



## C-me's TERMS OF SERVICE

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Terms of Service:

**Add-On Services:** any additional services set out in the Quotation, other than the Subscription Services, to be provided to the Customer (for instance, but not limited to, Training Services).

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party at the date of these Terms of Service.

**Accreditation Training:** means accreditation training provided by C-me for the Customer's nominated Authorised User, where such Add-On Service has been included in a Quotation.

**Accredited User:** means an Authorised User who has successfully completed Accreditation Training.

**Authorised Users:** those employees, agents and independent contractors of the Customer or its Affiliates who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2(d).

**Back-up Policy:** means C-me's back-up policy as in force from time to time.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**C-me:** Colour Preferences Limited incorporated and registered in England and Wales with company number 08651406 whose registered office is at 124 Wells Road, Bath, England BA2 3AH.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.1.

**Contract:** the legally binding contract between the Customer and C-me, comprising of the Quotation and these Terms of Service.

**Customer Data:** the data inputted by the Customer, Authorised Users, or C-me on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Documentation:** the document made available to the Customer by C-me online via [www.colour-profiling.com](http://www.colour-profiling.com) or such other web address notified by C-me to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

**Effective Date:** the date that the Quotation is signed by the Customer.

**Fees:** has the meaning ascribed to it in clause 9.

**Force Majeure Event:** means events, circumstances or causes beyond C-me's reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of C-me or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, pandemic or epidemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm.

**Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, [industry schemes] and sanctions, which are applicable to either the Customer or an Authorised User [(but not C-me)] relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**Initial Subscription Fees:** the subscription fees payable by the Customer to C-me for the User Subscriptions for the Initial Subscription Term, as set out in the Quotation.

**Initial Subscription Term:** the initial term of the Contract, commencing from the Services Start Date, for such period as is set out in the Quotation (unless terminated earlier in accordance with the Contract).

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Qualifying Claim:** means a claim in respect of: (a) a breach of clause 6 (Data Protection); or (b) a breach of clause 11 (Confidentiality).

**Quotation:** means the C-me quotation document (setting out, amongst other things, the details of the Services to be provided, the User Subscriptions, the Subscription Fees and any Training Fees (if applicable)), which references these Terms of Service and which is agreed by the parties and signed by the Customer.

**Renewal Period:** the period described in clause 15.2.

**Representatives** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

**Services:** means the Subscription Services and any Add-On Services (if any), to be provided by C-me to the Customer as set out in the Quotation.

**Services Start Date:** the date when Services are first made available to the Customer.

**Software:** the online software applications provided by C-me as part of the Services.

**Solution Partner:** a third party identified as a Solution Partner by C-me is defined as another organisations and representative that act like agents of C-me. Solution Partners integrate various products, services or technologies to deliver a more comprehensive solution that meets their customer's needs and C-me is one of them.

**Subscription Fees:** the subscription fees payable by the Customer to C-me for the User Subscriptions, as set out in the Quotation.

**Subscription Services:** the subscription services provided by C-me to the Customer under a Quotation and these Terms of Service via [www.colour-profiling.com](http://www.colour-profiling.com) or any other website notified to the Customer by C-me from time to time, as more particularly described in the Documentation.

**Subscription Term:** means the Initial Subscription Term together with any Renewal Periods.

**Support Services Policy:** C-me's policy for providing support in relation to the Services as set out in the Quotation.

**Training Fees:** means, where Training Services are included in a Quotation, the fees payable for the Training Services as set out in the Quotation.

**Training Services:** means the provision of training and/or workshops in respect of the Software to be provided by C-me (if any) as detailed in a Quotation.

**User Subscriptions:** the user subscriptions purchased by the Customer pursuant to clause 10.1 (as set out in the Quotation) which entitle Authorised Users to access and use the Services and the Documentation in accordance with the Contract.

**Virus:** any thing 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.

**Vulnerability:** 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 interpreted accordingly.

- 1.2 Clause headings shall not affect the interpretation of these Terms of Service.
- 1.3 A reference to:
- (a) a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns;
  - (b) a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
  - (c) a statute or statutory provision:
    - (i) is a reference to it as it is in force as at the date of the Contract; and
    - (ii) shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision; and
  - (d) writing or written excludes faxes but includes e-mail.

