PUSH Streaming Technologies Limited STANDARD TERMS

By using the Services (defined below) you agree to be bound by these Standard Terms and the SOW, together the Agreement. Save for any Special Terms (which shall take precedence over the Standard Terms), where any provision contained in the SOW conflicts with any provision of the Standard Terms, the SOW shall prevail to the extent of the conflict.

Push Streaming Technologies, Ltd., with registered address at Unit 14, The Westworks, 195 Wood Lane, London W12 7FQ, United Kingdom is a company incorporated in England & Wales under number 05955432 (**Push**). If you are using the Services for on behalf of any other person or entity, you warrant and represent you have the necessary authority to act and bind such third party to this Agreement. Should you fail to sign the SOW but use the Services, you will be deemed to have accepted the terms of this Agreement.

PUSH RESERVES THE RIGHT IN ITS DISCRETION TO ALTER OR UPDATE THESE TERMS OF SERVICE AND/OR THE SERVICES AT ANY TIME AND TO UPDATE OR CHANGE ANY FEATURES, SPECIFICATIONS, CAPABILITIES, FUNCTIONS, RELEASE DATES, GENERAL AVAILABILITY OR OTHERWISE. SHOULD SUCH CHANGES HAVE A MATERIAL IMPACT ON THE SERVICES BEING OFFERED, YOU MAY EXERCISE YOUR RIGHT TO CANCEL THE SERVICES OR PART OF THEM, IN ACCORDANCE WITH THE TERMS HEREIN. HOWEVER, IF YOU CONTINUE TO USE THE SERVICE SO AMENDED OR ADJUSTED, THEN YOU AGREE TO BE BOUND BY THE CHANGES.

THE USE OF THESE SERVICES ARE SUBJECT TO AND SHOULD BE READ IN CONJUCNTION WITH PUSH'S PRIVACY POLICY LOCATED AT PRIVACY POLICY WHICH MAY BE UPDATED FROM TIME TO TIME BY PUSH WITH OR WITHOUT NOTICE.

1   Definitions and Interpretation

1.1   Definitions

In this Agreement:

Additional Services means the additional cloud managed services set out in a SOW purchased by the Customer from time to time.

Affiliate(s) means in relation to any Party, a person which, directly or indirectly: (i) is Controlled by that Party; (ii) Controls that Party; or (iii) is Controlled by a person referred to in (ii) above, and for this purpose Control means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes and "Controlled" shall be construed accordingly.

Agreement means this Agreement, which is comprised of the SOW and the Standard Terms.

Confidential Information of a party means the terms of this Agreement and any information: (a) relating to the business and affairs of that party; (b) relating to the customers, clients, employees, sub-contractors or other persons doing business with that party; (c) which is by its nature confidential; (d) which is designated as confidential by that party; or (e) which the other party knows or ought to know, is confidential and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of Push, includes Push Material and the Fees.

Content means all audio-visual content, digital content, data, video, templates or information in any form that is uploaded to or made available in Customer's portal by Customer or on Customer's behalf or created for the Customer by Push as part of the Managed Services but excludes Customer Data.

Customer Account means a dedicated account through which Customer's Users access the Push SaaS Platform to utilise the Services for the Services.

Customer Data means any data provided by the Customer to Push or input by Customer into the Push SaaS Platform and may include Personal Information.
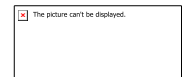
Customer Material means the Customer Data and Materials created owned or licensed to the Customer and uploaded to the Push SaaS Platform.

Data Protection Act means the Data Protection Act 2018 (UK).

Fees means the fees paid or payable by the Customer to Push for the Services as specified in the SOW.

Force Majeure Event means any occurrence or omission outside a party's control including: (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) any act of terrorism or terrorism related event; (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; (f) law taking effect after the date of this Agreement; (g) disruption or unavailability of the internet; (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and (i) failure of a utility service provider to Push.

