

Lative Terms of Service

These Terms of Service are agreed and entered into by Lative Limited, registered under No. 694940 in Ireland at Rockfalls House, Kindlestown Upper, Delgany, Co. Wicklow A63 RP04, Ireland (“**Lative**”) and the customer and its Affiliates (the “**Customer**”), each a “**Party**” and together, the “**Parties**”. These Terms of Service shall take effect from the date of signing of a Service Order as long as there is a Service Order in effect or until terminated in accordance with the terms of this Agreement.

1. Definitions

- 1.1 “**Agreement**” means this agreement between the Customer and Lative consisting of these Terms of Service, the Data Processing Agreement entered into by the parties (the “**DPA**”), the Schedules and Service Order(s) entered into in accordance with the terms of this Agreement;
- 1.2 “**Affiliates**” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity, and in this definition “**control**” means that a person, alone or together with another person, has an interest in 50% or more of the equity share capital of a company, or is entitled to exercise or control the exercise of 50% or more of the voting power of a company at any general meeting of that company;
- 1.3 “**Authorised User**” means any individual who is authorised by the Customer to use the Lative Services;
- 1.4 “**Effective Date**” means the date on which the Lative Services shall commence as detailed in the Service Order;
- 1.5 “**Customer Content**” means any data provided to Lative by or at the direction of Customer or its Authorised Users, including via the Lative Platform or via a third-party platform for the purpose of using the Lative Services;
- 1.6 “**Data Protection Law**” shall have the meaning ascribed to it in the DPA;
- 1.7 “**Documentation**” means any technical documentation relating to the Lative Services which Lative may provide the Customer from time to time;
- 1.8 “Initial Subscription Term” shall have the meaning set out in clause 12.1
- 1.9 “**Insolvency Event**” means if a Party summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts, has a receiver, manager, administrative receiver or examiner appointed over any of its assets, undertakings or incomes, has passed a resolution for its winding-up (except for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (except for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed or has any other analogous insolvency proceedings initiated against it;
- 1.10 “**Intellectual Property Right**” means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, trade dress, trade secrets, patentable

rights, copyright, design rights, utility models, trademarks (whether or not any of the above are registered), trade or business names, goodwill, rights in domain names, rights in inventions, rights in data, moral rights, database rights, rights in know-how and confidential information, and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites source code and all intellectual property rights concerning a technology application, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);

- 1.11 “**Lative Platform**” means the platform by which Customer Content is made available to Lative and Lative provides the Lative Services;
- 1.12 “**Lative Services**” means the growth efficiency metric and sales performance assessment subscription Lative Services, as may be further described in the Documentation, provided by Lative to the Customer under this Agreement;
- 1.13 “**Service Order**” means a mutually executed, Lative-approved order form that references these Terms of Service;
- 1.14 “**SLA**” means the service level agreement as set out in Schedule Two;
- 1.15 “**Subscription Fees**” has the meaning set out in Clause 4;
- 1.16 “**Subscription Term**” has the meaning set out in Clause 12.1;
- 1.17 “**Virus**” means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and
- 1.18 “**Vulnerability**” means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

2. Lative Services

- 2.1 Lative shall, during the Subscription Term, provide the Lative Services to the Customer on and subject to the terms of the Agreement.

2.2	Lative shall make the Lative Services available in accordance with the terms of the SLA at Schedule 2 of this Agreement.	Lative Services and/or the Documentation; or
2.3	Lative will, as part of the Lative Services and at no additional cost to the Customer, provide the Customer with Lative's standard customer support services as detailed in SLA (the "Support Services").	3.1.4 use the Lative Services and/or Documentation to provide Lative Services to third parties; or
2.4	No other terms or Customer standard terms will apply to the Lative Services or will form part of this Agreement unless expressly accepted in writing and signed by parties' authorised signatories.	3.1.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Lative Services and/or Documentation available to any third-party except the Authorised Users, or
2.5	Subject to the Customer's payment of the Subscription Fees in accordance with the terms of this Agreement and the Customer's compliance with the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Lative hereby grants to the Customer a worldwide, royalty-free, non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Lative Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.	3.1.6 attempt to obtain, or assist third parties in obtaining, access to the Lative Services and/or Documentation, other than as provided under this clause 3; or
		3.1.7 knowingly introduce or permit the introduction of, any Virus or Vulnerability into Lative's network and information systems.
2.6	Customer shall cooperate with Lative in all matters relating to the Lative Services and will give Lative timely access to any Customer Content, materials and systems reasonably necessary for Lative to provide the Lative Services, and if Customer fails to do so, Lative's obligation to provide the Lative Services will be excused until access is provided. Where applicable, Customer will ensure the availability of appropriately qualified internal IT or development resources during onboarding of the Services to support the delivery of integrations using the open API.	3.2 Customer shall:
2.7	Affiliates of Customer may procure Services from Lative under the terms and conditions of this Agreement, provided that each such Affiliate enters into a Service Order for such Services, referencing this Agreement. Any Affiliate that enters into such a Service Order with Lative will be deemed to be "Customer" hereunder, provided that such Service Order, together with these Terms of Service, will constitute a separate contract with such Affiliate.	3.2.1 ensure that the Authorised Users use the Lative Services and the Documentation in accordance with the terms and conditions of this Agreement and be responsible for any Authorised User's breach of this Agreement;
3.	Customer Obligations	3.2.2 use the Lative Services in accordance with the Acceptable Use Policy in Schedule 1;
3.1	The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Agreement:	3.2.3 be solely responsible for the accuracy, quality, reliability, integrity and legality of Customer Content;
	3.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Lative Services and/or Documentation (as applicable) in any form or media or by any means; or	3.2.4 be responsible for obtaining and maintaining its equipment, third-party software and services needed to connect to, access or otherwise use the Lative Services, including as set out in the Documentation;
	3.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Lative Services; or	3.2.5 use the current and up-to-date API as made available by Lative, which may be changed from time to time as notified in writing by Lative;
	3.1.3 access all or any part of the Lative Services and Documentation in order to build a product or service which competes with the	3.2.6 be solely responsible for its failure to maintain such equipment and software, or its failure to use the current version of the APIs made available by Lative and Lative will have no liability for such failures (including under the SLA);
		3.2.7 obtain and shall maintain all necessary licences for Customer's systems and third-party software used by Customer in integration with the Lative Services, and consents required by applicable Data Protection Laws for Lative's processing of Customer Content; and
		3.2.8 use commercially reasonable endeavours to prevent any unauthorised access to, or use of, the Lative Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Lative.

