

trustMinder Terms of Service

Last updated June 26 2020

The Terms of Service below govern your use of the trustMinder Service. Capitalized terms used in these Service Terms but not defined below are defined in the trustMinder Service Agreement

1 USER SUBSCRIPTIONS AND DEPLOYMENT

1.1 RIGHT TO USE

Subject to Company's compliance with this Agreement, Cauwill hereby grants to Company a non-exclusive and non-transferable right to permit the Authorised Users to use the Service and the Documentation during the Term solely for the purposes set forth in this Agreement. Cauwill acknowledges that Company may use the Service for the benefit of End Users, whether they are End Users of Company or of any client of Company.

1.1A Additionally, on receipt of a request from Company to provide Services to an Affiliate of Company ("**Company Affiliate Services**"), Cauwill shall, subject to agreement of the form and the terms of an order form in respect of the Company Affiliate Services, enter into such order form with the applicable Affiliate of Company.

1.2 SETUP SERVICE

To deploy the Service, Cauwill will work with the Company to design a bespoke solution for the Company and set up an account or accounts (each an "**Account**") based on information provided by Company (the "**Account Information**") (the "**Set up Service**"). Company represents and warrants that:

- (a) all Account Information provided by the Company is true and correct;
- (b) The Company shall keep all Account Information current throughout the Term of this Agreement; and
- (c) The Company will use the Account only for its own use and that of its Authorised Users. Company acknowledges that Cauwill shall not have any liability for errors in Account Information provided by Company or for Company's failure to keep Account Information current.

1.3 THE COMPANY API KEY

Cauwill shall provide the Company with a unique identifier (the "**API Key**"), which consists of a "**Company Username**" and "**Company Password**", and which is used to authenticate the Company's use of the Service. The Company is solely responsible for controlling use of and access to its Company Key and Cauwill shall not have any liability to Company for unauthorised use of or access to the same.

1.4 INTEGRATION WITHIN COMPANY SERVICE

As part of the Set Up Service Cauwill will provide five (5) Business Days' assistance with the integration of the Service with the Company Services. Any integration or customization work

beyond this will be charged as an additional support through professional services in accordance with Schedule A of this Agreement.

1.5 AUTHORISED USERS

In relation to the Authorised Users, the Company undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Service 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 Service and the Documentation;
- (c) each Authorised User shall use the Company Password for his use of the Service and each Authorised User shall keep the Company Password confidential;
- (d) it shall permit Cauwill to audit the Service in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at Cauwill's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Company's normal conduct of business and such audit shall not, for the avoidance of doubt, require any access to the Company's premises;
- (e) if any of the audits referred to in clause 1.5(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Cauwill's other rights, the Company shall promptly disable such passwords and Cauwill shall not issue any new passwords to any such individual; and
- (f) if any of the audits referred to in clause 1.5(d) reveal that the Company has underpaid Charges to Cauwill, then without prejudice to Cauwill's other rights, the Company shall pay to Cauwill an amount equal to such underpayment as calculated in accordance with the prices set out in Schedule A within 10 Business Days of the date of the relevant audit.

1.6 ADDITIONAL USER SUBSCRIPTIONS

1.6.1

Subject to clause 1.6.2, the Company may, from time to time during any Term, notify Cauwill in writing that it wishes to purchase additional User Subscriptions in excess of the number set out in Schedule A and if this request is approved Cauwill shall grant access to the Service and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

1.6.2

If Cauwill approves the Company's request to purchase additional User Subscriptions, the Company shall, within 45 days of the date of Cauwill's invoice, pay to Cauwill the relevant fees for such additional User Subscriptions as set out in Service Agreement.

