

Ocucon Limited – Pixelate

Terms and Conditions of Business

The Customer's attention is particularly drawn to the provisions of clauses 6.1 and 12 which limit the liability of the Supplier.

The Customer should not agree to these terms if the intended use of Pixelate is otherwise than for the purposes of a business and the Customer's attention is particularly drawn to the provisions of clause 2.1.

1. BASIS OF CONTRACT

- 1.1 These Conditions apply to the order by the Customer and the supply of Pixelate by the Supplier.
- 1.2 Each Order (or any Additional Order) constitutes an offer by the Customer to access Pixelate in accordance with these Conditions.
- 1.3 The Customer must follow the onscreen prompts to place an Order (or any Additional Order). The Customer may only submit an Order (or any Additional Order) using the method set out on the Website.
- 1.4 Acceptance of the Order takes place when the Supplier first permits a User to access Pixelate at which point and on which date (the **Commencement Date**) the Contract shall come into existence.
- 1.5 Acceptance of an Additional Order takes place when the Supplier adds the additional Minutes or additional Logins (as the case may be) to the Customer's account.
- 1.6 If the Supplier is unable to supply the Customers with Pixelate for any reason, the Supplier shall inform the Customer of this by email and shall not process the Order or Additional Order. If the Customer has already paid for the Order or Additional Order (as the case may be), the Supplier shall refund the full amount.
- 1.7 Any Special Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Customer's purchase order at which point and on which date the Special Order shall be deemed to be incorporated into the Contract.
- 1.8 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. PIXELATE

- 2.1 Subject to the Customer paying the Charges in accordance with clause 6, the restrictions set out in this clause 2 and the other terms and conditions of the Contract, the Supplier grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit Users to use Pixelate during the Subscription Term solely for use in the Customer's business.
- 2.2 In relation to the Users, the Customer undertakes that:
 - (a) the maximum number of Users authorised to access and use Pixelate shall not exceed the number of Logins it has purchased from time to time;

- (b) it will not allow or suffer any Login to be used by more than one individual User unless it has been re-assigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Services; and
 - (c) each User shall keep a secure password for their use of Pixelate and shall keep such password confidential.
- 2.3 For the avoidance of doubt, provided the maximum number of Users is not exceeded at any time, Logins may be assigned and re-assigned to such Users as the Customer sees fit, provided always that, in each calendar month, Logins may not be re-assigned more times than the number of Users specified in the relevant package purchased by the Customer. For example, if the Customer has purchased a subscription for two (2) Users, no more than two (2) re-assignments of Logins may be made in each calendar month.
- 2.4 The Customer shall not, and shall use best endeavours to procure that Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of Pixelate that:
 - (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) is otherwise illegal or causes damage or injury to any person or property;and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's or any User's access to any material that breaches the provisions of this clause.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, Pixelate and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 In relation to Minutes, the Charges for the relevant package purchased by the Customer from time to time are inclusive of the number of Minutes per month set out in the Rate Card.
- 3. ADDITIONAL MINUTES AND LOGINS**
- 3.1 Additional Minutes may be purchased only by the Customer purchasing a package of additional Minutes in advance.
- 3.2 For the avoidance of doubt:
 - (a) all additional Minutes shall be the subject of an Additional Order and deemed to be purchased under the Contract and shall be subject to these Conditions;

- (b) any Minutes included in the Charges for the relevant package purchased by the Customer from time to time but not used by any User during any calendar month shall not be carried over to the next or subsequent calendar months; and
- (c) any additional Minutes purchased in advance under clause 3.1 but not used during the calendar month that they are purchased shall be carried over to subsequent months **provided** that:
 - (i) the Contract has not expired or been terminated; and
 - (ii) all unused additional Minutes shall in any event expire on the date that is eighteen (18) months after the date on which they were purchased.

3.3 Subject to clause 3.4 and clause 3.5, the Customer may, from time to time during the Subscription Term, purchase additional Logins and the Supplier shall grant access to Pixelate to such additional Users in accordance with these Conditions.

