

## INTRODUCTION

- A.1 Displayr is an online data analysis software solution. In these Terms of Service, the "Important Terms" mostly deal with using Displayr, and the "General Conditions" set out the legal basis on which Displayr is provided. You must accept these terms to use Displayr.
- A.2 THESE TERMS SUBJECT DISPLAYR'S LIABILITY TO LIMITATIONS AND EXCLUSIONS AS SET OUT IN SECTIONS 12 (DISCLAIMER) AND 13 (LIMITATION AND INDEMNITY) OF THE GENERAL CONDITIONS. PLEASE READ THESE SECTIONS CAREFULLY BECAUSE THEY LIMITS YOUR RIGHTS.
- A.3 SECTION (DISPUTES) ALSO CONTAINS A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER.

## IMPORTANT TERMS

### A. KEY TERMS

- A.1 The following terms are used regularly throughout these Terms of Service and have a particular meaning:
- Account means a registered Customer account within Displayr
  - Agreement means the agreement formed in accordance with these Terms of Service between the Company and the User.
  - Analysis means any table, chart, graph or other visual representation of data, generated by Displayr.
  - Application means the Displayr SaaS application accessible via login through the Site.
  - Author means any registered user of Displayr authorized to use the Customer's Account in order to create Documents.
  - Company means Displayr, Inc. a Corporation registered in the State of Delaware.
  - Customer means the entity that Displayr is licensed to under this Agreement (which if in doubt shall be the named Account holder).
  - Customer Data means all Data Sets, information, data, code, documents and other such materials that belong to the Customer.
  - Data Set means the raw data set that a registered User uploads from a file or, connects to the Application via a third party service, in order to generate an Analysis.
  - Displayr means the Company's suite of tools, Application and services, known together as "Displayr", licensed to the Customer under this Agreement.
  - Document means any document, file or webpage containing an Analysis, created or exported by the Application.
  - Fee means any fees payable to the Company for access to or use of Displayr.

- Governing Law means the laws and courts of the jurisdiction described in item E.
- Privacy Policy means the Company's privacy policy as updated from time-to-time, accessible from here: <https://displayr.com/privacy-policy>.
- Site means the website found at <https://displayr.com>.
- Subscription Fee means the fee charged for access to and use of Displayr.
- Third Party Services means any third party service account connected to and/or integrated with Displayr.
- Usage means the length of time that a User uses Displayr.
- User means a Customer, an Author and a Viewer as the use of the term in its context implies.
- Viewer means any person that views a Document.

## **B. AGREEMENT**

- B.1. The license granted under this Agreement shall be ongoing until terminated in accordance with the terms of this Agreement.
- B.2. The User agrees:
- To use Displayr in accordance with the terms of this Agreement; and
  - If creating a Customer Account, that it is authorized to establish, maintain and pay for the Account for the Customer.
- B.3. The Customer agrees:
- To pay the Fees as and when they fall due; and
  - That it is responsible for the conduct of each Author it authorizes (who each must enter into and comply with this Agreement).
- B.4. The Customer may terminate this Agreement by written notice and cease using Displayr. No pro-rata shall apply to termination by a Customer without cause
- B.5. The Company may terminate this Agreement on no less than 14 days' written notice to the Customer. The Company shall only provide a pro-rata refund to a Customer if:
- The Company terminates this Agreement without cause; or
  - The Agreement is terminated as the result of a breach by the Company.

## **C. PAYING FOR DISPLAYR**

- C.1. Fees
- The primary Fee to use Displayr shall be the Subscription Fee
  - All Fees will be charged in accordance with the prices advertised on the Site, or as otherwise agreed between the Company and the Customer.
  - All prices advertised on the Site are exclusive of applicable local, state, federal and international sales, value added, withholding and other taxes and duties of any kind unless otherwise stated.