3.3 **Suspension.** Customer acknowledges that it is solely responsible for ensuring that its use (and the use of its Authorised Users) of the Services do not infringe this clause 3. Without prejudice to Lative's other rights in law or equity, Lative reserves the right, without liability to Customer, to suspend or disable Customer's or any Authorised Users access to the Services where Customer or an Authorised User is in breach of the provisions of this clause 3 and fails to remedy such breach within ten (10) days of being notified by Lative to do so, provided however that where such breach of same:

3.3.1 violates or may violate any applicable law; or

3.3.2 has or may have a material adverse impact on Lative's ability to provide the Services to its clients; or

3.3.3 impacts on the integrity and security of the Platform,

then no remedy period shall be granted to Customer prior to Lative exercising the suspension or disablement rights herein. Customer shall not thereby be entitled to claim any refund or compensation for such suspension or disablement and shall remain responsible for all fees arising during any period of suspension.

4. Fees

4.1 **Fees.** Customer shall:

4.1.1 pay Lative the Subscription Fees as set out in the Service Order (the "**Subscription Fees**"), and

4.1.2 provide to Lative approved purchase order information and any other relevant valid, up-to-date and complete contact and billing details.

4.2 **Excess usage.** If the Customer exceeds the number of Authorised Users as detailed in the applicable Service Order, Customer shall incur additional usage fees at the rate set out in the applicable Service Order for use of the Lative Services ("**Additional Usage Fees**"). Additional Usage Fees shall be payable by the Customer within 30 days of the end of the month in which an undisputed invoice from Lative detailing the Additional Usage Fees incurred was received by Customer.

4.3 **Payment.** Except as otherwise provided in the applicable Service Order, Fees are:

4.3.1 payable in /the currency set out in the Service Order;

4.3.2 except as otherwise explicitly stated herein, non-cancellable and non-refundable;

4.3.3 subject to Clause 4.2, payable in advance;

4.3.4 payable within the payment terms set forth in the Service Order; and

4.3.5 exclusive of value-added or other sales tax, which shall be added to Lative's invoice(s) at the appropriate rate, if applicable. Customer shall pay all Fees in full without set off or counterclaim.

4.4 **Disputes and Non-Payment.** If Customer reasonably disputes any portion of Lative's invoice, Customer will pay the undisputed portion of the invoice and submit written notice of the claim with sufficient detail to identify the issue. All billing disputes will be submitted to Lative within thirty (30) days of receipt of invoice. The Parties shall then negotiate in good faith to attempt to resolve any such disputes within thirty days (30) of notice. If Lative has not received payment of undisputed Fees within fifteen (15) days after the due date in accordance with the payment terms, and without prejudice to any other rights and remedies of Lative, Lative may, subject to providing a further fifteen (15) days' written notice, without liability to Customer, disable Customer's password, account and suspend access to all or part of the Services and Lative shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

4.5 **Fees.** Lative may increase the Fees at the end of the Initial Subscription Term and any Renewal Period by giving Customer not less than sixty (60) days' notice with such notice to expire at the end of the Initial Subscription Term or any Renewal Period as the case may be. During this notice period the Customer can either:

4.5.1 accept the increase in the Fees by continuing to avail of the Lative Services; or

4.5.2 reject the increase in Fees and issue a notice to Lative of their intention to terminate this Agreement on the expiration of the Initial Subscription Term or Renewal Period, as the case may be.

5. Ownership and Proprietary Rights

5.1 **Lative's Proprietary Rights.** The Customer acknowledges and agrees that Lative and/or its licensors own all Intellectual Property Rights in the Lative Services and the Documentation including any improvements, amendments, modifications or enhancements thereto. Except as expressly stated in this Agreement, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Lative Services and/ or the Documentation.

5.2 **Feedback.** All written or oral comments, ideas, suggestions made by Customer to Lative regarding the Lative Services (including user experience, functionality, and performance of the Lative Services; collectively, "**Feedback**") may be freely utilised by Lative without attribution or compensation of any kind to Customer.