3.4 If the Customer wishes to purchase additional Logins, the Customer shall notify the Supplier using the Customer's purchase order. The Supplier shall activate the additional Logins within twenty (20) Business Days of the Supplier's written acceptance of the Customer's purchase order.

3.5 The Supplier shall invoice the Customer for any additional Logins either:

- (a) in default, on the date of the Supplier's written acceptance of the Customer's purchase order (such Charges to be calculated *pro rata* from the date of the Customer's purchase order to the end of the Initial Subscription Period or then current Renewal Period (as the case may be) and thereafter they shall be added to the Annual Subscription Charge); or

- (b) if agreed by the Supplier in advance and in writing, monthly in arrears

4. SPECIAL ORDERS

4.1 The Customer shall notify the Supplier of Special Orders using the Customer's purchase order.

4.2 The Supplier shall use all reasonable endeavours to complete Special Orders promptly and, in any event, within any timescale agreed by the parties in writing prior to the date of the Customer's purchase order.

5. THIRD PARTY SERVICES

In order for the Supplier to provide Pixelate, the Customer expressly consents to the Supplier obtaining Third Party Services from its approved subcontractors and the identity of approved subcontractors shall be at the sole discretion of the Supplier.

6. PRICE AND PAYMENT

6.1 In consideration of the Supplier providing Pixelate the Customer shall pay the Charges in accordance with this clause 6.

6.2 The Charges are as set out in the Supplier's Rate Card:

- (a) in respect of the Annual Subscription Charge for the Initial Subscription Period, on the Commencement Date;
- (b) in respect of the Annual Subscription Charge for any Renewal Period, on the date that is three (3) months prior to the Renewal Date;
- (c) in respect of any other Charges in the service package set out in the Order on the Commencement Date;
- (d) in respect of additional services (other than Special Orders) purchased during the Subscription Term, on the date of the Customer's purchase order for such additional services; and
- (e) in respect of Special Orders, as agreed by the parties in writing prior to the date of the Customer's purchase order.

For the avoidance of doubt:

- (i) the Annual Subscription Charge for the Initial Subscription Period shall be calculated *pro rata* for the period from the Commencement Date to the first Renewal Date;
- (ii) in respect any Special Order, any Minutes purchased in advance whether as part of the Annual Subscription Charge or under clause 3.1 shall be exhausted before additional Minutes are charged in respect of that Special Order; and
- (iii) the Supplier shall not be obliged to notify the Customer of changes to pricing otherwise than by updating the Rate Card.

6.3 Where the Customer has chosen the option to pay by using a debit card or credit card, the Charges shall be charged to the card for which details have been supplied:

- (a) for the Annual Subscription Charge for the Initial Subscription Period, immediately following receipt of the Order;
- (b) for Renewal Periods, on the anniversary of the Commencement Date;
- (c) for Additional Orders, immediately following receipt of the Additional Order;
- (d) for Special Orders as agreed by the parties in writing prior to the date of the Customer's purchase order.

6.4 Where the Customer has chosen the option to provide the Supplier with a purchase order, the Supplier shall invoice the Customer in respect of:

- (a) the Annual Subscription Charges annually in advance on the Commencement Date and each Renewal Date; and
- (b) all other Charges monthly in arrears unless otherwise agreed by the Supplier and confirmed in writing to the Customer, and

the Customer shall pay each invoice submitted by the Supplier:

- (i) within thirty (30) days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

- (ii) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- (iii) time for payment shall be of the essence of the Contract.

6.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall pay to the Supplier such additional amounts in respect of VAT, at the applicable rate, at the same time as payment is made for the Charges.

