



Standard terms for the use of Motional

Important

By submitting a request to use the Motional service you agree to the terms of this agreement which will bind you and your employees as applicable. If you do not agree to these terms you should not submit a request to use the Motional service

When you submit a request to us via our website to use the Motional service, if we accept your request we will send you an order confirmation to confirm that your request is accepted. When we send you that email confirmation the terms of this agreement become binding on the parties to this agreement.

Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

1 **Applicable Laws:** means:

1a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.

1b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

2 **Applicable Data Protection Laws:** means:

2a) 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.

2b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

3 **Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

- 4 **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 5 **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in 10.5 or 10.6.
- 6 **Customer:** The legal person receiving the Software and the Services.
- 7 **Customer Data:** the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
- 8 **Customer Personal Data:** any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.
- 9 **Documentation:** the document made available to the Customer by the Supplier online via <https://motional.io> or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
- 10 **Effective Date:** the date of this agreement.
- 11 **EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).
- 12 **Initial Subscription Term:** 12 months commencing on the Effective Date.
- 13 **Normal Business Hours:** 9.30am to 4.30pm local UK time, each Business Day.
- 14 **Purpose:** the purposes for which the Customer Personal Data is processed, as set out in e 14.7(a).
- 15 **Renewal Period:** the period described in 13.1.
- 16 **Services:** the subscription services provided by the Supplier to the Customer under this agreement via <https://motional.io> or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
- 17 **Software:** the online software applications provided by the Supplier as part of the Services.
- 18 **Subscription Fees:** the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in 1 of Schedule 1.
- 19 **Subscription Term:** has the meaning given in 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).
- 20 **Supplier Personal Data:** any personal data which Motional processes in connection with this agreement, in the capacity of a controller.
- 21 **UK GDPR:** has the meaning given to it in the Data Protection Act 2018.
- 22 **User Subscriptions:** the user subscriptions purchased by the Customer pursuant to 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.
- 23 **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.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. User subscriptions

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with 3.3 and 8.1, the restrictions set out in this 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, 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 that each Authorised User shall keep their password confidential;
- (d) it shall permit the Supplier or the Supplier'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 this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier'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;
- (e) if any of the audits referred to in clause 2.2(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (f) if any of the audits referred to in 2.2(d) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of Schedule 1 within 10 Business Days of the date of the relevant audit.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or 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 the Supplier 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 this agreement:
 - (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
- (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 22.1, 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 2; or
- (f) introduce or permit the introduction of any Virus [or Vulnerability] into the Supplier'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 the Supplier.

2.6 The rights provided under this 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions

3.1 Subject to 3.2 and 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 1 of Schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier 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 the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 5 days of its approval of the Customer's request.

3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.

4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am UK time; and
- (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

5. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party websites made available via the Services.

6. Supplier's obligations

6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly

authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in 6.1.

6.3 The Supplier:

(a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free;
- (ii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
- (iii) the Software or the Services will be free from Vulnerabilities or Viruses;
or
- (iv) the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.

(b) 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.

6.4 This agreement shall not prevent the Supplier 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 this agreement.

6.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

6.6 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier 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 the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

7. Customer's obligations

7.1 The Customer shall:

(a) provide the Supplier with:

- (i) all necessary co-operation in relation to this agreement; and
- (ii) all necessary access to such information as may be required by the Supplier

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 this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement 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, the Supplier 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 this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier'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.

7.2 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.

8. Charges and payment

8.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this 8 and Schedule 1.

8.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier 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 the Supplier, the Customer hereby authorises the Supplier to bill such credit card:

- (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to 13.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to 13.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription 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.

8.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier 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 Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to 12.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to 3.3 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

9. Proprietary rights

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement 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.

9.2 The Supplier 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 this agreement.

10. Confidentiality

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

10.2 Subject to 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

10.4 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 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

10.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any

governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

10.8 The above provisions of this 10 shall survive termination of this agreement, however arising.

11. Indemnity

11.1 The Customer shall defend, indemnify and hold harmless the Supplier 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) the Supplier 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.

11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any [United Kingdom] patent effective as of the Effective 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) the Supplier 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 the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

11.3 In the defence or settlement of any claim, the Supplier 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 this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4 In no event shall the Supplier, 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 the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.5 The foregoing and 12.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12. Limitation of liability

12.1 Except as expressly and specifically provided in this agreement:

- (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. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier 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 this agreement; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

12.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation, or
- (c) under Article 82 of UK GDPR.

12.3 Subject to 12.1 and 12.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

12.4 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights".

13. Term and termination

13.1 This agreement shall, unless otherwise terminated as provided in this 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) 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;
- (d) 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;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (f) 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;
- (g) 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);

- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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 13.2(c) to *clause 14.2(j)* (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) 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 this agreement is in jeopardy;

13.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement 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) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier 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 the Supplier 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 agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. Data protection

- 14.1 The terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 14.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 14.3 The parties have determined that, for the purposes of Applicable Data Protection Laws the Supplier shall process the personal data as a processor on behalf of the Customer.
- 14.4 By entering into this agreement, the Customer consents to actions taken by Motional in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the privacy policy available at [motional.io \(Privacy Policy\)](https://motional.io/privacy-policy). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.
- 14.5 Without prejudice to the generality of 14.2, the Customer will ensure that it can enable lawful transfer of Personal Data to the Supplier and lawful collection of the same by the Supplier for the duration and purposes of this agreement.
- 14.6 In relation to Customer Personal Data, the Privacy Policy sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 14.7 Without prejudice to the generality of 14.2 the Supplier shall, in relation to Customer Personal Data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in the Privacy Policy, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;
 - (b) implement adequate technical and organisational measures set out in the Privacy Policy to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are 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;

- (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) on expiry of 90 days after termination of this agreement, at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this use 14.7(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier;
- (g) for the purpose of archiving and statistical research purposes only, on deletion of Customer Personal Data in accordance with clause 14.7(f) the Supplier may retain anonymised copies of Customer Personal Data in compliance with Recital 26 of the UK GDPR; and
- (h) maintain records to demonstrate its compliance with this clause.