5.3 **Customer Content and Licence.** As between the Parties, the Customer Content will be owned by Customer. Customer retains all right, title, and interest in and to the Customer Content. Customer

hereby grants to Lative a limited, non-exclusive, worldwide license to use, copy, store, transmit, display and modify Customer Content in order to provide, support and maintain the Lative Services and related Support for the Subscription Term. Notwithstanding anything else to the contrary in this Agreement, Customer shall own all intellectual property rights in or to the Outputs. “**Output**” means any and all reports, analyses, measurements, metrics or other output of data or information, including if any of the foregoing relates to Customer Content, that are generated through the use of the Lative Services by Customer.

5.4 **Usage Data.** Lative shall have the right to aggregate, collect and analyse data and other information relating to the provision, use and performance of the Lative Services (only in an aggregated anonymised form, and in a manner which does not permit identification of the Customer or any individual and does not include any Personal Data or Customer’s Confidential Information) (“**Anonymised Data**”) and shall be free (during and after the term hereof) to use such Anonymised Data and other information to develop and improve the Lative Services and other Lative offerings. All right, title, and interest in Anonymised Data and the Lative Services, including any software products or Lative Services derived from or enhanced as a result of the Anonymised Data shall at all times be and remain vested in Lative.

5.5 **Lative Marks.** Other than as displayed within the Lative Service or Outputs, Customer shall only use or display Lative’s tradenames, service marks, trademarks or logos (each, a “**Lative Mark**”) with the prior consent of Lative in writing (which may in its sole discretion be delayed and/or withheld) and where Lative gives its consent the Customer may only use or display the Lative Mark in accordance with the guidelines and/or restrictions as may be provided by Lative.

6. Confidentiality

6.1 Each Party (the “**Receiving Party**”) acknowledges that, in the course of this Agreement, it may obtain Confidential Information from the other Party, (the “**Disclosing Party**”). The Receiving Party shall keep in confidence and protect the Confidential Information of the Disclosing Party from unauthorised disclosure or dissemination and use no less than that degree of care it uses to protect its own like information, and in any event no less than reasonable care. The Receiving Party shall not use such Confidential Information except in furtherance of this Agreement, for no other purpose, except that Receiving Party may disclose Confidential Information to a bona fide potential acquirer of Receiving Party for the purpose of evaluating a potential acquisition, provided such acquirer is bound by confidentiality obligations no less restrictive than those contained herein.

6.2 The Receiving Party shall not disclose any Confidential Information to any person without the Disclosing Party’s prior written consent except that the Receiving Party may disclose the Confidential Information to its officers, employees, independent contractors and agents (“**Representatives**”) on a “need-to-know” basis, provided that such Representatives are bound by a written agreement with materially the same terms and conditions as this clause 6 and the Receiving Party remains

ultimately liable for any breach thereof. In addition, either Party may provide a copy of this Agreement or otherwise disclose its terms in connection with any audit, financing transaction, regulatory or due diligence inquiry provided the recipients are subject to obligations of confidentiality at least as restrictive as those contained herein. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

6.3 The obligations of confidentiality shall continue during the term of this Agreement and thereafter, unless and until such Confidential Information falls within one of the exceptions outlined in Clause 6.4.

6.4 This clause 6 shall not apply with respect to information the Receiving Party can document:

6.4.1 is in the public domain as a result of no act or omission of the Receiving Party or its employees or agents;

6.4.2 is received by the Receiving Party from third parties without restriction and without breach of a duty of nondisclosure by such third-party;

6.4.3 was independently developed by the Receiving Party without reliance on the Confidential Information as evidenced by its written records at the time; or

6.4.4 was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party and at its free disposal.

6.5 If the Receiving Party is confronted with legal action to disclose the Confidential Information received under this Agreement from the Disclosing Party or it is required to be disclosed by operation of law, the Receiving Party shall, unless prohibited by the applicable laws, provide prompt written notice to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order or other relief that it deems appropriate, and the Receiving Party shall reasonably assist the Disclosing Party in such efforts. If disclosure is nonetheless required, the Receiving Party shall limit its disclosure to only the portion of the Confidential Information which must be disclosed as advised by its legal counsel.

6.6 Any breach or threatened breach by the Receiving Party of an obligation under this clause 6 may cause the Disclosing Party immediate and irreparable harm for which damages alone may not be an adequate remedy. Consequently, the Disclosing Party has the right, in addition to other remedies available at law or in equity, to seek injunctive relief against the Receiving Party or to compel specific performance of this clause 6.

6.7 A Receiving Party must notify the Disclosing Party in writing, giving full details known to it immediately, when it becomes aware of any actual, suspected, likely or threatened breach by any person of any obligation in relation to the Confidential Information, or any actual, suspected, likely or threatened theft, loss, damage, or unauthorised access, use or disclosure of or to any Confidential Information.

6.8 Upon written request by Customer and upon termination or expiration of this Agreement, Lative

shall promptly return or destroy (or if embodied electronically, permanently erase) Customer Content and Customer Confidential Information, all as directed by Customer. Lative shall thereafter certify compliance with the foregoing in writing. For the avoidance of doubt, Lative shall not be obliged to return, destroy or delete any computer records or files containing Customer Content and Customer Confidential Information created pursuant to automated electronic archiving or back-up procedures in the ordinary course of business so long as such files are not generally accessible beyond the need for disaster recovery or similar operations.

7. Warranties and Disclaimers

7.1 **General Warranty:** Each Party hereby represents and warrants that it is:

7.1.1 duly organised and validly existing under the laws of its jurisdiction of formation and has the full power and authority to enter into this Agreement and assume the obligations and grant the rights and licenses stated herein; and

7.1.2 not bound by any agreement (including, but not limited to, any confidentiality or non-competition agreement), obligation or restriction that would interfere with its obligations under this Agreement, and that performance hereunder shall not constitute a breach of such agreements, obligations, or restrictions.