6.6 If the Customer fails to make a payment due to the Supplier under the Contract (including but not limited to failure by the Customer to update its debit or credit card details) by the due date then, without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier shall be under no obligation to provide Pixelate to the Customer or any User while the Charges concerned remain unpaid; and
- (b) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.6(b) will accrue each day at four percent (4%) a year above the base lending rate of Barclays Bank Plc from time to time, but at four percent (4%) a year for any period when that base rate is below zero percent (0%).

6.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.8 The Supplier may at any time, without notice to the Customer, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer, whether either liability is present or future, liquidated or un-liquidated, and whether or not either liability arises under the Contract.

7. DATA, DATA PROTECTION, SECURITY AND INTEGRITY

7.1 The following definitions apply in this clause 7:

- (a) **Data Protection Legislation** means, unless and until no longer directly applicable in the United Kingdom, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and then (in the event of non-applicability) any successor legislation to the GDPR, the Data Protection Act 1998 or the Data Protection Act 2018;
- (b) **Data Controller, Data Processor, Data Subject, Personal Data and Processing** bear the respective meanings given them in the Data Protection Legislation and **Process** shall be construed accordingly; and
- (c) **Customer Personal Data** means any Personal Data entered into the Website upon registration or log in and any digital video content uploaded by the Customer or any User to the Website that is or contains Personal Data.

- 7.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 7.3 The parties acknowledge and agree that:
- (a) for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor that processes certain Personal Data on behalf of the Customer;
 - (b) the subject matter of the Processing is the Customer Personal Data;
 - (c) the duration of the Processing is:
 - (i) for Personal Data entered into the Website upon registration, the term of the Contract; and
 - (ii) for digital video content uploaded by the Customer or any User to the Website that is or contains Personal Data, the time the Customer Personal Data is temporarily stored by the Supplier during use of Pixelate by the Customer or any User;
 - (d) the nature and purpose of the Processing is the provision of Pixelate including redaction of the Customer Personal Data using Pixelate as envisaged by these Conditions (including without limitation, in connection with Third Party Services);
 - (e) the type of Personal Data and which shall be processed is Personal Data entered into the Website upon registration and digital video images of individuals; and
 - (f) the categories of Data Subjects are persons whose Personal Data is entered into the Website upon registration and individuals who are identifiable by viewing the Customer Personal Data.
- 7.4 Without prejudice to the generality of clause 7.2, the Customer will ensure that it has all necessary appropriate consents and notices in place, and/or that it has taken all necessary measures (in each case, insofar as required by the Data Protection Legislation) to enable lawful transfer of the Customer Personal Data to and from the Website for the duration and purposes of the Contract.
- 7.5 Without prejudice to the generality of clause 7.2, the Supplier shall, in relation to any Customer Personal Data which is Processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) subject to clause 7.6, Process that Customer Personal Data only on the written instructions of the Customer (which shall for the avoidance of doubt include the Contract), unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Relevant Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for Processing Customer Personal Data, the Supplier shall inform the Customer of this before performing the Processing required by the Relevant

Laws unless those Relevant Laws prohibit the Supplier from so notifying the Customer;

- (b) ensure that all Supplier personnel who Process any Customer Personal Data are obliged to keep the same confidential;
- (c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer as soon as reasonably possible (and in any event within the timescale required by the Data Protection Legislation) on becoming aware of a Personal Data breach in relation to (including any actual or suspected accidental, unauthorised or unlawful use, destruction, loss, alteration, compromise, unauthorised disclosure of, or access to) the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Contract unless required by Relevant Laws to store the Customer Personal Data; and
- (g) make available to the Customer all information necessary to demonstrate compliance with the obligations in this clause 7, and allow for and contribute to audits, including inspections, conducted by the Customer or the Customer's designated auditor (subject always to prior written agreement of reasonable confidentiality terms concerning the same).

7.6 The Supplier shall inform the Customer if, in the Supplier's opinion, the Supplier's compliance with clause 7.5(a) would breach Data Protection Legislation. The Supplier shall be entitled to suspend execution of the instructions concerned, until the Customer confirms in writing that such instructions are to be followed (subject always to clause 7.10(b)).

