

**TERMS AND CONDITIONS of provision of
Mpro5 SERVICE**

1. DEFINITIONS AND INTERPRETATION

1.1 The capitalised terms used on the Front Sheet apply in this Agreement together with the following additional definitions and rules of interpretation:

Agreement:	together, the Front Sheet, these Terms and Conditions and the Schedules.
Authorised User:	those employees of the Customer who are authorised by the Customer to use the Service, the maximum number of which is specified on the Front Sheet.
Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Confidential Information:	any information (however recorded or preserved) that is confidential or proprietary in nature, including but not limited to: <ul style="list-style-type: none">(a) the terms of this Agreement;(b) any information that would be regarded as confidential by a reasonable business person relating to a Party's:<ul style="list-style-type: none">(i) business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities; and(ii) operations, processes, product information, know-how, designs, trade secrets or software; and(c) any information developed by the Parties in the course of carrying out this Agreement.
Consultancy Services:	Graphite Partners' consultancy services specified in the applicable Statement of Work.
Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:	as defined in the Data Protection Legislation.
Customer Content:	together the Import Content and the Service Data.
Data Protection Legislation:	all applicable data protection and privacy legislation in force from time to time in the UK including, insofar as directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003(SI 2003/2426).
Effective Date:	the date of this Agreement, as specified on the Front Sheet.

EULA:	End user licence agreement that an Authorised User is required to read and accept prior to accessing the Service.
Group:	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company, the expressions holding company or a subsidiary being defined in section 1159 of the Companies Act 2006.
Import Content:	the content provided to Graphite Partners by the Customer to enable Graphite Partners to develop (as part of the Mobilisation Services) a dashboard and landing page for the Customer to access the Service.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, all other rights in the nature of copyright, 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, 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 and the term Intellectual Property shall be interpreted to mean all property and material which is the subject of an Intellectual Property Right or Rights.
Mobilisation Fee:	the fees payable by the Customer in respect of the Mobilisation Services, as specified on the Front Sheet.
Mobilisation Services:	the services to be provided by Graphite Partners to the Customer to configure the Software, importing the Import Content and provisioning the Customer's environment.
Normal Business Hours:	9.00 am to 5.30 pm local UK time, each Business Day.
Renewal Period:	the period described in clause 12.1.
Service:	the digital workflow software service provided by Graphite Partners known as " mpro5 ", and more particularly described in the Specification, which the Customer accesses by the internet.
Service Data:	The data which the Customer and Authorised Users upload to the Service from time to time.
Service Levels:	the service levels specified in Schedule 1.
Software:	The software marketed under the name " mpro5 " whose operation provides delivery of the Service.
Specification:	the description and specification of the Service which Graphite Partners has provided to the Customer at http://graphite-partners.com/terms-and-conditions/ .

Subscription:	a permission to gain access to the Service which may be granted to an Authorised User whose entitlement to use the Service has been authorised by the Customer.
Subscription Fees:	the monthly fees payable by the Customer to Graphite Partners for the Service, as set out on the Front Sheet, and as may be varied in accordance with this Agreement.
Support Services:	the support services related to the Service to be provided by Graphite Partners by online portal/email/telephone to the Customer or Authorised User as set out in the SLA.
Statement of Work	a statement of work specifying the Consultancy Services to be provided by Graphite Partners and the Consultancy Fees payable in respect of them.
Term:	has the meaning given in clause 12.1 (being the Initial Term together with any subsequent Renewal Periods).

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 A reference to writing or written includes e-mail (to the email address notified for this purpose from time to time).
- 1.7 Any words following the terms **include, including, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, phrase or term preceding these terms.
- 1.8 Any reference to Graphite, Graphite Partners or any Graphite Partners Ltd subsidiary shall be interpreted as a reference to Graphite Partners Ltd as the holding company and contracting entity.

2. SERVICE

- 2.1 Graphite agrees to make available the Service to the Customer and the Authorised Users during the Term for the Customer's internal business purposes, on and subject to the terms of this Agreement. This Agreement takes effect on the earlier of it being signed by the Parties and the commencement of the Mobilisation Services and it supersedes any terms and conditions proffered by the Customer.
- 2.2 Graphite shall exercise all reasonable skill and care in delivering the Service substantially in accordance with the Specification. If the Service does not conform with the Specification Graphite will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole remedy for any breach of this clause 2.2.