1.7 USE OF THE SERVICE

The Company shall not:

- (a) access, store, distribute or transmit any Viruses as part of its use of the Service;
- (b) use the Service for any improper, immoral, defamatory, fraudulent or unlawful purposes;
- (c) knowingly permit the sending of any communication or storing of any information which is of an offensive, abusive, indecent, obscene or menacing nature in connection with the Service (“**Inappropriate Use**”) and shall use reasonable endeavours to prevent any such Inappropriate Use; and/or
- (d) use the Service in a manner that is otherwise illegal or causes damage or injury to any person or property;

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

1.8 USE OF THE SOFTWARE

The Company shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement,:

- (a) 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 in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (c) access all or any part of the Service and/or the Documentation in order to build a product or service which competes with the Service and/or the Documentation; or
- (d) use the Service and/or the Documentation to provide services to third parties (save as expressly contemplated by this Agreement); or
- (e) use the Service for the purpose of spamming either in part or in whole; or
- (f) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or the Documentation available to any third party except the Authorised Users, or
- (g) attempt to obtain, or assist third parties in obtaining, access to the Service and/or the Documentation, other than as provided under this clause 1; and
- (h) The Company shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and/or the Documentation and, in the event of becoming aware of any such unauthorised access or use, promptly notify Cauwill.

The rights provided under this clause 1 are granted to the Company only, and shall not be considered granted to any subsidiary or holding company of the Company.

1.9 CAUWILL BRANDING

1.9.1

Subject to Clause 1.9.1A, the Service (including any amendments or additional elements which may be added to the Service by agreement between the Parties) will be deployed using Cauwill branding, including but not limited to the Specified URLs and the Specified Survey Footers (the “**Cauwill Marks**”).¹

1.9.1A

The Company may, in the account provided to the Company by Cauwill as part of the Service, remove the Specified Survey Footers and deploy the Service with alternative branding required by it or by its clients PROVIDED ALWAYS that the Company shall not remove the Specified Survey Links unless the removal of the Specified Survey Links is agreed in advance between the Company and Cauwill in writing.

1.9.2

If an alternative URL to a Specified URL is requested by the Company Cauwill will make every effort to source and put in place a suitable alternative or to integrate Company owned URLs as an additional support charged through professional services in accordance with Schedule A of this Agreement.

1.9.3

For the avoidance of doubt, the Company acknowledges and accepts that, subject to Clause 1.9.1A, the Cauwill Marks may be displayed on the Specified URLs and the Specified Survey Footers as part of the Service, provided that in no event shall the Cauwill Marks be more prominent than Company branding on the Company sites.

1.10 3RD PARTIES

The Company acknowledges that the Service 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. Cauwill makes no representation 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 Company, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Company and the relevant third party, and not Cauwill. Cauwill recommends that the Company refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Cauwill does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Service.

2 THE COMPANY'S OBLIGATIONS

The Company shall:

2.1

Provide Cauwill with:

2.1.1

All necessary co-operation in relation to this Agreement; and

2.1.2

All necessary access to such information as may be required by Cauwill in order to provide the Service, including but not limited to Company Data, Account Information, security access information and configuration services;

2.2

comply with any reasonable instructions issued by Cauwill with respect to its use of the Service and co-operate with Cauwill in its reasonable security and other checks;

2.3

comply with all Applicable Laws with respect to its use of the Service and its activities under this Agreement;

2.4

carry out all other Company responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Company's provision of such assistance as agreed by the parties, Cauwill may adjust any agreed timetable or delivery schedule as reasonably necessary;

2.5

Ensure that the Authorised Users use the Service 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;

2.6

obtain and shall maintain all Required Permissions necessary for Cauwill, its contractors and agents to perform their obligations under this Agreement, including without limitation the Service;

2.7

ensure that its network and systems comply with the relevant specifications provided by Cauwill from time to time; and

2.8

be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Cauwill's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Company's network connections or telecommunications links or caused by the internet.

3 CAUWILL'S OBLIGATIONS

3.1

Cauwill undertakes that the Service will be performed substantially in accordance with the Documentation and with reasonable skill and care.

3.2

The undertaking at clause 3.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to Cauwill's instructions, or modification or alteration of the Service by any party other than Cauwill or its authorised contractors or agents. If the Service does not conform with the foregoing undertaking, Cauwill will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Company with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Company's sole and exclusive remedy for any breach of the undertaking set out in clause 4.1. Notwithstanding the foregoing, Cauwill:

3.2.1

does not warrant that the Company's use of the Service will be uninterrupted or error-free; or that the Service, Documentation and/or the information obtained by the Company through the Service will meet the Company's requirements; and

3.2.2

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 Company acknowledges that the Service and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities. Cauwill shall use reasonable endeavours to provide support to the Company in the event of technical problems related to the Service in accordance with the Service Levels.