7.7 The Customer hereby provides general authorisation to the Supplier to engage sub-processors (whether inside or outside the European Economic Area and/or the United Kingdom) in connection with leased lines and/or temporary data storage.

7.8 The Supplier hereby confirms that it has entered (or as the case may be, will enter) into written agreements with sub-processors that are substantially on that third party's standard terms of business, which in any event provide sufficient guarantees to implement appropriate technical and organisational measures in such a manner as to meet the requirements of the Data Protection Legislation. As between the Customer

and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any sub-processor appointed by it pursuant to clause 7.7.

7.9 In any instance where the Supplier transfers any Customer Personal Data outside the European Economic Area, it shall ensure that:

- (a) appropriate safeguards are in place in relation to the transfer;
- (b) the Data Subjects have enforceable rights and effective legal remedies; and
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Customer Personal Data that is transferred.

7.10 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:

- (a) any breach by the Customer (or any User) of clause 7.4;
- (b) the Supplier's compliance with any instructions issued to it under clause 7.5(a); and/or
- (c) any breach by the Customer (or any User) of the Data Protection Legislation.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall not, and shall use best endeavours to procure that Users shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Pixelate in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Pixelate; or
- (b) access all or any part of Pixelate in order to build a product or service which competes with Pixelate; or
- (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make Pixelate available to any third party except the Users, or
- (d) attempt to obtain, or assist third parties in obtaining, access to Pixelate, other than as provided under this clause 8.1.

8.2 Breach of clause 8.1 shall be a material breach for the purposes of clause 11.2.

9. SUPPLIER'S WARRANTIES AND OBLIGATIONS

9.1 The Supplier warrants that:

- (a) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract;
 - (b) it will provide Pixelate and fulfil any Special Order with reasonable skill and care.
- 9.2 The warranties set out in clause 9.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the Contract.
- 9.3 The Customer expressly acknowledges that Pixelate is provided under the Contract strictly “as is” and “as available”.
- 9.4 Without limitation, the Supplier does not warrant and specifically denies any implied or express representation that Pixelate:
 - (a) Pixelate will operate uninterrupted or error-free; or
 - (b) the information or results obtained by the Customer or any User through Pixelate will meet the Customer's requirements.
- 9.5 Any use of Pixelate contrary to the Supplier's instructions and/or any unauthorised modifications, use or improper installation of either of them by or on behalf of the Customer by any party other than the Supplier or the Supplier's duly authorised contractors or agents shall render all of the Supplier's warranties and obligations under the Contract null and void.
- 9.6 The Customer warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform the Contract, and that each User is duly authorised to bind the Customer to the Contract.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Intellectual Property Rights in Pixelate are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use Pixelate to any other party or parties.
- 10.2 Pixelate is proprietary to the Supplier (or the appropriate third-party rights owner(s)) and neither the Customer nor any User acquires any rights in or to Pixelate other than those expressly granted by the Contract.
- 10.3 The Customer shall use all reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in Pixelate and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall:
 - (a) ensure that each of its employees and agents before starting to use Pixelate is made aware that they are proprietary to the Supplier and that it may only be used in accordance with the Contract;
 - (b) ensure that each of the Users before starting to use Pixelate is made aware that they are proprietary to the Supplier and that it may only be used in accordance with the Contract; and

