

TESSERA DESIGN TERMS AND CONDITIONS

Welcome to Tessera Design! We are Tessera Security Ltd, a company registered in England and Wales with company number 17336112 whose registered office is at Office 444, Unit 5 399-405 Oxford Street, London, England, W1C 2BU ('we', 'our' or 'us') and we provide AI-assisted cybersecurity software that generates security design artefacts (such as threat models, security requirements, vulnerability and weakness assessments, risk assessments and security architecture material) from customer-provided system descriptions, architecture documents and diagrams known as Tessera Design as described on our Website (**Platform**).

These terms and conditions (**Terms**) govern your access to the Platform and our provision to you of any other goods and services as set out in these Terms (**Subscription**). You can view the most updated version of our Terms at <https://tesseractsecurity.ai> (**Website**). Please read these terms and conditions carefully before agreeing to proceed with your Subscription.

Your Subscription is for the pay-as-you-go plan or subscription plan selected by you in the Platform, or as otherwise agreed between us in writing (**Tier**).

Please note that your Subscription will continue to renew indefinitely, and you will continue to incur Subscription Fees, unless you give us notice under clause 3(c) that you do not want your Subscription to renew. Please ensure you contact us if you want to cancel your Subscription.

1 READING AND ACCEPTING THESE TERMS

- (a) In these Terms, capitalised words and phrases have the meanings given to them where they are followed by bolded brackets, or as set out in the Definitions table at the end of these Terms.
- (b) By clicking the button on our Website or within the Platform to indicate your acceptance of these Terms, paying for your Subscription or otherwise accepting the benefit of any part of your Subscription, you agree to be bound by these Terms which form a binding contractual agreement between you, the person acquiring a Subscription or the company you represent and are acquiring the Subscription on behalf of ('**you**' or '**your**') and us.
- (c) We may change these Terms by giving you at least 30 days' notice. If a change is materially adverse to you, you may terminate your Subscription before the change takes effect by giving us written notice, in which case we will refund any Subscription Fees paid in advance for the period after termination. Your continued use of the Platform after the change takes effect constitutes acceptance of the amended Terms.

2 ELIGIBILITY

- (a) By accepting these Terms, you represent and warrant that:
 - (i) you have the legal capacity and authority to enter into a binding contract with us; and
 - (ii) you are authorised to use the payment you provided when purchasing a Subscription.
- (b) The Platform is provided only for business use and is not available to consumers. By using the Platform, you represent and warrant that you are acting wholly or mainly for purposes relating to your trade, business, craft or profession, whether as a company, sole trader, consultant or other business user, and not as a consumer.
- (c) You must not access the Platform if you are acting as a consumer or have previously been suspended or prohibited from using the Platform.
- (d) If you are signing up on behalf of a company, your employer, an organisation, a government or other legal entity (**Represented Entity**), then "you" or "your" means the Represented Entity and you are binding the Represented Entity to this agreement. If you are accepting this agreement and using our Platform on behalf of a Represented Entity, you represent and warrant that you are authorised to do so.

3 DURATION OF YOUR SUBSCRIPTION

- (a) Your Subscription and these Terms commence on the date you agree to be bound by these Terms (as set out at the beginning of these Terms) and continue for the Subscription Period and any Renewal Periods applicable, unless terminated earlier in accordance with clause 15.
- (b) Subject to clause 3(c), upon expiration of the Subscription Period, this agreement will automatically and indefinitely renew on an ongoing basis for subsequent periods equal to the Subscription Period (**Renewal Period**).
- (c) If either party provides a written cancellation notice before the Renewal Date, this agreement will not automatically renew on expiry of the Subscription or Renewal Period (**Renewal Date**).

4 SOLUTION

4.1 SCOPE OF YOUR SUBSCRIPTION AND THE SOLUTION

- (a) We will provide you, to the extent described in your Tier, the Platform and the Documentation (**Solution**).
- (b) Your Subscription includes the benefits and limitations of your Tier as set out on our Website, or as otherwise communicated to you when you subscribe for your Subscription (and as amended from time to time by notice to you).
- (c) Your Subscription is for access to the Solution as hosted software only. It does not include consultancy, validation, custom integration or custom implementation services, which we provide (if at all) only under a separate written agreement. We do not supply the Solution for installation or hosting on your own or any third party's infrastructure. This clause does not apply to the Connector, which we license to you under clause 4.7.