- In relation to licenses acquired where U.S. sales tax is applicable, the Company maintains responsibility for collecting and remitting sales tax; which is a tax imposed by individual states, not the U.S. federal government, only when the sale takes place within states where the Company maintains a nexus for sales tax purposes.
- For sales tax purposes, the Company currently maintains nexus only in California, Massachusetts and Illinois. Some states have sought to expand the definition of nexus, and the Company is monitoring this situation. The states in which the Company maintains nexus is subject to change dependent on state sales tax laws and business location changes.
- In complying with U.S. sales tax law the Company collects sales tax only on sales made within states where it currently maintains nexus. Nexus in this document is defined by the relevant sales tax laws by state.
- The Company complies with a variety of other U.S. and state reporting and payment obligations for business tax, use tax, payroll tax, excise tax and personal and corporate income tax.
- For sales made outside of states where a nexus is maintained the Company hereby informs the Customer that sales tax will not be collected on the Customer's Subscription Fee and any and all responsibility for the collection and payment of use tax will be maintained by the Customer unless otherwise agree upon in writing.
- If the Customer is under U.S. jurisdiction and your purchase order includes general language making the Company as sellers responsible for "all taxes" or "all taxes other than income tax", the Company reserves the right to reject the Customer's terms and conditions by written notice.

#### C.2. Currency.

- All Fees are quoted in US dollars, however transactions may be processed in an equivalent foreign currency (such as Euros or British pounds).

#### C.3. Refunds.

C.4. The Company shall only provide a pro-rata refund to a Customer if:

- The Company terminates this Agreement without cause;
- The Agreement is terminated as the result of a breach by the Company; or
- As otherwise required by law.

#### C.5. Late Payment.

- If the Customer does not pay the full Fees as required, the Company may suspend access to Displayr for that Account.
- If Fees are not brought out of arrears within 28 days of becoming overdue, the Company may terminate the Customer's Account in Displayr without notice and end this Agreement.
- The User agrees that the Company shall not be responsible or liable in any way for:
  - Interruptions to the availability of Displayr in the event of (a);
  - Loss of Customer Data in the event of (b).

## D. USING DISPLAYR

- D.1. To access the Analysis, Document creation and editing functions of the Application, each User must register with Displayr with a valid email address.
- D.2. The Company provides instructions on the Site and within Displayr to assist Users with Displayr. This instructions shall be updated from time-to-time. Displayr also provides user support services.
- D.3. The features and tools available to a Viewer may be limited by the Company and/or the Customer.
- D.4. The Company owes no duty of care to a Viewer that is not a Customer, or Author. The Company is under no obligation to such a Viewer, to ensure ongoing access to a Document.
- D.5. The Customer shall be responsible for each Document it makes available to a Viewer that is not an Author, and indemnifies the Company in relation to that Document.
- D.6. Any dispute regarding a Viewer's access to a Document must be dealt with between the Viewer and the Customer only. In no circumstance will the Company perform a dispute resolution role between a Customer and a Viewer.
- D.7. The Customer is responsible for ensuring its use of Displayr complies with the Privacy Laws, and any privacy laws in the jurisdiction where the Customer is located. The Customer indemnifies the Company for any breach the Customer makes of such privacy laws.
- D.8. The prerequisites to use Displayr are:
  - Access to the Application; and
  - An internet connection.
- D.9. Application
  - The Application is only accessible to registered Users via login from the Site. To use Displayr, it is necessary that the User has access to the Application.
  - The Application contains the Customer's Documents, connects the Customer's Third Party Services and provides the Customer with Account management.
  - The Application allows a registered User to upload Data Sets in such formats as the Application may be compatible with. However, the Company accepts no responsibility for a User's use of that Data Set.
  - Each registered User warrants that it has the requisite rights to each Data Set it uploads or connects to the Application.
  - Each registered User uses Displayr at their own risk. The Company makes no representation that a registered User will be able to generate a particular Analysis from a Data Set. A registered User's results may vary depending on:
    - The quality and type of Data Set;
    - The registered User's skill and ability.
  - The Company shall not be responsible for any error in computation relating to a Data Set or and code that a registered User enters into the Application.
- D.10. Third Party services

