPSec tunnel VPN protocol
- Data Encrypted in transit
- Access Log
- Change Log
- Management Approval

#### Systems Security Access Controls

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

#### Application Security (Operating Systems / Hosting)

- Quarterly Security Risk Assessment using Netcraft
- New release deployment cycle
- 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
- Recovery Time Objective 30 minutes
- Recovery Point Objective 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 third 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 (GlobalDots) Microsoft Azure Front Door	<a href="https://www.akamai.com/">https://www.akamai.com/</a> <a href="https://www.microsoft.com">https://www.microsoft.com</a>	Edge Security (Web Application Firewall + DDoS)
Microsoft Azure	<a href="https://www.microsoft.com">https://www.microsoft.com</a>	Provider for a range of cloud computing services
Atlassian	<a href="https://www.atlassian.com/">https://www.atlassian.com/</a>	Provider of Jira Software, used for provisioning customer support
Databricks	<a href="http://www.databricks.com">www.databricks.com</a>	Provider of data platform
Microsoft Defender	<a href="https://www.microsoft.com/en-us/security/business/microsoft-defender">https://www.microsoft.com/en-us/security/business/microsoft-defender</a>	Email Security with deep AI integration with Office 365 Infrastructure threat prevention, detection, and response
Google Analytics	<a href="https://support.google.com/?hl=en-GB">https://support.google.com/?hl=en-GB</a>	User Flow Tracking within Admin/Affiliate platforms
IP2Location	<a href="https://www.ip2location.com/">https://www.ip2location.com/</a>	Geographical identification by IP Address
Mailchimp	<a href="https://mailchimp.com/">https://mailchimp.com/</a>	Email marketing
Xero	<a href="https://www.xero.com/">https://www.xero.com/</a>	Payments infrastructure
Zoho Site24x7	<a href="https://www.site24x7.com/">https://www.site24x7.com/</a>	Server and Cloud Monitoring URL Availability and Uptime Monitoring
Hubspot	<a href="http://Hubspot.com">Hubspot.com</a>	Provider of our customer relationship management platform

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

## STANDARD CONTRACTUAL CLAUSES

### Module 4

(International transfer processor to controller – applicable when NetRefer is a processor and Licensee, or Licensee’s users, are located outside EU/EEA)

## 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 (Client/Licensee)**

Name, Address, Contact Details: As set out in any applicable Order Form

Role: Controller

**Data Exporter (NetRefer)**

Name: Arnold Media Limited t/a NetRefer

Address: Quantum Place, Triq ix-Xatt, Gzira, GZR 1020, Malta

Email: [dpo@netrefer.com](mailto:dpo@netrefer.com)

Tel: +356 2767 3337

Role: Processor

Signature and accession date: The Parties agree that execution of the Order Form by the controller and the processor shall constitute execution of these Clauses by both parties as of the Effective Date specified in the Order Form.

## 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 Service.

### Categories of personal data transferred

#### 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
  - f. Passwords
- (iii) Payments (IBAN)

#### Sensitive Data

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

### 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 Service pursuant to the Agreement and as further instructed by the Client in its use of the Service.

### Purpose(s) of the data transfer and further processing

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

### 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

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.	
Client's Player Registration data	Used to associate the player with the affiliate and verify the acquisition of the player 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"> <li>• tracking, media, campaign, and affiliate performance.</li> <li>• Linking a customer to an affiliate</li> <li>• Rewarding affiliates</li> </ul>	
Affiliate, Customer, Views, Clicks and rewards	<ul style="list-style-type: none"> <li>• Generation of statistics, performance metrics and KPIs for</li> <li>• Affiliate management</li> <li>• Affiliate performance</li> <li>• Rewarding</li> <li>• Financial reporting</li> <li>• Benchmarking</li> </ul>	
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**”) constitutes a schedule to the Terms of Service.