4.2 ACCOUNTS

- (a) (**Accounts**) To use the Solution, you may be required to sign up, register and receive an account through the Platform or the Website (an **Account**).
- (b) (**Provide Information**) As part of the Account registration process and your continued use of the Website, you may be required to provide information such as your email address, first and last name, username, password, billing address, telephone number, profile information, payment details and authentication information.
- (c) (**Warranty**) You warrant that any information you give to us in the course of completing the Account registration process is accurate, honest, correct and up-to-date.
- (d) (**Acceptance**) Once you complete the Account registration process, we may, in our absolute discretion, choose to accept you as a registered user within the Website and provide you with an Account.

4.3 DISCLAIMER

You acknowledge and agree that:

- (a) any Output is draft work product, may not be suitable for your circumstances and does not constitute professional, legal, regulatory or compliance advice;
- (b) the Platform uses artificial intelligence technologies (**AI**) to generate Outputs, which may not be unique and in which copyright or other intellectual property rights may not subsist;
- (c) AI is not infallible, and we do not warrant that any threat model, vulnerability or weakness assessment or risk assessment is complete or exhaustive, or that any security architecture is secure;
- (d) each Output must be reviewed by a suitably qualified professional before you rely on it or deliver it to any third party, and any AI-identification or validation feature does not transfer that responsibility to us;
- (e) the Platform requires a User to confirm that they have reviewed an Output before it can be exported, that confirmation is given by you and not by us, and this clause applies whether or not you or your client are subject to regulatory requirements;

- (f) you are responsible for decisions made using the Solution and for compliance with Laws applicable to your business, including data protection laws; and
- (g) subject to clause 13, we are not liable for any loss arising from reliance on, or delivery to a third party of, an Output that has not been reviewed by a suitably qualified professional.

4.4 ACCESS

While your Subscription is maintained, we grant to you a non-exclusive, non-transferable licence to use the Platform and Documentation for the number of Users permitted by your Tier. If your Tier does not specify a number of Users, your licence to use the Solution under this clause will be limited to one User.

4.5 ENHANCEMENTS

- (a) We may from time to time, in our absolute discretion, release enhancements to the Platform, meaning an upgraded, improved, modified or new version of the Platform (**Enhancements**). Any Enhancements to the Platform will not limit or otherwise affect these Terms. Enhancements may cause downtime or delays from time to time, and credits will not be provided for such downtime. Any alpha, beta, preview or evaluation feature is provided as-is and is excluded from the warranties in these Terms to the extent permitted by Law.
- (b) We may change any features of the Solution at any time on notice to you.

4.6 SUPPORT SERVICES

We will provide basic general support where reasonably necessary to resolve technical issues with the Platform (**Support Services**). No service level agreement applies to a self-serve Tier. An Enterprise service level agreement applies only if expressly agreed in an order form. Unless otherwise agreed in writing:

- (a) we will take reasonable steps to provide Support Services where necessary (you must first endeavour to resolve any issues with the Platform internally and we will not assist with issues that are beyond our reasonable control);
- (b) we will use reasonable endeavours to respond to requests for Support Services and you acknowledge that we may not be available 24/7 or respond within a particular time frame;
- (c) you are responsible for all internal administration and managing access, including storing back-up passwords and assisting your Users to access and use the Platform; and
- (d) you will not have any claim for delay to your access to the Platform due to any failure or delay in Support Services.

4.7 CONNECTOR

- (a) We may make available for download client software that connects to and interacts with the Platform, including the Tessera MCP connector (the **Connector**). The Connector is licensed, not sold, and it and all Intellectual Property Rights in it remain our property or that of our licensors.
- (b) While your Subscription is maintained, we grant you a limited, non-exclusive, non-transferable, non-sublicensable and revocable licence to install and use the Connector, on devices under your control and for the number of Users permitted by your Tier, solely to access and use your own workspace on the Platform in accordance with these Terms and the Documentation.
- (c) Except as these Terms expressly permit or applicable law requires (including any right that cannot lawfully be excluded under sections 50A to 50C of the Copyright, Designs and Patents Act 1988), you must not, and must not permit any other person to: copy, publish, distribute, sell, rent, sub-licence or otherwise make the Connector available to any third party; modify, adapt or create derivative works of it; or decompile, disassemble or reverse engineer it, or attempt to derive its source code.
- (d) We may update, modify, replace or withdraw the Connector, or require you to install a later version, on notice to you. The Connector may include or depend on third-party or open-source components, which are licensed to you under their own terms as identified in the Documentation or the accompanying notices.

- (e) The Connector is provided on an 'as is' and 'as available' basis and is otherwise subject to the warranties, disclaimers and limitations of liability in these Terms. Your licence to use the Connector ends automatically on expiry or termination of your Subscription, after which you must stop using it and remove all copies within your control.

