RESELLER AGREEMENT (CLOUD SERVICES)

**THIS AGREEMENT** is dated

PARTIES

1. **METACOMPLIANCE IRELAND** **LIMITED** incorporated and registered in Ireland with company number 640228 whose registered office is at Unit 21, Block 1, Port Tunnel Business Park, Clonshaugh, Dublin, D17 YY31 (**MetaCompliance**); and
2. **RESELLER** (“**Reseller”**)**:**

|  |  |
| --- | --- |
| **Name:** |  |
| **Company Business ID:** |  |
| **Registered Office:** |  |
| **Mailing Address (if different):** |  |

AGREED TERMS

1. This agreement (**Agreement**) incorporates the terms and conditions set out in schedule 1 (Reseller **Commercial Terms**), schedule 2 (**General Terms**) and schedule 3 (MetaCompliance Commercial Terms and Conditions).
2. The General Terms take precedence over the Reseller Commercial Terms, and this Agreement takes precedence over any other document not specifically incorporated herein.
3. The parties acknowledge that they have read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.
4. Unless the context otherwise requires, the definitions set out in this Agreement shall apply throughout this Agreement.

**AGREED AND ACCEPTED**

|  |  |
| --- | --- |
| For and on behalf of **MetaCompliance** by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Printed Name)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Title)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Date) | For and on behalf of **Reseller** by:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signature)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Printed Name)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Title)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Date) |

**SCHEDULE 1: RESELLER COMMERCIAL TERMS**

|  |  |
| --- | --- |
| **Effective Date:** | To be inserted |
| **Cloud Services:** | The MetaCompliance Cloud subscription service which is a software as a service resource that is provided over the internet by or on behalf of MetaCompliance and the Documentation, together with any other services and related documentation developed by MetaCompliance and which MetaCompliance may permit the Reseller, by express notice in writing, to market pursuant to this Agreement, in each case, as may be varied in accordance with clause 4.2 of the General Terms |
| **Territory:** | To be defined |
| **Excluded Accounts:** | None except were MetaCompliance or other Reseller are already active. |
| **Prices:** | MetaCompliance’s current list prices for User Subscriptions from time to time (subject to adjustment in accordance with clause 6.2 of the General Terms), the list prices as at the Effective Date having been notified to the Reseller (receipt acknowledged) |
| **Discounts:** | The Reseller shall be entitled to a base discount of X% off the current list price from time to time. |
| **Currency:** | To be defined |
| **Minimum Quantity:** | means the following minimum sales (defined as the value of all purchase orders for User Subscriptions fulfilled and paid) for each Year: £x,000 |
| **Documentation:** | the documentation made available online at www.metacompliance.com or such other website address as may be notified to the Reseller from time to time |
| **Support Services Policy:** | MetaCompliance’s policy for providing support in relation to the Services as made available online at https://www.metacompliance.com/company/commercial-terms-and-conditions/support-services-policy-ir or such other website address as may be notified to the Reseller from time to time |
| **Duration:** | This Agreement shall commence on the Effective Date and shall (unless terminated earlier pursuant to clause 14.2, 14.3 or 16.1 of the General Terms) continue in full force and effect for an initial period of 12 months from the Effective Date, and thereafter for successive extensions of 12 months each, unless and until terminated by either party by not less than 3 months’ notice in writing to the other party, save that the earliest date on which such notice may take effect is the expiry of the initial period, or, if the initial period has been extended, then the expiry of the relevant extension. Any period of extension shall be deemed included within the duration of this Agreement |

**SCHEDULE 2 - GENERAL TERMS**

# INTERPRETATION

## In this Agreement:

Authorised Users means those employees or contractors of the Reseller or Commercial Licensee, who are authorised by the Reseller in accordance with these General Terms and the MCT&C’S, to use the Services and any ancillary documentation, in respect of whom a User Subscription has been purchased.

Business Day means a day other than a Saturday, Sunday or public holiday in the Republic of Ireland;

Business Hours means the period from 9.00 am to 5.00 pm on any Business Day;

Commercial Licensee means the end user organisation who has subscribed to the use of MetaCompliance Software and Services via the Reseller. All references to ‘Customer’ in the MetaCompliance Commercial Terms and Conditions (as provided [**here**](https://www.metacompliance.com/company/commercial-terms-and-conditions-ir)**)**, shall mean the ‘Commercial Licensee’ in the context of contracting via this Reseller Agreement.

Confidential Information means information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information;

Control means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company;

Intellectual Property Rights means patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Legislation means any statute, statutory provision or subordinate legislation or any mandatory rules or guidance issued by any regulatory body having jurisdiction over the applicable party;

MetaCompliance Commercial Terms and Conditions (“MCT&C’s”) means the standard Commercial Terms applying to the Commercial Licensee’s rights and obligations in the use of the Cloud Services (and amended from time to time) by MetaCompliance. Current version at the point of executing this Agreement is included in Schedule 3 and as updated via the website link [**here**](https://www.metacompliance.com/company/commercial-terms-and-conditions-ir)**;**

Specification means MetaCompliance’s standard functionality and performance specifications for the Cloud Services available at https://www.metacompliance.com/company/commercial-terms-and-conditions/specifications-ir (as may be varied from time to time in accordance with clause 4.3);

**Trade Marks** means any and all trade marks (whether registered in the Territory or not) owned or used by MetaCompliance under which it markets and packages the Cloud Services;

User Subscription means the user subscription which entitles Authorised Users to access and use the Cloud Services and Documentation in accordance with the MCT&C’S;

Year means the period of 12 months from the Effective Date and each consecutive period of 12 months thereafter during the term of this Agreement.