Insolvency Event in the context of a person means: (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Insolvency Act 1986), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person; (b) the Customer is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Insolvency Act 1986 or is presumed to be insolvent under the Insolvency Act 1986; (c) the Customer ceases to carry on business; or (d) an application or order is made for the liquidation of the Customer or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

Intellectual Property Rights means all copyrights, trademarks (including all goodwill associated therewith), trade secrets, patents, moral rights, industrial rights and all other intellectual, proprietary and other rights, including without limitation, (a) all rights, whether existing now or in the future, whether statutory or common law, whether subject to protection under statute, regulation or common law, in any jurisdiction in the world, together with all national, foreign and state registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, substitutions and re-examinations); (b) all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions); and (c) all rights to sue for all past, present and future infringements or other violations of any of the foregoing rights, and the right to settle and retain proceeds from any such actions.

Managed Services means those services undertaken within the Software Applications by Push; or Push production services undertaken for and on behalf of the Customer as set out in the SOW, as opposed to the authorised direct use by the Customer of the Software Applications directly accessing the Push SaaS Platform.

Material means any material including documents, Content, technical information, software, tables, Intellectual Property Rights, schedules and data stored by any means.

Personal Information has the meaning attributed to it in the Data Protection Act 2018.

Privacy Laws means (a) the Data Protection Act; (b) all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

Push SaaS Platform means the software as a service platform described in clause 4, which is owned and operated by Push and hosted by the SaaS Infrastructure Provider which provides the Services.

Push Material means any Material created in the course of providing the Services by Push, or provided by or to which access is given by Push, to the Customer for the purposes of this Agreement.

SaaS Infrastructure Provider means the third party supplier of the hosting infrastructure services nominated by Push from time to time.

Services means provision of the Managed Services and/or access to the Software Applications made available in a cloud environment for access at any time via the internet by a connected device and provided by Push to the Customer through its Push SaaS Platform as specified in the SOW.

SLA means the service level agreement for the Push SaaS Platform as updated from time to time

Software Applications means those hosted cloud production and publishing related services offered on the Push SaaS Platform from time to time such as and including real time live clipping, browser based editing, video publishing and distribution, advertising and sponsorship and other data live and recorded insertions.

Software as a Service or **SaaS** means the provision of access to the Software Applications as configured by Push and made available to for use by the Customer via the Push SaaS Platform.

Standard Terms means these Standard Terms.

Statement of Work/SOW means a statement of work setting out the details of the Managed Services and Customer access to the Push SaaS Platform under licence from Push, executed by the parties from time to time and each additional service or amendment shall be reflected in an additional SOW(s).

Term means the term of each agreement with a Customer as specified in the SOW.

Third Party Products means any software or services in which the Intellectual Property Rights are owned by a third party.

Third Party Platforms means any third party platform to which is used to deliver the Services.

Users means those employees, contractors, directors of the Customer using the Customer Account set up by Push for use of the Push SaaS Platform for the Services.

VAT Act means value added tax as provided for under the Value Added Tax Act 1994.

Interpretation

In this Agreement:

(a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;

(b) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it;

(c) a reference to a party is a reference to Push or the Customer, and a reference to the parties is a reference to both Push and the Customer;

(d) a reference to applicable law is to any relevant law (including any subordinate or delegated legislation or statutory instrument of any kind) of a jurisdiction in or out of the United Kingdom, and also to any relevant judgment, order, policy, guideline, official directive, code of conduct, authorisation or request (even if it does not have the force of law) of any government agency or regulatory body, such as a stock exchange, within or outside the United Kingdom; and

(e) Capitalised Terms used herein and not defined shall have the meanings attributed to them in the SOW or in the Data Protection Act.

2   Provision of Services

2.1   Subject to the Customer paying the Fees, Push will provide the Services as set out in the SOW and these Standard Terms.

2.2   This Agreement shall commence on the Effective Date (as defined in the SOW) and shall remain in effect for the Term .

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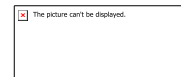
2.3 Each User authorised to access the Services in accordance with the SOW shall be given their owner User name and password. Where Customer access is granted, Customer is solely responsible for designating all Users and for providing accurate contact information to Push for such Users. Customer is liable for (a) ensuring that all Users comply with the terms of this Agreement and do not share user name and password details, and (b) any breach of this Agreement by any User.

2.4 Each User may access and use the Push SaaS Platform only after completing the applicable registration process via the Service within the Customer Account. Each User will maintain the confidentiality of his or her username and password and will not disclose such information to any other party or share their account with any other individual. Customer is liable for all act or omissions of their Users.