5 DATA HOSTING

We will store Customer Content (other than uploaded source files, which are deleted once processed in accordance with the DPA) using a third party hosting service selected by us (**Hosting Services**), subject to the following terms:

- (a) (hosting location) We host Customer Content at rest in the United Kingdom. Customer Content may be processed outside the United Kingdom by our sub-processors only in accordance with the DPA.
- (b) (service quality) While we will use reasonable efforts to select an appropriate hosting provider, we do not guarantee that the Hosting Services will be free from errors or defects or that Customer Content will be accessible or available at all times.
- ~~[(c)]~~ (security) We will implement the security measures described in the DPA ~~and the DPA~~. Subject to that and to clause 13, we do not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to Customer Content, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference, except to the extent caused by our failure to comply with those measures.
- ~~(c)~~[(d)] (backups and disaster recovery) In the event that Customer Content is lost due to a system failure (for example, a database or webserver crash), we cannot guarantee that any backup will be available, or, if available, that such a backup will be free from errors or defects.

6[5] CLIENT OBLIGATIONS

6.1[5.1] OBLIGATIONS

You agree to:

- (a) provide us with all documentation, information and assistance reasonably required by us to provide you with the Solution, the Hosting Services, or the Support Services; and
- (b) provide us with information reasonably required to configure any Integration you choose to enable.

6.2[5.2] CUSTOMER CONTENT

By providing Customer Content, you represent and warrant that, and must ensure that all Users make equivalent representations and warranties:

- (a) you are authorised to provide the Customer Content;
- (b) the Customer Content is accurate and true at the time it is provided;
- (c) the Customer Content is free from any harmful, discriminatory, defamatory or maliciously false implications and does not contain any offensive or explicit material;
- (d) the Customer Content does not infringe any Intellectual Property Rights, including copyright, trade marks, business names, patents, Confidential Information or any other similar proprietary rights, whether registered or unregistered, anywhere in the world;
- (e) the Customer Content does not contain any viruses or other harmful code, or otherwise compromise the security or integrity of the Solution or any network or system; and
- (f) the Customer Content does not breach or infringe any applicable Laws.

6.3[5.3] YOUR OBLIGATIONS

- (a) You must, and must ensure that all Users, comply with these Terms.
- (b) You indemnify us against losses, liabilities, damages, costs and expenses reasonably incurred as a result of any third-party claim arising from Customer Content, your or any User's breach of these Terms or your delivery of an Output to your client. We must notify

you promptly of a claim, allow you reasonable control of its defence and settlement, and provide reasonable assistance at your cost. You must not settle a claim in a way that admits liability by us or imposes an obligation on us without our prior written consent, not to be unreasonably withheld or delayed.

- (c) You must not, and must not encourage or permit any User, Personnel or any third party to, without our prior written approval:
- (i) upload any inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist material using the Platform;
 - (ii) upload any material owned by a third party unless you have the right to upload it and to permit us to use it as described in these Terms;
 - (iii) make copies of the Documentation or the Platform;
 - (iv) adapt, modify or tamper in any way with the Platform;
 - (v) remove or alter any copyright, trade mark or other notice on or forming part of the Platform or Documentation;
 - (vi) act in any way that may harm our reputation or that of associated or interested parties or do anything at all contrary to the interests of us or the Platform;
 - (vii) use the Platform in a way which infringes the Intellectual Property Rights of any third party;
 - (viii) create derivative works from or translate the Platform or Documentation;
 - (ix) publish or otherwise communicate the Platform or Documentation to the public, including by making it available online or sharing it with third parties;
 - (x) integrate the Platform with third party data or software, or make additions or changes to the Platform (including by incorporating APIs into the Platform) other than integrating in accordance with any Documentation or instructions provided by us in writing;
 - (xi) intimidate, harass, impersonate, stalk, threaten, bully or endanger any other User or distribute unsolicited commercial content, junk mail, spam, bulk content or harassment in connection with the Platform;
 - (xii) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Platform or Documentation to any third party, other than granting a User access as permitted under these Terms;
 - (xiii) decompile or reverse engineer the Platform or any part of it, or otherwise attempt to derive its source code;
 - (xiv) share your Account or Account information, including log in details or passwords, with any other person and that any use of your Account by any person who is not the account holder is strictly prohibited. You must immediately notify us of any unauthorised use of your Account, password or email, or any other breach or potential breach of the Solution's security;
 - (xv) use the Solution for any purpose other than for the purpose for which it was designed, including you must not use the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
 - (xvi) unless expressly agreed in writing, upload special category personal data, criminal offence data or information subject to specific legal restrictions that the Solution is not designed to process;
 - (xvii) permit use of the Solution by more Users than your Tier allows;
 - (xviii) make any automated use of the Solution and you must not copy, reproduce, translate, adapt, vary or modify the Solution without our express written consent; or
 - (xix) attempt to circumvent any technological protection mechanism or other security feature of the Platform.