Any terms capitalized and not defined within this Agreement, should be interpreted in accordance with definitions provided in the MetaCompliance Commercial Terms and Conditions as provided [**here**](https://www.metacompliance.com/company/commercial-terms-and-conditions-ir)**.** All references to ‘Customer’ in the MetaCompliance Commercial Terms and Conditions, shall mean the ‘Commercial Licensee’ in the context of contracting via this Reseller Agreement.

## In this Agreement: (a) clause and schedule headings shall not affect the interpretation of this Agreement; (b) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (c) unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular; (d) reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; (e) reference to writing or written includes letters and e-mail; (f) reference to any clause or schedule is to a clause or schedule to this Agreement and within each schedule, reference to a clause is to a clause of that schedule unless the context requires otherwise.

# APPOINTMENT

## Subject to compliance with the terms of this Agreement, MetaCompliance hereby grants the Reseller the non-exclusive rights: (a) to purchase User Subscriptions from MetaCompliance; and (b) to market and sell those User Subscriptions to Commercial Licensees’, other than to those Excluded Accounts, in the Territory.

## During the term of this Agreement, the Reseller shall not in any capacity, either directly or indirectly: (a) purchase User Subscriptions from any person other than MetaCompliance; or (b) make active sales of User Subscriptions to any of the Excluded Accounts (active sales being understood to mean actively approaching or soliciting customers or sales through visits, communication, advertising or otherwise).

## The Reseller shall be entitled to describe itself as an "Authorised Reseller" of the User Subscriptions but shall not represent itself as an agent of MetaCompliance for any purpose, nor pledge MetaCompliance’s credit or give any condition or warranty or make any representation on MetaCompliance’s behalf or commit MetaCompliance to any contracts. Further, the Reseller shall not without MetaCompliance’s prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of Cloud Services which are inconsistent with those contained in the promotional material supplied by MetaCompliance (including, without limitation, the MCT&C’S) or otherwise incur any liability on behalf of MetaCompliance howsoever arising.

## The Reseller shall not sell any User Subscriptions through a sales agent or to a sub-distributor or reseller without the express prior written permission of MetaCompliance. Where MetaCompliance agrees to any such appointment, the Reseller shall ensure that it enters into a written contract with such sales agent, sub-distributor or reseller on terms which provide at least the same level of protection to MetaCompliance as set out in this Agreement.

## The Reseller's appointment under this clause 2 only grants to the Reseller a licence to resell User Subscriptions, and does not transfer any right, title or interest to the Cloud Services to the Reseller or its Commercial Licensees.

# RESELLER'S UNDERTAKINGS

## The Reseller undertakes and agrees with MetaCompliance to: (a) in each Year, place orders with MetaCompliance for the Minimum Quantity for that Year and otherwise use its best endeavours to promote the distribution and sale of User Subscriptions in the Territory. For the avoidance of doubt there will be no financial penalty applied to Reseller if they do not meet the Minimum Quantity in a Year; (b) ensure that Commercial Licensees of the Cloud Services are aware of and accept the MCT&C’s before using the Cloud Services; (c) refrain from amending or varying the terms of the MCT&C’S; (d) employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of the Reseller's obligations under this Agreement; (e) to allow for support planning by MetaCompliance and to avoid channel conflict, the Reseller will promptly register each lead or opportunity with MetaCompliance; (f) no later than the last Business Day of each calendar month submit to MetaCompliance by such means as MetaCompliance may notify to the Reseller from time to time reports in the format stipulated by MetaCompliance from time to time showing a rolling forecast for the next 90 days of what leads or opportunities the Reseller expects to convert into orders, and any other information relating to the performance of its obligations under this Agreement MetaCompliance may reasonably require from time to time; (g) within 14 days of a written request from MetaCompliance at any time, and from time to time, provide such information as is reasonably requested by MetaCompliance about the Reseller's processes and controls to support compliance with this Agreement; (h) keep full and proper books of account and records showing clearly all enquiries, quotations, transactions and proceedings relating to the User Subscriptions and allow MetaCompliance (or its nominee, including without limitation its accountants or auditors), on reasonable notice, access to all accounts and records relating to the User Subscriptions for the purpose of inspection. MetaCompliance’s costs of such inspection will be borne by MetaCompliance unless it shows a shortfall exceeding 5% in respect of any period to which the inspection relates between the amount actually paid by the Reseller and the amount due to be paid by the Reseller, in which event (without affecting or prejudicing any other rights MetaCompliance may have) the Reseller will pay in full MetaCompliance’s costs (which for the avoidance of doubt will include any reasonable costs of MetaCompliance’ nominee in carrying out the inspection) and the amount of the shortfall, within 14 days of the date of MetaCompliance’s invoice for such costs and/or shortfall; (i) provide MetaCompliance such information about the Commercial Licensees of the Cloud Services as is required by MetaCompliance for the purposes of managing and enforcing the terms of the MCT&Cs with such Commercial Licensees as and required; and (j) inform MetaCompliance immediately of any changes in ownership or Control of the Reseller and of any change in its organisation or method of doing business which might affect the performance of the Reseller's duties in this Agreement.

# SUPPLY OF CLOUD SERVICES

## All purchase orders must be emailed to MetaCompliance.

## MetaCompliance is entitled upon giving 1 month’s written notice to the Reseller to vary this Agreement to exclude from this Agreement one or more of the Cloud Services as it thinks fit if for any reason the supply of such Cloud Services will be permanently discontinued. MetaCompliance must honour the existing contractual commitments with the Commercial Licensees or provide a pro-rata refund for the period of the Subscription Term that it can no longer fulfil, via the Reseller.

## MetaCompliance is entitled to make changes to the Specification which do not adversely affect the Cloud Services and shall give written notice of such changes to the Reseller as soon as reasonably practicable.