## **2. USER SUBSCRIPTIONS**

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 10.1, the restrictions set out in this clause 2 and the other terms and conditions of these Terms of Service, C-me hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences (except to its Affiliates as strictly necessary), to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
  - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - (c) each Authorised User shall keep a secure password for their use of the Services and Documentation, and shall keep their password confidential;
  - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to C-me within 5 Business Days of C-me's written request at any time or times;

- (e) it shall permit C-me or C-me's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with the Contract. Each such audit may be conducted no more than twice per year, at C-me's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to C-me's other rights, the Customer shall promptly disable such passwords and C-me shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Subscription Fees to C-me, then without prejudice to C-me's other rights, the Customer shall pay to C-me an amount equal to such underpayment as calculated in accordance with the rates set out in the Quotation; and
- (h) it shall be responsible for any Authorised User's breach of the Contract.

2.3 The Customer shall not access, store, distribute or transmit any Viruses in its use of the Services, and it shall not access, store, distribute or transmit any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and C-me reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) 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 these Terms of Service:

- (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 18.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of, any Virus into the Services or C-me's network and information systems.

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify C-me.

2.6 Where the Customer permits one of its Affiliates to use the Services, such Affiliate shall be bound by the Contract and the Customer shall be liable for the acts and omissions of the Affiliates (its employees, officers and subcontractors) as if they were the acts and omissions of the Customer.

### **3. ADDITIONAL USER SUBSCRIPTIONS**

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Quotation and C-me shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these Terms of Service.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify C-me in writing. C-me shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld). Where C-me approves the request, C-me shall

activate the additional User Subscriptions within 5 Business Days of its approval of the Customer's request.

- 3.3 If C-me approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of C-me's invoice, pay to C-me the relevant fees for such additional User Subscriptions.
- 3.4 The Customer understands and accepts that it shall not be permitted to reduce the number of User Subscriptions part-way through the Initial Subscription Term or Renewal Period (as applicable).

#### **4. SUBSCRIPTION SERVICES**

- 4.1 C-me shall, during the Subscription Term, provide the Subscription Services and make available the Documentation to the Customer on and subject to the terms of the Contract.
- 4.2 C-me shall use all reasonable endeavours to make the Subscription Services available 24 hours a day, seven days a week, except for planned maintenance carried out outside of Normal Business Hours and unscheduled maintenance performed strictly as necessary.
- 4.3 Upon receipt of the Initial Subscription Fees, C-me will contact the Customer to provide the Customer with the information the Customer needs to access and use the Subscription Services.
- 4.4 C-me will, as part of the Subscription Services, provide the Customer with C-me's standard customer support services as set out in C-me's Support Services Policy in effect at the time that the Subscription Services are provided. C-me may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 4.5 Notwithstanding the generality of the Support Services Policy, C-me shall have no obligation to provide any support services under the Contract where faults or support requests arise from: (a) misuse, incorrect or unauthorised use of the Software and/or Services; (b) failure of the Customer's hardware or software or any part of it; (c) use of the Software and/or Services other than in accordance with guidance provided by, or in combination with any hardware or software not approved by C-me; (d) any breach of the Customer's obligations under the Contract.
- 4.6 To the extent that the Services and/or Software comprises third-party software or products ("**Third-Party Elements**"), C-me shall provide such Third-Party Elements to the Customer under the standard licence terms provided by the relevant third party. C-me is not responsible in any way for the performance, features or failures of the Third-Party Elements and makes no warranty in respect of them being fit for the Customer's purposes and accepts no liability or responsibility for them, or the Customer's use or inability to use them, their accuracy or reliability or for any loss or damage (direct, indirect, special, consequential or otherwise) whatsoever that may arise from the Customer's use of them or the results obtained.