- 2.3 Graphite's obligations in clause 2.2 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to Graphite's instructions, this Agreement or the Specification, or modification or alteration of the Service and/or the Software by any party other than Graphite.
- 2.4 Graphite shall provide the Support Services during Normal Business Hours in accordance with the SLA.
- 2.5 Graphite shall in respect of the Software from time to time will ensure that any minor improvements, updates, enhancements, fault corrections, new releases and versions of the Software are completed. But nothing in this Agreement shall entitle the Customer to any new or different version of the Software which from time to time is publicly marketed and offered, being a version which contains such significant differences from previous versions as to be generally accepted in the marketplace as constituting a new or different product.

3. MOBILISATION SERVICES

- 3.1 The Customer shall promptly provide all information and assistance reasonably requested by Graphite to enable Graphite to provide the Mobilisation Services by the Provisioning Date, including in particular the Import Content which shall be provided in a format and structure specified by Graphite.
- 3.2 Graphite shall provide the Mobilisation Services with all reasonable skill and care and shall use all reasonable endeavours to complete the Mobilisation Services by the Provisioning Date, but time shall not be of the essence in respect of the provision of the Mobilisation Services.
- 3.3 The Customer is liable to pay the Subscription Fees from the Provisioning Date irrespective of whether or not it chooses to commence use of the Service from that date.
- 3.4 Graphite shall not be liable for any loss, damage or liability whatsoever suffered or incurred by the Customer to the extent resulting from the Customer's failure to provide or delay in providing any information and/or assistance requested in accordance with this clause 3. Where such failures on the part of the Customer extend the duration of the Mobilisation Services, the Customer shall be liable to pay for such additional time at Graphite's prevailing daily rates.

4. CONSULTANCY SERVICES

- 4.1 Where the Customer requires Graphite to provide Consultancy Services Graphite shall prepare and submit to the Customer a draft Statement of Work setting out the scope of the works, their estimated dates and duration and the Consultancy Fees payable. The Parties shall then discuss and agree the Statement of Works and shall both sign the Statement of Work when it is agreed. Where the Customer decides to progress without an agreed Statement of Work the Customer remains liable for Graphite's fees if the Consultancy Services does not meet the Customer's expectation.
- 4.2 Graphite shall provide the Consultancy Services with all reasonable skill and care and shall use all reasonable endeavours to complete the Consultancy Services within the timescales specified in the Statement of Work, but such date is an estimate only and time shall not be of the essence in respect of the provision of the Consultancy Services.
- 4.3 Each Statement of Work is subject to the terms of this Agreement together with any other specially agreed terms set out in the Statement of Work.

5. GRAPHITE DEVICES

- 5.1 This Clause **Error! Reference source not found.** applies only if the Order specifies that Devices will be provided by Graphite.
- 5.2 Subject to the Customer's payment of the One-Off Fee, Graphite shall use reasonable endeavours to deliver the Devices to the Customer (at the 'Delivery Address' specified in the Order or otherwise agreed between the parties in writing from time to time) on or before the Start Date.
- 5.3 The Customer shall procure that its authorised representative is present to take delivery of the Devices. Acceptance of delivery by such representative shall mean that the Customer has examined the delivery and found the delivery to be complete and the Devices are in good condition.
- 5.4 The Devices shall remain the property of Graphite Partners Ltd, and except as set out in this Clause **Error! Reference source not found.**, the Customer shall have no right, title, or interest in, or to, the Devices. The Customer is permitted to possess and use the Devices during the Subscription Period solely for the purposes of permitting the Licensed Users to install and use the Device Software on the Devices in accordance with the terms of this Contract.
- 5.5 The Customer shall not hold itself out as the owner of the Devices or tamper with any marks of identification, origin, or ownership on the same.
- 5.6 The risk of loss, theft, damage or destruction in the Devices shall pass to the Customer on delivery and shall remain at the Customer's sole risk until they are returned to Graphite in accordance with this Contract. The Customer shall immediately notify Graphite of any damage to, or loss of, the Devices. The Customer shall maintain suitable insurance to cover the full replacement cost of the Devices.
- 5.7 The Customer shall (and shall procure that the Licensed Users shall):
- 5.7.1 ensure that the Devices are kept safe and secure, and are not possessed or used by, or sold or let to, any third party;
 - 5.7.2 be responsible for agreeing to, and complying with, all third-party terms of use and licensing terms applicable to the Devices and the software contained within them; and
 - 5.7.3 not: (i) modify the Devices; (ii) use the Devices with any equipment or peripherals which are not supplied or approved by Graphite; (iii) use the Device outside of the manufacturer's recommended manner of use; and (iv) themselves, or permit any third party, to perform any support or maintenance in respect of the Devices.
- 5.8 If the Customer notifies Graphite that there is a fault with any Device then, provided that such fault is not caused by the Customer and / or the Licensed Users and does not result from any breach of this Contract, Graphite will use reasonable endeavours to replace the same within seventy-two (72) hours of the fault being notified to Graphite. Unless otherwise agreed in writing, delivery of a replacement Device will be conditional on the simultaneous return of the faulty Device. If a returned Device: (a) is not faulty (as determined by Graphite), then the Customer shall pay an administration fee of £150 for each returned Device; or (b) is faulty, and such fault is caused by the Customer and / or the Licensed Users (as determined by Graphite), then the Customer shall reimburse Graphite for the costs of any repairs required to put such Graphite Device in good and working condition.
- 5.9 On termination of this Contract, the Customer shall return the Devices to such address required by Graphite in good and working condition. The Customer shall reimburse Graphite for the costs of any repairs required to put the returned Graphite Devices in good and working condition. If any Devices are not returned in accordance with this Clause 5.9 or are beyond repair when returned, the Customer shall reimburse Graphite for the cost of replacing such Devices with new devices of the same specification.