- (d) If you become aware of misuse of your Subscription by any person, any errors in the material on your Subscription or any difficulty in accessing or using your Subscription, please contact us immediately using the contact details or form provided on our Website.
- (e) You agree, and you must ensure that all Users agree:
 - (i) to comply with each of your obligations in these Terms;
 - (ii) to sign up for an Account in order to use the Solution;
 - (iii) that information made available through the Platform, other than an Output, is general in nature and we take no responsibility for anything caused by actions you take in reliance on it; and
 - (iv) that we may cancel your, or any User's, Account at any time if we consider, in our absolute discretion, that you or they are in breach of, or are likely to breach, this clause 6.

7[6] FEES AND PAYMENT

7.1[6.1] SUBSCRIPTION FEES

- (a) You must pay the subscription fees for your Tier (**Subscription Fees**) and the price of any credits you buy (**Credit Charges**) at the rates shown in the Platform at the time of purchase, or as otherwise agreed in writing. Our current prices are published at <https://tesseractsecurity.ai/pricing.html>, and the rates that apply to you are confirmed when you are onboarded.
- (b) All Fees must be paid in advance and are non-refundable except as expressly stated in these Terms.
- (c) Where your Tier is a recurring subscription and unless otherwise agreed in writing, the Subscription Fees are due and payable on a recurring basis for the duration of your Subscription, with the first payment being due on the first day of the Subscription Period and at the beginning of every Renewal Period.
- (d) Each Generation uses the number of credits shown in the Platform before it starts. A Generation will not start unless you have enough credits.
- (e) Credits included in your Tier (**Allowance Credits**) that you do not use in the month in which they are issued carry over for one further month and then expire. Allowance Credits are used before Purchased Credits.
- (f) Credits you buy separately (**Purchased Credits**) do not expire while your Account remains open.
- (g) Credits have no cash value, cannot be transferred and, except as expressly stated in these Terms, are non-refundable.

7.2[6.2] AUTOMATIC RECURRING BILLING

Where your Tier is a recurring subscription, and subject to clauses 3(c) and 7.3:

- (a) your Subscription will continue to renew on an automatic indefinite basis unless you give a cancellation notice under clause 3(c);
- (b) while your Subscription is maintained, your Subscription Fees will continue to be debited at the beginning of each Renewal Period from the payment method you nominated when you registered for an Account; and
- (c) by signing up for a recurring Subscription, you acknowledge and agree that your Subscription has an initial and recurring payment feature, and you accept responsibility for all recurring charges prior to your cancellation of your Subscription.

7.3[6.3] CHANGES TO SUBSCRIPTION FEES

- (a) We may, from time to time, change our Subscription Fees by giving you at least 30 days' notice. During this time, you may cancel your Subscription.

- (b) If you do not notify us that you wish to cancel your Subscription before the next Renewal Date, you will be deemed to have agreed to pay the new Subscription Fees from that Renewal Date.
- (c) The changed Subscription Fees will take effect on your next Renewal Date following expiry of the notice period.

7.4[6.4] LATE PAYMENTS

If you fail to pay any Fees when due, we may suspend all or part of the Solution after giving you seven days' notice and an opportunity to pay the overdue amount.

7.5[6.5] VAT

Unless otherwise indicated, the Fees do not include VAT. In relation to any VAT payable for a taxable supply by us, you must pay the VAT subject to us providing a valid VAT invoice.

7.6[6.6] CARD SURCHARGES

We may charge a surcharge for payment by commercial card, not exceeding our cost of accepting that card, except where prohibited by law.

