



SAAS Subscription Agreement

(Global Version)

Created by:

Auraya Systems Pty Ltd

Parties

AURAYA SYSTEMS PTY LTD ABN 23 138 080 510 of 394 Lane Cove Road, Macquarie Park, NSW, 2113, Australia (**Auraya**)

and

CUSTOMER specified in Schedule 1 to this agreement (**Customer**)

Background

Auraya has agreed to supply to the Customer, and the Customer has agreed to acquire from Auraya, the Subscription Service and Professional Services in accordance with the terms and conditions of this Agreement.

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, the following definitions apply unless the context requires otherwise:

Administrator means an officer, employee, subcontractor, or agent of the Customer whom the Customer has appointed to administer the Customer's account with Auraya.

Authorized User means an officer, employee, subcontractor, or agent of the Customer whom the Customer authorizes to use the Subscription Service on the Customer's behalf.

Business Day means Monday to Friday other than gazette public holidays in New South Wales, Australia.

Confidential Information means any information which is designated as confidential, or which might reasonably, by its nature, be deemed to be confidential and includes:

- (a) in respect of Auraya – includes the Subscription Service, Software, Documentation, the pricing and cost of the Subscription Service or the Software, supplier lists, customer lists, sales strategies, business and marketing plans, production processes and techniques, research and development data and inventions, assets or liabilities, financial condition, prospects; and
- (b) in respect of the Customer – includes the Customer Data.

Confidential Information does not include information that:

- (i) is generally known to the public or is readily ascertainable from public sources (other than as a result of a breach of clause 10;
- (ii) can be shown by written records to have been independently developed by the Recipient without reference to or reliance on any Confidential Information of the Discloser; or
- (iii) can be shown by written records to have been obtained from a person who created or acquired such information without reference to or reliance on Confidential Information of the Discloser.

Customer Data means all data, records, files, information, content, or Personal Information held by the Customer, including text, sound, video, images, and software, that is:

- (a) input or uploaded by the Customer or its Personnel to the Subscription Service;
- (b) collected, received, transmitted, processed, or stored by the Customer or its Personnel using the Subscription Service; or

- (c) provided to Auraya to upload, use, and manage for the purpose of the Subscription Service.

Data Privacy Laws has the meaning given in Schedule 4.

Discloser means the party which discloses Confidential Information.

Dispute has the meaning given in clause 15.3.

Documentation means the documentation published by Auraya for the Subscription Service to assist the Customer in the use of the Subscription Service as amended by Auraya from time to time.

Eligible Privacy Breach means:

- (a) an “eligible data breach” as defined in section 6 of the *Privacy Act 1988* (Cth);
- (b) a “personal data breach” as defined in the Data Privacy Laws; or
- (c) a substantially equivalent term under the Privacy Laws of countries other than Australia or the European Economic Area or the United Kingdom applicable to a party.

Extended Subscription Term means the period specified in Schedule 1.

Fees means the Subscription Fees, overage fees and fees for Professional Services, if applicable.

Force Majeure Event means any events or circumstances beyond the reasonable control of an Affected Party including (but not limited to) strikes, lockouts, labor disputes, war, pandemic, epidemic, earthquake, flood, fire, accidents, breakdown of equipment, equipment fault, and government action.

GST has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Subscription Term means the period specified in Schedule 1.

Insolvency Event means:

- (a) if a party is located in Australia – being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act 2001 (Cth)) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act 2001 (Cth) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001 (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event; or
- (b) if a party is located outside Australia – any circumstance analogous to any of those specified in paragraph (a).

Intellectual Property Rights or **IPR** means all rights in relation to patents, copyright, registered designs, registered and unregistered trademarks, trade secrets, know-how and other intellectual property as defined in Article 2 of the 1967 Convention establishing the World Intellectual Property Organization, including any right to register those rights, whether created before or after the date of this Agreement, whether existing in Australia or any other country and in all cases for the duration of those rights.

Losses means liabilities, expenses, losses, damages, and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and special, indirect losses and damages including those arising out of any third party.

Permitted Purpose means performing a party’s obligations or exercising its rights under this Agreement including obtaining legal or other professional advice in relation to this Agreement.

Personal Information means:

- (a) “personal information” as defined in section 6 of the *Privacy Act 1988* (Cth) including “sensitive information” also as defined in section 6 of the *Privacy Act 1988* (Cth); and
- (b) “personal identifiable information” as defined in Article 4 of the GDPR; or
- (c) a substantially equivalent term under the Privacy Laws of countries other than Australia applicable to a party.

Personnel means a party’s officers, employees, agents, contractors, consultants, directors, and legal and professional advisers.

Professional Services means the system design and implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, training, solution training, backup and recovery and any other services described in an agreed Statement of Work (SOW) but does not include any services specified in Schedule 2 as comprising part of the Subscription Service.

Privacy Laws means the *Privacy Act 1988* (Cth) as applicable to a party and regulations and other delegated legislation made under those acts of parliament and any other privacy legislation of a jurisdiction other than Australia that is applicable to the party in connection with the supply or access to and use of the Subscription Service, as applicable, under this Agreement.