6. CUSTOMER'S OBLIGATIONS AND ACKNOWLEDGMENTS

6.1 The Customer shall provide Graphite with:

6.1.1 all necessary co-operation in relation to this Agreement; and

6.1.2 all necessary access to such information as may be reasonably required by the Graphite, to enable the Graphite to provide the Service, including but not limited to the information required in connection with the Mobilisation Services.

6.2 The Customer shall:

6.2.1 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

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

6.2.3 obtain and shall maintain all necessary licences, consents, and permissions necessary for Graphite, its contractors and agents to perform their obligations under this Agreement;

6.2.4 where Graphite Devices are not utilised, be responsible for procuring, maintaining and securing its network connections and telecommunications links from its information technology systems to the servers.

6.3 The Customer acknowledges that no computing infrastructure is wholly reliable or risk-free and, accordingly, shall ensure that it has appropriate safeguards and business continuity processes in place to minimise the potential impact of any unavailability or reduced functionality of the Service.

6.4 The Customer shall:

6.4.1 not allow or suffer the Service to be used by any person other than Authorised User; and

6.4.2 ensure that each Authorised User shall keep a secure password for his/her use of the Service and keep such password confidential.

6.5 The Customer shall not access, store, distribute or transmit any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices. If there is any breach of the provisions of this clause, Graphite reserves the right, without liability to the Customer or prejudice to its other rights, and without prior notice to the Customer, to:

6.5.1 in respect of the Authorised User in breach of the provisions of this clause, permanently disable access to the Service; and

6.5.2 disable the Customer's or Authorised User's (as applicable) access to the Services to take such action as it deems necessary to protect the Service and the Software.

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

- 6.6.1 copy, attempt to copy, modify, duplicate, create derivative works of, frame, mirror, republish, download, display, transmit, or distribute any part of the Software in any form or media or by any means;
 - 6.6.2 access all or any part of the Service in order to build a product or service which competes with (or might reasonably be expected to compete with) the Service; or
 - 6.6.3 use the Service to provide commercial services to third parties, save as expressly authorised pursuant to this Agreement.
- 6.7 The Customer acknowledges and agrees that Graphite shall not grant access to the Service to any Authorised User who has not accepted the EULA. Graphite may, without prejudice to its other rights, in respect of any Authorised User, exercise any right or remedy available to it in the EULA against such Authorised User.
- 6.8 The Customer shall be solely responsible for ensuring the compliance by its Authorised Users with the terms of this Agreement and shall be responsible for any Authorised User's breach of this Agreement.
- 6.9 This Agreement applies only to the set-up and supply of the Service and not to any other services which may be developed by Graphite from time to time (which it is acknowledged would be subject to the terms of a separate agreement).