7.2 **Performance Warranty.** Lative warrants to Customer that the Lative Services will operate in material conformity with the applicable Documentation and Lative will not materially decrease the functionality or overall security of the Lative Services during the applicable Subscription Term (the "**Performance Warranty**").

7.3 **Performance Warranty Remedy.** If Lative breaches the Performance Warranty, and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, then Lative will use reasonable efforts to correct the breach or non-conformity. If Lative cannot do so within a reasonable time not to exceed 30 days, Customer shall be entitled to terminate the Agreement and Lative will then refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term.

7.4 **Specific Warranties.** Lative further represents and warrants that:

7.4.1 the Lative Services shall be performed in a professional and workmanlike manner, and by qualified workers experienced in performing the type of work contemplated;

7.4.2 the Lative Services shall not infringe, misappropriate, or violate any third-party's Intellectual property;

7.4.3 the Lative Services are free and clear of any and all security interests, liens, claims, charges or other encumbrances;

7.4.4 it shall implement industry best practices to screen for and remove any virus, time bomb, worm, Trojan horse, disabling device, automatic restraint, or similar program or device designed to impede or harm Customer, the Lative Services, and Customer's Confidential Information;

7.4.5 the Lative Services are SOC 2 Type II certified and Lative shall maintain such accreditation and certification throughout for the Lative Services during the Term of this Agreement; and

7.4.6 Lative Services shall not include Copy-Left Open Source Software. "Copy-Left Open Source Software" means any software that requires as a condition of use, modification and/or distribution that such software or other software incorporated into, derived from, or distributed with such software, be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; and/or (iii) redistributable at no charge.

7.5 Customer warrants and represents that the Customer Content:

7.5.1 is owned by Customer or provided with the express consent from the third-party holding any ownership rights (including copyright) over such material, or, alternatively, are in the public domain, and is not owned by any third-party or otherwise covered by copyright laws;

7.5.2 does not breach the rights of any person or entity, including rights of publicity, privacy, or under applicable Data Protection Laws or direct marketing laws and are not defamatory; and

7.5.3 does not result in consumer fraud (including being false or misleading), product liability, tort, breach of contract, breach of Intellectual Property Rights, injury, damage or harm of any kind to any person or entity.

7.6 Other than with respect to the express warranties set forth herein, the Lative Services are provided "as is" and all warranties express or implied, representations, conditions and all other terms of any kind whatsoever implied by statute or common law, including those of non-infringement, merchantability and fitness for a particular purpose, all are, to the fullest extent permitted by applicable law, are hereby disclaimed and excluded by Lative from this Agreement. Customer is solely responsible for determining the suitability of the Lative Services for its use in light of any applicable legislation or regulations.

7.7 Notwithstanding the foregoing, Lative does not warrant that Customer's use of the Lative Services will be uninterrupted or error-free or that the Lative Services will operate in combination with third-party services used by Customer save where otherwise agreed. The Lative Service may be subject to limitations, delays and other problems inherent in

the use of the internet and electronic communications. Lative is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities which are part of Customer's system. In relation to the Services, Lative is not responsible for any inaccuracies or errors arising as a result of incorrect data provided by Customer or data provided by Customer or any third-party which does not conform to required input formats which are notified in writing by Lative to Customer or as advised in the Documentation.

- 7.8 Customer may choose to use the Lative Services with third-party platforms. Use of third-party platforms is subject to Customer's agreement with the relevant provider and not this Agreement. Lative does not control and has no liability for third-party platforms, including their security, functionality, operation, availability or interoperability or how the third-party platforms or their providers use Customer Data. If Customer enables a third-party platform with the Services, Lative may access and exchange Customer Data with the third-party platform on Customer's behalf.

8. Data Protection

- 8.1 The Parties in the performance of this Agreement shall:

- 8.1.1 comply with any applicable Data Protection Laws; and
- 8.1.2 not do, or omit to do, anything that would cause the other Party to violate any applicable Data Protection Laws.

- 8.2 Lative shall, in the performance of its obligations under this Agreement and the provision of the Lative Services, process personal data in accordance with the Data Processing Agreement.

9. Indemnification

- 9.1 **Indemnity by Lative.** Lative will indemnify Customer, its Affiliates, and their respective officers, directors, employees, and agents ("**Indemnified Parties**"), for any actual or threatened claim, demand, suit, or proceeding ("**Infringement Claim**") made or brought against Customer or any of the Indemnified Parties by a third-party alleging that the use of the Lative Services as permitted under this Agreement infringes or misappropriates a patent, trade mark, copyright or trade secret or other intellectual property rights and any resulting losses, liabilities, damages or costs finally awarded against the Customer or such Indemnified Parties (including reasonable legal fees) or agreed in settlement by Lative resulting from the Infringement Claim.

- 9.2 The Indemnified Party shall promptly notify Lative in writing of any such claim, but the failure of any Indemnified Party to provide such notice shall not relieve Lative of its obligations hereunder, except to the extent Lative is materially prejudiced by the Indemnified Party's failure to provide such notification. The Indemnified Party shall not make any admission, or otherwise attempt to compromise or settle the claim without Lative's prior written consent and provide reasonable co-operation to Lative in the defence and settlement of such claim,

at Lative's expense. Lative shall be given sole authority to defend or settle the claim, provided that Lative may not settle any claim without the Customer's prior written consent (which shall not be unreasonably withheld) if settlement would require the Customer to admit fault or take or refrain from taking any action.