### 1. Definitions

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

- 1.1 “**Business Hours**” means 08:30 to 17:30 (CEST) Monday to Friday (excluding Christmas Day, New Year’s Day and Good Friday).
- 1.2 “**Downtime**” means Service unavailability which is not Scheduled Downtime.
- 1.3 “**Incident**” means an interruption to, or a reduction in the quality of the Service.
- 1.4 “**Maintenance Window**” means a prescribed time period which is provided to the Licensor to perform maintenance, Upgrades or changes. This may include Scheduled Downtime.
- 1.5 “**NetRefer Backlog**” means a list maintained by the Licensor containing new features, changes to existing features, Bug fixes, infrastructure changes, or other activities relating to the Service.
- 1.6 “**Platform**” means the front-end web-based portals for the Licensee and their Contractual Partners, the back-end software modules, hosting of all the Licensee’s specific data, and the underlying infrastructure on which the platform resides.
- 1.7 “**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.
- 1.8 “**Service Credits**” means the percentage of monthly fee to be credited to the Licensee.
- 1.9 “**Workaround**” means a temporary solution which enables the Licensee to use the Service. This may relate to an Incident or a Support request.

### 2. Scope of SLA

- 2.1 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.
- 2.2 The time frames specified in this SLA will be calculated from the time of Licensee opening a ticket or a Live Chat through the NetRefer portal advising of the issue.
- 2.3 The Licensor shall not be bound by the terms of this SLA in any of the following circumstances:
  - a) failure by the Licensee to fulfil its obligations under the Agreement or any part thereof (including outstanding fees owed by Licensee);
  - b) failure by the Licensee to make appropriate support personnel available as needed to resolve technical issues;
  - c) information or data received from the Licensee or its representative is inaccurate, incomplete or not supplied in a timely manner;
  - d) incomplete or incorrect system configuration by the Licensee (e.g. changes made to system settings);

- e) failure, misconfiguration or incompatibility of third-party vendors (e.g. vendor data transfer, third party ad serving);
- f) DNS problems beyond the control of the Licensee or Licensor;
- g) Licensor being unable to verify service restoration with the Licensee;
- h) security breaches which occur when all reasonable precautions have been undertaken;
- i) factors outside of Licensor's reasonable control, including any force majeure event or Internet access or related problems;
- j) any errors, omissions, delays or failures caused by Licensee or any third party outside of Licensor's reasonable control.

### **3. Parties' Duties and Responsibilities**

#### **3.1 The Licensee shall:**

- a) ensure that the Software is used as intended under the TOS and the User Documentation;
- b) notify the Licensor of issues or problems in a timely manner, providing as much details as possible;
- c) provide detailed information/data and collaborate with Licensor to escalate, diagnose and resolve issues in an accurate and timely manner;
- d) 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;
- e) ensure that any changes to the data transfer process or file formats are immediately notified to Licensor;
- f) ensure that username and password access is supplied and maintained and that any changes are immediately notified to Licensor, where Licensor is retrieving data from the Licensee;
- g) ensure that all data required for the Software to function is captured, recorded and sent to Licensor correctly;
- h) ensure that the Licensor is informed when the main point of contact for support issues changes.

#### **3.2 The Licensor shall:**

- a) perform maintenance of servers to ensure Software performs at an acceptable level;
- b) ensure security of all infrastructures to the best of its ability and industry standards;
- c) inform the Licensee of any changes, restarts or Scheduled Downtime that could affect the performance of the Software for a period longer than 15 minutes;
- d) inform the Licensee of any Software Update or Upgrade, and release notes to accompany such Software Update or Upgrade;
- e) perform appropriate QA testing relating to Software Updates and Upgrades;
- f) ensure that emails are relayed to the correct specified server;
- g) be responsible for all third-party relationships that are related to the hosting of Licensee systems.