- 4.7 The Customer accepts and understands that some of the Software relies on open-source code and/or elements (the “**Open-Source Code**”), which C-me has no control over and for which C-me shall not be responsible. If there is a change to the Open-Source Code which has or will have a material impact on the provision of the Services, then C-me shall provide the Customer with details of this change as soon as is reasonably practicable following it becoming aware of the change (the “**Open-Source Change Notice**”). The Open-Source Change Notice shall set out, to the extent known by C-me, the effects that this will have upon the Software and the provision of the Services purchased by the Customer, and following receipt of this notice, the Customer will have 30 days to indicate C-me whether it wishes to terminate the Contract (such termination to take effect upon the expiry of those 30 days).

## **5. TRAINING SERVICES**

- 5.1 Where the Customer is purchasing Training Services under the Quotation, then in consideration of the Training Fees, C-me shall provide the Training Services to the Customer on the dates (and at the location) agreed between the parties.
- 5.2 If the Training Services relate to Accreditation Training, following successful completion of the Accreditation Training (and subject always to payment in full), the Accredited User shall be entitled to use the Software and the C-me name and logo to deliver their own training in respect of the Software for the Customer’s own internal business purposes. This is a limited non-exclusive licence only, which is revocable, non-transferable and non-sub-licensable.

## **6. SUSPENSION OF SERVICES**

- 6.1 C-me may suspend Services without liability if:
- (a) C-me reasonably believes that the Services are being used in breach of clause 2.3 or clause 2.4 and such suspension may be actioned without prior notice, although C-me shall provide notice following the suspension which shall provide its reasons for the suspension;
  - (b) C-me reasonably believes that the Customer is otherwise in breach of contract and:
    - (i) where the breach relates non or late payment, the Customer does not remedy the breach within 7 days; and
    - (ii) in respect of all other breaches (subject always to the generality of clause 5.1(a)), the Customer fails to remedy such breach within fourteen days of C-me’s written notice to the Customer describing the breach;
  - (c) the Customer doesn’t co-operate with C-me’s reasonable investigation of any suspected violation of the Agreement;



- (d) there is an attack on the Services or the Services are accessed by or manipulated by a third party without C-me's consent;
- (e) C-me is required by law to suspend the Services or the Customer's access to the Services;
- (f) there has been unauthorised or suspected fraudulent or suspicious activity relating to the Customer's use of the Services; or
- (g) there is another event for which C-me reasonably believe that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers.

6.2 C-me will use reasonable endeavours to give the Customer advance notice of a suspension under this clause 6, unless clause 6.1(a) applies or unless C-me determines in its reasonable commercial judgement that an immediate suspension is necessary to protect C-me or its customers from imminent and significant operational or security risk, or if to do so would be unlawful.

6.3 For the avoidance of doubt, any suspension of Services, unless caused directly by C-me, shall not suspend the Customer's obligation to pay any fees.

## **7. DATA PROTECTION**

If C-me processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and C-me shall be a data processor and in any such case the parties shall comply with the Data Processing Schedule.

## **8. C-ME'S OBLIGATIONS**

8.1 C-me shall perform the Services, in all material respects, in accordance with the Documentation and with reasonable skill and care.

8.2 C-me's obligations at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to C-me's instructions, or modification or alteration of the Services by any party other than C-me or C-me's duly authorised contractors or agents. If the Services do not conform with the terms of clause 8.1, C-me will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.

8.3 The Customer acknowledges that the Services may not be able to be performed adequately where information provided by the Customer to C-me is incomplete, incorrect, or misleading.

8.4 The Customer acknowledges that the Services have not been developed to meet the Customer's individual requirements and that it is therefore the Customer's responsibility

to ensure that the facilities and functions of the Services meet the Customer's requirements prior to committing to the Subscription Term.