# METACOMPLIANCE’ UNDERTAKINGS

MetaCompliance undertakes: (a) to provide such information and support as may be reasonably requested by the Reseller to enable it to properly and efficiently to discharge its duties under this Agreement; (b) to approve or reject any promotional information or material submitted by the Reseller within 28 days of receipt; (c) to provision the tenant, provide onboarding services and training directly to the Commercial Licensee in the use of the Cloud Services; and (d) for so long as each contract subsists for each of the Commercial Licensees, provide for the benefit of that Commercial Licensee support in relation to access and use of the Cloud Services as more particularly described in the Support Services Policy.

# PRICES & PAYMENT

## The prices to be paid by the Reseller to MetaCompliance for the User Subscriptions are to be MetaCompliance’s list prices from time to time, the current version of which having been provided by MetaCompliance are discounted in accordance with the Discounts set out in the Reseller Commercial Terms. For the avoidance of doubt, User Subscriptions are based on a minimum 12 months subscription prepayment paid annually in advance, with discounts available for multi-year subscription prepayments.

## MetaCompliance shall give the Reseller 30 days' notice of any rises in the prices of the User Subscriptions.

## Any and all expenses, costs and charges incurred by the Reseller in the performance of its obligations under this Agreement shall be paid by the Reseller unless MetaCompliance has expressly agreed beforehand in writing to pay such expenses, costs and charges.

## MetaCompliance will invoice the Reseller for the Cloud Services upon receipt of a Purchase Order for each relevant Commercial Licensee of the Reseller.

## The Reseller shall pay the full amount invoiced to it by MetaCompliance, in the Currency set out in the Reseller Commercial Terms, within 30 days of the date of invoice.

## All amounts due under this Agreement shall be paid by the Reseller to MetaCompliance in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## The Reseller shall be responsible for the collection, remittance and payment of any or all taxes, charges, levies, assessments and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, sale, lease or other distribution of the User Subscriptions.

## If the Reseller fails to make any payment due to MetaCompliance under this Agreement by the due date for payment, then, without limiting MetaCompliance’s remedies under clause 14, the Reseller shall pay interest on the overdue amount at the rate of 4% per annum above HSBC’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Reseller shall pay the interest together with the overdue amount.

# ADVERTISING & PROMOTION

## The Reseller shall: (a) be responsible for the advertising and promotion of the Cloud Services provided that the use by the Reseller of any advertising materials and promotional literature containing the Trade Marks or other references to the Cloud Services shall be subject to the prior written consent of MetaCompliance; (b) observe all reasonable directions and instructions given to it by MetaCompliance in relation to the promotion and advertisement of the Cloud Services to the extent that such promotions or advertisements refer to the Cloud Services or otherwise use the Trade Marks, and shall not make any written statement as to the quality or production of the Cloud Services without the prior written approval of MetaCompliance; (c) conduct its business in a manner that reflects favourably at all times on MetaCompliance and the good name, goodwill and reputation of MetaCompliance and not enter into any contract or engage in any practice detrimental to the interests of MetaCompliance in the Cloud Services; and (d) avoid deceptive, misleading or unethical practices that are, or might be, detrimental to MetaCompliance, the Cloud Services or the public and shall not publish or employ, or co-operate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to MetaCompliance or the Cloud Services.

# COMPLIANCE WITH LAWS & REGULATIONS

## The Reseller shall be responsible for obtaining any necessary import licences or permits necessary for access and use of the Cloud Services in the Territory, and the Reseller shall be responsible for any and all customs duties, clearance charges, taxes, brokers’ fees and other amounts payable in connection with the access and use of the Cloud Services in the Territory.

## The Reseller warrants to MetaCompliance that it has informed MetaCompliance of all Legislation affecting either the access and use of the Cloud Services or the distribution and sale of User Subscriptions which are in force in the Territory or any part of it (**Local Regulations**) at the date of this Agreement.

## The Reseller shall give MetaCompliance as much advance notice as reasonably possible of any prospective changes in the Local Regulations.

## On receipt of notification from the Reseller under clause 8.3 of the General Terms, MetaCompliance shall endeavour to ensure that the Cloud Services comply with any change in the Local Regulations by the date of implementation of that change or as soon as is reasonably possible thereafter.

# ANTI-BRIBERY

## The Reseller shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Criminal Justice (Corruption Offences) Act 2018 (Relevant Requirements) and have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Criminal Justice (Corruption Offences) Act 2018 or local and EU laws as applicable to the Reseller, to ensure compliance with the Relevant Requirements and this clause, and will enforce them where appropriate. Breach of this clause shall be deemed a material breach, which is irredeemable, under clause 14.2(b).

# INTELLECTUAL PROPERTY RIGHTS

## All Intellectual Property Rights in and to the Cloud Services belong, and shall belong, to MetaCompliance and/or its licensors.

## The Reseller shall, at the expense of MetaCompliance, take all such steps as MetaCompliance may reasonably require to assist MetaCompliance in maintaining the validity and enforceability of the Intellectual Property Rights of MetaCompliance during the term of this Agreement.

## Without prejudice to the right of the Reseller or any third party to challenge the validity of any Intellectual Property Rights of MetaCompliance, the Reseller shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of MetaCompliance and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.

## MetaCompliance makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Cloud Services (including, without limitation any trade marks, logos or designs displayed as part of any email template issued pursuant to MetaCompliance’s MetaPhish product) and the Trade Marks nor as to whether the same infringe on any Intellectual Property Rights of third parties.

## MetaCompliance grants to the Reseller a non-exclusive, revocable, personal licence (subject to the terms and conditions of this Agreement and during its term and solely for the purposes of performing the Reseller’s obligations under this Agreement) to use the Trade Marks on or in relation to the Cloud Services for the purpose of demonstrating, marketing and selling User Subscriptions to Commercial Licensees.