3 Subsequent Orders

3.1 Framework agreement

These Standard Terms constitute a framework agreement, under which the Customer may increase the scope of the Services or purchase additional Managed Services from time to time, as agreed with Push in an SOW.

3.2 SOW's

The Customer may request to purchase Managed Services and/or access to the Push SaaS Platform and/or one or more of the Software Applications by way of an SOW.

4 Software as a Service

4.1 Access to Push SaaS Platform

(a) Where applicable and set out as part of the Services, Push grants the Customer a non-exclusive, non-transferable right to access the Push SaaS Platform during the Term to use those Software Applications specified in the SOW, solely for the business purposes of the Customer.

(b) The access right is personal to the Customer, and the Customer may not attempt to transfer the right to any third party, including an Affiliate without the prior written consent of Push.

(c) The Customer must (i) ensure that its Users comply with the requirements of this Agreement (where applicable); (ii) not sell or rent the use of, or results of the use of the Software as a Service to anyone outside its business; and (iii) not attempt to mortgage, charge or otherwise encumber the Software as a Service, or use the Software as a Service as either surety or collateral.

4.2 Push SaaS Platform

(a) The Software as a Service will be made available via the Push SaaS Platform consisting of (i) the infrastructure required to host the services offered by Push from time to time; (ii) storage space as specified in the SOW; and (iii) Managed Services.

(b) Unless specifically set out in the SOW, the SaaS does not include effort associated with altering or modifying interfaces; data recovery; application management or administration tasks; Managed Services or which shall all be subject to additional charges by Push.

4.3 SaaS Infrastructure Provider

(a) Push may use any SaaS Infrastructure Provider to host the SaaS. The Customer acknowledges and agrees that the terms of the SaaS Infrastructure Provider are non-negotiable and standard and use of the Push SaaS Platform is subject to and conditional upon the Customer agreeing to such terms. The Customer can request access to the standard operating terms of the SaaS Infrastructure Provider that are publicly available.

(b) The Customer must comply with the following:

(i) the end user terms of the SaaS Infrastructure Provider as they are relevant to the Customer's use of the SaaS, as updated from time to time during the Term; and

(ii) the acceptable use policy of the SaaS Infrastructure Provider and Push, as amended from time to time during the Term.

4.4 Customer requirements

(a) The Customer must:

(i) promptly comply with any notices sent to the Customer by any person claiming that Customer Material and/or Customer Data: (a) infringes a third party's rights (including Intellectual Property Rights); (b) violates a third party's privacy rights or publicity rights; (c) is unlawful, libelous, defamatory, pornographic, or obscene; (d) is otherwise in violation of the content guidelines of a SaaS Infrastructure Provider/Third Party Platform; or (e) violates a SaaS Infrastructure Provider or a Third Party Platform's terms and conditions or acceptable use policies;

(ii) comply with any reasonable policies of Push (including any acceptable use policy relating to the SaaS) notified by Push to the Customer from time to time;

(iii) not copy, modify or reverse engineer the SaaS without Push's express written permission, regardless of whether permitted under applicable law;

(iv) not use the SaaS in any way not expressly permitted by this Agreement, or in breach of any applicable law;

(v) ensure that it employs appropriate security and control measures to ensure that only Users use the SaaS;

(vi) collect and retain the back-up of the Customer Data made available by Push hereunder as often as is necessary to ensure that the Customer meets its data retention and disaster recovery policies and procedures;

(vii) enter into an appropriate data processing agreement (DPA) for any processing of Personal Data for and on behalf of the Customer.
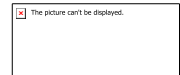
(viii)   comply with all Privacy Laws applicable to the Services and obtain all necessary consents for processing Personal Information in the jurisdictions in which they instruct Push to provide the Services.

(b)   The Customer acknowledges and agrees that if the Customer does not comply with clause 4.4 above at any time during the Term then Push may withhold the supply of the SaaS or Services to the Customer without liability to the Customer.

4.5   Data and Data Location

(a)   Unless otherwise specified in the SOW Push undertakes to ensure that the storage of any Customer Data is restricted to the UK, the Republic of Ireland or other member country of the European Union. For the purposes of this Agreement, Push is a Data Processor and the Customer is the Data Controller. All processing of Personal Information outside of the UK and European Union shall be at the risk and direction of the Customer and Push accepts no liability for compliance with international data protection laws, regulations and guidelines.

