

Hosted Service Terms of Use

Insert Application & Customer

Insert Date

Version ??

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Hosted Services Terms of Use This agreement ("Agreement") is entered into on 2nd January 2026 by

PARTIES

Ishango Limited, a company incorporated in England & Wales (Registration number: 10466140) having its registered office at Ishango Ltd, AMS House, Unit 1, Kesteven Way, Saxilby, Lincoln, LN1 4BJ (the "Provider"); and

Insert client name, a company incorporated in England & Wales (Registration number: insert reg number) having its registered office at Insert Address (the "Customer"); ("Customer"); each a party, and collectively the parties.

BACKGROUND

The Hosted Services provided by the Provider are the web and associated technologies, technical support, and any IT consulting services on request.

The parties agree that these Terms of Use and the relevant Hosted Service Order Form will constitute the entire agreement between the Provider and the Customer and will apply to the supply of the Provider's products to the Customer.

These Hosted Services Terms of Use ("Agreement" constitute a legally binding agreement between the Customer and the Provider relating to the Customer's access and use of the Providers Hosted Services and shall prevail over any previous agreements, unless otherwise expressly agreed by the parties.

The Provider has agreed to provide and the Customer has agreed to take and pay for the Provider's Hosted Services subject to the Agreement and the terms and conditions of the Hosted Service Order Form.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this Agreement.

1.1. DEFINITIONS:

"**Account**" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Affiliate**" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity where "Control" has the meaning given in section 1124 of the Corporation Tax Act 2010;

"**Applicable Law**" means all applicable laws, statutes, and regulation from time to time in force in England and Wales

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"Authorised User" means those employees, agents, Affiliates, independent contractors of the Customer who are authorised by the Customer to access and or use the Hosted Services;

"Background Intellectual Property" means all Intellectual Property Rights introduced and required by either party to give effect to their obligations under this Agreement, and owned, in whole or in part by or licensed to either party or their Affiliates, Authorised Users, (or in the case of the Provider, the Provider's Personnel), prior to the Effective Date, or developed after the Effective Date.

"Business Day" means any day other than a Saturday, Sunday, or a bank or public holiday in England;

"Business Hours" means the hours of 08:00 to 18:00 GMT/BST on a Business Day;

"Charges" means the following amounts:

- (a) the amounts specified in the Hosted Services Order Form;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of this Agreement) by the time spent by the Provider's Personnel performing the Support Services (rounded down by the Provider to the nearest quarter hour);

"CPI" means the Consumer Price Index as published by the United Kingdom's Office for National Statistics;

"Confidential Information" means:

- (a) all information, whether technical or commercial, not in the public domain disclosed by (or on behalf of) the parties at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) is identified as confidential; or
 - (ii) should have been reasonably understood by the parties to be confidential; and
- (b) the Customer Data;

"Customer Data" means all data (including Customer Personal Data), works and materials: (i) uploaded to or stored on the Platform by the Customer; (ii) transmitted by the Platform at the instigation of the Customer; (iii) supplied by the Customer to the Provider for uploading to, transmission by, or storage, on the Platform; or (iv) including Derived Data but excluding analytics data relating to the use of the Platform and server log files;

"Customer Personal Data" has the meaning given to it by the Data Protection Laws;

"Data Controller" has the meaning given to it by the Data Protection Laws;

"Data Processor" has the meaning given to it by the Data Protection Laws;

"Data Subject" has the meaning given to it by the Data Protection Laws;

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"**Data Protection Laws**" means all Applicable Law relating to data protection, the processing of personal data and privacy, including (to the extent and so long as it remains in force in England and Wales) but not limited to:

- (a) the Data Protection Act 2018;
- (b) UK GDPR;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed EU Regulation on Privacy and Electronic Communications); and
- (d) any direction, policy, requirement, rule, order, code of practice or guidance issued or published by the ICO (or any other relevant Supervisory Authority) from time to time;;

"**Account**" means any Customer account login required to access the Hosted Services.

"**Derived Data**" means any data, information, or knowledge howsoever created (including data generated by the Platform as a result of the use of the Hosted Services by the Customer), directly or indirectly, from the Customer Data;

"**Disaster Recovery**" means the process for recovering the Hosted Services back to operation in the case where the Hosted Solution becomes unavailable to the Customer. Where required this may mean a recovery from a recent backup requiring the Customer to re-enter any missing data.