## The Reseller shall not: (a) copy the Software provided as part of the Cloud Services or any part of any of it except to the extent and for the purposes expressly permitted by this Agreement; or (b) modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Cloud Services except and only to the extent that it is expressly permitted by applicable law.

## The Reseller shall ensure that each reference to, and use of, any of the Trade Marks by the Reseller is in a manner approved from time to time by MetaCompliance and accompanied by an acknowledgement in a form approved by MetaCompliance that the same is a trade mark (or registered trade mark) of MetaCompliance.

## The Reseller shall not: (a) use any of the Trade Marks in any way which might prejudice their distinctiveness or validity or the goodwill of MetaCompliance therein; (b) use in relation to the Cloud Services any trade marks other than the Trade Marks without obtaining the prior written consent of MetaCompliance; or (c) use any trade marks or trade names so resembling any trade mark or trade names of MetaCompliance as to be likely to cause confusion or deception.

## Other than the licences expressly granted under this Agreement, neither party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights. In particular, except as expressly provided in this Agreement, the Reseller shall have no rights in respect of any trade names or trade marks used by MetaCompliance in relation to the Cloud Services or their associated goodwill, and the Reseller hereby acknowledges that all such rights and goodwill shall inure for the benefit of and are (and shall remain) vested in, MetaCompliance.

## At the request of MetaCompliance, the Reseller shall do or procure to be done all such further acts and things (including the execution of documents) as MetaCompliance shall reasonably require to give MetaCompliance the full benefit of this Agreement.

## The Reseller shall promptly give notice in writing to MetaCompliance in the event that it becomes aware of: (a) any infringement or suspected infringement of the Trade Marks or any other Intellectual Property Rights in or relating to the Cloud Services; and (b) any claim that the Cloud Services or the use, sale or other disposal of the Cloud Services, whether or not under the Trade Marks, infringes the rights of any third party. In the case of any matter falling within this clause: (a) MetaCompliance shall, in its absolute discretion, determine what action if any shall be taken in respect of the matter; and (b) MetaCompliance shall have sole control over and shall conduct any consequent action as it shall deem necessary; and (c) MetaCompliance shall pay all costs in connection with that action and shall be entitled to all damages and other sums which may be paid or awarded as a result of any such action.

## The Reseller shall, at the request and expense of MetaCompliance, provide all reasonable assistance to MetaCompliance (including, but not limited to, the use of its name in, or being joined as a party to, proceedings) in connection with any action to be taken by MetaCompliance, should MetaCompliance, with justification, deem the Cloud Services to violate a third party’s right as referred to above, provided that the Reseller is given such indemnity as it may reasonably require against its reasonable costs.

# CONFIDENTIALITY & DATA PROTECTION

## Each party may have access to Confidential Information of the other party under this Agreement. A party’s Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; or (b) was in the other party’s lawful possession prior to the disclosure; or (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; or (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

## Each party shall hold the other's Confidential Information strictly in confidence and, unless required by law, 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.

## Each party agrees to 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.

## Both parties shall observe their respective obligations set out in the General Data Protection Regulation and any other Data Protection Law that is relevant (as amended from time to time).

## This clause 11 shall survive termination of this Agreement for any reason.

# WARRANTIES

## Each party represents, warrants and undertakes that: (a) it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and to grant the rights and licences referred to in this Agreement and that this Agreement is executed by its duly authorised representative and represents a binding commitment on it; and (b) it shall comply with all applicable Legislation in the performance of its obligations under this Agreement.

# LIMITATION OF LIABILITY

## The following provisions set out the entire financial liability of MetaCompliance (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Reseller in respect of: (a) any breach of this Agreement howsoever arising; and (b) any representation, misrepresentation (whether innocent or negligent) statement or tortious act or omission (including without limitation negligence) arising under or in connection with this Agreement.

## Except as expressly and specifically provided in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

## Nothing in this Agreement excludes the liability of MetaCompliance: (a) for death or personal injury caused by MetaCompliance’s negligence; or (b) for fraud or fraudulent misrepresentation (c) any reliance on Indemnities provided to Commercial Licensee via the MetaCompliance Commercial Terms and Conditions.

## Subject to clause 13.3, MetaCompliance shall not in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of use, loss or corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

## Subject to clause 13.3, MetaCompliance’s total aggregate liability in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to an amount equal to the amount actually paid by the Reseller to MetaCompliance under this Agreement in the 12 months preceding the date on which the claim arose that directly relates to the Commercial Licensee (s) subject to such a claim.

## This clause 13 shall survive termination of this Agreement for any reason.

# TERM & TERMINATION

## The Duration of this Agreement is as specified in the Reseller Commercial Terms.

## Without affecting any other right or remedy available to it, either party may terminate this Agreement (without liability to the other party) 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; or (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or (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; or (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; or (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party; or (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party; or (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(i) (inclusive); or (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## Without prejudice to any other rights or remedies to which MetaCompliance may be entitled, MetaCompliance may terminate the Agreement (without liability to the Reseller) with immediate effect by giving written notice to the Reseller if: (a) the Reseller fails to purchase the Minimum Quantity in any Year; or (b) there is a change of Control of the Reseller; or (c) the Reseller challenges or disputes the validity of any of MetaCompliance’s Intellectual Property Rights; or (c) the Reseller purports to assign any of its rights or obligations under this Agreement. Notwithstanding the foregoing, in case MetaCompliance terminates the Agreement based on clause 14.3(a), MetaCompliance must honour the existing contractual commitments with the Commercial Licensees and any User Subscriptions shall be valid until the end of the then current Subscription Term regardless of the termination of this Agreement.