3.3

Cauwill shall use reasonable endeavours to provide support to the Company in the event of technical problems related to the Service in accordance with the Service Levels and the Support Services Policy. Cauwill shall, as part of the Service and at no additional cost to the Company, provide the Company with Cauwill's standard customer support services during Normal Business Hours in accordance with Cauwill's Support Services Policy in effect at the time that the Services are provided. The Cauwill Support Services Policy will automatically enable the Company to receive each of the quarterly product release updates during the Term. Benefits include:

- Scheduled maintenance;

- Performance improvements and Software development (which may include integration of 3rd party applications & services such as Delivery Platforms (SMS, EMAIL, IM), Analytic Engines, NLP engines, research panels and Social Networks); and
- Bug fixes.

4 PROPRIETARY RIGHTS

4.1 CAUWILL DATA OWNERSHIP

The Company acknowledges and agrees that Cauwill and/or its applicable licensors retain all right, title, and interest in and to the method of delivery of the Service and the Documentation, all integration guides and materials, and all Intellectual Property Rights associated thereto. Except as expressly stated herein, this Agreement does not grant the Company any Intellectual Property Rights, or any other rights or licences in respect of the Service or the Documentation.

4.2 COMPANY DATA OWNERSHIP

The Parties acknowledge and agree that, subject to the license grants contained in this Agreement the Company and/or its applicable licensors retain all right, title, and interest in all of the Account Information, Company Data, and all Intellectual Property Rights associated thereto. The Company and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Account Information, the Company Data.

4.3 THIRD PARTY IP RIGHTS

In its use of the Service the Company shall ensure that it will not send or upload anything which in any way breaches the Intellectual Property Rights of any third party.

5 DATA PROTECTION

5.1 DEFINITIONS

The following definitions apply to this clause 5:

Data Protection Legislation: any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Company, Cauwill and/or the Service, including

- (i) the Data Protection Acts 1988 to 2003 and European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, and any laws or regulations implementing Directive 95/46/EC (**Data Protection Directive**) or Directive 2002/58/EC (**ePrivacy Directive**); and/or the General Data Protection Regulation (EU) 2016/679 (**GDPR**), any corresponding or equivalent national laws or regulations and any laws or regulations repealing or replacing the ePrivacy; and
- (ii) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;

Personal Data: has the meaning set out in the Data Protection Legislation.

Processing and process: have the meaning set out in the Data Protection Legislation.

Data Controller: has the meaning given to that term (or to the term 'controller') in the Data Protection Legislation;

Data Processor: has the meaning given to that term (or to the term 'processor') in the Data Protection Legislation;

Data Subject: has the meaning given to that term in the Data Protection Legislation;

User Personal Data: the Personal Data of any Authorised User and/or End User which Cauwill has access to pursuant to this Agreement.

5.2 HOSTING AND BACK-UP

Cauwill uses a third party provider (currently AWS EU West (Dublin)) to host the Service including any Company Data, and to maintain regular backups of Company Data and ship transaction logs. As at the date of this Agreement, Cauwill also maintains a seven-day rolling back-up of certain data. In the event of any loss or damage to Company Data, the Company's sole and exclusive remedy shall, except where such loss or damage to Company Data results from any unauthorised access, extraction or removal of Company Data, be for Cauwill to use reasonable commercial endeavours to restore the lost or damaged Company Data from the latest back-up of such Company Data maintained on behalf of Cauwill. Cauwill shall not be responsible for any loss, destruction, alteration or disclosure of Company Data caused by any third party (except those third parties sub-contracted by Cauwill).

5.3 PRIVACY

Cauwill shall, in providing the Service, comply with its Privacy Policy relating to the privacy and security of the Company Data available from the Cauwill website at <https://cauwill.com/> or such other website address as may be notified to the Company from time to time, as such document may be amended from time to time by Cauwill in its sole discretion. Cauwill shall notify the Company of any material amendment to the Privacy Policy from time to time.

