

Tactics On Terms of Use

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ICP has developed a set of Software as a Service (SaaS) applications ("**Platform**") and an accompanying mobile application ("App") which enable customers and their personnel to keep in touch, share their locations, signal an alarm, trigger devices to call emergency services, and to access tactical security and safety information and guidance ("**Purpose**") and may offer certain consultancy services and make certain parts of the Platform and App available for the Purpose ("**Service**").

These terms (together with the documents and materials referred to in them) set out the terms and conditions ("**Terms of Use**") upon which you may use this Service, the Platform and any **Outputs** produced as a result.

This Platform and its associated Service are provided by ICP Group Companies Limited, a company registered in England and Wales under number 08174298 and whose registered office is Level 30, The Leadenhall Building, 122 Leadenhall Street, London, United Kingdom, EC3V 4AB ("**ICP**", "**we**", "**us**", or "**our**").

Please read these Terms of Use carefully together with all documents and materials mentioned in them before placing an **Order** for any Services relating to the Platform or App. If you do not accept these Terms of Use, you will not be able to Order any Service and/or access and use the Platform or App. Each Order once accepted by us in writing in accordance with clause 3, together with the Terms of Use forms a legally binding agreement between us (the "**Agreement**").

1 Definitions

- 1.1 These Terms of Use use some capitalised terms which have special meanings. These capitalised terms and their respective meanings are set out in the **Glossary** in Schedule 1.
- 1.2 Where capitalised terms are used first in these Terms of Use, they are shown in **bold** to highlight they have a special meaning.

2 Ordering, Configuration and Access to the Services

- 2.1 When you place an Order you are placing it on behalf of the Client which enters into these Terms of Use. Except for End Users, you may not authorise any Third Party to access and/or use any of the Services on your behalf, except where we have given our prior written consent and we have provided a mechanism for Third Parties to access any of the Services on your behalf.
- 2.2 Before we provide access to the Platform, you agree to follow the on-boarding and registration process (On-Boarding) as detailed in the Set-Up Instructions and otherwise instructed by our accounts team (and which shall be conditional for our granting access to the Platform, failing which we may terminate this Agreement without liability), which may include:
 - 2.2.1 provision by you of appropriate technical and user details, and
 - 2.2.2 procuring such access, personnel, cooperation and information as are reasonably required by us to integrate and/or configure the Platform as necessary to supply you with the Services, and
 - 2.2.3 payment of such consultancy and other fees and expenses (if any) as may be agreed between us to be due in advance, whether as part of the Order or otherwise.
- 2.3 You may start using the Services as soon as we give you access to them. You can continue to use the Services as long as you Subscribe to the relevant Service. Time shall be material but not of the essence with respect to our supply of the Services.
- 2.4 Other than as expressly stated otherwise in these Terms of Use, you acknowledge that it is your sole responsibility to determine that the Services meet your business requirements and, to the fullest extent permissible by law and without limitation, we give no warranties that the Service or Outputs will be fit for purpose, of satisfactory quality, uninterrupted or error free save where expressly set out in the Agreement.
- 2.5 You and we shall ensure that our respective account managers meet on an annual basis to discuss the performance of the Services and any disputes or disagreements which may have arisen.

3 Formation of Contract

- 3.1 All Orders are subject to:
 - 3.1.1 you paying applicable fees (if any) in advance (where any such fees are payable in advance,

Tactics On Terms of Use

including any On-Boarding fee set out in the Order) and our receiving that fee in cleared funds; and

3.1.2 acceptance by us by notifying you in writing that we have accepted your Order; whereupon a legally binding agreement will be formed between you and us.

3.2 Where the terms of an Order and these Terms of Use conflict, these Terms of Use shall take precedence save in respect of provisions labelled as "Special Conditions" in the Order.

4 Price and Payment

4.1 The Fees for the Services will be calculated in accordance with the Usage of the Services as set out in the Tiers and Fees page and the consultancy fees set out in the Order or otherwise agreed between the parties, if any.

4.2 In the event that the Fees are dependent upon your Usage, you may be required by us to revise your Order to include more Usage at any point dependent on your then-current Usage (where the calculation of such Usage shall be in accordance with our Tiers and Fees page, and may vary depending upon the nature of the Services you have requested), failing which you acknowledge that, at our option, we may: (i) charge additional Subscription fees in accordance with clause 4.4 and our Tiers and Fees page; or (ii) limit access by you or End Users to the Platform or Services, or the capacity or nature of the Platform or Services (including infrastructure on which such Platform or Services are hosted or to which you or your End Users have access) in accordance with the scope of your Order and our Tiers and Fees page (please note that such limitations may degrade, suspend or otherwise affect the performance of, or access to, the Platform or Services).