7.7[6.7] ONLINE PAYMENT PARTNER

- (a) We may use a third-party online payment partner (**Online Payment Partner**) to collect Subscription Fees and Credit Charges.
- (b) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms, you acknowledge and agree that:
 - (i) the processing of payments by the Online Payment Partner will be, in addition to this agreement, subject to the terms, conditions and privacy policies of the Online Payment Partner;
 - (ii) you release us and our Personnel in respect of all liability for loss, damage or injury which may be suffered by any person arising from any act or omission of the Online Payment Partner, including any issue with security or performance of the Online Payment Partner's platform or any error or mistake in processing your payment; and
 - (iii) we reserve the right to correct, or to instruct our Online Payment Partner to correct, any errors or mistakes in collecting your payment.
- (c) You have the right to reject any terms and conditions of the Online Payment Partner. If you reject those terms, we cannot provide you with the Subscription, and either party may terminate your Subscription by written notice, in which case we will refund any Subscription Fees paid in advance for the period after termination.

8[7] INTELLECTUAL PROPERTY AND DATA

8.1[7.1] INTELLECTUAL PROPERTY

- (a) (**Our ownership**) We retain ownership of the Platform, software, Documentation, templates, prompt structures, methodologies, artefact frameworks and all other Materials provided to you in connection with the Platform (including text, graphics, logos, design, icons, images, sound and video recordings, pricing and downloads) (**Platform Content**), and reserve all rights in any Intellectual Property Rights owned or licensed by us in the Platform Content not expressly granted to you.
- (b) (**Licence to you**) You are granted a licence to the Platform Content for the Users permitted by your Tier, and you may make a temporary electronic copy of all or part of any materials provided to you for the sole purpose of viewing them and using them for the purposes of the Platform. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish those materials or any Platform Content without prior written consent from us or as otherwise permitted by law.

8.2[7.2] CUSTOMER CONTENT

Our Rights and Obligations

- (a) You retain ownership of Customer Content and grant to us and our Personnel a non-exclusive, royalty-free, worldwide licence to use Customer Content and Outputs only to the extent reasonably required to provide, secure, support and administer the Solution and comply with Law. We will not use Customer Content or Outputs to train any artificial intelligence model or create any content-derived dataset. We may collect and use service telemetry and usage data that excludes Customer Content and Outputs to operate, secure and improve the Solution.
- (b) We reserve the right to remove or disable access to Customer Content where we reasonably consider it unlawful, in breach of these Terms, or a risk to the security or integrity of the Solution.

Your Obligations

- (c) You are responsible for ensuring that:
 - (i) you share Customer Content only with intended recipients; and
 - (ii) all Customer Content is appropriate and not in contravention of these Terms.
- (d) You:
 - (i) warrant that our use of Customer Content will not infringe any third-party Intellectual Property Rights; and
 - (ii) indemnify us from and against losses, claims, expenses, damages and liabilities arising out of such infringement, subject to the conduct-of-claims procedure in clause 6.3(b).

8.3[7.3] OUTPUTS

- (a) Subject to payment of all applicable Fees, you own each Output. We assign to you with full title guarantee all Intellectual Property Rights, if any, that we own in an Output. To the extent any such right cannot be assigned or does not subsist, we grant you a perpetual, irrevocable, worldwide, royalty-free licence to use, reproduce, adapt and exploit the Output.
- (b) You may provide an Output to your own client under your branding. No ownership of, or licence to use separately from an Output, any underlying Platform Content, template, prompt structure, methodology or artefact framework transfers to you.
- (c) We may generate outputs for other customers that are the same as or similar to an Output. Outputs may not be unique, and we do not warrant that Intellectual Property Rights subsist in an Output or that an Output is owned by us, original or non-infringing.

8.4[7.4] FEEDBACK

You grant us a perpetual, irrevocable, worldwide, royalty-free licence to use and incorporate into the Solution any feedback or suggestions you provide, provided that we do not identify you as their source.

9[8] THIRD PARTY SOFTWARE & TERMS

9.1[8.1] THIRD PARTY TERMS

- (a) If we are required to acquire goods or services supplied by a third party, you may be subject to the terms and conditions of that third party ('**Third Party Terms**').
- (b) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms, you agree to any Third Party Terms applicable to any goods or services supplied by a third party that we acquire as part of providing the Solution to you and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.

9.2[8.2] INTEGRATIONS

- (a) The Platform may let you connect third-party services that you use (**Integrations**) using API keys, webhooks or other credentials that you hold.
- (b) You decide whether to enable an Integration, and you are responsible for your account with that provider, for keeping your credentials secure and for that provider's terms and processing of data. When you enable an Integration, you instruct us to send the relevant Customer Content and Outputs to that service, and that provider is your supplier, not our sub-processor.
- (c) We are not responsible for any Integration, and we may change or withdraw an Integration on notice to you.