(b)   Push will not transfer Customer Data outside the UK or the European Union unless instructed to do so by the Customer and unless required to comply with applicable law or upon request from a relevant government regulator with authority to require such transfer.

4.6   Updates and New Releases

(a)   Updates and new releases of the Software Applications which are generally made available to Push customers will be made available to the Customer under this Agreement during the Term at no additional cost.

(b)   Push may make changes to the Software as a Service from time to time, including by changing or discontinuing features. The Customer acknowledges that patches, bug fixes and minor upgrades will be installed centrally by Push without notice to the Customer. Push will notify the Customer of any material change or discontinuation of Software as a Service offerings.

4.7   Back up

The Customer acknowledges and agrees that, unless otherwise specified in the SOW, Push's obligations to back-up Customer Data is limited to the back up offered by the SaaS Infrastructure Provider.

4.8   Fair Use

(a)   If, in the reasonable opinion of Push, the Customer uses an excessive amount of system load and the Customer's excessive usage is likely to affect the Push system or other customer of Push, then Push may limit or "throttle" the Customers capacity.

(b)   Where reasonably practicable, if Push intends to throttle the Customer's SaaS pursuant to clause 4.8(a) above, it will advise the Customer at least 24 hours beforehand that the SaaS is to be throttled.

(c)   If the Customer's usage of data transfer exceeds the thresholds then Push may charge the Customer an additional Fee.

4.9   Storage

Push will notify the Customer if the Customer exceeds the storage specified in the SOW, in which case the Customer may elect to either:

(a)   archive Customer Data to bring its usage within permitted storage limits; or

(b)   purchase additional storage at Push's then current rates (as notified to the Customer by Push).

4.10   Acknowledgement

The Customer acknowledges and agrees that:

(a)   the Software as a Service may not function as intended (or at all) if the Customer does not:

(i)   have the resources necessary to receive the SaaS, including hardware, software, telecommunications resources and internet access of a standard acceptable to Push; and

(ii)   comply with systems recommended by Push from time to time in relation to the Customer's network and use of the SaaS;

(b)   any timeframes provided by Push to the Customer in relation to the SaaS and Managed Services are estimates only;

(c)   the SaaS may not be available from time to time;

(d)   Push makes no representation and gives no warranty that the SaaS and/or Managed Services will be free from errors and defects or fit for any purpose not set out in the SOW; and

(e)   Push makes no representation and gives no warranty in relation to the suitability or performance of any SaaS Infrastructure Provider, Third Party Platform or third party service provider used in the provision of the Services and/or referred to the Customer by Push and accepts no liabilities in respect of such entities, even if their use has been recommend by Push. Any use of such third party service is at the sole risk of the Customer.

(f)   Push is a conduit of services and does not moderate the Content of the Customer and will immediately remove any Customer Content complained or objected to and shall indemnify Push for any breach of any law, regulation or code of conduct.

4.11   Prohibited conduct

The Customer must not use the SaaS:

(a)   to engage in fraud, fraudulent or illegal behaviour;

(b)   to, or attempt to, circumvent any security measures or otherwise gain unauthorised access to or interfere with any third party's online resources or systems including by any form of hacking or penetration testing;

(c)   to distribute, view or create any material that:

(i)   is or may be pornographic, defamatory, offensive, obscene, illegal or unlawful; or

(ii)   infringes any third party's Intellectual Property Rights;

(d)   in a way that poses a security risk to the SaaS Services or may adversely impact the SaaS or the systems of another user of the SaaS;

(e)   to distribute unsolicited emails to third parties including bulk unsolicited emails;
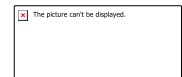
(f)   in a way that disrupts, misuses or excessively uses the hardware, bandwidth access, storage space or other resources of Push or Push's other customers; or

4.12 Third Party Products and Third Party Platforms

(a)   Push may make use of, or make available to Customer, Third Party Products in connection with the Services and deliver the Services via a Third Party Platform. Notwithstanding anything to the contrary in the Agreement, Customer's use of and access to such Third Party Products and Third Party Platforms are subject to and conditional on the Customer's compliance with the Third Party Product and Third Party Platform terms (if any) as updated from time to time. For the avoidance of doubt, it is the Customer's sole responsibility to comply with such terms including but not limited to the following (as may be amended or superseded from time to time):