- Displayr connects to and integrates with many Third Party Services.
  - Displayr cannot warrant the ongoing availability or efficacy of any Third Party Services.
  - The User authorizes the Company to access the Customer Data in any Third Party Services enabled by the User.
  - The User must comply with the terms of use of any Third Party Service, and in no way will the Company be liable for any breach of such terms by the User's connection of Displayr to a Third Party Service.
- D.11. Support
- The Company provides user support for Displayr via a dedicated support email support@displayr.com.
  - The Company shall endeavour to respond to all support requests within 1 Business Day.
  - The Company reserves the right to require the payment of reasonable Fees for non-standard support requests prior to the provision of such support.
  - The Company's support service does not include providing information that is available via the Site. Requests for such information may incur a Fee.

## **E. DISCLAIMER - THIRD PARTY DEPENDENCIES**

- E.1. The User acknowledges that Displayr:
- a) Is dependent on third-party services, including but not limited to:
    - Banks, credit card providers, BPAY;
    - Telecommunications services;
    - Hosting services;
    - Email services;
    - Analytics services; and
    - Databases belonging to third parties.
  - b) May provide links to third party websites.
- E.2. The User agrees that the Company shall not be responsible or liable in any way for:
- a) Interruptions to the availability of Displayr due to third-party services; or
  - b) Any information or content contained on any linked third party website.

## **F. OPEN SOURCE SOFTWARE**

- The Application may make use of, or assist a User to use, certain open source software (including, where applicable, the open source software known as R);
- Any such open source software:
  - Does not form part of the Application;

- Is separately licensed by the relevant licensors under the terms of the open source software license (OSS License) which applies to that software; and
  - Is not licensed to a User by the Company, whether under this agreement or otherwise;
- The User must review the terms of each OSS License and confirm whether the User's use will comply with it before using the relevant open source software.
- To the extent permitted by law, the use of any such open source software is at the User's own risk, and the Company shall have no liability for losses arising in connection with the User's use of that open source software.

## **G. SPECIAL CONDITIONS**

F.1. The parties may agree to any Special Conditions to this Agreement in writing. Where the parties make such Special Conditions those Special Conditions shall prevail over any inconsistency with any other provisions of this Agreement.

## **GENERAL CONDITIONS**

### **1. INTERPRETATION**

1.1. The following definitions apply in this document:

- Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business.
- Confidential Information means all information (whether or not it is described as confidential) in any form or medium concerning any past, present or future business, operations or affairs of either party, including, without limitation:
  - i. all technical or non-technical data, formulae, patterns, programs, devices, methods, techniques, plans, drawings, models and processes, source and object code, software and computer records;
  - ii. all business and marketing plans and projections, details of agreements and arrangements with third parties, and User and supplier information and lists;
  - iii. all financial information, pricing schedules and structures, product margins, remuneration details and investment outlays;
  - iv. all information concerning any employee, customer, contractor, supplier or agent of the relevant party;
  - v. the party's policies and procedures; and
  - vi. all information contained in this document,

but excludes information that the other party can establish:

- vii. is known by or is in the other party's possession or control other than through a breach of this document and is not subject to any obligation of confidence; or
  - viii. is in the public domain other than by a breach of this document or any obligations of confidence.
- o Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
  - i. act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
  - ii. act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
  - iii. the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
  - iv. embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- o General Conditions means the terms and conditions set out in the section of this Agreement entitled "General Conditions".
- o Intellectual Property means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- o Intellectual Property Rights means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
- o Moral Rights means:
  - i. moral rights pursuant to any enactment or legislation governing copyright as determined by, and subject to the Visual Artists Rights Act of 1990 (VARA) and other applicable Federal Statutes.
- o Important Terms means this Agreement's details and variables set out in the section of this Agreement entitled "Important Terms".
- o Privacy Law means the collective enactments and legislation governing privacy of personal information as determined by, and subject to the Governing Law.
- o Special Conditions means the terms and conditions set out in the section of this agreement entitled "Special Conditions".
- o Tax Invoice means an invoice that may be used for tax purposes in accordance with the Governing Law.