10[9] CONFIDENTIALITY

- (a) Except as contemplated by these Terms, a party must not, and must not permit any of its Personnel, use or disclose to any person any Confidential Information disclosed to it by the other party without the disclosing party's prior written consent. This obligation continues for 3 years after termination or expiry, except that obligations relating to trade secrets continue for so long as the information remains a trade secret.
- (b) Each party must promptly notify the other party if it learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information.
- (c) The notifying party will investigate each potential, actual or suspected breach of confidentiality and assist the other party in connection with any related investigation.

11[10] PRIVACY AND DATA PROTECTION

11.1[10.1] DATA PROTECTION

- (a) Words and phrases in this section have the meanings given to them by applicable data protection and privacy laws, including the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any other applicable national legislation that applies to data protection and privacy, as amended, extended, re-enacted or consolidated from time to time (**Data Protection Legislation**). The terms "**controller**", "**processor**", "**process**", "**personal data**" and "**personal data breach**" have the meanings given to those terms in Data Protection Legislation.
- (b) We act as controller when processing business contact, account, billing and relationship-management personal data for our own purposes, including to:
 - (i) administer Accounts and our relationship with you;
 - (ii) send you and your representatives marketing about our own similar products and services in accordance with Data Protection Legislation, with a simple way to opt out in every message;
 - (iii) process and transfer personal data as necessary to effect a re-organisation of our business; and
 - (iv) share personal data with other legal or professional advisers used by us to provide services.

[(c)] Our processing as controller is described in our privacy notice available at [\[PRIVACY NOTICE URLhttps://tesseractsecurity.ai/privacy.html\]](https://tesseractsecurity.ai/privacy.html).

(c)[(d)] Each party shall comply with Data Protection Legislation.

11.2[10.2] THIRD PARTY DATA

[(a)] Where we process personal data in Customer Content on your behalf, you are the controller and we are the processor. That processing is governed by the Data Processing Agreement available at [\[DPA URLhttps://tesseractsecurity.ai/dpa.html\]](https://tesseractsecurity.ai/dpa.html) (**DPA**), which is incorporated into these Terms and subject to clause 13. If there is any inconsistency between this clause and the DPA, the DPA prevails.

- (a)[(b)] Your instructions to us as processor include our use of independent contractors and third party suppliers appointed by us for functions such as data and file storage, back-up, destruction and similar functions, in accordance with the sub-processor terms of the DPA.
- (b)[(c)] You agree that, where necessary, you will have satisfied a relevant lawful basis under Data Protection Legislation in connection with the processing before providing us with personal data.
- (c)[(d)] You warrant, in relation to the personal data and all other data that you provide to us in connection with these Terms (**Third Party Data**), that:
- (i) you have all necessary rights in relation to Third Party Data, such that the Solution can be provided in respect of that data;
 - (ii) you are not breaching any Law by providing us with Third Party Data;
 - (iii) we will not breach any Law by providing the Solution in relation to any Third Party Data;
 - (iv) there are no restrictions placed on the use of the Third Party Data (including by any Third Party Terms) and, if there are any such restrictions, you have notified us of this and we have agreed to provide the Solution in respect of that data; and
 - (v) we will not breach any Third Party Terms by providing the Solution in relation to any Third Party Data.
- (d)[(e)] You indemnify us and our officers, employees and agents against losses, liabilities, damages, costs and expenses (including reasonable legal costs) reasonably incurred as a result of any third-party claim arising from your breach of a warranty in this clause. Clause 6.3(b) applies to the conduct of any such claim.
- (e)[(f)] If you process personal data on behalf of your own client, you confirm that your instructions to us accord with that controller's instructions and that you are authorised to appoint us as sub-processor. References in this clause to you as controller include you acting as processor where applicable.

12[11] WARRANTIES

12.1[11.1] WARRANTIES AND LIMITATIONS

- (a) (**Service Limitations**) Except for the express warranties in this clause, the Solution is made available to you on an 'as is' and 'as available' basis. Without limitation, you acknowledge and agree that we cannot guarantee that:
- (i) the Solution will be free from errors or defects;
 - (ii) the Solution will be accessible at all times;
 - (iii) messages sent through the Solution will be delivered promptly, or be delivered at all;
 - (iv) information received or supplied through the Solution will be secure or confidential, except as set out in clauses 10 and 11; or
 - (v) any information provided through the Solution will be accurate or true.
- (b) (**Express warranties**) We warrant that we will provide the Solution with reasonable skill and care, that the Solution will materially conform with the Documentation, and that we have the right to supply it. If the Solution materially fails to conform with the Documentation, your exclusive remedy is for us to use reasonable efforts to re-perform or correct the affected part and, if we do not do so within a reasonable period, for you to terminate the affected Subscription and receive a pro-rata refund of Subscription Fees paid in advance for the period after termination.
- (c) (**Exclusion**) To the maximum extent permitted by applicable law, all representations, warranties, conditions and other terms, whether express or implied by statute, common law or otherwise, that are not expressly stated in these Terms are excluded, and we give no warranty that any Output is accurate, complete or fit for any purpose.