4.3 Any On-Boarding fees are payable in full on or before our acceptance of your Order. Fees for consultancy and/or development shall be payable in accordance with the payment schedule set out in the Order or otherwise agreed in writing between the parties. You will be charged your Subscription fee for the Services from the Commencement Date set out in the Order unless the Services have not been made available to you by that date wholly as a result of our breach of this Agreement in which case you may either: (i) agree to our proposal for a reasonable extension of the Commencement Date; or (ii) terminate this Agreement without further liability to us save for those sums validly invoiced up to the effective date of termination in respect of On-Boarding; and this shall be your exclusive remedy in respect of such delay. You acknowledge that, in accordance with the foregoing, you may be liable to pay the Subscription fee in respect of Services which are not available if such non-availability arises from your delay or default, including, without limitation, your failure to comply with the On-Boarding.

4.4 Payment of Subscriptions must be made yearly in advance or otherwise in accordance with the Tiers and Fees page by such method as we shall require from time to time. Where your Subscription fee is agreed in the Order to be dependent upon a selected Tier or your Usage, it will be based on either your selected Tier or on your Usage (whichever is the higher).

4.5 All fees are payable without set-off, restriction or other condition, and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, in advance by credit or other payment card (in which case you authorise us to charge your card for the sums referred to in this clause, agree to keep your card details with us up to date, and agree that you shall be responsible for payment of any third party bank or other charges incurred in the course of payment), or such other payment mechanism as is agreed in your Order.

4.6 Failure to pay fees when due shall be a material breach of these Terms of Use which entitles us to suspend or terminate (pursuant to Clause 11.3(1) of these Terms of Use). This, in turn, will affect your access to the Services. Fees remain chargeable at our standard rates during the suspension. If we terminate these Terms of Use for your material breach, we will require you to pay, without delay, all fees and costs accruing before the termination date, all unpaid Subscriptions and any other amounts you owe us under these Terms of Use.

4.7 If you fail to pay in cleared funds any amount due under these Terms of Use, we may charge you interest on a day to day basis on the overdue amount, payable by you on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 10% per annum above the base rate for the time being. Such interest shall accrue on a daily basis and be compounded quarterly.

4.8 All overcharges or billing disputes must be reported within 90 days of date of invoice. Failure to do so will mean you have accepted our invoice.

5 Warranties

5.1 You warrant, represent and undertake you shall:

Tactics On Terms of Use

- 5.1.1 comply with all laws, regulations, regulatory policies, guidelines or industry codes (and shall be responsible for obtaining all licences, clearances and consents) which apply to your use of the Service, and acknowledge that we are merely a provider of access to the Platform and accept no responsibility for your use thereof or compliance with applicable law or regulation or to any End User (other than to the extent we are required by applicable statutory law);
 - 5.1.2 provide ICP with such information as it may reasonably need concerning the your operations and answers to queries, decisions and approvals which may be reasonably necessary for ICP to undertake any of the Services, and you shall be responsible for ensuring that such information and answers are accurate and complete (provided we shall, to the extent reasonably practicable, give you reasonable prior notice of any information or answers we require in accordance with this clause or if we have reason to suspect that any information is inaccurate or incomplete);
 - 5.1.3 not use the Service for any unlawful purposes;
 - 5.1.4 not use the Service for any purpose other than the Purpose;
 - 5.1.5 not do, or omit to do, anything which disparages, defames or puts into disrepute us, our trade marks/trading names, goodwill and/or the Service; and
 - 5.1.6 be and are fully entitled to enter into and grant all rights granted under this Agreement and that entering into this Agreement shall not in any way conflict with any of your existing obligations, either at the date hereof and/or throughout the Term.
- 5.2 Subject to the remaining provisions in this Clause, we warrant that:
- 5.2.1 during the Term we will provide the Services with reasonable due care and skill in accordance with these Terms of Use, and in compliance with such English law and regulation as is applicable to our supply of the Services;
 - 5.2.2 subject to completion of the On-Boarding the Services and the Platform will perform substantially in accordance with the Specification;
 - 5.2.3 the Indemnified Service and the Outputs shall not infringe any third party's intellectual property rights (save that we shall have no liability in respect of content which may be included within the Outputs or delivered in the course of the Indemnified Service to the extent that such content is a reproduction or adaptation of content supplied by you or any End User, notwithstanding any other term of these Terms of Use);
 - 5.2.4 we have the authority and right to license all rights to and in the Service as set out in these Terms of Use.
- 5.3 The warranties in Clause 5.2 do not cover or apply to failures or shortcomings in the provision of the Services caused by, arising out of or due to:
- 5.3.1 your or any End User's connection to the Internet or any telecommunication network;
 - 5.3.2 patents of which we are not aware; or
 - 5.3.3 accident, abuse or use of the Services in a manner inconsistent with these Terms of Use or resulting from events beyond our reasonable control.
- 5.4 Subject to Clause 5.3, if the Service does not meet the warranties in Clause 5.2, we will, at our sole option, either:
- 5.4.1 modify, improve or update the Services to make them conform; or
 - 5.4.2 obtain such clearances, licences and consents at our cost as may be necessary to enable you to use the Services; or
 - 5.4.3 return Subscriptions paid for such Services for the period that they failed to conform; and
 - 5.4.4 this shall be your exclusive remedy for any breach of such warranties under this Agreement.
- 5.5 We shall have no liability under this Agreement for any breach of this Agreement, if any claim relates to:
- 5.5.1 a modification of the Services, or use of the Services in combination with any third party software or data, by you or your agents; or
 - 5.5.2 your use (or use by your End Users) of the Services in a manner contrary to the instructions given to you by us or any claim relating to Client Data; or
 - 5.5.3 your use (or use by your End Users) of the Services after notice of an alleged or actual infringement has been given to you by us or by any appropriate authority; or
 - 5.5.4 where a claim for infringement arises directly in respect of a feature which was specified by you or on your behalf.
- 5.6 We will use reasonable endeavours to maintain the Services free of viruses but we do not warrant or represent that no viruses or other contaminating or destructive materials or elements will be transmitted to you or that your computer system will not be damaged or that defects will be corrected. Accordingly, we recommend that you have your own local anti-virus, anti-spam and anti-spyware programs, that they are of good quality and that they are kept up to date. You are therefore advised to implement and operate your own commercially reasonable and up-to-date virus prevention precautions and measures when accessing the Service. You agree to communicate the aforementioned recommendations to your End Users.