8.5 C-me does not warrant that:

- (a) the Customer's use of the Services will be uninterrupted or error-free; or
- (b) the Services will meet the Customer's requirements;
- (c) the Software or the Services will be free from Vulnerabilities or Viruses; or
- (d) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

8.6 C-me 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, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.7 These Terms of Service shall not prevent C-me from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

8.8 C-me warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

8.9 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against C-me shall be for C-me to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by C-me in accordance with the archiving procedure described in its Back-Up Policy. C-me shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by C-me to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

8.10 The Customer acknowledges that C-me may change or modify the Services from time to time. C-me shall only be required to provide the Customer with reasonable notice of a change or modification to the Services in advance if the change or modification is material (and does not extend or enhance the functionality or architecture of the Services) or may substantially adversely affect the Customer's use of the Services. In such circumstances, "reasonable notice" shall be considered not less than 30 days. Following receipt of such notice (the "**Change Notice**"), the Customer shall have 14 days within which it can elect (by written notice) not to accept such change or modification. If the Customer gives notice within the prescribed window that it does not accept the change or modification, then the Contract shall terminate at the end of the 30-day notice

period given in the Change Notice and C-me shall provide the Customer with a pro-rated refund of the Subscription Fees for the period following the termination date.

## **9. CUSTOMER'S OBLIGATIONS**

9.1 The Customer shall:

- (a) provide C-me with all necessary co-operation in relation to the Contract and all necessary access to such information as may be reasonably required by C-me in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under it;
- (c) carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, C-me may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for C-me, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by C-me from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to C-me's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9.3 The Customer acknowledges and agrees that whilst the Services are designed for ease of use, it is the Customer's responsibility to ensure that any Authorised Users involved in accessing and using the Services are appropriately trained in the use of any applicable technology and understand and are familiar with the Services and any training materials or Documentation made available to the Customer relating to them.

## **10. CHARGES AND PAYMENT**

10.1 The Customer shall pay C-me:

- (a) the Subscription Fees for the User Subscriptions; and
- (b) any other fees stated in the Quotation for the Add-On Services,

together the **"Fees"**. All Fees must be paid in accordance with the Quotation and this clause 10.

10.2 The Customer shall on the Effective Date provide to C-me valid, up-to-date and complete credit card details or approved purchase order information acceptable to C-me and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to C-me, the Customer hereby authorises C-me to bill such credit card:
  - (i) on the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clauses 15.2, on each anniversary of the Services Start Date for the Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to C-me, C-me shall invoice the Customer:
  - (i) on the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clauses 15.2, at least 30 days prior to each anniversary of the Services Start Date for the Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

10.3 If C-me has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of C-me:

- (a) C-me may, on no less than 5 Business Days' notice to the Customer and without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and C-me shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Lloyds TSB from time to

time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.4 All amounts and fees stated or referred to in the Contract:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to C-me's invoice(s) at the appropriate rate.

10.5 C-me shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 at the start of each Renewal Period upon 45 days' prior notice to the Customer and the Quotation shall be deemed to have been amended accordingly.

## **11. PROPRIETARY RIGHTS**

11.1 The Customer acknowledges and agrees that C-me and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

11.2 C-me confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

## **12. CONFIDENTIALITY**

12.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with the provision of the Services, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to the business, assets, affairs, customers, clients, suppliers, operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of performing the Services and the parties agree that:
  - (i) details of the Services, the results of any performance, security, penetration, Vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, shall constitute C-me Confidential Information; and

(ii) Customer Data shall constitute Customer Confidential Information.

12.2 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

12.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Contract (the **Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 12.

12.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 12.

12.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010,

disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

- 12.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Terms of Service are granted to the other party, or to be implied from these Terms of Service.
- 12.8 Except as expressly stated in these Terms of Service, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 12.9 The above provisions of this clause 12 shall continue to apply after termination or expiry of the Contract.

### **13. INDEMNITY**

- 13.1 The Customer shall indemnify C-me against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) C-me provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 13.2 C-me shall defend the Customer against any claim that the Customer's use of the Services or Documentation in accordance with the Contract infringes any United Kingdom patent effective as of the Services Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) C-me is given prompt notice of any such claim;
  - (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to C-me in the defence and settlement of such claim, at C-me's expense; and
  - (c) C-me is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, C-me may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.