(i)   YouTube API / Developer Terms: https://developers.google.com/youtube/terms/api-services-terms-of-service

(ii)   YouTube Terms of Service https://www.youtube.com/static?template=terms

(iii)   Twitch Terms of Service https://www.twitch.tv/p/en-gb/legal/terms-of-service/

(iv)   Twitch developer / API terms https://www.twitch.tv/p/legal/developer-agreement/

(v)   Facebook API terms https://developers.facebook.com/terms/

(vi)   Facebook terms https://www.facebook.com/legal/terms

(vii)   Periscope terms https://help.twitter.com/en/using-twitter/periscope-terms

(viii)   Periscope API / Developer terms https://developer.twitter.com/en/developer-terms/agreement-and-policy

(b)   The Customer acknowledges that Third Party Product terms may include licence restrictions and may change from time to time and Third Party Platforms may be subject to use or other such restrictions which Push will be obliged to adhere to. For the avoidance of doubt, Customer will obtain and maintain at all times during the Term, and will be fully liable for failing to obtain and maintain, all necessary rights, consents, approvals, permits, and/or licenses related to the use, reproduction, broadcasting, streaming, distribution, and performance and display (publicly and otherwise) of the Content and/or Client Materials, including the right to use the name, voice, image, likeness, identity, persona or any biographical material of any persons featured in the Content and/or Client Materials (together "Personality Rights"), as required for Push to deliver the Services including via a Third Party Platform, including all rights and applicable approvals and consents from all artists, other performers, producers, mixers, engineers, songwriters, publishers and other third parties in respect of the foregoing.

(c)   Where Push receives the benefit of warranties and indemnities from a Third Party Product provider, Push will pass those benefits on to the Customer to the extent that Push has the right to do so. Except as set forth in this section or where specifically set out in the Agreement otherwise:

(i)   Push makes no, and expressly disclaims all, representations and warranties with respect to Third Party Products; and

(ii)   use of the Third Party Products is at Customer's sole risk.

(d)   If Push's arrangements with the applicable third party supplier are terminated for any reason at any time, Push may cease to provide the Customer with access to, or maintain, the relevant Third Party Product.

5   Warranties

5.1 SaaS warranty

(a)   Push warrants that the Software as a Service will function materially in accordance with the service description on the Push website during the Term.

(b)   Push will not be required to rectify any defect or error in the SaaS or Managed Services caused by the Customer or a third party service provider to the Customer.

(c)   Push shall comply with the service levels set out in the SLA, and the Customer's sole remedy in respect of any breach thereof shall be as set out in the SLA.

5.2 Content/Customer Material warranty

The Customer represents and warrants, and it is a condition of this Agreement, that the Content and Customer Materials, and Push's exercise of any license granted to it in this Agreement does not and will not, infringe the rights of any third party, including any Intellectual Property Rights, rights of publicity, rights of personality, rights of privacy; require the payment by Push or any Third Party Platform of any royalties, remuneration, residuals or any other fees; or result in any tort, injury, damage or harm to any third party.

5.3 Accuracy and reliance warranties

The Customer represents and warrants, and it is a condition of this Agreement, that:

(a)   the Customer has assessed the SaaS and Services and determined the SaaS and Services are fit for the Customer's purposes;

(b)   all information provided by the Customer or on the Customer's behalf to Push is accurate and is not, whether by omission of information or otherwise, misleading;

(c)   the Customer has not withheld from Push any document, information or other fact material to the decision of Push to enter into this Agreement; and

(d)   except as specifically set out in this Agreement, the Customer did not rely upon any representation made to the Customer by Push or any Affiliate of Push (if any) prior to entry into this Agreement.

5.4 Privacy warranties

(a) In respect of Personal Information the Customer represents and warrants, and it is a condition of this Agreement, that the Customer has all necessary consents required under Privacy Laws to:

    (i) provide Push with any Personal Information which forms part of the Customer Data or the Customer Material and the processing thereof internationally where so required for the purposes of providing the Services; and

    (ii) permit Push to use any Personal information which forms part of the Customer Data or the Customer Material in the manner contemplated by this Agreement, including to provide that Personal Information to the SaaS Infrastructure Provider.