Tactics On Terms of Use

5.7 We do not warrant that the Services will be wholly uninterrupted, error-free or entirely secure.

6 Liability

6.1 This clause 6 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

6.1.1 any breach of the Agreement; and

6.1.2 any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms of Use.

6.2 Except as expressly and specifically provided in these Terms of Use, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

6.3 Nothing in this Agreement excludes our liability:

6.3.1 for death or personal injury caused by our negligence; or

6.3.2 for fraud or fraudulent misrepresentation; or

6.3.3 any other liability which cannot be excluded by law.

6.4 We shall accept liability for reasonably foreseeable losses arising as a direct result of breach by us of our statutory duty. However we shall not be liable where the causes or potential causes of the loss:

6.4.1 arose from the use of the Services for purposes other than for the Purpose;

6.4.2 were reasonably foreseeable and preventable by you such as those arising from, but not limited to:

6.4.2.1 virus damage; or

6.4.2.2 user inflicted problems such as those caused by failure to read and/or follow user instructions provided in writing or orally by one of our technicians.

6.5 In claiming against us for any such losses you are expected to avoid losses occurring and take reasonable precautions to avoid loss (such as contacting us promptly upon becoming aware of an issue).

6.6 Our total aggregate liability arising under or in connection with this Agreement or otherwise (whether in contract, tort, including negligence or otherwise, or for breach of statutory duty), whether foreseeable or not will not exceed a sum equal to the lesser of £100,000 and 100% of the amount actually paid by you to us in connection with the provision of the Service to you in the 12 month period preceding the date upon which the claim arose.

6.7 We will not be liable under this Agreement for:

6.7.1 use not consistent with our applicable description of the Service in question; or

6.7.2 indirect, special or consequential losses or loss of profits, data, revenue, goodwill, reputation, wasted management operation or other time or anticipated savings.

6.8 In the event of any breach of the warranties we give in Clause 5.2 your exclusive remedy and our only obligation and liability to you shall be as set out in Clause 5.4.

6.9 If our performance of our obligations under this Agreement is prevented or delayed by any act or omission of you, your Affiliates, agents, subcontractors, consultants or employees, or End Users we shall not be liable for any costs, liabilities, charges or losses sustained or incurred by you or your Affiliates that arise directly or indirectly from such prevention or delay.