7. PERSONAL DATA

- 7.1 Where and to the extent that the Customer Content comprises personal data ("Personal Data"), both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a Party's obligations, responsibilities or rights under the Data Protection Legislation.
- 7.2 The Parties agree that in respect of any personal data processed by the Graphite on behalf of the Customer in connection with the provision of the Service the Customer is determining the purpose and approving the manner in which that personal data is processed and, accordingly, the Customer is the controller and Graphite is the processor for the purposes of the Data Protection Legislation. Schedule 3 sets out the scope, nature and purpose of processing by Graphite, the duration of the processing and the types of personal data and categories of data subject.
- 7.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of Personal Data by Graphite.
- 7.4 Graphite shall, in relation to any Personal Data which it processes in the course of the provision of the Service:
- 7.4.1 process that Personal Data only as is strictly necessary to provide the Services and on the documented written instructions of the Customer unless otherwise required by the Data Protection Legislation;
 - 7.4.2 not transfer any Personal Data outside of the United Kingdom unless the Customer has consented to such transfer in writing (such consent not to be unreasonably withheld or delayed).
 - 7.4.3 ensure that all personnel who have access to and/or process such Personal Data are obliged to keep it confidential;
 - 7.4.4 assist the Customer at the Customer's expense in responding to any request (including a subject access 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;

- 7.4.5 notify the Customer in writing without undue delay on becoming aware of a personal data breach concerning the Personal Data;
 - 7.4.6 at the written direction of the Customer, and not later than 14 days from receipt of such direction, delete or return any Personal Data to the Customer on termination of this Agreement unless required by Data Protection Laws to store the Personal Data;
 - 7.4.7 maintain complete and accurate records and information to demonstrate its compliance with the Data Protection Legislation and inform the Customer if, in the opinion of Graphite, an instruction provided by the Customer infringes the Data Protection Legislation;
 - 7.4.8 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, 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.
- 7.5 In respect of any Personal Data processed by Graphite, the Customer consents to Graphite appointing Microsoft as a third party processor of Personal Data or such replacement processor as Graphite may from time to time appoint. Provided that Graphite confirms that it has entered or will enter a written agreement with such third-party processor incorporating terms which are substantially similar to those set out in this clause 6 and which reflect the requirements of the Data Protection Legislation. As between the Customer and Graphite, Graphite shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.

8. FEES AND PAYMENT

- 8.1 The Customer shall pay to Graphite in accordance with this clause 7:
 - 8.1.1 the Mobilisation Fee in respect of the Mobilisation Services;
 - 8.1.2 the Subscription Fees in respect the Service; and
 - 8.1.3 where applicable, the Consultancy Fees in respect of the Consultancy Services.
- 8.2 The Mobilisation Fee shall be paid by the Customer to Graphite (to the bank account notified for this purpose from time to time) immediately following the date of this Agreement.
- 8.3 The Subscription Fees are invoiced by Graphite monthly in advance with effect from the Provisioning Date and are payable by the Customer within 30 days to the bank account notified for this purpose from time to time.
- 8.4 If at any time the number of Authorised Users exceeds the threshold of Users indicated on the Front Sheet Graphite may raise an additional invoice for the Subscription Fees due in respect of the additional Authorised Users, calculated by reference to the chargeable Subscription Fees specified in the Front Sheet on a pro-rata basis. Graphite shall consult with the Customer before issuing such additional invoice.
- 8.5 The Consultancy Fees shall be paid in accordance with the applicable Statement of Work by reference to Graphite's then applicable daily consultancy rates.
- 8.6 If Graphite has not received payment by the due date then without prejudice to its other rights and remedies:

- 8.6.1 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of The Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment; and
- 8.6.2 Graphite may, provided the Customer has not remedied such non-payment within five Business Days of notice in writing requiring it to do so, without liability to the Customer and without the requirement to notify the Customer or its billing representative in advance, suspend the provision of the Service, including disabling the Customer's (and each Users' and Authorised User's) password, account and access to all or part of the Service and Graphite shall be under no obligation to provide the Service while the invoice(s) concerned (and any interest accrued thereon) remain unpaid.
- 8.7 All amounts and fees stated or referred to in this Agreement shall be payable in the currency stated on the Front Sheet and are exclusive of value added tax, which shall be added to Graphite's invoice(s) at the appropriate rate.
- 8.8 Where applicable, the Customer shall ensure that any purchase order which it requires in order to process payment of Graphite's invoices is generated prior to the point of issue of such invoices.
- 8.9 With effect from the first anniversary of the Provisioning Date and on each subsequent anniversary of the Provisioning Date, Graphite shall be entitled to increase the Subscription Fees to reflect any percentage increase in the Consumer Prices Index during the previous year upon 30 days' prior written notice to the Customer.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer acknowledges and agrees that:
- 9.1.1 Graphite and/or its licensors own all Intellectual Property Rights relating to the Software and the Specification used to provide the Service or developed during the provision of the Service; and
- 9.1.2 this Agreement does not grant the Customer any permission to use or exploit any such Intellectual Property.
- 9.2 The Customer grants to Graphite a royalty-free, non-transferable licence to copy, modify, distribute, store and process any Customer Content for the Term for the purpose of branding and thereafter providing the Service to the Customer and Authorised Users and where required, to delete or remove the same to protect the integrity of any other data held by Graphite.
- 9.3 Subject to the provisions of clause 8.5, Graphite shall indemnify the Customer against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable professional fees) arising out of or in connection with any claim that the Service infringes any Intellectual Property Rights, provided that:
- 9.3.1 Graphite is given prompt written notice of any such claim;
- 9.3.2 the Customer provides reasonable co-operation to Graphite in the defence and settlement of such claim, at Graphite's expense; and
- 9.3.3 Graphite is given sole authority to defend or settle the claim.
- 9.4 In the defence or settlement of any claim, Graphite may procure the right for the Customer to continue using the Service, replace or modify the Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer

(save for a pro-rata reimbursement of any Subscription Fees paid in advance for the then current invoicing period).

- 9.5 In no event shall Graphite, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 9.5.1 any modification of the Service by anyone other than Graphite (or its authorised representatives); or
 - 9.5.2 the Customer's use of the Service in a manner contrary to this Agreement and any other reasonable written instructions given to the Customer by Graphite; or
 - 9.5.3 the Customer's continued use of the Service after notice of the alleged or actual infringement from the Graphite or any competent authority.
- 9.6 Clause 8.3 states the Customer's sole and exclusive rights and remedies, and Graphite's entire obligations and liability, for infringement of any Intellectual Property Rights in connection with this Agreement.

10. CONFIDENTIALITY

- 10.1 Each Party may be given access to Confidential Information belonging to the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;
 - 10.1.2 was in the other Party's lawful possession before the disclosure;
 - 10.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or
 - 10.1.4 is independently developed by the receiving Party, which independent development can be shown by satisfactory written evidence.
- 10.2 Subject to clause 9.4, each Party shall hold the other's Confidential Information in confidence and not make (whether by act or omission) the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than as strictly necessary for the performance of this Agreement.
- 10.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 A Party may disclose the other Party's Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much written notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 9.4, and it takes into account the reasonable requests of the Party to which the Confidential Information belongs in relation to the content and form of such disclosure.

11. CUSTOMER INDEMNITY

- 11.1 The Customer shall defend, indemnify and hold harmless Graphite against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable professional fees) arising out of or in connection with:

- 11.1.1 any claim made against Graphite for actual or alleged infringement of a third party's Intellectual Property Rights arising from the Customer's and any Authorised User's use of the Service; or
 - 11.1.2 the possession, use of or reliance on any Customer Content.
- 11.2 The Customer's liability pursuant to Graphite pursuant to clauses 10.1 shall be subject to Graphite's compliance with the following:
- 11.2.1 the Customer being given prompt written notice of any such claim;
 - 11.2.2 Graphite providing reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 11.2.3 the Customer being given sole authority to defend or settle the claim.