5.4 USER PERSONAL DATA

In respect of the User Personal Data that Cauwill will process on the Company's behalf when performing its obligations under this Agreement, or otherwise, the parties record their intention that the Company shall be the Data Controller and Cauwill shall be a Data Processor and:

5.4.1 CAUWILL SHALL;

- 5.4.1.1 comply with all Data Protection Legislation in connection with the processing of User Personal Data, the Service and the exercise and performance of its respective rights and obligations under this Agreement;
- 5.4.1.2 unless required to do otherwise by Applicable Law, process the User Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Company from time to time;
- 5.4.1.3 if any Applicable Law requires it to process User Personal Data other than in accordance with the Company's instructions, notify the Company of any such requirement before processing the User Personal Data (unless Applicable Law prohibits such notification on important grounds of public interest);

- 5.4.1.4 ensure that all employees:
 - 5.4.1.4.1 are informed of the confidential nature of the User Personal Data;
 - 5.4.1.4.2 have undertaken training in the laws relating to handling personal data; and
 - 5.4.1.4.3 are aware both of Cauwill's duties and their personal duties and obligations under such laws and this Agreement;
- 5.4.1.5 if it receives any request from a Data Subject for access to that person's User Personal Data, or any complaint, notice or communication which relates directly or indirectly to the processing of the User Personal Data or to either party's compliance with the Data Protection Legislation, notify the Company within three Business Days and provide the Company with full co-operation and assistance in relation to any such request, complaint, notice or communication, and shall not respond to any Data Subject request or complaint without the Company's prior written approval;
- 5.4.1.6 Cauwill shall not transfer the User Personal Data to any country outside the European Economic Area (EEA) or to any international organisation, except where such transfer is necessary to comply with any Applicable Law and such transfer has been notified to the Company in writing, without the Company's prior written consent or other than as envisaged by this Agreement (for example where Company expressly directs Cauwill to transfer relevant data, or where an Authorised User/Affiliate is located outside the EEA);
- 5.4.1.7 maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Company, and at the Company's request, shall in a timely manner (and in any event within three Business Days) provide to the Company a copy of all User Personal Data held by it;
- 5.4.1.8 notify the Company without undue delay (wherever possible, no later than 24 hours after becoming aware) if it becomes aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any User Personal Data;
- 5.4.1.9 comply, without delay, with any request from the Company requiring Cauwill to amend, transfer, return or delete the User Personal Data; and
- 5.4.1.10 provide reasonable access for the Company, or its auditors (where practicable, during normal business hours) to the facilities, equipment, premises and sites on which User Personal Data is held, and to any other equipment or facilities used in the provision of the Service, for the purpose of demonstrating compliance by Cauwill with its obligations under Data Protection Legislation provided that the Company gives Cauwill reasonable prior notice of such audit and/or inspection. Cauwill shall permit Company's clients to exercise the above audit rights where a client is required under Applicable Laws to have relevant audit rights over all third parties with access to applicable data, provided that Company shall use reasonable endeavours to satisfy the relevant client through alternative means than a direct audit right. Any costs associated with the audit shall be borne by each party and neither party will be responsible for the costs of the other party in connection with the audit;
- 5.4.1.11 comply with reasonable requests for information received from clients of Company or their auditors for the purpose of demonstrating compliance by Cauwill with its obligations under Data Protection Legislation;
- 5.4.1.12 provide reasonable assistance to the Company in ensuring compliance with Company's obligations in Articles 32 to 36 of the GDPR;

5.4.1.13 ensure that any contract between Cauwill and a subprocessor of relevant Personal Data incorporates the provisions of this clause 8.4.1 (or where not possible having used reasonable endeavours, the requirements of Article 28, and 33(2) of GDPR); and

5.4.1.14 immediately notify Company if in Cauwill's opinion, an instruction from the Company infringes the GDPR or other relevant data protection law.

5.4.2 *THE COMPANY SHALL;*

5.4.2.1 comply with all Data Protection Legislation in respect of the performance of its obligations under this Agreement.

5.4.2.2 ensure that its privacy notices are clear and provide sufficient information to the Data Subjects for them to understand what User Personal Data the Company is sharing with a category of subprocessor which Cauwill falls into, the circumstances in which it will be shared, the purposes for the data processing, and shall ensure that it complies with Data Protection Legislation in connection with the use, processing and transfer of User Personal Data.;

5.4.2.3 ensure that the Company is entitled to transfer the relevant User Personal Data to Cauwill so that Cauwill may lawfully use, process and transfer the personal data in accordance with this Agreement on the Company's behalf;