7 Confidentiality and Audit

7.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall be deemed not to include information that:

7.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or

7.1.2 was in the other party's lawful possession before the disclosure without obligation of confidentiality; or

7.1.3 is lawfully disclosed to the receiving party by a Third Party without restriction on disclosure; or

7.1.4 is independently developed by the receiving party without reference to the Confidential Information and which independent development can be shown by written evidence; or

7.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

Tactics On Terms of Use

- 7.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any Third Party, or use the other's Confidential Information for any purpose other than for the purposes of the Agreement.
- 7.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees, sub-contractors or agents in violation of these Terms of Use or used for any purpose other than the performance of its obligations hereunder, and shall co-operate with the other to help regain control of the Confidential Information if it is lost, and prevent further unauthorised use or disclosure of it.
- 7.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any Third Party without the participation and/or knowledge of a party hereto.
- 7.5 Clauses 7.1 - 7.5 shall survive termination of these Terms of Use, however arising, for a period of five (5) years.

8 Client Data, Data Protection and Information Security

- 8.1 You shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of it.
- 8.2 Each party shall comply with any obligations it might have under the provisions of the Data Protection Act 1998 and references in this clause to "processing", "data processor", "data controller" and "personal data" shall have the meanings defined in that Act.
- 8.3 If we process personal data (including that of your End Users) on your behalf when performing our obligations under the Agreement, the parties' record their intention that you shall be the data controller and we shall be a data processor and in any such case:
- 8.3.1 you warrant that during the Term you are and shall be entitled to transfer the relevant personal data to us so that we may lawfully process the personal data in accordance with the Agreement on your behalf, and that you hold any rights or consents necessary for any processing under this Agreement and for the transfer outside of the EEA of personal data by us;
- 8.3.2 we shall process the personal data only in accordance with these Terms of Use and any lawful instructions reasonably given by you from time to time;
- 8.3.3 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage; and
- 8.3.4 We shall notify you within a reasonable time, and shall use our reasonable endeavours to notify you within not more than three (3) Business Days, of:
- 8.3.4.1 any request for disclosure of the personal data by a public body or applicable law that could force us to disclose such personal data, unless such notification is forbidden by law;
- 8.3.4.2 any disclosure or accidental or unauthorised access or unlawful processing made by us or our employee, subcontractor or any other identified person or any other security incident which may affect the personal data in any way;
- 8.3.4.3 the known facts in respect of such disclosure or use;
- 8.3.4.4 any personal data that is lost or destroyed, or becomes damaged, corrupted, or unusable; and
- 8.3.4.5 any requests received directly from data subjects to disclose personal data and shall promptly respond to any such request but only in accordance with your written instructions.
- 8.4 You acknowledge that we are reliant on you for direction as to the extent to which we are entitled to use and process any personal data supplied by you or on your behalf or by End Users. Consequently, we shall not be liable for any claim brought by a data subject arising from any action or omission to the extent that such action or omission resulted from your instructions.
- 8.5 We shall use all our reasonable commercial endeavours to safeguard Client Data from unauthorised or unlawful processing, or accidental loss, destruction or damage by complying with our own internal information security policies, and with such of your security policies as are mutually agreed in writing.
- 8.6 You and we acknowledge that the European General Data Protection Regulation (2016/679) of 27 April

Tactics On Terms of Use

2016 ("GDPR") is expected to enter into force on 25 May 2018 ("GDPR Date"). You agree to co-operate with us in good faith to ensure that any processing of personal data by you or us under or in connection with the Agreement shall comply with the GDPR from the date it is effective.

9 Intellectual Property Rights

- 9.1 We grant to you a personal, non-exclusive, non-transferable right for End Users to access and use the Services, the Platform, the App and the Outputs solely in connection with the Purpose upon and subject to the terms of these Terms of Use, and, where applicable our EULA (if any). You may not use the Services, Outputs, App or the Platform for any other purpose without our prior written consent.
- 9.2 The Service is provided subject to the following:
- 9.2.1 you undertake you shall not (and shall not permit any End User or Third Party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Service in whole or in part, except to the extent permitted by law or with our prior written consent.
- 9.2.2 payment of the applicable On-Boarding, Subscription and other Fees.
- 9.3 We and/or our licensors own all intellectual property rights in and to the Service, the Platform, and the App. Except as expressly stated herein, these Terms of Use do not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, designs, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or any related documentation. Where the Service comprises Tools and/or other features, data, software or other materials which are licensed from a Third Party, you shall (and shall procure that End Users shall) comply with all applicable policies, restrictions and limitations relating to use of such Third Party features and shall indemnify us and our Affiliates against all losses, claims, damages and expenses suffered and/or incurred by us arising out of your failure to do so, provided we have brought the same to your attention.
- 9.4 You, the relevant third party licensor or, where applicable, End Users, own all intellectual property rights in and to the Client Data. Except as expressly stated herein, these Terms of Use do not grant us any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Client Data and all such rights are expressly reserved to you (or the applicable End User). You grant us a non-exclusive, royalty-free licence to use the Client Data for the purposes of providing the Service, and as part of Service Data, to provide services to our other clients, subject always to the data protection and confidentiality provisions set out in these Terms of Use.