- (d) **(Non-excludable liability)** Nothing in these Terms excludes or limits liability for fraud or fraudulent misrepresentation, death or personal injury caused by negligence, or any other liability which cannot lawfully be excluded or limited.

13[12] LIABILITY

13.1[12.1] LIMITATION OF LIABILITY

To the maximum extent permitted by law, and subject to clause 13.3, the aggregate liability of each party arising out of or in connection with this agreement is limited to the greater of the Fees paid or payable by you to us in the 12 months preceding the event giving rise to the liability and £250.

13.2[12.2] CONSEQUENTIAL LOSS

To the maximum extent permitted by law, and subject to clause 13.3, neither party will be liable for any indirect or consequential loss, or any loss of profits, revenue, goodwill, anticipated savings, data, business or business opportunity, arising out of or in connection with this agreement, except:

- (a) in relation to a party's liability for fraud or fraudulent misrepresentation, or death or personal injury caused by negligence; or
- (b) to the extent this liability cannot be limited or excluded under applicable law.

13.3[12.3] EXCLUSION

Clauses 13.1 and 13.2 do not apply to your liability in respect of Fees due, an indemnity under these Terms, or loss or damage sustained by us arising from your breach of clauses 2 (Eligibility), 4 (Solution), 6 (Client Obligations), 8 (Intellectual Property) or 10 (Confidentiality).

13.4[12.4] UNFAIR CONTRACT TERMS

To the extent that any applicable law imposes restrictions on the extent to which liability can be excluded or limited under these Terms, including sections 3, 6 and 11 of the Unfair Contract Terms Act 1977 and any requirement of reasonableness, the exclusions and limitations set out in this clause shall be limited in accordance with those restrictions. Any exclusions or limitations of liability that are not affected by those restrictions shall remain in full force and effect.

14[13] UPGRADES AND DOWNGRADES

- (a) You may notify us that you would like to upgrade or downgrade your Tier or number of Users at any time. If you do, we will:
 - (i) take reasonable steps to promptly provide you with access to the new Tier or additional Users; and
 - (ii) in the case of an upgrade, and subject to clause 14(b), on providing such access, invoice you immediately for the difference between your existing Subscription Fees and the Subscription Fees for the new Tier or additional Users, pro-rated for the remainder of the then-current Subscription Period or Renewal Period. The upgraded Tier or additional Users will be coterminous with your existing Subscription and will expire on the same Renewal Date, and from the next Renewal Period the full Subscription Fees for the new Tier or additional Users will apply in every subsequent Renewal Period.
- (b) If you choose to downgrade your Subscription or number of Users, access to the new Tier or number of Users and the new Subscription Fees will be effective at the start of the next Renewal Period, unless we notify you otherwise. We generally do not pro-rate downgrades between Renewal Periods, but we reserve the right to do so from time to time.
- (c) If you choose to downgrade your Subscription, you acknowledge and agree we are not liable, and you release us from all claims in relation to, any loss of content, features or capacity, including any Customer Content.

15[14] CANCELLATION

15.1[14.1] CANCELLATION AT ANY TIME

We may terminate your Subscription for convenience by giving you at least 60 days' notice. We will refund any Subscription Fees paid in advance for the period after termination.

15.2[14.2] CANCELLATION FOR BREACH

- (a) Either party may terminate your Subscription by written notice if the other party commits a material Breach of these Terms that is not remedied in accordance with this clause.
- (b) A "Breach" of these Terms means:
 - (i) a party (**Notifying Party**) considers the other party (or any of its Personnel or Users) is in breach of these Terms and notifies the other party;
 - (ii) the other party is given 30 days to rectify the breach; and
 - (iii) the breach has not been rectified within 30 days or another period agreed between the parties in writing.

15.3[14.3] EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) your access to the Platform will end, but for 30 days after termination we will make available a reasonable means for you to export Outputs and any Customer Content we retain (uploaded source files are deleted once processed, as described in the DPA), after which we may delete them in accordance with the DPA;
- (b) accrued and unpaid Fees remain payable and, except where these Terms expressly provide otherwise, Subscription Fees already paid are non-refundable; and
- (c) each party must comply with all obligations that are by their nature intended to survive the end of this agreement.