- 9.3 If the use of the Lative Services by Customer has become, or in Lative's opinion is likely to become, the subject of any Infringement Claim, Lative may at its option and expense

9.3.1 procure for Customer the right to continue using and receiving the Lative Services as set forth hereunder;

9.3.2 replace or modify the Lative Services so that they become non-infringing (with comparable functionality); or

9.3.3 if the options in Clauses 9.3.1 or 9.3.2 are not reasonably practicable despite reasonable efforts, then Customer or Lative may terminate this Agreement within 15 days' notice in writing and Lative shall provide a pro rata refund of any prepaid fees for Lative Services for the remaining unused period of the Subscription Term.

- 9.4 Lative will have no liability or obligation with respect to any Infringement Claim if such Infringement Claim is caused solely by:

9.4.1 use of the Lative Services by Customer not in accordance with this Agreement and such Infringement Claim would not have arisen if not for such misuse;

9.4.2 modification of the Lative Services by the Customer or any third-party without Lative's express written consent or not in accordance with the Documentation, and such Infringement Claim would not have arisen if not for such modification;

9.4.3 Customer Content; or

9.4.4 the combination, operation or use of the Lative Services with other applications, portions of applications, product(s), provided such Infringement Claim would have been avoided if not for such combination.

- 9.5 This clause 9 states the Customer's sole and exclusive rights and remedies, and Lative's (including Lative's employees', agents' and sub-contractors') entire obligations and liability arising from an Infringement Claim. The foregoing does not in any way limit any other remedy available to Customer under the Agreement for any other breaches of contract remedies and indemnification that are not in relation to Infringement Claim.

- 9.6 **Indemnity by Customer.** Customer shall defend, indemnify and hold harmless Lative from and against any claims, demands, actions, damages, losses, liabilities, costs and expenses (including reasonable legal fees) arising out of or relating to:

9.6.1 any third-party claim alleging that Customer Content infringes or violates a third-party's intellectual property rights; or

9.6.2 Customer or its Authorised Users' infringement or violation of Lative's Intellectual Property Rights.

9.7 Each party (as the "**Indemnified Party**") shall promptly notify the other party (as the "**Indemnifying Party**") in writing of any claim, demand, action or proceeding for which it seeks indemnification under this Agreement (a "**Claim**"); provided that the failure of the Indemnified Party to provide such notice shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent that the Indemnifying Party is materially prejudiced by such failure. The Indemnified Party shall not make any admission of liability, agree to any settlement, or otherwise compromise or dispose of any Claim without the prior written consent of the Indemnifying Party. The Indemnified Party shall provide the Indemnifying Party with reasonable cooperation and assistance in the defence and settlement of the Claim, at the Indemnifying Party's expense. The Indemnifying Party shall have the sole authority to defend or settle the Claim; provided that the Indemnifying Party shall not settle any Claim without the Indemnified Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) if such settlement would (a) require the Indemnified Party to admit fault or liability, (b) impose any non-monetary obligation on the Indemnified Party, or (c) fail to include a full release of the Indemnified Party from the Claim. The Indemnified Party may participate in the defence of any Claim at its own expense with counsel of its choosing; provided that such participation shall not unreasonably interfere with the Indemnifying Party's control of the defence.

10. Limitation of Liability

10.1 Nothing in this Agreement limits or excludes liability of either Party in respect of any claims for death or personal injury caused by negligence, fraud or any other liability which cannot be excluded or limited by law.

10.2 To the maximum extent permitted by applicable law, Lative will not have any liability to Customer for any loss of profits, loss of business, loss of revenue, loss of data, reputational damage, or for any indirect, special, incidental, punitive, or consequential damages however caused and under any theory of liability whether or not Lative has been advised of the possibility of such.

10.3 Subject to clauses 10.1 and 10.2, to the maximum extent permitted by applicable law, Lative's total aggregate liability arising out of or related to this Agreement or the Services under any theory of law (including liability for negligence or breach of statutory duty or an indemnity claim) shall not exceed the total amount of the Fees paid by Customer to Lative in the twelve (12) months preceding the claim under which the liability has arisen.

10.4 Except as expressly and specifically provided in this Agreement, the Customer assumes sole

responsibility for results obtained from the use of the Lative Services and the Documentation by the Customer, and for conclusions drawn from such use. Lative shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Lative by the Customer in connection with the Lative Services to the extent caused as a direct result of Customer's information, instruction or scripts;

11. Trial and Beta Lative Services

Trial and Beta Lative Services. From time to time, Customer may have the option to use alpha or beta Lative Services, products, features or documentation offered by Lative free of charge for testing purposes ("**Beta Lative Services**") or for Customer's product evaluation purposes ("**Trial Purposes**") (Beta Lative Services and Trial Lative Services, together "**Free Lative Services**"). Lative shall clearly mark such Free Lative Services. Any use of the Free Lative Services is at Customer's sole risk. The Free Lative Services are provided "as is" and without warranty of any kind. Notwithstanding anything else in this Agreement, except to the extent expressly stated in a Service Order, Lative provides no warranty, indemnity, SLA or support for free Lative Services and its liability for free Lative Services shall not exceed €100. For clarity, Customer is under no obligation to use any Free Lative Services, and any such use by Customer will remain at Customer's sole discretion. Notwithstanding anything to the contrary in this Clause, Lative shall remain responsible for confidentiality and data protection obligations specified herein with respect to the Free Lative Services.