10 Indemnity

- 10.1 You shall defend, indemnify and hold us, our Affiliates and their (and our) respective directors and employees harmless against claims, actions, proceedings, losses, liabilities, damages, expenses and costs (including, without limitation, court costs and reasonable legal fees) arising out of or in connection with: (a) your use (or that of your End Users) of the Services; (b) claims from a third party that the Client Data infringes the rights of a third party; (c) any breach of your warranties or representations under these Terms of Use; and/or (d) any breach by you of applicable data protection, employment or other law or regulation.

11 Term and Termination

- 11.1 The Agreement will come into effect on the date of receipt of payment and cleared funds, subject to clause 3.1, and shall remain in effect for the initial term specified in the Order (or, for 12 months where no such period is specified in the Order) ("Initial Term") and shall automatically renew for a period equal to the Initial Term upon the expiry of any Subscription Period (where each of the Initial Period and any such renewal period shall constitute a "Subscription Period") at the fee then listed on the Tiers and Fees page at the Tier that is applicable at the time of renewal (or subject to such other fees as are agreed in the Order in respect of renewal periods) unless and until terminated in accordance with its terms.
- 11.2 Unless agreed otherwise in writing between you and us (for example where an alternative "Notice Period" is agreed in the Order), the Agreement may be terminated for convenience by either party giving notice at least one month prior to the expiry of any Subscription Period, provided that such notice shall not expire earlier than the expiry of the then current Subscription Period and, unless agreed otherwise in writing between the parties, any such termination shall not be effective in respect of any consultancy or development Services until such Services have been completed, accepted and all applicable Fees received by us.
- 11.3 Notwithstanding anything else contained in these Terms of Use, we may terminate (or, at our option, suspend) the Agreement or part thereof:
- 11.3.1 immediately on giving notice in writing to you if you fail to pay any sum due under the Agreement

Tactics On Terms of Use

- (otherwise than as a consequence of any default on our part) and such sum remains unpaid for 14 days after written notice from us requiring such sum to be paid;
- 11.3.2 immediately on giving notice in writing to you if you are in material breach of any term of the Agreement (other than any failure by you to make any payment hereunder, in which event the provisions of Clause 11.3(1) shall apply) and, in the case of a breach capable of being remedied, shall have failed to have remedied, within 30 days of receiving notice requiring you to do so;
 - 11.3.3 immediately on giving written notice if you have a change in your management and/or control.
 - 11.3.4 If you choose to cancel your Subscription pursuant to the terms of Clause 11.2 you are not entitled to a refund in respect of the remainder of any period in respect of which your Subscription or other fee was paid in advance (if applicable). If we cancel without cause (which we may do on 90 days' written notice), then we will refund to you (to the extent you have already paid it to us), on a pro-rata basis, the amount of unused Subscription remaining right before the cancellation.
 - 11.3.5 Notwithstanding the above, we may suspend access to any part of the Platform and/or the Services immediately without notice if: (a) you are in breach of this Agreement; (b) your use of the Platform, App, Outputs or Services has or is likely to have an adverse impact on us, our clients, or any other third party. Suspension in accordance with the foregoing shall not relieve you of any of your liabilities or obligations under this Agreement.
 - 11.4 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving written notice to the other if:
 - 11.4.1 the other party commits a material or persistent breach of any of its obligations under these Terms of Use and (in the case of a breach capable of being remedied) does not remedy such breach within 30 days of receiving from the other party written notice of the breach and a request to remedy the breach; or
 - 11.4.2 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
 - 11.4.3 the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - 11.4.4 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 11.4.1 to 11.4.3(inclusive).
 - 11.5 Any termination of the Agreement howsoever occasioned shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

12 Force Majeure

- 12.1 Provided we have complied with the provisions of clause 12.3, we shall not be in breach of the Agreement nor liable or responsible for any failure to perform, or delay in the performance of, any of our obligations under the Agreement that is caused by events outside our reasonable control ("Force Majeure Event").
- 12.2 Our performance under the Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period.
- 12.3 We will use our reasonable commercial endeavours to mitigate the effect of any Force Majeure Event and to carry out our obligations under the Agreement in any way that is reasonably practicable despite the Force Majeure Event and to resume the performance of our obligations as soon as reasonably possible.

13 Variations

- 13.1 Subject to clause 13.2, we may revise and amend these Terms of Use from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in the options available in relation to the Services, changes in relevant laws and regulatory requirements, changes in our capabilities and changes in what we are able to obtain from our Third Party licensors, contractors and other suppliers.