15.4[14.4] DATA BACKUP

- [(a)]** Subject to the DPA, we may delete Customer Content and Outputs ~~30 days after~~once the 30-day export period after termination or expiry of your Subscription has ended.
- [(a)][(b)]** We may be unable to recover Customer Content or Outputs after the 30-day export window, so you should export anything important to you before that window ends.
- [(b)][(c)]** We will not be responsible to you, or any User, for, and we expressly disclaim any liability for, any cost, loss, damages or expenses arising out of the cancellation, termination or expiry of these Terms and any loss of data, except for our failure to make Customer Content and Outputs available for export under clause 15.3(a).

16[15] IF THE PARTIES HAVE A DISPUTE

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent injunctive or interlocutory relief or debt recovery, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 30 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

17[16] FORCE MAJEURE

- (a) We will not be liable for any delay or failure to perform our obligations under this agreement if such delay or failure arises out of a Force Majeure Event.

- (b) If a Force Majeure Event occurs, we must use reasonable endeavours to notify you of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which we will be unable to perform or be delayed in performing our obligations under this agreement.
- (c) Subject to compliance with clause 17(b), our relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of our control; or
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic.

18[17] NOTICES

- (a) A notice or other communication to a party under these Terms must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in the order form or other ordering document agreed by the parties (**Order**), or if no email address is specified in the Order, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the place whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring Business Day in that place; or
 - (ii) when replied to by the other party,whichever is earlier.

19[18] GENERAL

19.1[18.1] GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or their subject matter or formation.

19.2[18.2] THIRD PARTY RIGHTS

These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms.

19.3[18.3] WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

19.4[18.4] SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

19.5[18.5] JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

19.6[18.6] ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party. Despite this, we may assign, novate or otherwise transfer any or all of our rights and obligations under this agreement without your consent to a company that controls, is controlled by or is under common control with us, or to a person who acquires all or substantially all of our business or assets relating to the Solution. We will give you written notice of the transfer. You agree to sign any document we reasonably require to give effect to it.

19.7[18.7] ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

19.8[18.8] INTERPRETATION

In these Terms, unless the context otherwise requires:

- (a) **(singular and plural)** words in the singular include the plural (and vice versa);
- (b) **(currency)** a reference to £ or "GBP" is to pound sterling, unless otherwise agreed in writing;
- (c) **(gender)** words indicating a gender include the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, a consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word "includes" and similar words in any form are not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

DEFINITIONS

Term	Definition
Business Day	means a day, other than a Saturday, Sunday or public holiday in the jurisdiction whose laws govern these Terms, on which banks are open for general business.
Confidential Information	means information of or provided by a party that is by its nature confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.
Connector	has the meaning set out in clause 4.7.
Customer Content	means any files, data, system descriptions, architecture documents, diagrams, information or other Materials uploaded to the Platform by you or any User, or otherwise provided by you, your Personnel or Users under or in connection with these Terms, including any Intellectual Property Rights attaching to those materials.
Data Protection Legislation	has the meaning given in clause 11.1(a).
Documentation	means all manuals, help files and other documents supplied by us to you relating to the Platform.
DPA	has the meaning given in clause 11.2(a).
Fees	means the Subscription Fees and Credit Charges payable under clause 7.
Generation	means the Platform's processing of Customer Content to create an Output.
Hosting Services	has the meaning given in clause 5.
Intellectual Property Rights	means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, database rights, moral rights, trade, business, company and domain names, trade secrets, know-how, confidential information and the right to have information kept confidential, or any rights to registration or renewal of such rights, whether created before or after the date of this agreement.
Laws	means all applicable laws, regulations and binding codes.
Material	means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.
Output	means material generated by the Platform from Customer Content.
Personnel	means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.
Platform	has the meaning given in the first paragraph of these Terms.
Platform Content	has the meaning set out in clause 8.1(a).
Solution	has the meaning set out in clause 4.1.
Subscription	has the meaning given in the second paragraph of these Terms.
Subscription Fees	has the meaning set out in clause 7.1(a).
Subscription Period	means the period of your Subscription to the Solution as agreed on the Website.
Support Services	has the meaning given in clause 4.6.

Term	Definition
Tier	means the plan applicable to your Subscription.
User	means you and any individual you permit to access and use the Solution under your Subscription, up to the number permitted by your Tier.
Website	means the website at the URL set out in the first paragraph of these Terms, and any other website operated by us in connection with the Solution.