## 2. APPLICATION OF THIS AGREEMENT

- This Agreement applies to use of and access to Displayr.
- Where the User does not accept or can no longer comply with the terms and conditions of this Agreement, the User must immediately cease using Displayr.
- This Agreement may be updated by the Company at its absolute discretion from time-to-time, and unless stated otherwise by the Company in writing, such updates shall come into effect for use of Displayr at the commencement of the User's next billing period.

## 3. SOLUTION

- 3.1. The User agrees and accepts that Displayr is:
  - hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company's servers and is not available 'locally' from the User's systems; and
  - managed and supported exclusively by the Company from the Company's servers and that no 'back-end' access to Displayr is available to the User unless expressly agreed in writing.
- 3.2. As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Displayr.
- 3.3. The Company shall not exercise its rights under clause 3.2 in a manner that would intentionally cause the User to lose access to Customer Data or fundamentally decrease the utility of Displayr to the User, other than in accordance with the terms of this Agreement.

## 4. LICENSE

- By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable license to access and use Displayr for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- The Company may revoke or suspend the User's license(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User or any of its users. The Company will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

## 5. USE



- 5.1. The User agrees that it shall only use Displayr for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

## **6. AUTHORIZED USERS**

- 6.1. The Customer shall authorize users to access Displayr in its absolute discretion.
- 6.2. The Company accepts no liability for access to Customer Data by users authorized by the User or using login details of users authorized by the User.
- 6.3. The User is solely responsible for the security of its username and password for access to Displayr.
- 6.4. The User is responsible for ensuring that users comply with this Agreement in full and are liable for any breach of them.

## **7. CUSTOMER DATA**

- 7.1. The Company obtains no right, title or interest in Customer Data including any Intellectual Property found within it.
- 7.2. The Company accepts no liability for the content of Customer Data.
- 7.3. The User is responsible for the accuracy, quality and legality of Customer Data and the User's acquisition of it, and the users that create, access and/or use Customer Data.
- 7.4. Despite clause 7.1, the Company shall be authorized to permanently delete Customer Data where outstanding Fees remain unpaid in accordance with the Important Terms.
- 7.5. The Company shall not access, use, modify or otherwise deal with Customer Data except where required by compulsion of law, or upon the User's authority (such as to provide support for Displayr), or as part of internal testing and troubleshooting.

## **8. PRIVACY**

- 8.1. The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Law for data that it collects about the User and other customers.
- 8.2. The Privacy Policy does not apply to how the User handles Customer Data. It is the User's responsibility to meet the obligations of the Privacy Law by implementing a Privacy Policy in accordance with law.
- 8.3. The Company makes no warranty as to the suitability of Displayr in regards to the User's privacy obligations at law or contract, and it is the User's responsibility to determine whether Displayr is appropriate for the User's circumstances.

## 9. DATA

- 9.1. Security. The Company takes the security of Displayr and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- 9.2. Transmission. The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.
- 9.3. Storage. The Company may limit the amount of data that the User stores in Displayr, and shall advise the User of such. Data that is stored with the Company shall be stored according to accepted industry standards.

## 10. INTELLECTUAL PROPERTY

- 10.1. Trademarks. The Company has moral & registered rights in its trademarks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- 10.2. Proprietary Information. Displayr may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Displayr (U.S. Copyright Act of 1976, Title 17 U.S.C).
- 10.3. Solution. The User agrees and accepts that Displayr is the Intellectual Property of the Company and the User further warrants that by using Displayr the User will not:
  - o copy Displayr or the services that it provides for the User's own commercial purposes; and
  - o directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Displayr or any documentation associated with it.
- 10.4. Content. All content (with the exception of Customer Data) remains the Intellectual Property of the Company, including (without limitation) any source code, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Displayr.