Tactics On Terms of Use

- 13.2 We may amend these Terms of Use from time to time but only to the extent reasonably necessary to comply with any requirement under or change of applicable law or any regulatory requirements affecting rights and/or obligations arising from or connected with these Terms of Use, and after giving to you as much as advance written notice as reasonably possible of such amendment and the date upon which it is to be effective. If such amendment materially prejudices your interests under these Terms of Use, you may notify us that you wish to terminate these Terms of Use, and such termination shall be effective on the date upon which such amendment to these Terms of Use would otherwise be effective between you and us, unless we notify you before that date that such amendment shall not be effective between you and us.
- 13.3 In addition, you acknowledge that from time to time during the Term we may apply upgrades to the App or Platform, and that such upgrades may, subject to Clause 13.4, result in changes to the appearance and/or functionality of the App or Platform.
- 13.4 No upgrade shall disable, delete or significantly impair the existing functionality of the Platform or App.
- 13.5 You shall not be subject to any additional charges arising out of the application of the upgrade, save where:
- (a) the upgrade introduces new functionality to the Platform or App;
 - (b) you are given the opportunity whether or not to accept such new functionality and any additional changes associated with such functionality (after, if applicable, any free trial period); and
 - (c) any decision by you not to pay the charges for the new functionality will not prejudice your access to and use of the rest of the Platform or App.

14 General

- 14.1 You may not assign or sub-contract the Agreement or any rights and obligations thereunder without our prior written consent. We may assign the Agreement to our Affiliates.
- 14.2 Except as set out in the Order:
- 14.2.1 Any notice under the Agreement must be in writing and must be delivered by hand or sent by recorded delivery to the address specified in the Order, or by email to the email address notified by a party for such purposes or to such other address as may have been notified by a party for such purposes.
 - 14.2.2 A notice delivered by hand or by recorded delivery will be deemed to have been received when delivered (or if delivery is not in Business Hours, at 9am on the first Business Day following delivery). A notice sent by e-mail will be deemed to have been received when sent (or, if despatch is not in Business Hours, at 9am on the first Business Day following despatch), unless the sender receives a response to the effect that the e-mail has not been received or the recipient is not available.
- 14.3 No failure by either party to enforce any rights under the Agreement shall constitute a waiver of such right then or in the future. Any waiver must be in writing and signed by an authorised representative of the waiving party.
- 14.4 If for any reason a court of competent jurisdiction finds any provision of the Order or these Terms of Use, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to give effect to the economic intent of the parties, and the remainder of these Terms of Use and the Order will continue in full force and effect.
- 14.5 Other than our Affiliates, a person who is not a party to the Agreement has no right or benefit under or to enforce the Agreement whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.6 These Terms of Use, including the Schedules, and the Order constitute the sole and entire understanding of the parties in relation to the subject matter of the Agreement and supersede all previous agreements, representations and arrangements between the parties (either oral or written) with regard to the subject matter of the Agreement. The parties confirm that they have not entered into the Agreement on the basis of any representations that are not expressly incorporated in these Terms of Use or the Order. Each party irrevocably and unconditionally waives any rights it may have to claim damages and/or to rescind the Agreement for any misrepresentation in relation to the subject matter of the Agreement whether or not contained in these Terms of Use or the Order or for breach of warranty not contained in these Terms of Use or the Order unless such misrepresentation or warranty was made fraudulently. The Agreement may only be amended or supplemented in writing and signed by an authorised representative of both parties.
- 14.7 We are an independent contractor and neither we nor any of our personnel assigned to provide Services to you under this Agreement will be, or be deemed to be for any purpose, an employee or agent of yours.

Tactics On Terms of Use

- 14.8 We may use subcontractors to provide the Services provided that we remain solely responsible for the Services of such subcontractors. We shall provide you with details of our subcontractors and the Services supplied by them within a reasonable time of your written request.
- 14.9 Throughout the Term and for 6 months thereafter you shall not, and shall procure that those Affiliates, employees or officers of yours who have used the Service in the preceding 12 months shall not, directly or indirectly develop, contribute to, or have a financial interest in, a service, platform or business which competes with or is likely to compete with, the Platform or App.
- 14.10 The Parties acknowledge that each has incurred significant costs in the recruitment and training of its employees engaged in connection with the Services. Accordingly, the Parties agree with each other that it will not, and it will ensure that its Affiliates will not, solicit or approach in any way, any of the other's employees who are engaged in connection with the Services with a view to offering them employment or to solicit services from them on their own account (whether for itself or another party) during the period of this Agreement and for a period of six (6) months after the termination or expiration of this Agreement.
- 14.11 If any employee leaves the employment of either you or ICP (as appropriate) (the "Non-Breaching Party") as a result of a breach by the other Party or its associated companies ("the Breaching Party") of Clause 14.10 and commences employment with, or provides services to the Breaching Party, the Breaching Party shall pay to the Non-Breaching Party 50% of the higher of:-
- 14.11.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of the Non-Breaching Party; or
- 14.11.2 the annual salary of the employee at the time they commence employment with the Breaching Party and the Parties acknowledge that any such payment is by way of liquidated damages and is reasonable and genuine pre-estimate of the Non-Breaching Party's losses.