# EFFECTS OF TERMINATION

## Taking into account what is stated above in clause 14.3, upon termination of this Agreement for any reason: (a) the Reseller shall promptly return to MetaCompliance, or otherwise dispose of as MetaCompliance may instruct, all samples, technical pamphlets, catalogues, advertising materials, specifications and other materials, documents or papers whatsoever sent or made available to the Reseller and relating to the Cloud Services or MetaCompliance’s business (other than correspondence which has passed between the parties) which the Reseller may have in its possession or under its control; and (b) the accrued rights of the parties as at termination or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced; and (c) all rights and licences of the Reseller under this Agreement shall terminate.

## The termination of this Agreement shall not of itself give rise to any liability on the part of MetaCompliance to pay any compensation to the Reseller for loss of profits or goodwill, to reimburse the Reseller for any costs relating to or resulting from such termination, or for any other loss or damage.

## This clause 15 shall survive termination of this Agreement for any reason.

# FORCE MAJEURE

## Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (excluding those involving the workforce of the Reseller), failure of a utility service or transport or telecommunications network for any reason (including, without limitation, cyber attack), 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 or storm. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 30 days, the party not affected may terminate this Agreement with immediate effect by giving written notice to the other party.

# GENERAL

## 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. No waiver shall be effective unless it is in writing.

## If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 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. 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

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

## The Reseller shall not, without the prior written consent of MetaCompliance, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. MetaCompliance 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.

## Nothing in this Agreement is intended to, or shall be deemed to, establish any agency, franchise, partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly permitted by this Agreement. Each party confirms it is acting as an independent party on its own behalf and not for the benefit of any other person.

## No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## Any notice given to a party under or in connection with this Agreement shall be in writing and shall be: (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) by email to finance@metacompliance.com. Any notice shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt; (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; (c) if sent by email, at 9.00 am on the next Business Day after transmission or upon delivery of a valid read receipt. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the Republic of Ireland. The parties irrevocably agree that the Irish courts have jurisdiction to settle any disputes or claims arising out of or in connection with this Agreement, its subject matter or its formation (including non-contractual disputes or claims).

**SCHEDULE 3 – METACOMPLIANCE COMMERCIAL TERMS AND CONDITIONS (APPLICABLE TO COMMERCIAL LICENSEE)**

COMMERCIAL TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these General Terms and Conditions:

**Administrator User** means an Authorised User with administrative privileges in respect of the Customer’s account (as designated by the Supplier).

**Agreement to Purchase** means the agreement signed between the Supplier and the Customer setting out, among other things the specific Services purchased Subscription Fees and the Initial Subscription Term. Acknowledgement of Order means an acknowledgement of the Customer’s order issued by the Supplier.

**Authorised Users** means those employees or contractors of the Customer only, who are authorised by the Customer in accordance with clause 2, to use the Services and any ancillary documentation, in respect of whom the Customer has purchased a User Subscription.

**Business Day** means 09.00 to 17.00 GMT on any day which is not a Saturday, Sunday, bank or public holiday in the Republic of Ireland.

**Commencement Date** means the date as set out in Clause 1.2.

**Confidential Information** means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including without limitation the Software, Products and their ancillary documentation) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party.

**Contract** means the contract between the Supplier and the Customer for the supply of the Services in accordance with these T&Cs and any applicable Agreement to Purchase.

**Customer** means the organisation (inclusive of their known subsidiaries and affiliates) which has purchased User Subscriptions from the Supplier from time to time, as specified in the Agreement to Purchase or otherwise.

**Customer Data** means all content, including text, sound, video image files that are provided and uploaded by, or on behalf of, the Customer, its Authorised Users, or (if applicable) the Supplier (or its sub-contractors) through use of the Supplier’s platform. Customer Data does not include personal data within the meaning of data protection legislation.

**Customer Equipment** means a functioning hardware system and software facilitating access to a modern internet browser, namely latest versions of Google Chrome, Mozilla Firefox, Safari or MS Edge, as well as anything else specified by the Supplier from time to time.

**Customised Services** means the creation and supply to Customer, by Supplier of eLearning course or other named materials, which conform to the Customer’s requirements as documented in the Statement of Work

**Data Processing Agreement (DPA)** means a supplemental agreement between the Supplier and the Customer which sets out the additional terms, requirements and conditions on which the Supplier will process personal data on behalf of the Customer when providing Services under the Contract. The DPA is accessible here.

**Initial Subscription Term** means the initial subscription term of 12 months beginning on the Commencement Date (or such other period as the Supplier may agree in writing with the Customer either in the Agreement to Purchase or otherwise).

**Intellectual Property Rights (IPRs)** means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements.

**Payment Terms** means the payment terms set out in the Agreement to Purchase or in these T&Cs.

**Purpose** means the Authorised Users accessing and using the Services in accordance with this Contract and for their benefit and the benefit of the Customer only.

**Renewal Period** means rolling terms of 12 months (or such other period as the Supplier may agree in writing with the Customer either in the Agreement to Purchase or otherwise).

**Services** means the subscription services provided by the Supplier to the Customer under this Contract and making them available for access to Authorised Users via the Supplier’s platform using the Customer Equipment, and as more specifically described in the applicable Agreement to Purchase or otherwise. Services meaning can include the use of SCORM transfer and/or MetaLearning Fusion eLearning files in Customer’s Learning Management System (LMS) when compatible, on a licensed basis, only for the duration of the Subscription Term.

**Service Charges** means the service charges in respect of any customised services requested by the Customer, any enhanced support provision (in addition to the Supplier’s standard customer support services which do not incur an additional charge) or Professional Services. Service Charges if applicable will be included in the related Pricing Proposal or Agreement to Purchase.