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer stated in the Hosted Services Order Form;

"**Effective Date**" means the date of last execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of, not involving fault or negligence by, and not foreseeable by, the party affected that prevents or delays the party affected from performing any of its obligations under the Hosted Services Order Form (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Good Industry Standards**" means that degree of skill, care, prudence, and foresight and operating practice which would reasonably or ordinarily be expected from time to time of a skilled and experienced provider engaged in providing the same or similar service as the Provider under the same or similar circumstances;

"**Hosted Services**" is the web and associated technologies, technical support, and any IT consulting services that are provided, owned, managed and maintained by the Provider and defined in the Hosted Service Order Form.

"**Hosted Services Defect**" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

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- (a) any act or omission of the Customer or any of the Customer's Authorised User ;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by its Authorised Users;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Service Order Form" means an ordering document specifying the Hosted Services to be provided by the Provider to the Customer which contains the service Documentation, Term, Charges, payment schedules and any specific service level agreements, as may executed by the parties from time;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in the Hosted Service Order Form and in the Documentation;

"Hosting Partner" means the company that provides the data centre services that provide the technology platform that the Hosted Services is delivered through.

"Information Commissioner" means the UK's supervisory authority based at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF;

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Personal Data Breach" has the meaning given to it by the Data Protection Laws;

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Processing" has the meaning given to it under Data Protection Laws and **"Process"** and **"Processed"** shall be construed accordingly;

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"Provider's Personnel" means all employees, officers, workers and staff, suppliers, consultants, agents and sub-contractors of the Provider who are engaged or involved in the provision of any of the Hosted Services from time to time;

"Renewal Term" shall have the meaning given to it in clause 2.1;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under the Hosted Services Order Form;

"Subcontracting" means any new third party company that is proposed to provide resources or services in the delivery of the Hosted Services. This does not include contractors employed directly by the Provider, or the technology hosting service provided by the Hosting Partner .

"Sub-processor" means any third party appointed to Process Customer Personal Data on behalf of the Data Processor related to this agreement

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services, as defined in the Hosted Service Order Form;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance the terms of this Agreement;

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

"Update" means a hotfix, patch or minor version update to any Platform software; and

"Upgrade" means a major version upgrade of any Platform software.

- 1.2. Clause and schedule headings shall not affect the interpretation of this agreement.
- 1.3. a reference to writing or written excludes fax.
- 1.4. references to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- 1.5. if there is an inconsistency between any of the provisions in the main body of this agreement and the schedules, the provisions in the main body of this agreement shall prevail.
- 1.6. unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7. a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

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- 1.8. a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9. any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.10. **references to content include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a user of that website.**
- 1.11. In the event of any conflict or inconsistency between the Agreement and the Hosted Service Order Form the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - 1.11.1. the Hosted Service Order Form;
 - 1.11.2. the Agreement.

2. TERM

- 2.1. This **AGREEMENT** shall come into force upon the Effective Date and shall continue to be in force until the date stated in the Hosted Service Order Form or unless terminated earlier in accordance with this Agreement ("**TERM**"); and, thereafter, this Agreement shall be automatically renewed for subsequent periods of ninety (90) calendar days (each a "**Renewal Term**"), unless:
 - 2.1.1. The Customer notifies the Provider of termination, in accordance with clause 16.1, in which case this Agreement shall terminate upon the expiry of the applicable Term or Renewal Term;
or
 - 2.1.2. otherwise terminated in accordance with the provisions of this Agreement.

3. HOSTED SERVICES

- 3.1. The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account on or promptly following the Effective Date.
- 3.2. The Provider hereby grants to the Customer a worldwide, non-exclusive, revocable, non-transferable, non-sublicensable right to use the Hosted Services by means of a Supported Web Browser for the business purposes of the Customer in accordance with the Documentation during the Term.
- 3.3. The license granted by the Provider to the Customer under Clause 3.2 is subject to the limitation that the Hosted Services may only be used by the Authorised Users of the Customer who have been provided with a login by the Provider under clause 3.1;
- 3.4. Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the license granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:
 - 3.4.1. the Customer must not sub-license its right to access and use the Hosted Services;