12. Termination and Effects of Termination

12.1 **Term.** This Agreement shall commence on the Effective Date and shall, unless otherwise terminated as provided in this Agreement, continue for the period as set out in the applicable Service Order (the "**Initial Subscription Term**"). Thereafter, this Agreement shall automatically renew for renewal periods of twelve (12) months each ("**Renewal Period**") unless either party notifies the other party of termination, in writing, at least sixty (60) days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period or otherwise terminated in accordance with the provisions of this Agreement. The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

12.2 **Termination.** Either Party may terminate any Service Order and this Agreement upon written notice to the other Party in the event:

12.2.1 the other Party commits a material breach of this Agreement and either that breach is incapable of remedy or it fails to remedy that breach within 30 days of receiving a notice specifying the breach and requiring it to be remedied; and

12.2.2 the other Party is the subject of or suffers an Insolvency Event.

12.3 Customer may terminate any Service Order and this Agreement for cause in the event that Lative fails to meet its obligations under the SLA in any two consecutive months during the Subscription Term.

12.4 Effects of Termination. On termination of this Agreement, for any reason:

12.4.1 All rights of access and licences granted under this Agreement shall terminate and the Customer shall cease all use of the Lative Services and/or the Documentation immediately, provided however that Lative shall provide Customer access to the Lative Platform, at no additional fees, for a period of thirty (30) days following termination or expiration of the Agreement, for the sole purpose of exporting any stored Customer Content;

12.4.2 Lative shall return to Customer all the Customer Content and Customer Confidential Information and following full return of data to Customer, Lative shall permanently destroy Customer Content and Confidential Information. Following Customer's request, a certification of return and deletion of Customer data and Confidential Information should be returned to Customer;

12.4.3 In the event of termination by Customer pursuant to Clause 12.2, Lative shall issue to Customer a pro-rated refund of any prepaid but unutilised fees in respect of any unused services at the date of termination; and

12.4.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12.5 The following shall survive termination of this Agreement:

12.5.1 any provision and/or right that is stated, or that by its nature is contemplated, to survive termination; and

12.5.2 all clauses relating to intellectual property, indemnities, limitations of liability, confidentiality, privacy, governing law, jurisdiction for disputes.

13. General

13.1 **Waiver.** No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law, or a single or partial exercise of such right or remedy, shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

13.2 **Invalidity.** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or

illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

13.3 **Entire Agreement.** This Agreement and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Additional Service Orders may be agreed between the parties referencing this Agreement, each of which shall form part of the Agreement.

13.4 **Assignment.** Either Party may assign on written notice all of its rights and obligations under this Agreement to: (i) an Affiliate; (ii) a purchaser of all or substantially all assets related to this Agreement; or (iii) a third-party participating in a merger, acquisition, sale of assets or other corporate reorganisation in which a Party is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement will bind and inure to the benefit of the Parties and their respective permitted successors and assigns.

13.5 **Publicity.** Neither Party may publicly announce this Agreement except with the other Party's prior consent or as required by applicable laws. However, Lative may include Customer and its trademarks in Latvia's customer lists and promotional materials but will cease this use at Customer's written request.

13.6 **No agency.** Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the Parties, or authorise either Party to act as agent for the other.

13.7 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties' authorised representatives.

13.8 **Notice.** Any notice to be given by either Party for the purposes of the Agreement shall be sent by mail/email to the contact details set out in the Service Order. A notice delivered: (i) by hand shall be deemed to have been received when delivered or if delivery is not in Business Hours, at 9am on the first Business Day following delivery; (ii) by post if correctly addressed by prepaid registered delivery shall be deemed delivered two days from the date of posting and five days for pre-paid registered airmail; and (iii) by email shall be deemed to have been received at 9.00am on the next Business Day after transmission.

13.9 **Force Majeure.** Neither Party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control ("**Force Majeure Event**"), including, without limitation, earthquake, flood, or other natural disaster, act of God, labour controversy (except such incidents concerning only the relevant Party's personnel), civil disturbance, terrorism, war (whether or not officially declared), cyber-attacks (e.g., denial of service attacks), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or

any change in or the adoption of any law, regulation, judgment or decree. A Party whose performance is affected by a Force Majeure Event shall give notice to the other Party as soon as reasonably practicable, stating the nature of the Force Majeure Event and the period of time the occurrence is expected to continue. The affected Party shall use commercially reasonable efforts to end the failure or delay and minimise the effects of such Force Majeure Event. If such failure or delay continues for a period of thirty (30) business days or more, the non-affected Party may, as a sole remedy, terminate this Agreement and/or any affected Service Order.

13.10 Interpretation. For purposes hereof, "including" means "including, but not limited to". All dates and times set forth in this Agreement, any Service Order or any related document are in relation to Greenwich Mean Time (GMT), unless otherwise specified. In case that a translation of the Agreement, its Schedules or the Service Order is provided, the translation is made only out of courtesy and the English version shall always prevail.

13.11 Survival. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement will survive the expiration or termination of this Agreement.