## 11. CONFIDENTIALITY

- 11.1. The Company agrees to keep all Customer Data in the strictest confidence, and to the extent Customer Data is accessed and/or received by Displayr it shall be deemed as Confidential Information for the purposes of this Agreement.
- 11.2. Each party acknowledges and agrees that:
- the Confidential Information is secret, confidential and valuable to the disclosing party (**Discloser**);
  - it owes an obligation of confidence to the Discloser concerning the Confidential Information;
  - it must not disclose the Confidential Information to a third party except as permitted in this Agreement;
  - all Intellectual Property rights remain vested in the Discloser but disclosure of Confidential Information does not in any way transfer or assign any rights or interests in the Intellectual Property to the receiving party; and
  - any breach or threatened breach by the receiving party of an obligation under this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently the Discloser has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the receiving party (and its agents, assigns, employees, officers and directors, personally) or to compel specific performance of this clause.
- 11.3. A party must notify the Discloser in writing, giving full details known to it immediately, when it becomes aware of:
- any actual, suspected, likely or threatened breach by it of any obligations it has in relation to the Confidential Information.
  - any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information; or
  - any actual, suspected, likely or threatened theft, loss, damage, or unauthorized access, use or disclosure of or to any Confidential Information.
- 11.4. The receiving party must promptly take all steps that the Discloser may reasonably require and must co-operate with any investigation, litigation or other action of the Discloser or of a related body corporate if there is:
- any actual, suspected, likely or threatened breach of a term of this Agreement; or
  - any theft, loss, damage or unauthorized access, use or disclosure of or to any Confidential Information that is or was in its possession or control.
- 11.5. The protection of all electronic communication is governed by the Electronic Communications Privacy Act (18 U.S.C. §§ 2701-2711). In compliance with this Act the Company makes the following notice: THE COMPANY CAN MAKE NO ABSOLUTE GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED ON THE SITE OR ANY WEBSITE LINKED TO THE SITE. THE COMPANY WILL THEREFORE NOT BE LIABLE FOR THE PRIVACY OF E-MAIL ADDRESSES, REGISTRATION AND IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE-SECRET INFORMATION, OR ANY OTHER CONTENT STORED ON

THE COMPANY'S EQUIPMENT, TRANSMITTED OVER NETWORKS ACCESSED BY THE SITE, OR OTHERWISE CONNECTED WITH USER'S USE OF THE SERVICE.

## 12. DISCLAIMERS

- 12.1. Each User acknowledges and agrees that:
- The Platform (including all content, function, Content and services) is provided "as is," without warranty of any kind, either express or implied, including any warranty for information, data, data processing services or uninterrupted access, any warranties concerning the availability, accuracy, completeness, usefulness, or content of information, and any warranties of title, non-infringement, merchantability or fitness for a particular purpose.
  - Company does not warrant that the Platform (or the function, content or services made available thereby) will be timely, secure, uninterrupted or error free, or that defects will be corrected. Company makes no warranty that the Platform will meet User's expectations or requirements. No advice, results or information, or Content whether oral or written, obtained through the Platform shall create any warranty not expressly made herein. If a User is dissatisfied with the Platform, the sole remedy is to discontinue using the Platform.
  - Company does not endorse, warrant or guarantee any products or services offered or provided by or on behalf of third parties on or through the Platform. Company is not a party to, and does not monitor, any transaction between Users and third parties.
- 12.2. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in these Terms.