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- 3.4.2. the Customer must not permit any unauthorised person to access or use the Hosted Services;
- 3.4.3. the Customer must not use the Hosted Services to provide services to third parties. The prohibition in this clause 3.4.3 shall not apply to the Customer's use of the Hosted Services as a tool or component within its service offerings to its clients, provided that such Customer clients shall not have a direct access to, or rights to use, the Hosted Services independent of the Customer's services;
- 3.4.4. the Customer must not republish or redistribute the Documentation or similar material relating to the Hosted Services;
- 3.4.5. the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
- 3.4.6. the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.
- 3.5. The Customer shall use its reasonable endeavors, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services Accounts.
- 3.6. The Provider shall use reasonable endeavours and Good Industry Standard to provide and maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the Hosting services provider for the Hosted Services but does not guarantee 100% availability.
- 3.7. For the avoidance of doubt, unavailability of the Hosted Services and or the Platform caused directly by any of the following shall not be considered a breach of this Agreement:
 - 3.7.1. a Force Majeure Event;
 - 3.7.2. a fault or failure of the internet or any public telecommunications network;
 - 3.7.3. a fault or failure of the Customer's computer systems or networks;
 - 3.7.4. any breach by the Customer of this Agreement; or
 - 3.7.5. scheduled maintenance carried out in accordance with this Agreement.
- 3.8. The Customer must comply with Schedule 1 (Acceptable Use Policy) and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 1 (Acceptable Use Policy).
- 3.9. The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.10. The Customer must not use the Hosted Services:
 - 3.10.1. in any way that is unlawful, illegal, or fraudulent; or

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3.10.2. in connection with any unlawful, illegal, or fraudulent purpose or activity.

- 3.11. For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 3.12. The Provider may suspend the provision of the Hosted Services if any undisputed amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least fourteen (14) calendar days' written notice, following the amount becoming overdue, and the amount remains unpaid on the expiration of such notice.

4. MAINTENANCE SERVICES

- 4.1. The Provider shall provide the Maintenance Services to the Customer during the Term.
- 4.2. The Provider shall where reasonably practicable give to the Customer at least 5 Business Days' prior notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Agreement.
- 4.3. The Provider shall give to the Customer notice of the application of any security Update to the Platform and at least 5 Business Days' prior written notice of the application of any non-security Update to the Platform.
- 4.4. The Provider shall provide the Maintenance Services with reasonable skill and care and in accordance with Good Industry Standards.
- 4.5. The Provider may suspend the provision of the Maintenance Services if any undisputed amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least fourteen (14) calendar days' written notice, following the amount becoming overdue, and the amount remains unpaid on the expiration of such notice.

5. SUPPORT SERVICES

- 5.1. The Provider shall provide the Support Services to the Customer during the Term as defined in the Hosted Service Order Form.
- 5.2. The Provider shall provide the Support Services with reasonable skill and care and in accordance with Good Industry Standards.
- 5.3. The Customer may use the Service Desk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the Service Desk for any other purpose.
- 5.4. The Provider shall respond promptly to all relevant requests for Support Services made by the Customer through the Service Desk relating to the Providers obligations under this Agreement.
- 5.5. The Customer accepts the Provider is under no obligation to respond to any out-of-scope Support Services requests. Should the Customer require response to any out-of-scope Support Services the Provider reserves the right to apply an additional charge to the Customer which will be provided to the Customer prior to any such request being actioned by the Provider.

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- 5.6. The Provider may suspend the provision of the Support Services if any undisputed amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least fourteen (14) calendar days' written notice, and the amount remains unpaid on the expiration of such notice.

6. CUSTOMER DATA

- 6.1. The Customer hereby grants to the Provider a non-exclusive, revocable, non-transferrable, non-sublicensable right to copy, reproduce, store, distribute, export, adapt, and translate the Customer Data to but only the extent strictly necessary for the performance of the Provider's obligations under this Agreement. The Customer also grants to the Provider the right to sublicense these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement as stated in the Hosted Service Order Form.
- 6.2. The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any third party, and will not breach the provisions of any Applicable Law.
- 6.3. For purposes of Disaster Recovery that impacts the Hosted Service the Provider shall create a back-up copy of the Customer Data at least every 30 minutes, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of thirty (30) calendar days.
- 6.4. In the event of a Disaster Recovery incident that requires the full recovery of the Hosted Services for all customers, the Provider shall use reasonable endeavors to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 6.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

7. NO ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

- 7.1. Nothing in this agreement shall operate to assign or transfer any background intellectual property rights from the provider to the customer, or from the customer to the provider.