Recipient means the party which receives or becomes aware of Confidential Information.

Software means the software specified in Schedule 1 as described in detail in Schedule 2 and includes and includes the Documentation and any upgrades or new versions of this software.

Subscription Commencement Date means the date specified in Schedule 1.

Subscription Fees means the fees specified in Schedule 3.

Subscription Service means the Software and services specified in Schedule 2.

Subscription Term means the Initial Subscription Term and all Extended Subscription Terms (if any).

Taxes means:

- (a) GST or any value added tax, goods and services tax, sales tax, or any other tax on the supply of services or goods in the jurisdiction in which the services are supplied to the Customer; or
- (b) any tax, levy, duty, charge, impost, deduction or withholding however it is described that is imposed by a government agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income of the other party in any jurisdiction.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the expression person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity, a corporation, an association (incorporated or unincorporated) and a government authority;
- (b) words importing the singular include the plural (and vice versa);
- (c) words denoting a given gender include all other genders; a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure respectively of this Agreement;
- (d) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (e) a reference to anything includes a part of that thing;
- (f) a reference to include or including means includes, without limitation, or including, without limitation, respectively;

- (g) a reference to “writing” includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) headings are for convenience only and do not affect interpretation;
- (j) a provision will not be construed to the disadvantage of Auraya on the basis that Auraya put it forward.

1.3 Documents Comprising Agreement and Order of Precedence

This Agreement is comprised of the following in order of precedence:

- (a) the clauses of this Agreement;
- (b) the Schedules; and
- (c) the Documentation.

Subject to clause 9.4(b), if there is an inconsistency between the parts of this Agreement, the part of the Agreement higher in the order of precedence prevails to the extent of the inconsistency.

2. Scope

This Agreement sets out the terms and conditions on which Auraya agrees to supply:

- (a) the Subscription Service; and
- (b) Professional Services

to the Customer for the Subscription Term.

3. Commencement and Term

3.1 Commencement of Agreement

This Agreement commences on the date on which it is signed by the parties and, if signed on different dates, the latter of the dates and continues until expiry or termination of the Subscription Term.

3.2 Commencement of Subscription Service

The Subscription Term commences on the Subscription Commencement Date and continues for the Initial Subscription Term.

3.3 Extended Subscription Term

- (a) If a party has not given at least 30 days’ notice prior to the scheduled expiry of the Initial Subscription Term, the Subscription Term will be extended for an Extended Subscription Term.
- (b) If a party has not given at least 30 days’ notice prior to the scheduled expiry of an Extended Subscription Term, the Subscription Term will be extended for a further Extended Subscription Term.

3.4 Fee Increase for Extended Subscription Term

- (a) At least 60 days prior to the scheduled expiry date of the Initial Subscription Term or then current Extended Subscription Term, Auraya may notify the Customer that the Fees in the Extended Subscription Term will increase as specified in the notice.

- (b) If the Customer does not accept the Fees notified by Auraya for the Extended Subscription Term, the Customer must issue a notice terminating this Agreement to Auraya at least 30 days prior to the scheduled expiry of the Initial Subscription Term or then current Extended Subscription Term.
- (c) If the Customer does not issue a notice under clause 3.4(b), this Agreement will be extended for the Extended Subscription Term and the new fees will apply with effect from the commencement of the Extended Subscription Term.
- (d) If the Customer issues a notice under clause 3.4(b), this Agreement will expire at the end of the Initial Subscription Term or then current Extended Subscription Term.

4. Subscription Service

4.1 Provision of Subscription Service

In consideration of the Customer paying the Fees:

- (a) Auraya will provide the Subscription Service to the Customer in accordance with this Agreement; and
- (b) subject to the terms and conditions of this Agreement, Auraya grants the Customer during the Subscription Term a personal, non-exclusive, non-transferable, non-sublicensable, and terminable right and license to access and use the Subscription Service and Software online, solely for the Customer's internal business operations (and not in any resale or outsourcing capacity).

4.2 Availability of Subscription Service

Auraya will use commercially reasonable efforts to make the Subscription Service available during the periods specified in Schedule 2.

4.3 Performance of Subscription Service

The Subscription Service will perform in accordance with the performance standards specified in Schedule 2 (including the Documentation).

4.4 Maintenance

- (a) Auraya will maintain and support the Subscription Service during the Term as it considers necessary or appropriate to ensure that the Subscription Service operates as required under this Agreement.
- (b) Auraya will endeavor to perform all scheduled maintenance during the hours specified in Schedule 2 or at such time as may be agreed between Auraya and the Customer.
- (c) Auraya will perform unscheduled maintenance as it considers reasonably necessary from time to time. If any unscheduled maintenance requires the Subscription Service to be off-line for more than 60 minutes, Auraya will send an e-mail alert to the Administrator.