## 13. LIABILITY & INDEMNITY

- 13.1. THE USER AGREES THAT IT USES DISPLAYR AT ITS OWN RISK.
- 13.2. THE USER ACKNOWLEDGES THAT THE COMPANY IS NOT RESPONSIBLE FOR THE CONDUCT OR ACTIVITIES OF ANY USER AND THAT THE COMPANY IS NOT LIABLE FOR SUCH UNDER ANY CIRCUMSTANCES.
- THE USER AGREES TO INDEMNIFY THE COMPANY FOR ANY LOSS, DAMAGE, COST OR EXPENSE THAT THE COMPANY MAY SUFFER OR INCUR AS A RESULT OF OR IN CONNECTION WITH THE USER'S USE OF DISPLAYR OR CONDUCT IN CONNECTION WITH DISPLAYR, INCLUDING ANY BREACH BY THE USER OF THIS AGREEMENT.
- 13.3. IN NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OR CORRUPTION OF DATA, LOSS OF PROFITS, GOODWILL, BARGAIN OR OPPORTUNITY, LOSS OF ANTICIPATED SAVINGS OR ANY OTHER SIMILAR OR ANALOGOUS LOSS RESULTING FROM THE USER'S

ACCESS TO, OR USE OF, OR INABILITY TO USE DISPLAYR, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, IN EQUITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGE, TO BUSINESS INTERRUPTION OF ANY TYPE, WHETHER IN TORT, CONTRACT OR OTHERWISE.

## 14. BREACH

- 14.1. Where a party is in breach of this Agreement, the other party may issue a written notice (Breach Notice) requiring the party in breach that must set out:
- the nature of the breach;
  - the provisions of the Agreement that are alleged to have been breached;
  - a reasonable timeframe to remedy the breach in no less than 10 Business Days; and
  - the action required to remedy the breach.
- 14.2. Where a party issues a compliant Breach Notice in accordance with clause 15.1, the receiving party shall be required to respond and/or remedy the breach as so set out in the Breach Notice. Failure to respond in writing setting out:
- the steps taken to remedy the breach; or
  - why the party believes it is not in breach as put forward in the Breach Notice,
  - shall not in itself confirm the alleged breach but shall be in itself a breach of this Agreement.
- 14.3. Failure to remedy a breach set out in a Breach Notice shall be a material breach of this Agreement (Material Breach).

## 15. TERMINATION

- 15.1. Breach. Where a party is in Material Breach of this Agreement, the other party may terminate this Agreement by giving written notice of termination, which shall become effective 5 Business Days after the date of the notice.
- 15.2. Insolvency. Either party may terminate this Agreement immediately by notice, if either party:
- stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
  - is insolvent under Companies Law.
  - fails to comply with a demand unless:
    - the debt to which the demand relates is discharged within 15 Business Days of the date of the failure; or

- the party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
  - has an administrator appointed in respect of it;
  - has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
  - has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking; or
  - is subject to any event which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.
- 15.3. Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.
- 15.4. The rights and obligations under the relevant provisions of clauses 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18 and 19 survive termination of this Agreement.

## 16. DISPUTES

- 16.1. All disputes shall be handled in accordance with the Company's dispute resolution policy.
- 16.2. Where the Company does not have a relevant dispute resolution policy for a type of dispute, the following process shall apply:
  - Negotiation. If there is a dispute between the parties relating to or arising out of this Agreement, then within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
  - Mediation. If the dispute between the parties relating to or arising out of this Agreement is not resolved within five Business Days of notification of the dispute under Clause 17.1, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
  - Arbitration. If the dispute between the parties relating to or arising out of this Agreement is not settled by mediation under clause (b) either party may by written notice to the other refer the dispute binding arbitration before a single arbitrator under the rules of the American Arbitration Association (AAA) as in effect at such time. Both parties agree that either party may, within 30 days after the filing of a demand for Arbitration, demand that the parties' dispute first be submitted to a neutral evaluator pursuant to the American Arbitration Association's Early Neutral Evaluation Procedures prior to proceeding with

arbitration. Any resulting arbitration award may be enforced in any court having valid jurisdiction, wherever located.