8. CHARGES

- 8.1. The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 8.2. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 8.3. The Provider has the right to increase all Fees annually provided that such increases (expressed as a percentage) shall not on any occasion exceed the higher of: (i) 5% of the total Fees paid in the preceding twelve months (12); or (ii) and the increase (if any) expressed as a percentage in

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the CPI in the preceding twelve months (12). For the avoidance of doubt, the Annual Licence Fee will not be reduced for the Licence Term.

9. PAYMENTS

- 9.1. The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in the Hosted Service Order Form.
- 9.2. The Customer must pay the Charges to the Provider within the period of thirty (30) calendar days following the receipt of a valid and undisputed invoice issued in accordance with this Clause 9.
- 9.3. The Customer must pay the Charges by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 9.4. If the Customer does not pay any undisputed amount properly due to the Provider under this Agreement, the Provider may, following 7 working days written notice to Customer
 - 9.4.1. charge the Customer interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - 9.4.2. CLAIM INTEREST AND STATUTORY COMPENSATION FROM THE CUSTOMER PURSUANT TO THE LATE PAYMENT OF COMMERCIAL DEBTS (INTEREST) ACT 1998.
 - 9.4.3. suspend all or part of the Hosted Services for non-payment, provided that the Provider has given to the Customer at least fourteen (14) calendar days' written notice, following the amount becoming overdue, and the amount remains unpaid on the expiration of such notice. The Provider accepts no liability to the Customer impact from any suspension due to non-payment.

10. PARTIES CONFIDENTIALITY OBLIGATIONS

- 10.1. The parties must:
 - 10.1.1. keep the Confidential Information strictly confidential;
 - 10.1.2. not disclose the Confidential Information to any person without the other parties prior written consent, and then only under conditions of confidentiality approved in writing by the other party;
 - 10.1.3. use the same degree of care to protect the confidentiality of the Confidential Information as the other party uses to protect their own confidential information of a similar nature, being at least a reasonable degree of care;
 - 10.1.4. act in good faith at all times in relation to the Confidential Information; and
- 10.2. Notwithstanding Clause 10.1, the Provider may disclose the Customer Confidential Information to the Provider's Personnel who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement and who are bound by a written

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agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

- 10.3. Clauses 10.1 and 10.2 impose no obligations upon the parties with respect to Confidential Information that:
- 10.3.1. is known to the parties before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
 - 10.3.2. is or becomes publicly known through no act or default of the parties; or
 - 10.3.3. is obtained from a third party in circumstances where the party has no reason to believe that there has been a breach of an obligation of confidentiality.
- 10.4. The restrictions in this Clause 10 do not apply to the extent that any Confidential Information is required to be disclosed by any Applicable law or any judicial or governmental order or request.
- 10.5. The provisions of this Clause 10 shall continue in force indefinitely following the termination of this Agreement.

11. DATA PROTECTION

- 11.1. The parties shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data. This clause 11.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.
- 11.2. With respect to the parties' rights and obligations under this Agreement, the parties agree that the Customer is the Data Controller and that the Provider is the Data Processor.
- 11.3. The Customer warrants to the Provider that it has complied with Data Protection Laws applicable to the Customer Personal Data it provides to the Provider under this Agreement.
- 11.4. The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement, the type and category of Customer Personal Data of data subjects falling within the those specified in the Hosted Service Order Form Part 1 of Schedule 3 (Data processing information) and of the types specified in Part 2 of Schedule 3 (Data processing information); and the Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 3 (Data processing information).
- 11.5. The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 11.
- 11.6. The Provider shall only process the Customer Personal Data in accordance with the terms of this Agreement and on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any jurisdiction outside the United Kingdom), as set out in this Agreement or any other document agreed by the parties in writing.