5.4.3 *EACH PARTY SHALL*

5.4.3.1 take appropriate technical and organisational measures against unauthorised or unlawful processing of User Personal Data or its accidental loss, destruction or damage, sufficient to meet the requirements of Data Protection Legislation and ensure the protection of the rights of Data Subjects. Each party shall comply with the information security exhibit at Schedule D to this Agreement;

5.5 **USER DATA COLLECTION, USE, AND OWNERSHIP**

As the Company and/or End User (the "**User**") opens trustMinder URL link and access Cauwill's server Cauwill may collect certain non-personally identifiable information such as browser type, session information, browser cookies, IP address, device ID, carrier user ID (the "**User Data**") for the purposes of optimising the End User's experience. User Data collected by Cauwill shall be owned by Cauwill and shall be subject to Cauwill's then-current Privacy Policy available from the Cauwill website at www.cauwill.com. During and after the Term of this Agreement, Cauwill shall use this User Data solely to comply with its legal obligations and to fulfill Cauwill's obligations hereunder. Except as stated above, User Data collected by Company on Company Service shall be owned by Company.

6 CONFIDENTIALITY

6.1 DEFINITIONS

"**Confidential Information**" includes without limitation, any and all proprietary information including but not limited to: (a) any and all technical and non-technical information, computer

code and data, in any format, future and proposed technologies, business, products and services, development, design details and specifications, the Documentation, Company Data, Account Information, Company lists, sales reports, statistics, specifications, materials, guidelines and documentation, including this Agreement and its terms; and (b) any other information designated in writing by the Discloser as “Confidential” or an equivalent designation or any information reasonably understood as confidential by the Recipient. Confidential Information does not include (i) information that has become publicly known other than through any act or omission of the Recipient, (ii) information that has been independently developed by the Recipient without access to the Discloser’s Confidential Information, as evidenced in writing; or (iii) information that was rightfully received by the Recipient from a third party that had no obligation to keep it confidential.

6.2 NON-USE, NON-DISCLOSURE AND OWNERSHIP

6.2.1

Each Party (“**Recipient**”) shall hold the other’s Confidential Information in confidence and shall not use it for any purpose other than the intended use set forth herein, and unless required by law, shall not disclose, disseminate or otherwise publish or communicate Confidential Information received hereunder to any person, firm, corporation or other third party without the prior written consent of the disclosing Party (“**Discloser**”), except to employees, contractors, financial and legal advisors, and Affiliates who have a need to know, who have been informed of the Confidentiality obligations hereunder, and who have agreed in writing or are obligated as a matter of law, to maintain the Confidential Information in accordance with the terms of this Agreement.

6.2.2

The Recipient agrees to use the same degree of care that it uses to protect its own confidential information of a like nature from unauthorised disclosure, but in no event less than a reasonable degree of care.

6.2.3

The confidentiality restrictions in this clause 6 will not apply; to Confidential Information which is required to be disclosed by Recipient by law by a governmental authority, by court order, discovery or administrative or quasi-administrative process, however, Recipient must, to the extent lawful, provide notice to Discloser as soon as practicable of the disclosure demand and take all reasonable steps to limit disclosure of Discloser’s Confidential Information.

6.2.4

The Parties recognise and agree that nothing contained in this Agreement will be construed as granting any property right, by license or otherwise, to any Confidential Information of Discloser. Parties shall not, and shall not allow any party on its behalf to, copy, modify, reverse engineer, disassemble any Confidential Information. Parties further agree not to export or re-export (within the meaning of Irish or applicable other export control laws or regulations) any Confidential Information in any form.

6.2.5

The Parties agree that any violation or threatened violation of this clause 6 will cause irreparable injury to the Discloser, entitling the Discloser to seek injunctive relief in addition to all legal remedies.

7 INDEMNITIES

7.1 INDEMNITY BY THE COMPANY

The Company shall defend, indemnify and hold harmless Cauwill, its officers, directors and employees against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection

(i) misuse of Cauwill's Intellectual Property Rights and/or the platform made available to Company in connection with the Service;

(ii) any third party claims against Cauwill arising as a result of Company's misuse of the Service
, provided that:

- (a) the Company is given prompt notice of any such claim;
- (b) Cauwill provides reasonable co-operation to the Company in the defence and settlement of such claim, at the Company's expense; and
- (c) the Company is given sole authority to defend or settle the claim.