- Parties to the arbitration shall each pay an equal share of the costs and expenses of such arbitration, except as prohibited by law. Each party shall separately pay for its respective attorneys' fees and costs.
- Class Action. BOTH PARTIES AGREE NOT TO BRING OR PARTICIPATE IN A CLASS OR REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR COLLECTIVE ARBITRATION, EVEN IF AAA PROCEDURES OR RULES WOULD OTHERWISE ALLOW ONE. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT OF THAT PARTY'S INDIVIDUAL CLAIM. BOTH PARTIES ALSO AGREE NOT TO SEEK TO COMBINE ANY ACTION OR ARBITRATION WITH ANY OTHER ACTION OR ARBITRATION WITHOUT THE CONSENT OF ALL PARTIES TO THIS AGREEMENT AND ALL OTHER ACTIONS OR ARBITRATIONS.
- If the agreement in this Section not to bring or participate in a class or representative action, private attorney general action or collective arbitration should be found illegal or unenforceable, Both parties agree that it shall not be severable, that this entire Section shall be unenforceable and any claim or dispute would be resolved in court and not in collective arbitration.
- Court proceedings. A party may not commence court proceedings in relation to a dispute relating to or arising out of these Terms, unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that damages are inadequate to compensate.
- Small Claims Court. Notwithstanding this Section, any User has the right to litigate any dispute in small claims court, if all the requirements of the small claims court, including any limitations on jurisdiction and the amount at issue in the dispute, are satisfied.

## **17. ATTORNEY'S FEES**

- 17.1. The prevailing Party in an action to enforce these Terms may recover from the other its reasonable attorneys' fees and costs, if employment of an attorney was necessary.

## **18. FORCE MAJEURE**

- 18.1. If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:

- specify the obligations and the extent to which it cannot perform those obligations;
  - fully describe the event of Force Majeure;
  - estimate the time during which the Force Majeure will continue; and
  - specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- 18.2. Following a notice of Force Majeure in accordance with clause 18.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.
- 18.3. The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 18.4. The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.
- 18.5. The term of this Agreement will not be extended by the period of Force Majeure.

## **19. GOVERNING LAW AND JURISDICTION**

- 19.1. These Terms, as well as the respective rights and obligations hereunder, shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to conflict of laws principles. Please note that use of the Platform by any User may be subject to other local, state, national, and international laws.
- 19.2. Each Party expressly:
- Agrees that exclusive jurisdiction for resolving any claim or dispute with Company relating in any way to use of the Platform resides in the state and federal courts of the State of Delaware;
  - Agrees and consents to the exercise of personal jurisdiction in the state and federal courts of the State of Delaware;
  - Waives any right to a jury trial in any legal proceeding against the Company; and
  - Agrees that any claim or cause of action with respect to use of the Platform must be commenced within one (1) year after the claim arises.
- 19.3. If the User is accepting these Terms on behalf of a United States federal government entity that is legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to that User. In this event, these Terms and any action related thereto will be will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to



the extent permitted under federal law, the laws of the State of Delaware (excluding choice of law).

## **20. ELECTRONIC COMMUNICATION AND ASSIGNMENT**

- 20.1. The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
- 20.2. The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- 20.3. A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law. Notices must be sent to a party's most recent known contact details.
- 20.4. The User may not assign or otherwise create an interest in this Agreement without the written consent of the Company.
- 20.5. The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

## **21. GENERAL**

- 21.1. **Prevalence.** Each party to this Agreement agrees to the clauses in the Important Terms and the Special Conditions. The Important Terms, any Special Conditions and the General Conditions form a single legal agreement. To the extent that the Important Terms or the Special Conditions are inconsistent with the General Conditions, the terms of the Important Terms will prevail. To the extent that the Special Conditions are inconsistent with the Important Terms, the Special Conditions will prevail.
- 21.2. **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 21.3. **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 21.4. **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 21.5. **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- 21.6. **Governing Law.** This Agreement is governed by the laws of the state described in item E of the Important Terms. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

21.7. Severability. Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.