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- 11.7. The Provider shall promptly inform the Customer if, in the reasonable opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 11.8. Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by any applicable law, subject to prior notification to the Customer unless such notification is prohibited by Applicable Law.
- 11.9. The Provider shall ensure that Provider Personnel authorised to process the Customer Personal Data:
- 11.9.1. have committed themselves to equivalent obligation of confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 11.9.2. aware of and comply with the Provider's duties under this Clause 11 and or Schedule 3 [X];
 - 11.9.3. are informed of the confidential nature of the Customer Personal Data and do not publish, disclose or divulge any of the Customer Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - 11.9.4. have undergone adequate training in the use, care, protection and handling of Customer Personal Data;
- 11.10. The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in the HostED Service Order FORM Part 4 of Schedule 3 (Data processing information).
- 11.11. As at the Effective Date, the Provider is hereby authorised by the Customer to act as sub-processors with respect to Customer Personal Data, identified in the Hosted Service Order Form Part 5 of Schedule 3 (Data processing information).
- 11.12. The Provider shall implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data (including, as appropriate, the measures referred to in Article 32(1) of the UK GDPR), including those measures specified in the Hosted Service Order Form Part 4 of Schedule 3 (Data processing information).
- 11.13. The Provider shall only engage Sub-processors, not on the list of approved Sub-processors in Schedule 3, with the prior written consent of the Customer and under a written contract which imposes at least the same level of protection as is provided by this clause 11 and Schedule 3 The Provider shall remain liable to the Customer for compliance of any Sub-processor engaged and in the event the Customer provides prior written general authorisation to Sub-processing, informing the Customer of any changes concerning the addition or replacement of Sub-processors giving the Customer sufficient opportunity to object to such changes.

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- 11.14. The Provider shall, insofar as is required by Data Protection Laws, assist the Customer, on its request, in the Customer's obligations to respond to any data subject access requests made in accordance with the Data Protection Laws.
- 11.15. The Provider shall notify the Customer, within 2 Business Days, if it receives:
- 11.15.1. a request from a Data Subject under the Data Protection Laws in respect of the Customer Personal Data and not respond to any such request without the written authorisation of the Customer;
 - 11.15.2. any communication from the Information Commissioner's Office or any other regulatory authority in connection with the Customer Personal Data; or
 - 11.15.3. a request from any third party for disclosure of Customer Personal Data where compliance with such request is required or purported to be required by an Applicable Law.
- 11.16. The Provider shall notify the Customer without undue delay, and at least within 48 hours, upon becoming aware of a Customer Personal Data Breach, providing the Customer with sufficient information to allow it to meet its obligations under the Data Protection Laws and to enable the Customer to report the breach to the Information Commissioner's Office within the 72 hour deadline imposed by the UK GDPR and assist the Customer, as directed, in the investigation, mitigation and remediation of such Customer Personal Data Breach.
- 11.17. The Provider shall not transfer Customer Personal Data outside the United Kingdom without obtaining the prior written consent of the Customer and fulfilling the following conditions:
- 11.17.1. providing appropriate safeguards in relation to the transfer, in accordance with Article 46 of the UK GDPR, as determined by the Customer;
 - 11.17.2. complying with its obligations under the Data Protection Laws by providing an adequate level of protection to any Customer Personal Data that is transferred; and
 - 11.17.3. complying with any reasonable instructions notified to it in advance by the Customer with respect to the Processing of the Customer Personal Data.
- 11.18. The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 11 and the Data Protection Laws.
- 11.19. The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Customer Personal Data.
- 11.20. The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 11. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.21.

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- 11.21. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Customer Personal Data carried out under this Agreement, then the parties shall use their best endeavors promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

12. WARRANTIES

- 12.1. The Provider represents, warrants, and undertakes to the Customer that:
- 12.1.1. the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - 12.1.2. the Provider will comply with all Applicable Law relevant to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
 - 12.1.3. the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 12.2. The Provider represents, warrants, and undertakes to the Customer that:
- 12.2.1. the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification and the Hosted Service Order Form
 - 12.2.2. the Platform will incorporate security features reflecting the requirements of Good Industry Standards.
- 12.3. The Provider represents, warrants, and undertakes to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any Applicable Laws,.
- 12.4. The Provider represents, warrants, and undertakes to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any Applicable Law.
- 12.5. If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
- 12.5.1. modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - 12.5.2. procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 12.6. The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 12.7. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by

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Applicable Law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

13. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

- 13.1. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 13.2. The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 13.3. The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 13.4. The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal financial, accountancy or taxation liability on the part of the Customer or any other person.
- 13.5. Subject to the other provisions of this Agreement, the Hosted Services are provided on an as-is basis. It is the Customers responsibility to ensure that the Hosted Service meets the Customers business requirements and has undertaken the necessary testing to verify this. The Customer is responsible for implementing the necessary business process changes required by the Hosted Service. Any subsequent Customer functionality change requests will be chargeable.
- 13.6. The Provider has no responsibility or liability in respect to of a failure of the Customer's implementation of the necessary business process change requirements to operate the Hosted Service.
- 13.7. Notwithstanding the provisions of this cause 13, the Provider shall use reasonable endeavours, to ensure the prompt rectification of any defects, errors, bugs, or security vulnerabilities, in the Hosted Services and or the Platform, in accordance with the Service Level Agreements set out in the Hosted Service Order Form.

14. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 14.1. Nothing in this Agreement will:
 - 14.1.1. limit or exclude any liability for death or personal injury resulting from negligence;
 - 14.1.2. limit or exclude any liability for fraud or fraudulent misrepresentation;
 - 14.1.3. limit any liabilities in any way that is not permitted under Applicable Law; or

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- 14.1.4. exclude any liabilities that may not be excluded under Applicable Law.
- 14.2. The limitations and exclusions of liability set out in this Clause 14 and elsewhere in this Agreement:
- 14.2.1. are subject to Clause 14.1; and
- 14.2.2. govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract (excluding under any indemnities), in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 14.3. Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 14.4. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 14.5. Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 14.6. Neither party shall be liable to the other party in respect of any loss of use or production.
- 14.7. Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 14.8. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 14.9. The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the greater of:
- 14.9.1. 125% of the Charges paid or payable by the Customer to the Provider under this Agreement;
or
- 14.9.2. the total amount paid or payable by the Customer to the Provider under this Agreement;
- 14.10. in the 12-month period preceding the commencement of the event or events, giving rise to the Claim

15. FORCE MAJEURE EVENT

- 15.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 15.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- 15.2.1. promptly notify the other; and
- 15.2.2. inform the other party of the period for which it is estimated that such failure or delay will continue.

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- 15.3. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.
- 15.4. Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues in excess of 2 weeks from the start date of such Force Majeure, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

16. TERMINATION

- 16.1. Either party may terminate this Agreement by giving not less than 60 calendar days' prior Notice to the other before the end of the Term or at any time during the Renewal Term.
- 16.2. Provider may terminate the Hosted Services defined in the Hosted Service Order Form without cause or liability by giving the Customer at least 60 days written notice to terminate after which the Services under this Agreement will be removed without liability.
- 16.3. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement, unless that breach was directly attributable to a failure of Microsoft which shall not constitute a breach of this agreement and the Hosted Services Order Form, provided that, if such material breach is capable of being remedied, the other party failed to remedy such material breach within thirty (30) calendar days, or other mutually agreed period of time, after receiving written notice from the other party specifying the breach and requiring it to be remedied.
- 16.4. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- 16.4.1. the other party:
- (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- 16.4.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- 16.4.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);
or

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16.4.4. if that other party is an individual:

- (i) that other party dies;
- (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
- (iii) that other party is the subject of a bankruptcy petition or order.

17. EFFECTS OF TERMINATION

- 17.1. Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.11, 7, 10 and clause 11.
- 17.2. Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 17.3. Within thirty (30) calendar days following the termination of this Agreement for any reason:
- 17.3.1. the Customer must pay to the Provider any valid and undisputed Charges in respect of Services provided to the Customer before the termination of this Agreement; and
 - 17.3.2. without prejudice to the parties' other legal rights.
- 17.4. Upon termination of this Agreement the Customer Data will be deleted from the system unless an archive copy is explicitly requested by the Customer within thirty (30) days after the effective date of termination. The supply of Customer archive data is a chargeable extra however, and its supply is dependent on all valid and undisputed payments to the Provider being finalised. Beyond the date of deletion the Provider has no further obligations relating to Customer data.
- 17.5. If this Agreement is terminated by Customer for cause, then without prejudice to the Customer's other rights under this Agreement or any Applicable Law, the Customer shall be entitled to a pro-rata refund of the unused and remaining portion of any prepaid Charges and or amounts made by Customer to the Provider prior to the effective date of termination. Such pro-rata refund shall be paid by the Provider in accordance with the payment terms set forth in this Agreement, and Customer will be released from any further obligations under this Agreement.