15 Governing Law, Disputes and Jurisdiction

These Terms of Use are governed by and construed according to English law and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute arising therefrom, including both contractual and non-contractual disputes.

All disputes, differences or questions arising in relation to this Agreement shall be referred in the first instance to the account managers of you and ICP who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.

If unable to resolve the dispute, it shall be referred to ICP's Directors, and your appointed point of contact/relationship manager, head of IT or manager/Director responsible therefore who shall meet together and attempt to settle the dispute (acting in good faith) within 10 Business Days.

If still unable to resolve the dispute within 10 Business Days, the Parties shall have no further obligation to follow this dispute resolution procedure. However, neither party may initiate any legal proceedings until the procedure set out above has been completed except that in no event shall the provisions of this clause operate to prevent a Party seeking interim relief in respect of any dispute or differences..

Tactics On Terms of Use

SCHEDULE 1 - GLOSSARY

1. In these Terms of Use, unless the context otherwise requires, the following expressions have the following meanings:

Affiliate means, in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of this body corporate, and any subsidiary or subsidiary undertaking of any such holding company for the time being as defined in section 1159 of the Companies Act 2006;

Available means where servers, or the servers operated by a third party on our behalf, hosting the Service are found, after prompt investigation by us, to be operational and accessible to any End User (the Service shall be deemed available where we can demonstrate the server(s) hosting the Service is/are operational and accessible even though an End User cannot access them, whether as a result of a failure of the End User's or the third party's computer system or third party communications network or the unavailability of the world wide web or otherwise and "unavailable" shall be interpreted accordingly) or, in respect of hosting, such definition of available (or similar concept) as defined or determined under the applicable hosting provider's terms of service;

Business Day means any day (other than a Saturday or Sunday) on which banks are open for the conduct of normal banking business in the City of London;

Business Hours means 9.00am to 5.30pm local UK time, on a Business Day;

Client means you, a subscriber to the Services, as defined in the Order;

Client Data means data supplied, input or uploaded by or provided under licence to you and/or End Users in using the Service;

Commencement Date has the meaning given to it in the Order;

Confidential Information means any non-public information, know how, trade secrets or data in any form which is designated as being "proprietary", "confidential" or "secret" or could reasonably be understood by a reasonable person to be confidential. The term "Confidential Information" shall also include any information not publicly available concerning the products, services (including the Services), finances, personnel or business of a party (and/or, if either party is bound to protect the confidentiality of any Third Party's information, of a Third Party);

Deliverables has the meaning ascribed to it in clause 2;

End User means those end users who are authorised by you to access and use the Services or Outputs via the Platform and App in accordance with these Terms of Use;

Fees includes Subscription fees, together with On-Boarding fees and consultancy fees (if any);

Indemnified Service: the Service, excluding any Third Party Software or any Client Data;

EULA: those terms which we may require your End Users to comply with when using the App or Platform;

Order means an offer to us to Subscribe to any one or more of the Services by submitting a request for Services and "Ordered" shall be construed accordingly;

Outputs means those outputs which are created and supplied or made available to the Client as part of the Services provided as part of and/or in connection with the Platform, but excluding Client Data;

Tactics On Terms of Use

Platform and App have the meanings given to them in the introduction.

Purpose has the meaning given to it in the introduction;

Service(s) means any one or more of the online services described in the Order and available through the Platform or App, including without limitation, the Tools, but excluding any improvements or additional functionality which we may develop from time to time, in respect of which we reserve the right to charge additional fees for access to that additional functionality;

Service Data means metadata and other data derived from use of the Service (for example analytics data about how often people use the App to help us improve it) but excluding Client Data or personal data;

Set-Up Instructions means the instructions for setting up the Services as set out in the Order or otherwise notified by us to you in writing;

Specification means the functional and technical specification in respect of the Service from time to time available upon request;

Subscribe means to pay a Subscription and “**Subscribed**”, “**Subscribing**” and “**Subscriber**” shall be construed accordingly;