(b) Push warrants that it will comply with the Privacy Laws as they relate to it in providing the Services. The Parties agree that if and to the extent that Push is processing Personal Information under this Agreement where Customer acts as a data controller and Push acts as a data processor for Customer, each party will comply with its obligations, and will enter into a data processing agreement in a form acceptable to Push.

5.5 Other

Except as specifically set out in this Agreement Push excludes all other warranties, whether express or implied or however they may arise, to the maximum extent permitted at law and makes no representations either express or implied except as provided in this Agreement.

6 Customer obligations

6.1 No Resupply

The Customer may use the Services for its own benefit only and must not resupply the Services to any third party.

6.2 Customer requirements

The Customer must cooperate with Push and provide Push with such information and assistance reasonably necessary to enable Push to provide the Services.

6.3 Customer is responsible for its own Content and Push accepts no liability for any errors or omissions therein. Under no circumstances will Push or its officers, sub-contractors, employees, or otherwise be liable in any way for Content or errors in distribution thereof if such distribution was in accordance with the instructions of the Customer nor shall Push be liable for any loss or damage of any kind incurred as a result of the use or publication of any such Content posted, delivered, emailed or otherwise transmitted via the Push SaaS Platform or Third Party Platforms.

7 Fees

7.1 Fees

(a) The Customer must pay the Fees to Push in accordance with the Payment Terms set out in the SOW.

(b) If there is a dispute about whether a Fee or other amount contemplated by this Agreement is payable or available, the Customer may withhold the disputed amount, but must promptly and in any event within thirty (30) days of receipt raise the disputed amount with Push and must not withhold any undisputed amount. If the Customer has not disputed an invoice within twenty one (21) days of receipt, then the invoice is deemed accepted by the Customer and the Customer waives its right to dispute the invoice under this clause.

(c) The Fees may change during the Term where storage levels or fair use are exceeded and the Customer shall be liable for such additional costs even if such costs are not expressly set out in an SOW.

7.2 Invoices

(a) Push will invoice the Customer from time to time for the Fees in accordance with the SOW.

(b) The Customer must pay an invoice issued under clause 7.2(a) within 30 days of the date of the invoice unless otherwise specified in the SOW.

(c) Without limiting any other remedies available to Push, if the Customer fails to pay any amount payable under this Agreement, the Customer must pay interest on that amount in accordance with the then rate applied by law on commercial debts in the United Kingdom.

(d) Customer will pay all Fees in full and without deduction or set off.

8 Termination and Suspension

8.1 Termination for breach

If:

(a) Subject to the terms of the SLA, a party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days of receiving notice from the other party requiring it to do so; or

(b) an Insolvency Event occurs in relation to a party,

then the other party may terminate this Agreement by notice to that party, in which case this Agreement will terminate immediately.
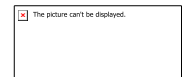
8.2 Termination for Customer misconduct

Push may terminate this Agreement immediately by notice to the Customer if the Customer breaches clause 4 or 6 of this Agreement, uses the Services in a way which breaches any applicable law, or attempts to modify or tamper with the SaaS.

8.3 Effect of termination or expiry

On termination or expiry of this Agreement:

(a) the Customer's right to use the SaaS will automatically cease and the Customer must immediately stop using the SaaS;

(b)   Push will continue to make a back-up copy of the Customer Data available to the Customer for a period of thirty (30) days, after which Push may delete the Customer Data;

(c)   if the Customer requests Push to assist in extracting Customer Data and Push agrees to do so, the Customer must pay Push for assistance on a time and materials basis at Push's then current rates;

(d)   Push is not required to refund any amounts to the Customer including Fees paid in advance;

(e)   each party must return or destroy all Confidential Information of the other party in its care, custody or control to the other party; and

(f)   accrued rights are not affected.

8.4 Survival

Termination of this Agreement will not affect clauses or any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination.

8.5 Suspension

(a)   Without limiting any other remedy Push may have under this Agreement or at law including under clauses 8.1 and 8.2, Push may suspend the provision of all Services if:

   (i)   the Customer fails to pay the Fees, and the unpaid Fees are more than thirty (30) days overdue, and Push has issued a payment reminder notice following the invoice;

   (ii)   Push reasonably suspects the Customer has exceeded the fair use or any use restrictions;

   (iii)   Push reasonably suspects that the Customer has done or is likely to do any of the things described as prohibited conduct in clauses 4 or 6; or

   (iv)   Push receives a court order or notice from a regulatory body requiring Push to cease providing the Software as a Service to the Customer or remove any content the Customer is making available through use of the SaaS or Third Party Platforms.