18. NOTICES

- 18.1. Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 18.2 and the Hosted Service Order Form):
- 18.1.1. delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - 18.1.2. sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting, providing that, if the stated time of deemed receipt is not

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within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

18.2. The Provider's contact details for notices under this Clause 18 are as follows:

18.2.1. for the Provider, Ishango Ltd, AMS House, Unit 1, Kesteven Way, Saxilby, Lincoln, LN1 4BJ

18.2.2. for the Customer, *insert address*.

18.3. The addressee and contact details set out in Clause 18.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 18.

19. SUBCONTRACTING

19.1. The parties must not subcontract any of its obligations under this Agreement without the prior written consent of the other party, such consent must not be unreasonably withheld or delayed.

20. GENERAL

20.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

20.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

20.3. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

20.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

20.5. This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party. The Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.6. This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

20.7. The Provider shall maintain both ISO270001 and Cyber Essentials Plus accreditation during the term of the agreement

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21. CHANGES TO THESE TERMS OF USE

- 21.1. The Provider shall be entitled to amend these Terms of Use at any time, to reflect changes in the Hosted Services or the Providers business, for legal, regulatory or security reasons and/or to prevent abuse or harm
- 21.2. The Provider shall post any changes to this Agreement within the Hosted Services and notify the Customer in writing. The Customer will be deemed to have accepted any changes to this Agreement if the Customer fails to object to such changes within thirty (30) Calendar days of receiving such notification.

22. JURISDICTION

- 22.1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 22.2. Both parties agree the English courts shall have exclusive jurisdiction to adjudicate any dispute arising within this Agreement.

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Signature Page

SIGNED for and on behalf of the Provider, Ishango Ltd on the date below:-

Ishango Ltd

By:

Designation:

On:

SIGNED for and on behalf of the Customer, ***insert name*** on the date below

Insert Customer name

By:

Designation:

On:

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Schedule 1 (Acceptable Use Policy)

1. Introduction

1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:

- (a) the use of the Hosted Services, any successor website, and the services available on that website or any successor website (the "**Services**"); and
- (b) the transmission, storage and processing of Customer Data by you, or by any person on your behalf, using the Services ("**Content**").

1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to Ishango Limited (and "we" and "our" should be construed accordingly).

1.3 By using the Services, you agree to the rules set out in this Policy.

1.4 By logging into the Hosted Services you will be deemed to have accepted the terms of this Policy.

2. General usage rules

2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2 You must not use the Services:

- (a) in any way that is unlawful, illegal, fraudulent, or deceptive; or
- (b) in connection with any unlawful, illegal, fraudulent, or deceptive purpose or activity.

2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

- (a) be libelous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral right, database right, trademark right, design right, right in passing off, or other intellectual property right;
- (d) infringe any right of confidence, right of privacy or right under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;

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- (g) be in contempt of any court, or in breach of any court order;
- (h) constitute a breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) constitute a breach of official secrets legislation; or
- (k) constitute a breach of any contractual obligation owed to any person.

3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question, and in particular for children over 12 years of age.
- 4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.
- 4.3 Content must not be pornographic or sexually explicit.

5. Factual accuracy

- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6. Negligent advice

- 6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.
- 6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7. Etiquette

- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behavior on the internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.

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- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content does not duplicate other content available through the Services.
- 7.8 You must ensure that Content is appropriately categorised.
- 7.9 You should use appropriate and informative titles for all Content.
- 7.10 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

- 8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, or promotion, of any product, service or commercial offering.
- 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.
- 8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.
- 8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

9. Regulated businesses

- 9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.
- 9.2 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.
- 9.3 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

10. Monitoring

- 10.1 You acknowledge that we may actively monitor the use of the Services.

11. Data mining

- 11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12. Hyperlinks

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- 12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

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13. Harmful software

- 13.1 You shall take commercial reasonable steps to ensure that the Content shall not contain or consist of, and you shall not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 13.2 You shall take commercially reasonable steps to ensure that the Content shall not contain or consist of, and you shall not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

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