12. LIMITATION OF LIABILITY

- 12.1 Except as expressly and specifically provided in this Agreement and subject to clause 11.2:
- 12.1.1 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - 12.1.2 the Services are provided to the Customer on an "as is" basis.
- 12.2 Nothing in this Agreement excludes the liability of Graphite to the Customer for:
- 12.2.1 death or personal injury to the Customer caused by the Graphite's negligence;
 - 12.2.2 fraud or fraudulent misrepresentation; and/or
 - 12.2.3 any other liability which cannot be limited or excluded by applicable law.
- 12.3 Subject to clauses 11.1 and 11.2:
- 12.3.1 Graphite shall not be liable (whether in contract, tort (including negligence or breach of statutory duty), under an indemnity or otherwise howsoever arising):
 - (a) for business interruption, loss of profits, loss of production, loss of or corruption to data, loss of or damage to hardware, loss of or corruption to software, loss of business, loss of revenue, loss of operation time, loss of goodwill or reputation, loss of anticipated savings, loss of competitive advantage, loss of opportunity, wasted management time or any claims by third parties, in each case whether direct or indirect; or
 - (b) for any special, indirect, incidental, punitive or consequential loss, damage, cost or expense.
- 12.4 Subject to clause 11.2, Graphite's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall not in any year of the Term exceed the value of the Subscription Fees paid or payable during that year.

13. TERM, TERMINATION AND SUSPENSION

- 13.1 This Agreement shall, unless otherwise terminated as provided in this clause 12, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:
- 13.1.1 either Party notifies the other Party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or
 - 13.1.2 otherwise terminated in accordance with the provisions of this Agreement;
- and the Initial Term together with any subsequent Renewal Periods shall constitute the **Term**.
- 13.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 13.2.1 the other party commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified of the breach; or
 - 13.2.2 an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or documents are filed with the Court for the appointment of an administrator, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt, or if any analogous event occurs in relation to the other party in the jurisdiction in which it operates (if other than the UK).
- 13.3 Graphite may terminate this Agreement if the Customer fails to pay any amount due on the due date for payment and remains in default not less than 28 days after being notified in writing to make such payment.
- 13.4 On termination of this Agreement for any reason:
- 13.4.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Service;
 - 13.4.2 Graphite shall provide the Customer with a copy of the Customer Content stored on the servers and shall then delete such content;
 - 13.4.3 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced; and
 - 13.4.4 any provision that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 13.5 Graphite may, without prejudice to its other rights and remedies, suspend provision of all or part of the Service if:
- 13.5.1 Graphite reasonably suspects that the Customer or the Authorised Users are using the Service in an unauthorised way;
 - 13.5.2 There is, or Graphite reasonably suspects that there is a security breach by the Customer or any Authorised User; or

13.5.3 Graphite's cloud service provider ceases to provide or suspends provision of its hosting service.

13.6 If any suspension carried out by Graphite under clause 12.5 continues for a period of 5 or more consecutive Business Days, Graphite may at its discretion and without liability to the Customer, terminate this Agreement immediately on notice to the Customer.

14. ANTI-BRIBERY AND SLAVERY

14.1 Graphite shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010 (Relevant Requirements) and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

14.2 Graphite shall comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force, including the Modern Slavery Act 2015.

15. FORCE MAJEURE

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

16. MISCELLANEOUS

16.1 Entire Agreement

This Agreement constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it. Neither party has entered into this Agreement in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in this Agreement.

16.2 No Partnership etc

The Parties are independent contractors and this Agreement shall not be deemed to create any partnership or joint venture relationship between them.

16.3 Amendments

Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the Parties.

16.4 Assignment etc

The Customer shall not without Graphite's prior written consent assign, transfer, charge or deal in any other manner with this Agreement or its rights under it or purport to do any of the same. Graphite may, after having given prior written notice to the Customer, assign its rights under this Agreement to any other company in its Group but shall remain liable to the Customer for their performance.

16.5 Waiver

The failure of a party to exercise or enforce any right under this Agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

16.6 Severability

If any part of this Agreement becomes invalid, illegal or unenforceable, the Parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible validly gives effect to their intentions as expressed in this Agreement.

16.7 Counterparts

This Agreement may be executed in counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

16.8 Notices

Any notice or communication required to be given by either party to the other shall be deemed given at the time and on the date sent by email to the other party, save that if that time falls outside business hours in the place of receipt, it shall be deemed given when business hours resume. The Parties confirm that the email addresses listed on the Front Sheet are correct. Either party may update their email address by promptly following the procedure set out in this clause.

16.9 Rights of Third Parties

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16.10 Disputes

Any dispute arising under this Agreement should first be escalated to the senior management of each party. If the dispute remains unresolved for more than 21 days, the Parties will attempt in good faith to resolve the dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. This shall not apply to any disputes concerning recovery of a debt and shall not restrict a party from seeking injunctive relief.

16.11 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and subject to clause 15.10, each party irrevocably submits to the exclusive jurisdiction of the English Courts.