- (c) not permit third parties to have access to the Pixelate except as permitted by the Contract or with the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given such access.
- 10.4 The Customer grants to the Supplier a royalty-free, worldwide, transferable, irrevocable, perpetual license (which shall include the right to grant sub-licences) to:
 - (a) use or incorporate into Pixelate any suggestions, enhancement requests, recommendations or other feedback provided by the Customer or any User, in relation to or in connection with the operation of Pixelate;
 - (b) use the Customer Data; and
 - (c) collect and use Usage Data relating to the Customer's use of Pixelate, only in accordance with clauses 10.5 and 10.6.
- 10.5 The Customer Data may only be used to determine the effectiveness of and improve Pixelate and, at all times, Personal Data comprised in the Customer Data shall be processed in accordance with clause 7.
- 10.6 The Usage Data may be mixed with similar data from the Supplier's other customers. The Supplier must always ensure that:
 - (a) the Usage Data does not include Personal Data;
 - (b) it does not disclose the Usage Data publicly nor provide the Usage Data to any third party;
 - (c) it does not use the Usage Data in a manner in which Users or the Customer can be identified;
 - (d) it will not comment on the Usage Data solely from Users or the Customer, either publicly or to a third party, in a manner which may disclose that such Usage Data relates to Users or the Customer; and
 - (e) it will only use the Usage Data for the purpose of analysing such data to determine the effectiveness of Pixelate (as provided to all its customers) so it can improve Pixelate.

11. TERM AND TERMINATION

- 11.1 The Contract shall commence on the Commencement Date and shall continue until the last day of the twelfth month after the month in which the Commencement Date falls (the **Renewal Date**) (the **Initial Subscription Period**) and, thereafter, the Contract shall be automatically renewed for successive twelve (12) month periods (each a **Renewal Period**), unless:
 - (a) either party notifies the other party of termination, in writing, at least three (3) months before the end of the Initial Subscription Period or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of the Contract;

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

- 11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer or any User commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five (5) Business Days after being notified in writing to do so.

For the purposes of this clause 11.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Supplier would otherwise derive from a substantial portion of the Contract.

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

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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 fourteen (14) days;
- (h) 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 11.3(a) to clause 11.3(g) (inclusive); or

- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.4 On termination of the Contract by the Customer under clause 11.3, the Supplier shall refund to the Customer that portion of the Charges paid by the Customer applicable to that part of the original Subscription Term after the date of termination.
- 11.5 On termination of the Contract by the Supplier:
 - (a) under clause 11.2 or 11.3; or
 - (b) because the Customer is in breach of clause 6.4(b)(iii)

the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of any Charges for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt. The parties confirm that such payments are reasonable and proportionate to enable the Supplier to provide Pixelate.
- 11.6 On termination of the Contract for any reason:
 - (a) the licence granted under clause 2.1 shall immediately terminate and the Customer and the User shall immediately cease all use of Pixelate; and
 - (b) any rights, remedies, obligations or liabilities of the parties that have accrued up to the termination date, including the right to claim damages in respect of any breach of the Contract which existed at or before the termination date shall not be affected or prejudiced.
- 11.7 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

12. LIMITATION OF LIABILITY

- 12.1 Neither party excludes or limits liability to the other party for:
 - (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence;
 - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any matter for which it would be unlawful for the parties to exclude liability.
- 12.2 Subject to clause 12.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - (b) any loss or corruption (whether direct or indirect) of data or information;

- (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 12.3 Subject to clauses 6.1 and 12.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or any collateral contract shall be limited to the amount of the Charges.

13. CONFIDENTIALITY

- 13.1 Each party undertakes that it shall hold the other's Confidential Information in confidence and, except as permitted by clause 13.2, not make the other's Confidential Information available to any third party.
- 13.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, provided that it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.2(b), it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract and each party shall ensure other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the terms of the Contract. Both parties expressly acknowledge that the use of Third Party Services to provide temporary data storage shall not be a breach of the Supplier's obligations under this clause 13.
- 13.4 Notwithstanding any other provision of this clause 13, information disclosed by the Customer to the Supplier shall only be Confidential Information to the extent it remains under the Supplier's control. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party. For the avoidance of doubt, the Supplier shall not be in breach of this clause 13.4 if Customer Data is accessed from temporary data storage by the Customer or a User.
- 13.5 The Customer expressly acknowledges that Pixelate constitutes the Supplier's Confidential Information.