14.8 The Customer hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this agreement;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal

fees) and expenses suffered by the Supplier in accommodating the objection.

- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

15. Force majeure

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

17. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

- 20.1 If any provision or part-provision of this agreement 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 this agreement.
- 20.2 If any provision or part-provision of this agreement is deemed deleted under 20.1 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.

21. Entire agreement

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party acknowledges that in entering into this agreement 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 this agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

22. Assignment

- 22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

23. No partnership or agency

Nothing in this agreement 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).

24. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Notices

25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

26. Governing law

This agreement 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 construed in accordance with the law of England and Wales.

27. Jurisdiction

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 this agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1: Subscription Fees

The Subscription Fees set out at <https://motional.io/pricing/>

Additional User Subscription Fees

Additional User Subscriptions may be purchased by the Customer in accordance with 3, prices as listed at motional.io/pricing or as quoted by Motional staff.

Schedule 2: Processing, Personal Data and Data Subjects

Subject matter of the processing	
The Supplier will be providing the Customer with access to the Motional System which will be used to store personal data of the pupils. Within the system the teachers can create reports based on specific algorithms which generate intervention materials specific to the pupil's emotional requirements.	
Duration of the processing	
The processing will commence on the date the Customer's account on Motional is activated, and will end on the termination date in accordance with clause 14.29.	
Nature and purposes of the processing	
<i>The Motional tool will be used by the school to ensure they are promoting healthy emotional wellbeing of their pupils. It is a suite of evidence-based tools designed to measure and report on the emotional health of individuals or across the whole school. Using the system's sophisticated algorithms, the teachers can produce reports that can be used within the school to assist with the pupils' wellbeing. The core functions in Motional provide tools to measure and analyse, then to intervene through advice and activities to effect positive change. The School can then track and monitor progress of the mental health and wellbeing of your children and young people. The tools are designed to work in a cyclical fashion providing the opportunity to check and recheck progress.</i>	
Personal Data Types	
Personal Descriptors	- Name, age, date of birth, gender, character, images, recordings
Identification Numbers	- Pupil Number
Education	- Education history, exam results, attendance
Special Category Data Types	
Ethnicity	- None

Health	- Physical or mental disabilities, family or individual health history, health records, current and past medications, ALN categories
Life	- None
Categories of Data Subject	
<i>The services provided by the Supplier will relate to pupils in school and teaching staff (which will include agency and temporary staff)</i>	
Retention of Personal Data	
<i>The Customer Personal Data will be held by the Supplier for the duration of the Agreement. On termination of the Agreement the data will be destroyed in accordance with clause 14.29</i>	

Schedule 3 - Reasons for processing this information

Due consideration has been given to the proportionality of the personal data being processed and how each field is used for the Business Purpose. All data types are optional - the Customer can use Motional without providing any personal data at all. The rationale for each field is explained below.

Personal Data Type	Reason for Processing
Pupil name & UPN	To identify pupils in the system
Pupil dob	For calculating school year and key stage, and providing reports based on age/year/ks, and offering relevant activity suggestions
Pupil gender	To provide more detailed reports to the Customer
Pupil character, images, recordings	To enhance the Participant Profile and details of intervention sessions carried out by the Customer's staff.
Pupil ALN, disabilities, mental health, life events, attendance, attainment, all other details	To offer the Customer better insight into what could be affecting the pupil's emotional health and wellbeing, and measure the impact of any interventions offered.
Staff name, email, IP address, browser type & version, OS type & version	For identifying and authorising unique users to ensure the security of the Customers data, and inform the Supplier about commonly used browsers and OSs for the purpose of improving the system

Schedule 4 - Approved Sub-processors

The following is a list of the Suppliers approved Sub-processors:

Company Name	Data Protection Officer	Contact Information		
		Address	Telephone	Email
Amazon Web Services EMEA SARL <i>Database & Web hosting</i>		38 Avenue John F. Kennedy, L-1855, Luxembourg	n/a	aws-EU-privacy@amazon.com
Intercom R&D Unlimited Company <i>User support emails and live chat</i>		2nd Floor, Stephen Court, 18-21 St. Stephen's Green, Dublin 2, Republic of Ireland	n/a	dataprotection@intercom.io
Google LLC <i>Company emails and document storage</i>	Dr. Emil Ochotta	1600 Amphitheatre Parkway, Mountain View, California 94043, USA	n/a	https://support.google.com/a/contact/googlecloud_dpr
Heliom inc. <i>User support emails</i>		190 rue Dorchester, studio 50.5 Quebec QC, Canada G1K 5Y9	n/a	info@missiveapp.com
AC PM LLC <i>User notifications from the Motional app, and Transactional emails for user account administration</i>		1 N Dearborn Street, Suite 500, Chicago, IL 60602	n/a	privacy@activecampaign.com

Summary of changes

01/09/2021

- First version

07/09/2022

- Annual review
- No changes
- Paragraph numbers updated for consistency

15/05/2023

- Reviewed, and changes made;
- Added 12.2 c) “under Article 82 of UK GDPR”. This is to clarify that we are not seeking to limit our liability relating to harm caused to data subjects.
- Added Schedules 2 - 4 giving further details of the processing we do, and why. These details will assist Customers in completing DPIAs.