**Software** means the MetaCompliance® software applications provided by the Supplier as part of the Services.

**Specifications** means a Services description as provided by the Supplier and available here.

**Statement of Work** means an additional schedule to these T&Cs which upon signature shall together with these T&Cs form the Contract between

the Customer and Supplier. Each Statement of Work shall be assigned an identifiable service schedule number (“**SSN**”).

**Subscription Fees** means the subscription fees payable by the Customer to the Supplier for the User Subscriptions as set out in these T&Cs and any applicable Agreement to Purchase.

**Subscription Term** means, in respect of each User Subscription, the term beginning on the Commencement Date, and continuing for the Initial Subscription Term, and any Renewal Periods (subject to clause 14.3), unless and until this Contract is terminated in accordance with its terms.

**Supplier** means MetaCompliance Ireland Limited (company number 640228) whose principal office is at Unit 21, Block 1, Clonshaugh Business and Technology Park, Dublin 17, D17 YY31, Republic of Ireland.

**Support** means the support services which are provided by the Supplier in relation to each Administrator User, for the relevant Subscription Term, and made available in accordance with the Support Services Policy. Remote access must be provided by the Customer to allow the Supplier access to the Customer Equipment for emergency fixes. Support queries may only be raised by Administrator Users. The Supplier may also provide online support resources for Authorised Users.

**Support Services Policy** means the Supplier’s policy available here for providing support in relation to the Services made available to the Customer by the Supplier on request.

**Term** means the term of this Contract as defined in clause 14.1;

**T&Cs** means these General Terms and Conditions; and

**User Subscription(s)** means the subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services in accordance with this Contract.

1.2 The Customer’s order shall be deemed accepted when the Supplier issues a written Acknowledgement of Order at which point the Contract shall come into existence (Commencement Date).

1.3 These T&Cs were most recently updated on 22nd March 2024. They will apply to new Contracts from that date unless an amendment has been agreed in writing and signed by both parties. If you are already a Customer these T&Cs will apply upon the commencement of your next Renewal Period, the receipt of a Purchase Order or upon signing a subsequent Agreement to Purchase after the 22nd March 2024 unless an amendment has been agreed in writing and signed by both parties.

1.4 These T&Cs apply to the Contract to the express exclusion of any other standard terms that the Customer seeks to impose or incorporate, regardless of whether such standard terms appear on any order form of Customer or other document and even if Supplier executes a Contract without expressly objecting to such conditions.

1.5 In the event of any inconsistency or conflict between any provision contained in an applicable Agreement to Purchase and any provision contained in these T&Cs, the provision in the Agreement to Purchase shall take precedence and the provision in these T&Cs shall take precedence over any provision contained in the schedules or appendices or other documents not expressly incorporated herein.

2. USER SUBSCRIPTIONS

2.1 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 during the Subscription Term for the Customer’s internal business operations on the following terms.

2.2 In relation to the Authorised Users, the Customer undertakes that: (a) it shall be responsible for compliance by Authorised Users with these T&Cs, and that the restrictions on the Customer set out within these T&Cs shall, unless the context requires otherwise, equally apply to any such persons; (b) each User Subscription is entirely individual, assigned by name, email address and protected by an individual password; (c) it will not allow any User Subscription to be used or shared by more than one individual Authorised User unless it has been transferred 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; (d) each Authorised User shall keep his password confidential; (e) it shall maintain an up to date list of current Authorised Users and provide such list to the Supplier within 10 Business Days of the Supplier’s written request at any time; (f) it shall permit the Supplier to audit the Services in order to establish the number of User Subscriptions is within the Contract limits. Such audit may be conducted no more than once per quarter, shall be non-intrusive and not interfere with the use of the Services; (g) if any of the audits referred to in clause 2.2 (f) reveal that the Customer has underpaid Subscription Fees to the Supplier the Customer shall pay to the Supplier an amount equal to such underpayment (as calculated in accordance with clause 3.2 below) within 30 Business Days of the date of the relevant audit; and (h) if any of the audits referred to in clause 2.2(f) reveal that access 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 access and the Supplier shall not allow access to any such individual.

2.3 The Customer shall not, and shall not allow its Authorised Users to, access, upload, store, distribute or transmit any malware, or any material onto the Supplier’s platform during the course of their 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 any other illegal activity; or (f) causes damage or injury to any person or property; and the Supplier reserves the right, without liability 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) other than as permitted by law and these T&Cs, 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 its content in any form or media or by any means; nor attempt to 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 in order to build a product or service which competes with the Services; or (c) use the Services to provide services to third parties other than Authorised Users; or (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or (f) interfere with or disrupt the integrity or performance of the Services or third party data contained therein; or (g) attempt to gain unauthorised access to the Services or their related systems or networks.

2.5 The Customer shall use its best endeavours to prevent any unauthorised access to, or use of, the Services and/or its content and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to clause 3.2, the Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions.

3.2 The Customer shall, within 30 days of the invoice receipt, pay to the Supplier the relevant fees for such additional User Subscriptions 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.

4. SERVICES

4.1 The Supplier shall, during the Subscription Term deliver the Support and the Services to the Customer on and subject to these T&Cs.

4.2 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier’s standard customer support services on Business Days in accordance with the Supplier's Support Services Policy.

4.3 For any customised and enhanced services required by the Customer, the Supplier shall charge the Customer additional Service Charges in accordance with any pricing proposal or Agreement to Purchase provided.

4.4 The Supplier may, from time to time at its discretion, generally upgrade and improve the Services and Software as it sees fit and the Customer acknowledges that such upgrades and improvements may affect its use of the Services. Any specific upgrades requested by the Customer are chargeable by the Supplier in accordance with any pricing proposal or Agreement to Purchase provided.