## 4. Service Availability - 99.9% Platform Uptime Standard

- 4.1 Licensor warrants 99.9% Platform Uptime. The Platform will be deemed available if all its resources are available and responding to monitoring tools as designed and in a non-degraded manner.
- 4.2 In the event of failure to provide the aforesaid uptime standard, the Licensee will accrue Service Credits for the Downtime based on the following metrics:

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

- 4.3 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 Platform 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). Nevertheless, should the Monthly Cumulative Uptime 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.
- 4.4 **Exemptions** - The following items or situations are exempt from the Platform 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 Availability - 99.9% CDN Uptime Standard

- 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 availability fails to meet the aforesaid uptime, Licensee will accrue Service Credits based on the following metrics:

Monthly Cumulative Uptime (% of availability)	Service Credits (% of monthly fee)
>= 99.8 <b>and</b> < 99.9	1
>= 99.7 <b>and</b> < 99.8	2
>= 99.5 <b>and</b> < 99.7	3
>= 99.3 <b>and</b> < 99.5	4
>= 99.0 <b>and</b> < 99.3	5
>= 98.9 <b>and</b> < 99.0	10
>= 98.2 <b>and</b> < 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.
- 5.5 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). Nevertheless, should the Monthly Cumulative Uptime 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. Support Tickets

- 6.1 Support ticket SLAs are categorized by NetRefer, based on their level of severity, with SLA 1 being the most severe.

Severity Level	Definition
SLA 1	Covers Tracking and Affiliate Sign-Up for which loss in service would mean loss of data.
SLA 2	Covers the availability of the NetRefer Admin and Affiliate web portals and critical product functionality which impacts the capabilities to pay affiliates. This critical product functionality covers Data Transfer, Pixel Tracking, and any other issues blocking End of Month.
SLA 3	Important but non-critical functionality covering: standard reports and custom reports, reward calculations and reward plan management (unless they are affecting End of Month), and bulk updates related to payments, media, affiliate and customer management, and rewards.
SLA 4	Issues impacting UI, informational queries, and monitoring issues, as well as all other issues not covered by SLA 1, 2 or 3.

6.2 **Support Ticket Workaround and Resolution Times for Incidents**

Severity Level	Step 1: Workaround / Resolution *	Step 2: Final Resolution (if step 1 is Workaround)
SLA 1	4 hours	15 calendar days
SLA 2	8 Business Hours **	15 business days
SLA 3	5 business days	4 business weeks
SLA 4	3 business weeks	6 business weeks

\* Any support ticket that is identified to be a **Bug** will be bound by the above Step 1: Workaround timeframes, however, the Licensor will have sole discretion as to the final resolution (Step 2), if any, of such Bug and the timeframe therefor.

\*\* Data transfer issues are considered as SLA 2 blockers and are dealt with on a 24/7 basis, provided that for out of Business Hours, the issue is reported to NetRefer through the emergency contact number at +356 2767 3337.

6.3 **Remedies for failure to adhere to Final Resolution Times for SLA 1 and SLA 2 Incidents**

6.3.1 In the event of failure to by the Licensor to adhere to the aforesaid Final Resolution times for Incident Support Ticket SLAs 1 and 2 only, the Licensee will accrue Service Credits for each day of delay beyond the time specified in clause 6.2 above, based on the following metrics:

Delay in providing a Final Resolution:	Service Credits (% of monthly fee)
1-2 Business Days	1
3-4 Business Days	2
5-6 Business Days	3
7-8 Business Days	4
9-10 Business Days	5
10-14 Business Days	10
15-21 Business Days	15
More than 21 Business Days	20

6.3.2 The number of days in delay shall be calculated commencing on the first day after which the Licensor was to provide a final resolution, as stated above.

6.3.3 The aforesaid Service Credits shall be the sole and exclusive remedy available to Licensee in the event of failure by Licensor to adhere to this clause 6.3. 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 delay in providing a final resolution for SLA 1 or SLA 2 Incidents in any three consecutive months exceed 21 business days, this shall constitute a breach of the Agreement by Licensor, and Licensee’s sole and exclusive remedy shall be as specified in the TOS.

- 6.3.4 The aforesaid Service Credits will not be given where failure by Licensor to adhere to the resolution times is due, in part or wholly, to an action, omission or delay by the Licensee.

## 7. Limited Warranty

Save for the express Service Credits provided under this SLA and in the absence of any specific remedy set out herein, Licensor's sole obligation and Licensee's exclusive remedy shall be as set forth in clause 18 (Limited Warranty) of the TOS.