- 13.4 In no event shall C-me, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than C-me; or
  - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by C-me; or
  - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from C-me or any appropriate authority; or
  - (d) the Customer's breach of the Contract.
- 13.5 The foregoing and clause 14.3(b) state the Customer's sole and exclusive rights and remedies, and C-me's (including C-me's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

#### **14. LIMITATION OF LIABILITY**

- 14.1 Except as expressly and specifically provided in the Contract:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. C-me shall have no liability for any damage caused by errors or omissions in any Customer Data, information or instructions provided to C-me by the Customer in connection with the Services, or any actions taken by C-me at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract;
  - (c) the Services and the Documentation are provided to the Customer on an "as is" basis;
  - (d) Under no circumstances shall C-me be responsible or liable for any harm caused by the transmission, through the Services, of a Virus or a Vulnerability that might be used to access, modify, delete, damage, corrupt, deactivate, disable, disrupt, or otherwise impede in any manner the operation of any of the Customer software, hardware, data or property;
  - (e) Under no circumstances shall C-me be responsible or liable for: (a) any inaccuracy, error or delay in, or omission of any data or information entered into the Services by the Customer or any third party; (b) any error or delay in the transmission of such data or information; or (c) any interruption in any such data or information.
- 14.2 Nothing in the Contract excludes the liability of either party:

- (a) for death or personal injury caused by such party's negligence;
- (b) for fraud or fraudulent misrepresentation;
- (c) in respect of the Customer's obligations in clauses 2.3 and 2.4; and
- (d) in respect of the indemnities included at clause 13.1 or 13.2.

14.3 Subject to clause 14.1 and clause 14.2:

- (a) Each party shall have no liability to the other party for any loss of profits, loss of business, wasted expenditure, depletion of goodwill and/or similar losses or loss or corruption of data or information (except to the extent attributable to that party's negligence or breach of Contract), or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses; and
- (b) Each party's total aggregate liability to the other party in respect of all breaches occurring within any contract year shall not exceed:
  - (i) Unless clause 14.3(b)(ii) applies, the cap; or
  - (ii) Unless the claim constitutes a Qualifying Claim, the supra-cap,

but if breaches committed in more than one contract year give rise to a single claim or a series of connected claims, a party's total liability for those claims shall not exceed the single highest annual cap for those contract years.
- (c) In clause 14.3(b):
  - (i) The **cap** is 100% of the total Fees paid or payable in the contract year in which the breaches occurred;
  - (ii) The **supra-cap** shall be an amount equal to three times the cap; and
  - (iii) A **contract year** means a 12 month period commencing on the Services Start Date or any anniversary of it.

14.4 References to liability in this clause 14 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

## 15. **TERM AND TERMINATION**

15.1 The Contract shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue until the end of the Initial Subscription Term.

15.2 The Customer may elect to extend the Contract by further periods of successive 12 months (each a **Renewal Period**) by notice in writing to C-me giving at least 30-days'

notice before the end of the then-current term. The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply];
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.3(b) to clause 15.3(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

15.4 Without affecting any other right or remedy available to it, C-me may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) the Customer breaches clause 2.3 and/or clause 2.4 of these Terms of Service.

15.5 On termination of the Contract for any reason:

- (a) all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) C-me may destroy or otherwise dispose of any of the Customer Data in its possession unless C-me receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. C-me shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by C-me in returning or disposing of Customer Data; and
- (d) 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 Contract which existed at or before the date of termination shall not be affected or prejudiced.

15.6 The parties may agree following the service of a termination notice, a 30 day transition period during which time, notwithstanding termination, C-me shall continue to provide the Services, subject to: (a) the payment of an agreed fee in respect of such transition

services by the Customer in advance to C-me; (b) the Customer's full compliance with the Contract during the Term and the transition period; and (c) the Customer having paid all undisputed Fees in full to C-me.

- 15.7 If the Contract is terminated prior to the end of the Initial Term or any Renewal Term, other than for breach by C-me under clause 15.4, all fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to C-me under the Contract shall be immediately due and payable to C-me.

## **16. FORCE MAJEURE**

C-me shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks], the party not affected by the Force Majeure Event may terminate the Contract by giving 14 days' written notice to the affected party.