13.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. The Parties acknowledge that they may use an electronic signature process to sign this Agreement and agree to be bound by any such electronic signature which they have applied to the Agreement. The exchange of a fully executed version of this Agreement (in counterparts or otherwise) by electronic transmission (including .pdf or any electronic signature complying with Regulation (EU) N°910/2014 (eIDAS Regulation), e.g. www.docusign.com) and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes and shall be sufficient to bind the parties to the terms and conditions of this Agreement. No exchange of original signatures is necessary.

13.13 Dispute Resolution. The Parties shall do their best acting in good faith to settle amicably any dispute, controversy or claim arising out of or in connection with the existence, validity, construction, performance and termination of the Agreement (or any terms thereof). Escalation to the senior management (or C-Suite) of the Parties shall be the preferred dispute resolution methodology. If senior management (or C-Suite) cannot resolve the dispute within thirty (30) days of first notification of the dispute the matter shall be referred to the courts of Ireland in accordance with clause 13.14.

13.14 Governing Law and Jurisdiction. This Agreement and any disputes or claims arising out of or in connection with it are governed by and construed in accordance with the laws of the Republic of Ireland. The parties irrevocably agree that the courts of the Republic of Ireland have exclusive jurisdiction to

settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Acceptable Use Policy

This Acceptable Use Policy ("AUP") describes actions that Lative prohibits when Customer uses and accesses the Lative Services. Customer agrees not to knowingly use, and not to encourage or allow any other person or entity to knowingly use, the Lative Services in prohibited manners, including but not limited to the following:

1. Transmitting any material that infringes the intellectual property rights or other rights of third parties, including but not limited to trademarks, copyrights or rights of publicity or otherwise violating, infringing or misappropriating the rights of any third party.
2. Transmitting any material that contains viruses, trojan horses, worms or any other malicious, harmful, or deleterious programs or code.
3. Engaging in activities or transmitting through the Lative Services any information that is libelous or defamatory or otherwise malicious or harmful to any person or entity, or discriminatory based on race, sex, religion, nationality, disability, sexual orientation or age.
4. Adversely impacting the availability, reliability or stability of any Lative Services.
5. Launching or facilitating, whether intentionally or unintentionally, a denial-of-service attack on any Lative Services or on any third party.
6. Attempting to bypass or break any security mechanism on any of the Lative Services or using the Lative Services in any other manner that poses a security or service risk to Lative, to any user of the Lative Services, to any of our respective customers or to their customers.
7. Using the Lative Services in any manner that may subject Lative or any third-party to liability, damages or danger.
8. Using the Lative Services to engage in or in connection with fraudulent activity. Using your account to engage in fraudulent activity with respect to third parties.
9. Promoting or engaging in illegal activities. Harvesting or otherwise collecting information about others without their express consent.
10. Interfering with or disrupting networks connected to the Lative Services or violating the regulations, policies or procedures of such networks.
11. Violating or facilitating the violation of any local, state, federal, or foreign law or regulation, including laws and regulations. Registering with the Lative Services with an email of a throw-away

email address provider or any other publicly accessible email address.

12. Using the Lative Services, or a component of the Lative Services, in a manner not authorised by Lative.
13. Creating a Lative account for the purpose of competitive evaluation or research.
14. Revealing your account password to others or allowing use of your account by others.
15. Failing to make a reasonable effort to protect your passwords and to secure resources against unauthorised use or access. You must configure hardware and software in a way that reasonably prevents unauthorised users from accessing your account.

This list of prohibited uses is provided by way of example and should not be considered exhaustive. All determinations related to violations of this Acceptable Use Policy will be made by Lative in its sole discretion acting reasonably.

Schedule 2

Service Level Agreement

1. Definitions

Terms not defined herein will have the meanings ascribed to them in the Terms of Service and Agreement entered into between the Parties that incorporates this Service Level Agreement by reference. In addition, the following terms, when used in this Service Level Agreement will have the following meanings:

“**SLA Plan**” means the level of availability and support Lative Services that Customer selects in the Service Order (Gold, Silver or Bronze).

2. Service Availability and Performance.

- 2.1 **Service Components.** Lative provides this Service Level Agreement during the Subscription Term as measured by automated performance tests on each of the service components set forth below (“**Service Components**”):

2.1.1 Lative Frontend

2.1.2 Lative API (Backend)

- 2.2 **Service Component Availability.** The “**Service Component Availability**” shall be calculated as the number of downtime hours of the specific service, divided by the corresponding total number of hours in that calendar month; provided that service issues or outages relating to any Exclusions (as defined below) shall not be included in the calculation. Lative will report downtime hours and upon request of Customer will make the number, the times and the affected Service Component available.

- 2.3 **Scheduled Maintenance.** “**Scheduled Maintenance**” means maintenance that is announced on <https://lative.statuspage.io/> (or by email if Customer subscribed to updates) at least three (3) business days in advance, during which any or all of the Service Components are

unavailable to Customer's Account. Scheduled Maintenance shall not exceed four (4) hours in a calendar month. Lative will use commercially reasonable efforts to schedule Scheduled Maintenance for off-peak hours and to avoid any Scheduled Maintenance causing unavailability of the Service Components.