(b)   Push will give Customer reasonable prior notice of any suspension of the SaaS, unless prohibited from doing so by law or other legal obligation.

9   Intellectual property

9.1 Push Material

The Customer agrees that all Intellectual Property Rights:

(a) in the Software as a Service, Software Applications, and Push Material; and

(b) otherwise created by Push in the course of performing the Services,

are retained by Push, and other than the access right granted herein, nothing in this Agreement grants the Customer any right, title or interest in the Software as a Service, Software Applications or Push Material, or any other Intellectual Property Rights of Push.

9.2 Modifications

Push retains all Intellectual Property Rights in modifications to the Software Applications and SaaS, regardless of whether those modifications are made on the suggestion of the Customer, or if the Customer paid Fees for those modifications. If Push implements a change to the Software Applications or SaaS suggested by the Customer, the Customer assigns all Intellectual Property Rights in that modification to Push.

9.3 Customer Material

(a)   Customer Material remains the property of the Customer, and nothing in this Agreement grants to Push any Intellectual Property Rights in the Customer Material.

(b)   The Customer grants to Push a perpetual, non-exclusive, irrevocable, global licence (including the right to sublicense) to exercise the Intellectual Property Rights and Personality Rights in any Content and Customer Material to the extent required for Push to provide the Services to the Customer and to improve the Services, including to use and modify the Customer Material.

9.4 No use of marks

Each party must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trade marks or logos of the other party except with the prior written consent of the other party.

9.5 Disclosure to Media and Others

Without limiting the confidentiality obligations in clause 10, each party must not, and must ensure that its employees, officers or agents do not, make any public statement or disclose to the media any information regarding the other party, this Agreement, the Services, without the prior written consent of the other party.

10   Confidential Information

10.1 Obligations of confidence

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party prior to or after entry into this Agreement.

10.2 Exclusions

The obligations of confidence in clause 10.1 do not apply to Confidential Information:

(a)   that is required to be disclosed by the rules of any relevant stock exchange;

(b)   that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency or by any regulator, as long as the disclosing party:

   (i)   discloses the minimum amount of Confidential Information required to satisfy the law or rules; and

(ii)   before disclosing any information, gives a reasonable amount of notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;

(c)   that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence; or

(d)   that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.

10.3 Restriction on disclosure

(a)   Each party may use and disclose Confidential Information of the other party only:

(i)   with the prior written consent of the other party; or

(ii)   to that party's directors, agents, professional advisors, employees, contractors and permitted sub-contractors solely for the exercise of rights or the performance of obligations under this Agreement.

(b)   If either party discloses Confidential Information under clause 10.3(a) that party must ensure that such information is kept confidential by the person to whom it is disclosed and is only used for the purposes of performing the Services under this Agreement.

10.4 Injunctive relief

Each party acknowledges that:

(a)   the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the other party, and that monetary damages would be an insufficient remedy; and

(b)   in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of this clause 10.

11   Limitation of liability

(a)   In no circumstances will Push be liable to the Customer or any third party for any loss or damage, however caused (including by the negligent act or omission of Push), suffered by the Customer in connection with this Agreement for any amount in excess of the Fees paid under that SOW in the twelve (12) months prior to the initial claim.

(b)   In no circumstances will Push be liable for any actual or alleged loss or damage to the Customer for Third Party Products or use of any Third Party Platform.

(b)   Nothing in this Agreement is intended to limit or exclude any rights of the Customer under applicable law that cannot be limited or excluded.

(c)   Neither party shall be liable to the other party for any actual or alleged consequential or pure economic loss of (i) profits, (ii) data (ii) business opportunity (iv) goodwill; or (v) or any other consequential or economic loss or damage.