Subscription means the relevant fee(s) (plus applicable taxes) payable to us by you, a Client, to access one or more of the Services;

Subscription Period has the meaning ascribed to it in clause 11.1;

Term means the duration the Agreement is in force in accordance with its terms;

Third Party means any legal person other than you and us;

Third Party Software means any software, material or applications provided as part of the Service, the intellectual property rights in which are owned by a party other than us;

Tier means the scope of your desired Subscription as set out in further detail on our Tiers and Fees page, as amended from time to time;

Tiers and Fees page means details of the Tiers and Subscription fees which are payable in respect of the Services as set out in your Order and as amended from time to time in accordance with these Terms of Use;

Tools means those tools offered as part of the Platform comprising the Service;

Usage has the meaning set out in the Tiers and Fees Page;

you/your/yours means the Client;

Tactics On Terms of Use

2. The headings in these Terms of Use do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of these Terms of Use.
3. Unless the context otherwise so requires:
 - a) references to statutory provisions include those statutory provisions as amended or re-enacted; and
 - b) references to any gender include all genders.
 - c) Words in the singular include the plural and in the plural include the singular.
 - d) The word, "**including**" shall be deemed to mean, "**including, without limitation**" and shall not limit the types or categories to the information or items following such types or categories.

Tactics On Terms of Use

SCHEDULE 2 – SERVICE LEVEL AGREEMENT

Part 1: Support

1. Should you or any End User experience difficulties with the Service, in the first instance, please refer to the documentation and instructions which we may make available to you from time to time.
2. If the materials referred to in section 1 above do not resolve your problem, and the problem is a failure (attributable to us) of the Service to perform substantially in accordance with the Specification (a "Defect"), then you may raise a support request in accordance with this Schedule. Should you experience any other difficulties, for example if you are unsure how to use a particular feature, please get in touch as we are happy to offer consultancy and training to support your efforts, subject to our standard fees and consultancy agreement.
3. Support requests should be logged via our service desk including through a local support application, web portal, email or telephone (as notified to you from time to time) and all subsequent enquiries relating to an incident or fault must quote the support ticket number provided. Any request for support shall be deemed received on a Business Day. Upon receipt, we shall use our reasonable endeavours to respond to, remedy or provide a workaround to an incident or fault but do not guarantee any support response, fix or workaround within a specific timeframe.

Part 2: Support tickets, response and resolution times

Where you raise a support ticket in respect of a Defect connected with the Services caused by us, in accordance with the notification requirements specified in Part 1 of this schedule, we shall acknowledge that notification and respond in accordance with the table below. To the extent reasonably practicable, where we are unable to remedy a Defect within the proposed response times, we shall in any event use our reasonable endeavours to implement a Workaround in respect of that Defect. For the purpose of this Schedule, a "Workaround" means a way to achieve, to a reasonable extent, a business objective described in the Specification, which is affected by a Defect, using technical or other means which differ from those set out in the Specification, and which may, for the avoidance of doubt, entail a time delay or require changes to the way you or End Users access the Platform or Service.

Response times

Nature of the defect	Response time
Critical – an issue affecting all users, including system unavailability and data integrity issues which may include circumstances where our production server is not available, where messages cannot be sent or received by you or your End Users; and in each case where no work around is available.	1 Working Day
High – an issue which means that a primary function cannot be used until the error is corrected but for which there are workarounds in place to avoid direct loss of revenue to you.	2 Working Days (sooner if possible)
Non-critical – which cause an inability to perform a function properly but which have only a minor impact on your ability to use the Platform or App.	3 Working Days (sooner if possible)
Low – issues which cause no loss of functionality but which cause software to function in a manner which materially deviates from its specification, or defects which are purely visual.	As part of the next scheduled release of the App and/or Platform

Tactics On Terms of Use

Part 3: Availability

1. Subject to the remaining provisions of this schedule and the Terms of Use we shall use reasonable endeavours to ensure the Service is Available for a Monthly Uptime Percentage (as defined below) of 98% following the Commencement Date.
2. Monthly Uptime Percentage is calculated by subtracting from 100% the percentage of minutes during the month in which the Service is not Available measured from the time our help desk receives notice via the designated contact details for support that the Service is not Available until the time the Service is once again Available, excluding downtime resulting directly or indirectly from: (i) factors outside of our reasonable control, including any Force Majeure Event or Internet access or related problems beyond the demarcation point of our servers; (ii) that result from any actions or inactions of you or any third party; (iii) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (vi) that result from any scheduled or emergency maintenance of the Service; or (vi) arising from our suspension or termination of your right to use the Service in accordance with the Agreement.