7.2 INDEMNITY BY CAUWILL

Cauwill shall defend the Company, its officers, directors and employees against any claim that the Service or Documentation infringes any third party Intellectual Property Rights, and shall indemnify the Company for any amounts awarded against the Company in judgment or settlement of such claims, provided that:

- (a) Cauwill is given prompt notice of any such claim;
- (b) the Company provides reasonable co-operation to Cauwill in the defence and settlement of such claim, at Cauwill's expense; and
- (c) Cauwill is given sole authority to defend or settle the claim.

7.3

In defence or settlement of any claim under clause 7.2, Cauwill may procure the Company's right to continue the use of respective infringing material, replace the respective infringing material with an equivalent material not infringing the rights referred to above, or modify the respective infringing material so as to avoid infringement, provided that such modification or replacement does not materially and adversely affect the operability, functionality, performance or use of the material in accordance with this Agreement, or if such remedies are not reasonably available, terminate this Agreement on 5 Business Days' notice to the Company without any additional liability or obligation to pay liquidated damages or other additional costs to the Company.

7.4

Cauwill shall have no liability whatsoever to the Company in respect of any infringement which is based on modification of the Service or Documentation not authorised by Cauwill, or on the use of the Service or Documentation for purposes other than planned and accepted for, or on the use of the Service or Documentation in combination with products, services and materials supplied by third party that Cauwill has not approved or are not reasonably necessary to enable Company to make use of the Services, or on the use of the material against Cauwill's instructions.

7.5

Save as provided above, neither Party shall have any liability whatsoever in respect of any infringement of intellectual property rights or consequences thereof or otherwise.

8 LIMITATION OF LIABILITY - CAUWILL

8.1

This clause 8 sets out the entire financial liability of Cauwill (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Company:

8.1.1

arising under or in connection with this Agreement;

8.1.2

in respect of any use made by the Company of the Service and Documentation or any part of them; and

8.1.3

in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

8.2

Except as expressly and specifically provided in this Agreement:

8.2.1

the Company assumes sole responsibility for surveys prepared using the Service and ensuring that such surveys meet all Applicable Laws in the jurisdiction in which such surveys are carried out, from the results obtained from the use of the Service and the Documentation by the Company, and for conclusions drawn from such use. Cauwill shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Cauwill by the Company in connection with the Service, or any actions taken by Cauwill at the Company's direction (other than actions taken by Cauwill at the Company's direction in the ordinary course of providing the Service in the manner expressly contemplated in the terms of this Agreement);

8.2.2

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

8.2.3

the Service and the Documentation are provided to the Company on an "as is" basis.

8.3

Nothing in this Agreement excludes the liability of Cauwill:

8.3.1

for death or personal injury caused by Cauwill's negligence; or

8.3.2

for fraud or fraudulent misrepresentation.

8.4

Subject to clause 8.2 and clause 8.3:

8.4.1

Cauwill 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 (other than where such loss of data arises as a result of a breach by Cauwill of its obligations under Data Protection Legislation) 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

8.4.2

Cauwill's total aggregate liability in contract, 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 Charges paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

9 LIMITATION OF LIABILITY – COMPANY

9.1 This clause 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Cauwill:

9.1.1 arising under or in connection with this Agreement; and

9.1.2 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

9.2 Nothing in this Agreement excludes the liability of the Company:

9.2.1 for death or personal injury caused by the Company's negligence; or

9.2.2 for fraud or fraudulent misrepresentation.

9.3 Subject to clause 9.2 and clause 9.3:

- 9.3.1 The Company 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 (other than where such loss of data arises as a result of a breach by the Company of its obligations under Data Protection Legislation) 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
- 9.3.2 The Company's total aggregate liability in contract, 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 Charges received by Cauwill for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

10 GENERAL

10.1 ASSIGNMENT

10.1.1

The Company shall not, without the prior written consent of Cauwill, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement except that Company may novate this Agreement to a) a third party acquirer or all or substantially all of the assets of the Company or b) to an Affiliate.

10.1.2

Cauwill 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 provided that Cauwill has provided prior written notice to Company and obtained the prior consent in writing of the Company (not to be unreasonably withheld).