## **17. NOTICES**

- 17.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to the email addresses set out in the Quotation (or an address substituted in writing by the party to be served):
- 17.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- ## **18. ASSIGNMENT**
- 18.1 The Customer shall not, without the prior written consent of C-me, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

18.2 C-me may at any time:

- (a) Subcontract any or all of its rights and obligations under the Contract, provided that it shall be responsible for the acts and omissions of its sub-contractors as if they were the acts and omissions of C-me; and
- (b) subject always to clause 18.2(a), assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract including to a Solution Partner.

## **19. ENTIRE AGREEMENT**

- 19.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 19.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **20. GENERAL**

- 20.1 The Customer allows C-me to make it known, for marketing purposes, that the Customer is a customer of C-me and permits C-me to use the Customer's then current logo and name on the C-me web site. C-me may from time to time collaborate with the Customer to produce and publish testimonials, endorsements, case studies and other instances of advocacy, for the purposes of marketing, which the Customer shall have the right to review, amend and / or approve before publication. C-me will make reasonable efforts to inform the Customer when and where the publications occur. Whilst C-me will use its best endeavours to ensure best practice, C-me cannot be held liable for any inaccuracies or errors in either C-me marketing materials or third-party marketing materials.
- 20.2 If there is an inconsistency between any of the provisions in the Quotation and these Terms of service, the provisions in the Quotation shall prevail.
- 20.3 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.4 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 20.5 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 20.6 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 20.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- 20.8 If any provision or part-provision of the Contract is deemed deleted under clause 20.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.9 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 20.10 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 20.11 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.
- 20.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).



## DATA PROCESSING SCHEDULE

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation:**

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or C-me is subject, which relates to the protection of personal data.

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).

**EU Law:** the law of the European Union or any member state of the European Union.

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

### 1. DATA PROTECTION

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 1.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and C-me is the Processor. Appendix 1 sets out the scope, nature and purpose of processing by C-me, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 1.3 Without prejudice to the generality of paragraph 1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to C-me and/or lawful collection of the Personal Data by C-me on behalf of the Customer for the duration and purposes of the Contract.
- 1.4 Without prejudice to the generality of paragraph 1.1, C-me shall, in relation to any Personal Data processed in connection with the performance by C-me of its obligations under the Contract:
  - (a) process that Personal Data only on the documented written instructions of the Customer which are set out in Appendix 1 unless C-me is required by Domestic Law or EU Law to otherwise process that Personal Data. Where C-me is relying on Domestic Law or EU Law as the basis for processing Personal Data, C-me shall

promptly notify the Customer of this before performing the processing required by the Domestic Law or EU Law unless the Domestic Law or EU Law prohibits C-me from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK or EEA unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or C-me has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) C-me complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) C-me complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law or EU Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this Schedule.

- 1.5 The Customer consents to C-me appointing third-party processors of Personal Data under the Contract. C-me confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Schedule and in either case which C-me confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and C-me, C-me shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 1.2.
- 1.6 Either party may, at any time on not less than 30 (thirty) days' notice, revise this Schedule by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).]

## APPENDIX 1: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

### 1. Processing by C-me

- (a) **Scope:** Processing personal data to the extent required to provide the Services in accordance with the
- (b) **Nature and purpose of processing:** Except for the administration of the Contract, the processing of personal data is entirely incidental to the service provision by C-me and is limited to storage and authorized disclosure. No access of change to, or other processing of any personal data is carried out as part of the service provision other than as may be required on the Customer's specific written instructions.
- (c) **Duration of the processing:** the duration of the service provision. Data is deleted or anonymised following termination of the Contract in accordance with its terms.

### 2. Types of Personal Data

- (a) Customer employee contact information for the administration of the Contract.
- (b) As may be included by the Customer and Authorised Users in any uploaded data to the Software.

### 3. Categories of Data Subject

The Authorised Users (which might consist of the Customer's or the Customer's Affiliate's employees and subcontractors)

Schedule 1: Mandatory Policies

The Mandatory Policies are:

- [Slavery and Human Trafficking Policy](#)
- [Privacy and Cookie Policy](#)
- [Anti-Bribery Policy](#)