4.5 The Supplier will provide hosting service and store all Customer Data and any personal data on behalf of the Customer in the cloud. The hosting is an intrinsic part of the Services offered by the Supplier, subcontracted to Microsoft Azure and limited to these terms and conditions: https://www.microsoft.com/en-us/licensing/product-licensing/products .

5. DEVELOPMENT OF CUSTOMISED SERVICES

5.1 If the Services include the provision of Customised Services then the following provisions shall apply.

5.2 If not already agreed and documented in the Statement of Work, the parties shall develop and agree the Specification of the Services. Supplier shall have no obligation to produce the Customised Services until the Specification within the Statement of Work is agreed and documented.

5.3 In the case of any conflict between these T&Cs and the agreed Statement of Work, the Statement of Work shall take precedence.

6. SUPPLIER'S OBLIGATIONS

6.1 The Supplier warrants that the Services shall be performed with reasonable skill and care and that the Software shall operate materially as described in the Specifications.

6.2 If the Services or Software fail to conform materially with the above warranty (a Service Defect), the Customer shall notify the Supplier promptly with full details (the Warranty Claim). The Customer shall cooperate in good faith with the Supplier in the process of investigating and seeking to remedy the Service Defect.

6.3 Once the Supplier has validated the Warranty Claim, it shall (at its option):

(a) fix the Service Defect;

(b) create a workaround for the Service Defect that has no material impact on the operation or quality of the Service or Software; or

(c) terminate the Contract on written notice to the Customer, refunding to the Customer all Subscription Fees paid up to the date of termination minus a pro rata sum for the fees paid up to the date when the Warranty Claim was notified to the Supplier.

6.4 A Warranty Claim shall be invalidated to the extent that the Service Defect is caused by use, configuration or modification of the Service or Software by Customer (or an unauthorised third party) other than in accordance with the Specifications provided by the Supplier.

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 the Contract.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall: (a) at its cost, provide the Supplier with all necessary co-operation in relation to this Contract, and all necessary data and access to information as may be required by the Supplier, its agents or contractors, in order to render the Services, including but not limited to applicable specifications, data management decisions, approvals, security access information and configuration services; (b) comply with all applicable laws and regulations with respect to its activities under the Contract; (c) carry out all other Customer responsibilities set out in these T&Cs in a timely and efficient manner. In the event of any delays, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary; (d) ensure that the Authorised Users use the Services in accordance with these T&Cs and shall be responsible for any Authorised User’s breach of the Contract; (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services; (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; (g) be solely responsible for procuring, maintaining and securing its network connections and telecommunications links, and maintaining appropriate Customer Equipment; (h) provide a single main point of contact who can address questions or issues relating to the Services, provide timely feedback and review any changes to the Services; and (i) be solely responsible at its own cost for generating Customer Data required to utilise the Services and for uploading all such content and data onto the Supplier’s platform.

8. CHARGES AND PAYMENT

8.1 The Customer shall pay the Subscription Fees (and any Service Charges, or other charges specified or agreed) to the Supplier in accordance with these Payment Terms. Invoices are payable within 30 days of invoice receipt, unless otherwise agreed in writing by the Supplier.

8.2 If the Supplier has not received payment for any Subscription Fees in accordance with these T&Cs, and any Services Charges within 10 days after the due date, without prejudice to any other rights and remedies of the Supplier: (a) the Supplier may, without liability to the Customer, disable the Customer’s and any Authorised Users’ passwords, accounts 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) the Customer shall pay the interest on the overdue amounts in accordance with the prevailing statutory rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

8.3 All amounts and fees stated or referred to in the Contract: (a) shall be payable in the currency detailed in the Pricing Proposal or Agreement to Purchase; (b) are non-cancellable and non-refundable (except as otherwise provided in these T&Cs); (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate where applicable.

8.4 Supplier reserves the right to increase Subscription Fees or professional services fees at any time, provided however that any increase will not go into effect until the end of the then current term (Initial Subscription Term or Renewal Period, as applicable).

8.5 Any on-site support required by the Customer and agreed by the Supplier will be chargeable at the Supplier’s then prevailing standard daily rates in accordance with the Supplier’s Support Services Policy.

9. PROPRIETARY RIGHTS

9.1 The Customer acknowledges and agrees that the Supplier and/or third parties own the Intellectual Property Rights (IPRs) in the Services, Software and its content. Except as expressly stated herein, these T&Cs do not grant the Customer any rights to IPRs in respect of the Services, Software and its content.

9.2 The Customer shall own all rights, title and interest in all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and the means by which it acquired such Customer Data.

9.3 The Supplier shall use reasonable endeavours to maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data.

9.4 The Supplier shall not modify, disclose or access Customer Data except: (a) as required by law; (b) as expressly permitted by the Customer; (c) to contact the Customer or Authorised Users; (d) to provide the Services; (e) to address technical problems or issues with the Services; or (f) at the Customer’s request when providing Support.

9.5 In the event of any loss of or damage to Customer Data, the Customer’s sole and exclusive remedy shall be for the Supplier to use its reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier (or its hosting provider, as appropriate according to the nature of the Customer Data which has been lost or damaged).

9.6 If the Supplier processes any personal data on the Customer’s behalf when performing its obligations under the Contract the Customer shall be the data controller and the Supplier shall be a data processor and the parties shall be deemed to have entered into the Data Processing Agreement (DPA) as detailed here, unless a separate DPA signed by the parties is in place.

10. CONFIDENTIALITY

Each party shall maintain the confidentiality of the other party’s Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party’s Confidential Information (or permit any third party to do so) other than as strictly necessary for the performance of its rights and obligations under the Contract. The provisions of this clause shall not apply to any information which: (a) is or comes into the public domain without breach of this agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; or (c) was obtained from a third party free to divulge such information; or (d) is required to be disclosed by law or by any legal, regulatory or administrative body.