10.1.3

Cauwill may subcontract portions of its obligations under this Agreement to one or more third party providers at its sole discretion, including but not limited to Cauwill Affiliates, provided that Cauwill has provided prior written notice to Company with and obtained the prior consent in writing of the Company (not to be unreasonably withheld) and provided that Cauwill will remain responsible for its obligations under this Agreement to the extent not performed as required.

10.2 ANTI-BRIBERY

Cauwill shall comply with Applicable Laws relating to anti-bribery and anti-corruption including the Prevention of Corruption (Ireland) Acts 1906-2010, the Ethics in Public Office (Ireland) Act 1995 and the Bribery Act (U.K.) 2010.

10.3 REGULATORY ASSISTANCE

Cauwill shall on reasonable written request in advance from Company, a client of Company, or a regulator of either, assist the relevant entity with its request. Where Cauwill considers that the steps necessary to comply with the request would constitute an unreasonable burden, Cauwill

shall be entitled to recover reasonable costs in connection with complying with the request from Company, subject to prior notification to Company of the amount of costs.

10.4 SURVIVAL

Provisions of this Agreement, which by their terms are to survive expiration or termination of this Agreement, (including without limitation clauses 7, 8 and 10 will survive the expiration or earlier termination of the Service Agreement.

10.5 JOINT MARKETING ACTIVITIES

Company and Cauwill may jointly prepare any and all co-marketing activities and press releases regarding this Agreement and the relationship between the Parties. Co-marketing activities will include the joint rights to display Company and Cauwill marks on marketing materials and websites. Each Party retains the right to have final approval for each and all co-marketing activities and press releases created, written or drafted by the other Party making reference to or disclosing any or all activities arising out of or related to this Agreement.

10.6 NOTICE

Any notices required or permitted hereunder shall be given to the appropriate Party at the address set forth in the first paragraph of this Agreement or at such other address as the Party shall specify in writing or as is available at a public register incorporating details of either Party from time to time. Such notice shall be deemed given: upon personal delivery; if sent by electronic mail, upon confirmation of receipt; if sent by certified or registered mail, postage prepaid, five days after the date of mailing; or if sent by overnight courier service, on the next business day after the date of sending.

A copy of notices to Cauwill shall be sent to:

Cauwill Technologies Limited
Coliemore House, Coliemore Road, Dalkey, Co. Dublin, Ireland.
ATTN: Company Secretary

A copy of notices to Company shall be sent to the address in the Service Agreement.

10.7 NO AGENCY

The Parties understand and agree that each Party is an independent contractor in the performance of each and every part of this Agreement and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. Neither Party (nor any agent or employee of that Party) is the representative of the other Party for any purpose and neither Party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other Party for any purpose whatsoever.

10.8 FORCE MAJEURE

10.8.1

Any delay in or failure of performance by either Party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such Party including, but not limited to, acts of God, acts of civil or military authority, fires, floods, earthquakes, environmental conditions, riots, wars, sabotage,

strikes or labor disputes, failure of power, theft, failure of telecommunications lines or compliance with any law, regulation, or order (whether valid or invalid) of any governmental body provided that in each case the relevant party affected by the force majeure event is using reasonable endeavours to implement its business continuity policy.

10.8.2

Cauwill shall maintain a business continuity policy and no less frequently than annually test the business continuity plan to ensure it remains fit for purpose.

10.9 SEVERABILITY

In the event that any of the provisions of this Agreement are held to be unenforceable, the remaining portions of the Agreement will remain in full force and effect.

10.10 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.

10.11 EXPENSES

Each Party will pay its own expenses and costs incurred in the negotiation, execution of, and fulfillment of such Party's obligations under this Agreement, except as may otherwise be set forth herein.

10.12 HEADINGS

Heading and captions are for convenience only and are not to be used in the interpretation of this Agreement.

10.13 ENTIRE AGREEMENT

This Agreement and the attached exhibits constitute the full and complete understanding and agreement of the Parties relating to the subject matter hereof and supersede all prior understandings and agreements relating to such subject matter. Any waiver, modification, or amendment of any provision of this Agreement shall be effective only if in writing and signed by the Parties. The provisions of this Agreement shall prevail over any conflicting provisions in a purchase order, acceptance notice or other document.

10.14 GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with Irish law (excluding its choice of law provisions) and the Parties agree to submit to the non-exclusive jurisdiction of the Irish courts.