12   Indemnity

12.1 Customer indemnity

The Customer:

(a)   is liable for, and shall indemnify Push on demand from and against and in respect of all liabilities, losses, costs, charges, fees and expenses, including reasonable attorneys' fees, expert witness fees, and other legal expenses in connection with any claim, allegation, suit, action, investigation, judgment, deficiency, settlement, inquiry, demand or other proceeding of whatever nature or kind, whether formal or informal, brought against arising out of or relating to provision of the Services by Push to the Customer including use of the Content and/or the Customer Material by Push, or the Customer's use of the Services or Software Applications in breach of this Agreement, and if the Content or Customer Materials infringes in any manner any Intellectual Property Right, Personality Right or any other right of any third party is or contains any material or information that is obscene, defamatory, libelous, slanderous, or that violates any Law, or violates any rights of any person or entity, including rights of publicity, privacy or personality, or has otherwise resulted in any consumer fraud, product liability, tort, deceptive trade practice, breach of contract, injury, damage or harm of any kind to any third part, where arising in contract, tort or otherwise; and

(b)   must defend and hold harmless Push against any claim or allegation by a third party that the Content, the Customer Material or the Customer's use of the Services or Software Applications in breach of this Agreement infringes their Intellectual Property Rights.

13   Force majeure

Each party will not be (a) in breach of this Agreement as a result of; or (b) liable for, any failure or delay in the performance of that party's obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event.
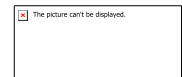
14   Costs and taxes

14.1 Other taxes

The Customer must pay all taxes, duties, government charges and other taxes of a similar nature (including any related fines, penalties and interest) imposed or levied in the United Kingdom or overseas in connection with the Customer's performance of this Agreement.

14.2 VAT

Any words capitalised in this clause 14.2 and not already defined in clause 0 have the meaning given to those words in the VAT Act.

(a) Except under this clause 14.2**Error! Reference source not found.**, the consideration for a supply made under or in connection with this Agreement does not include VAT.

(b) All Fees, costs, charges and/or expenses referred to in this Agreement or any subsequent SOW or purchase order are exclusive of and net of any and all taxes, duties, charges or such other additional sums including, without limitation, purchase or value added tax, withholding tax, excise tax, import and other duties, whether levied in respect of this Agreement, the Services or otherwise, imposed by the authorities of any country and such taxes or charges shall be invoiced as and when appropriate. If any withholding tax is due to be withheld from any payment of Fees due hereunder then unless otherwise agreed in an SOW the Customer shall gross up such payment to ensure the entire amount of the Fees is paid to Push without deduction.

15 Record keeping and Audits

15.1 Audits

(a) Once during each twelve (12) month period of the Term, Push may carry out an audit, or engage a third party to carry out an audit, on the Customer to determine the Customer's compliance with this Agreement.

(b) Push will be responsible for Push and the auditor's costs and charges in connection with the audits, provided that if the audit finds the Customer has exceeded the use restrictions by greater than 10%, the Customer must reimburse Push for its reasonable costs.

(c) The Customer must co-operate with the auditors and will be responsible for providing appropriate resources and reasonable assistance at the Customer's cost.

15.2 Extending Use Restrictions

If an audit or self-audit finds that the Customer is using the Software as a Service in excess of the use restrictions, the Customer must pay an additional Fee as specified by Push.

15.3 Requests by regulatory bodies

If, from time to time during and after the term of this Agreement, a court, government or governmental body, authority or agency requires information or documents from Push that are in the possession or control of the Customer relating to the Services, the Customer must use reasonable efforts to assist Push comply with that request.

16 General

(a) The laws of England and Wales govern this Agreement.

(b) Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales and courts competent to hear appeals from those courts.

(c) Where this Agreement contemplates that Push may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, Push may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this Agreement expressly requires otherwise.

(d) Each party must not assign, in whole or in part, or novate the party's rights and obligations under this Agreement without the prior written consent of the other party.

(e) For the avoidance of doubt, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

(f) Each provision of this Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.

(g) Any notice or approval required by or contemplated by this Agreement must be in writing and delivered, posted or emailed to the other party at the address provided for them in this Agreement, which address may be updated from time to time by written notice to the other party.

(h) Any variation or amendment to this Agreement must be in writing and properly executed by the parties.

(i) This Agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.

(j) Push may subcontract the performance of all or any part of Push's obligations under this Agreement.

(k) A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

(l) The Customer must comply with all applicable laws in connection with receipt of the Services.