11. Compliance with Laws

11.1 Each party shall comply with laws and regulations applicable to its obligations under the contract, and the other party has a duty to cooperate in good faith and using its reasonable endeavours in support of such compliance.

12. INDEMNITY

12.1 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 its and/or the Authorised Users’ (a) infringement of third party Intellectual Property Rights in the content or phishing simulation templates uploaded or created by the Customer, and sent via the Software; (b) Personal Data provided by the Customer to Supplier; and (c) any culpable breach of the obligations outlined in Clause 2 of these T&Cs which can be demonstrated to have caused the Supplier harm. This is provided that (a) the Customer is given prompt notice of any such claim; and (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of IPR or Personal Data claim, at the Customer’s expense.

12.2 The Supplier shall, subject to clause 12.4 and 12.5 defend the Customer against any claim that the Software itself infringes any UK or EU patent effective as of the Commencement Date 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 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.

12.3 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 the Contract subject to repayment of the balance of any Subscription Fees paid in advance for the remaining Subscription Term.

12.4 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 by anyone other than the Supplier; or (b) the Customer's use of the Services in a manner contrary to the Purpose and Specification given to the Customer by the Supplier; or (c) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or (d) the use of any trademark or copyright was referred to within the Software as being at the Customer’s own risk of use.

12.5 The foregoing 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 IPRs. The Customer agrees that it shall otherwise use the Services and Software at its own risk and hold the Supplier harmless from any claim in respect of a third party IPR infringement that may be brought against the Customer.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier to the Customer for any breach of the Contract, use made by the Customer of the Services or Software or for any other legal default (including negligence) arising in connection with the Contract.

13.2 Except as provided expressly in these T&Cs: (i) all warranties and other terms implied by law or statute are excluded to the fullest extent permitted by applicable law; and (ii) Customer assumes sole responsibility for the results obtained by it from use of the Services and Software.

13.3 The Supplier’s total aggregate liability howsoever caused under or in connection with the Contract to the Customer, inclusive of known subsidiaries and affiliates, shall be limited in aggregate for the term of the Contract to the total Subscription Fees paid for the User Subscriptions during the 12 month period prior to the first event giving rise to liability.

13.4 Subject to the next provision, the Supplier shall not be liable under or in connection with this Contract for any indirect, special or consequential losses, nor for loss of profit, goodwill or business opportunity.

13.5 Nothing in these T&Cs shall limit the Supplier’s liability for death or personal injury caused by negligence, fraud or any other liability that may not be limited according to applicable law.

14. TERM AND TERMINATION

14.1 The Contract shall come into force on the Commencement Date and shall (unless terminated earlier in accordance with these T&Cs) continue in full force and effect until the end of the Subscription Term.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if: (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or (b) the other party ceases or threatens to cease to trade, or become insolvent, has a receiver or administrator appointed over the whole or any part of its assets or business, makes any arrangements with its creditors, or an order or resolution is made for its dissolution or liquidation, or takes or suffers any similar or analogous procedure, event or action in any jurisdiction.

14.3 The Subscription Term shall automatically renew after the Initial Subscription Period and over each Renewal Period unless and until either party gives notice to the other in writing (including by email) that it does not wish the Contract to continue beyond the then current Renewal Period. Such notice shall not expire earlier than the end of the Initial Subscription Term or subsequent Renewal Period. In order to prevent the automatic renewal of the Services, three months’ notice of termination for convenience must be provided in advance of the anniversary of the Subscription Term in writing to the Supplier by email to: finance@metacompliance.com and in accordance with clause 15.8 below.

14.4 On expiry or termination of the Contract for any reason: (a) all licences granted under the Contract shall immediately terminate, even if the Initial Subscription Term or Subscription Term is defined as “perpetual” in, or if no expiration date is specified in the Agreement to Purchase; (b) each party shall make no further use of any Confidential Information belonging to the other party; and (c) the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive (including, without limitation, clauses 1, 9, 10, 12.1, 13.3, 14.4 and 15) or implicitly surviving termination, shall not be affected or prejudiced; and (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession within 90 days following expiration or termination of the Contract.

15. GENERAL

15.1 The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations, or from carrying on its business, by events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for more than 3 (three) months, the Customer may terminate the Contract by giving 6 (six) weeks’ notice to the Supplier.

15.2 A waiver of any right or remedy is only effective if it is in writing and shall not be deemed a waiver or any subsequent breach or default.

15.3 If any provision of these T&Cs is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the Contract.

15.4 These T&Cs and the applicable Agreement to Purchase constitute the entire agreement between the parties and supersede and extinguish all previous understandings between them, whether written or oral, relating to the Contract.

15.5 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 Contract.

15.6 Nothing in these T&Cs 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. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15.7 The Contract does not give rise to any rights to any third parties to enforce any of its terms, and no one other than a party to the Contract shall have any right to enforce any of its terms.

15.8 Any notice given in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified in writing, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or sent by email to the other party’s email address as set out in the applicable Agreement to Purchase. The Supplier’s address for service is Unit 21, Block 1, Clonshaugh Business and Technology Park, Dublin 17, D17 YY31, Republic of Ireland.

15.9 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ireland. Each party irrevocably agrees that the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

15.10 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure, with the mediation to occur in Dublin, Ireland, and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

15.11 The Agreement to Purchase may be executed in any number of counterparts, each of which will be considered an original, but all of which together will constitute the same agreement.

15.12 No variation of these T&Cs or the Agreement to Purchase shall be effective unless it is in writing and signed by authorised representatives of each of the parties.

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