## 8. Service Credits

- 8.1 With respect to the Platform and CDN Uptime, Service Credits are accumulated monthly with Monthly Cumulative Uptime being reset at the beginning of each calendar month.
- 8.2 The Service Credit percentage, which only applies to the monthly fee in which the Downtime occurred, will not exceed the monthly fee actually paid by Licensee to Licensor.
- 8.3 Multiple Service Credits will not be given for the same period of time, i.e. failure to meet multiple criteria during a period of time generates only a single Service Credit.
- 8.4 To apply for a Service Credit under this Service Level Agreement, the Licensee must submit a request to [acctmgt@netrefer.com](mailto:acctmgt@netrefer.com), within **thirty (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 or Support Ticket for which Service Credit is being requested, and any additional documentation that demonstrates the claim. 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.

## 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 that are not related to Bugs. All Billable hours used in excess of the monthly hours allocated in the Order Form, are charged at the rate specified in the Order Form.

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

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

## 10. Contacting NetRefer Support

- 10.1 When contacting NetRefer Support, the Licensee should have the following information ready:
- a detailed description of the issue, including screenshots where applicable;
  - a technical person on behalf of Licensee who is able to assist if necessary;
  - relevant information in relation to the impact on Licensee's business.

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.



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

### 10.3 **Resolution Management**

Upon logging a ticket, the Licensee will receive an automatic email response, with a unique ticket number. The email will contain the ticket number as well as a link for accessing the ticket and monitoring its progress. When contacting Support through Chat, the transcript is translated into a ticket with a unique ticket number for reference too.

The User Experience Team Member will investigate and escalate Licensee's issue as needed to resolve the issue. Workaround and resolution times will apply according to the SLA levels as per clause 6.2.

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.

Should the request be classified as SLA 1 or SLA 2 Bug requiring development, the Licensor shall endeavour to provide a temporary fix as per such SLA. For SLA 3 and SLA 4 Bugs, 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.

### 10.4 **Self-Service**

In addition to the Support Services, the Licensor also offers User Documentation, coupled with online learning courses which provides the Licensee extensive information on how to use the NetRefer platforms on self-service basis.

### 10.5 **After Hours Support**

After Business Hours, support requests for SLA 1 or SLA 2 blockers which are serviced on 24/7 basis, must be reported on the NetRefer Service Desk, including all the information as specified above and followed by a telephone call referencing the ticket number.

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.

### 10.6 **Incidents**

In the case of a SLA 1 Incident, the NetRefer team will be assembled and once the issue is resolved or a temporary work-around achieved, a full incident report will be compiled by the same team to determine the causes of the issue/s and what was done to resolve it.

If a temporary work-around was achieved, the incident report shall include 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 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 – Add Ons, Integrations and APIs

- 1.1 With regards to add-ons and integrations, Licensor as the data processor is only responsible for receiving the data and displaying it correctly.
- 1.2 Integration of the Service 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.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 Licensor may prescribe usage limits, including limits on the number of calls, number of records per call, bandwidth usage and frequency of calls. Licensor shall notify Licensee of such usage limits in writing from time to time, and 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.
- 1.7 The APIs are designed to help Licensee enhance its websites and applications. Licensee agrees that the Licensor may monitor use of the APIs to ensure quality and verify Licensee's compliance with the terms. This monitoring may include NetRefer accessing and using Licensee's API client, for example to identify security issues that could affect NetRefer or its customers. Licensee will not interfere with this monitoring. NetRefer may suspend access to the APIs by Licensee or Licensee's API client without notice if it reasonably believes that these terms are being violated.
- 1.8 NetRefer does not acquire ownership in Licensee's API clients, and by using NetRefer's APIs, Licensee does not acquire ownership of any rights in NetRefer's API.
- 1.9 When using the APIs, Licensee may not (or allow those acting on its behalf to):
  - a) Sublicense an API for use by a third party. Consequently, Licensee will not create an API client that functions substantially the same as the APIs and offer it for use by third parties.
  - b) Perform an action with the intent of introducing to NetRefer's products and services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature.
  - c) Interfere with or disrupt the APIs or the servers or networks providing the APIs.
  - d) Promote or facilitate unlawful activity.

- e) Reverse engineer or attempt to extract the source code from any API or any related software.

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