- 13.6 The Supplier expressly acknowledges that the Customer Data is the Customer's Confidential Information.
- 13.7 Neither party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.
- 13.8 This clause 13 shall survive termination of the Contract, however arising.

14. GENERAL

Assignment and subcontracting

- 14.1 The Contract is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 14.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

Waiver

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

Rights and remedies

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

Entire agreement

- 14.5 The Contract 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.
- 14.6 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

Variation

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

Severance

- 14.8 If any provision or part-provision of the Contract 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 the Contract.

Third Party Rights

- 14.9 Except as specifically set out in these Conditions, the Contract does not confer any rights on any person or party (other than the parties to the Contract and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

No partnership or agency

- 14.10 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 14.11 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

Notices

- 14.12 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered or sent by email to the Customer Representative (in the case of the Customer) or the Project Manager (in the case of the Supplier) in both cases to the email address last used by each of them to the other.
- 14.13 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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; if sent by or email, at 9.00 am on the next Business Day after transmission.
- 14.14 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15. GOVERNING LAW AND JURISDICTION

- 15.1 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 law of England and Wales.
- 15.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

16. INTERPRETATION

16.1 The following definitions and rules of interpretation apply to the Contract.

Additional Order: the Customer's order for additional Minutes and/or additional Logins made using the onscreen prompts.

Annual Subscription Charge: the annual subscription charge payable for the package purchased by the Customer and set out in the Order or the Additional Order (as the case may be).

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

Charges: the charges for access to Pixelate are as set out in clause 6.1.

Commencement Date: has the meaning given in clause 1.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.7.

Confidential Information: any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

Contract: the contract between the Supplier and the Customer for the supply of Pixelate in accordance with the Order or any Additional Order and these Conditions.

Customer: the person or firm who completes a registration form on the Website to purchase Pixelate from the Supplier.

Customer Data: the digital video images uploaded to the Website by Users and temporarily stored by the Supplier in order to provide Pixelate in accordance with the Contract.

GDPR: Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and then (in the event of non-applicability) any successor legislation to it.

Initial Subscription Period: has the meaning given in clause 11.1.

Intellectual Property Rights: patents, utility models, 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.

Logins: the user subscriptions purchased by the Customer pursuant to clause 6 which entitle Users to access and use Pixelate in accordance with the Contract.

Minute: each minute or part thereof (measured in real-time) of digital video uploaded by a User to the Website and **Minutes** means all of them.

Order: the Customer's order for the supply of Pixelate as made using the onscreen prompts or, where applicable, set out in the Customer's purchase order..

Pixelate: the digital video redaction service software provided as a service by the Supplier through the Website which allows Users to redact digital video images temporarily uploaded to the Website.

Rate Card: the Supplier's schedule of prices from time to time published on the Website at <https://www.ocucon.com/products/pixelate-video-redaction-software#plans>

Renewal Date: has the meaning given in clause 11.1.

Renewal Period: has the meaning given in clause 11.1.

Special Order: an order for the Supplier to redact digital video images provided to it by the Customer otherwise than by using Pixelate.

Subscription Term: has the meaning given in clause 11.1.

Supplier: Ocucon Limited incorporated and registered in England and Wales with company number 10285590 whose registered office is at The Old Pub, Albion Row, Newcastle upon Tyne, Tyne and Wear, NE61LR

Third Party Services: services provided by third party providers including maintenance and support of the Website and/or Pixelate, provision of leased lines and/or temporary data storage.

Usage Data: de-identified, aggregated statistical data relating to usage of Pixelate by the Customer. Usage Data includes but is not limited to de-identified, aggregated data relating to number of views, click data and information flows.

Users: individuals authorised by the Customer to use Pixelate including but not limited to employees and agents of the Customer and who have been provided with a user name and password by the Customer or the Supplier at the request of the Customer (as the case may be) and **User** shall mean any of them.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

Website: the website operated by the Supplier at www.ocucon.com.

16.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to writing or written includes email.

Ocucon Limited
October 2021