- 2.4 Lative will use commercially reasonable endeavours to keep the operation of the Lative Services uninterrupted and error free. Lative shall ensure availability is at a minimum of 99.9% per month excluding any Scheduled Maintenance and the other items listed at 1.4.1-1.4.9 below (“**Service Availability**”). Service Availability shall mean the percentage of time during each calendar month that the Lative Services are available and accessible to Customer, calculated as follows:

Service Availability = ((Total Minutes in Month - Downtime Minutes) / Total Minutes in Month) × 100

The following shall be excluded from the calculations (“Exclusions”):

- 2.4.1 Scheduled Maintenance;
- 2.4.2 Third-Party infrastructure outages (including Amazon Web Services (AWS) service disruptions beyond Lative's reasonable control);
- 2.4.3 Customer-caused outages or network connectivity issues;
- 2.4.4 Force Majeure events; or
- 2.4.5 Cyber security incidents requiring emergency maintenance.

Lative delivers the Services through Amazon Web Services infrastructure (“**AWS**”). Service Availability calculations shall exclude any downtime directly attributable to:

- 2.4.6 AWS service outages or degradation as reported on the AWS service health dashboard;
- 2.4.7 AWS planned maintenance activities;
- 2.4.8 Internet backbone or DNS provider failures affecting AWS regions; or
- 2.4.9 Third-party integrations or dependencies required for AWS service delivery

- 2.5 Lative will integrate AWS service status information into its status page and will not be deemed in breach of Service Availability commitments during periods when AWS reports service degradation or outages affecting the relevant AWS services or regions used by Lative.

- 2.6 Lative shall use a reliable monitoring system to measure availability, shall provide regular reporting of uptime status to Customer through <https://lative.statuspage.io/> (to which Customer can subscribe), and such system shall be the sole basis for resolution of any dispute regarding Lative compliance with the 99.9% Service Availability. If the Service Availability is less than 99.9% in:

- 2.6.1 any two months during a six-month period;
or
- 2.6.2 any two consecutive months during the Subscription Term,

Customer may as its sole and exclusive remedy terminate the applicable Service Order and this Agreement upon written notice to Lative. In the event of such termination, Lative will issue a pro-rated refund for unused Services up to the date of termination.

3. Support

- 3.1 **Language.** Lative will provide the Support Lative Services to Customer as set out below. Support is provided in English as the sole language.
- 3.2 **Ticket Submission.** Customer's Authorised Users may submit a ticket (a "**Support Ticket**") that shall contain a detailed description of the issue to Lative. Lative will respond to each Support Ticket in accordance with this Service Level Agreement and will use commercially reasonable efforts to promptly resolve each Support Ticket. Actual resolution time will depend on the nature of the Support Ticket and the resolution itself. A resolution may consist of a fix, workaround, new feature request, delivery of information or other commercially reasonable solution of the issue.
- 3.3 Lative may, from time to time, develop additional methods for Customer to submit a Support Ticket and will make information regarding such methods available to the Customer.
- 3.4 Multiple Support Tickets submitted related to substantially the same occurrence or subject matter shall be deemed a single Support Ticket
- 3.5 **Scope of Support.** Support covers:
- 3.5.1 development and production issues for the Lative Service Components;
- 3.5.2 informational and implementation questions about the Lative Service and its features; and
- 3.5.3 troubleshooting operational problems with the Lative Service Components.

Support does not include issues resulting from the Exclusions or code development, debugging or fixing of Customer's or third party's software that interacts with the Lative Service Components. Lative may assist Customer and its third-party providers in diagnosing and resolving issues or errors but Customer acknowledges that these matters are outside of Lative's support obligations

- 3.6 **Lative Support Commitment.** Lative will respond to Support Tickets based on the Response Times below. For Critical and High severity issues, Lative will provide support 24/7/365 (including outside Business Hours).

"Response Time" means the period of time in which Lative responds to Customer after submission of a Support Ticket.

For Critical and High severity issues, Response Time is measured 24/7/365. For all other severity levels, Response Time is measured within Business Hours only.

"Business Day" means a day other than a Saturday, Sunday or public holiday in the Republic of Ireland when banks are open for business. **"Business Hours"** means 9.00 am to 5.00 pm local Irish time, each Business Day.

"Resolution Time" means the period of time in which Lative resolves the Customer's Support Ticket, which may include providing a fix, workaround, or other commercially reasonable solution, measured from the time the Support Ticket was submitted.

For Critical and High severity issues, Resolution Time is measured 24/7/365. For all other severity levels, Resolution Time is measured within Business Hours only.

The Response Time and Resolution Time to a Support Ticket depends on the Severity Level determination and the SLA Plan selected described herein.

SLA Plan

Priority	Response Times	Resolution Times
Critical: Complete service outage affecting all users	2 hours	4 hours
High: Major functionality unavailable or severely degraded	4 hours	8 hours
Medium: Partial service degradation or individual user issues	24 hours	48 hours
Low: Minor issues or general inquiries	48 hours	5 Business Days

- 3.7 **Customer Support Commitment.** Lative's provision of Support is subject to Customer providing reasonable support and assistance to Lative as follows based on the Severity Level of the Support Ticket: Severity Level Customer Support Commitment:

Severity 1 – Critical. Customer's technical team or technical personnel shall remain accessible available via phone or chat from the time Support Ticket is submitted until issue is resolved; and

Severity 2 – High. Customer's technical team or technical personnel shall respond to Lative's requests for additional information and shall implement recommended solution in a timely manner.

- 3.8 Lative is not responsible for any delays, failures, deficiencies or non-conformities with regards to Support if such delays, failures, deficiencies or non-conformities are due to a delay or failure by Customer to reasonably comply with their obligations set forth above. Agreed deadlines (if any) will be automatically extended by the amount of time during which Customer is not in full compliance with these obligations.