4.5 Changes in Subscription Service

- (a) Auraya may at any time and for any reason modify the Subscription Service (including changes in computer hardware, systems, and/or Software, programming languages, data communications and the Customer identification procedures) without giving the Customer prior notice of the proposed modification as long as the modification does not reduce the functionality of the Subscription Service as described in Schedule 2.
- (b) In the event of any such changes that, in Auraya's reasonable determination, would materially change the operation of the Subscription Service, Auraya will give the Customer notice of the changes prior to implementing the changes.

4.6 Professional Services

- (a) If specified in Schedule 1, Auraya will provide Professional Services to the Customer in accordance with Schedule 4.
- (b) The Customer may request, and Auraya may agree, to provide professional services in addition to those specified in Schedule 4. Auraya's obligation to provide the additional professional services will not become binding on Auraya unless and until the parties sign a Statement of Work or Order Form in respect of those additional Professional Services which will bring into existence a separate contract for the supply of the additional professional services on Auraya's standard terms for such services at the time the Statement of Work or Order Form is signed or such other terms and conditions as the parties agree.
- (c) Auraya will provide the Professional Services in a professional and workmanlike manner, consistent with generally recognized commercial practices and standards applicable in the services sector in which Auraya operates.
- (d) The Customer must provide prompt notice of any deviation by Auraya from the standard specified in clause 4.6(c), and Auraya will re-perform any service that, in Auraya's discretion, fails to meet this standard.
- (e) If the Professional Services include system design, installation, implementation, configuration services or solution training, the Customer must:
 - (i) provide assistance as reasonably requested by Auraya in connection with the installation, implementation and configuration of the Subscription Service including, if requested, timely providing Auraya with access to the Customer's facilities, network, hardware and software, reasonably requested by Auraya in order to provide the Subscription Service; and
 - (ii) all data required for the provision of the Subscription Service, including set up and configuration, in a timely manner.

4.7 Delay Caused by Customer

If the Customer's actions or inactions cause a delay in the performance of Auraya's obligations, the Fees and any milestones or performance dates specified in Schedule 2 for the performance of Auraya's obligations will be adjusted to accommodate the delay caused by the Customer.

4.8 Exclusions

- (a) Auraya will use industry standard practices designed to:
 - (i) detect and protect the Subscription Service against any viruses, "Trojan horses", "worms", spyware, adware or other harmful code designed or used for unauthorized access to or use, disclosure, modification or destruction of information within the Subscription Service or interference with or harm to the operation of the Subscription Service or any systems, networks or data, including as applicable using anti-malware software and keeping the anti-malware software current; and
 - (ii) prevent the use of deepfake voices as a means of verification.
- (b) Despite clause 4.8(a), Auraya does not warrant that:
 - (i) the Subscription Service will be free from external intruders (hackers), unauthorized virus or worm dissemination, or other persons having access to the services or systems of Auraya without the consent of Auraya;
 - (ii) access to or use of the Subscription Service will be uninterrupted or error free; or
 - (iii) deepfake voices will be prevented from verifying a voice in all circumstances and the Customer expressly acknowledges and agrees that the verification of deepfake voices is subject to:

- (A) any limitations and exclusions specified in Schedule 2 or the Documentation; and
 - (B) the settings applied to the Subscription Service by the Customer which are entirely at the Customer's discretion.
- (c) The Customer must use industry standard practices designed to detect and protect its use of the Subscription Service and the systems which the Customer uses to access and use the Subscription Service against any viruses, "Trojan horses", "worms", spyware, adware or other harmful code designed or used for unauthorized access to or use, disclosure, modification or destruction of information within the Subscription Service or interference with or harm to the operation of the Subscription Service or any systems, networks or data, including as applicable using anti-malware software and keeping the anti-malware software current.

5. Fees, Invoicing and Payments

5.1 Fees

The Customer must pay the Fees to Auraya in accordance with this clause.

5.2 Taxes

All Fees are exclusive of Taxes. The Customer must pay all applicable Taxes in addition to payment of the Fees at the same time as paying the Fees.

5.3 Time for Payment

The Customer must pay the Fees to Auraya within 30 days of the date of Auraya's invoice.

5.4 Interest

Any payment delayed by the Customer for more than 30 days beyond the due date will be subject to an interest charge at a rate of the 5% above the cash rate set by the Reserve Bank of Australia per month, compounded monthly from the date such payment first became due until paid in full.

5.5 Suspension of Access to Subscription Service

If the Customer fails to make any payment when due, Auraya may, without limitation to its rights under clauses 5.4 and 13, suspend the Customer's access to and use of the Subscription Service in accordance with clause 13.1.

5.6 Payment Methods

All payments must be made in the currency specified in the invoice issued by Auraya by wire transfer, direct bank deposit or other reasonable payment means specified by Auraya in the invoice in cleared funds to the bank account specified by Auraya in the invoice or, if no bank is specified in the invoice, to the last bank account notified to the Customer by Auraya. The Customer is responsible for any bank charges in making the payment including any foreign currency exchange costs.

5.7 Disputed Payments

If the Customer disputes any of Auraya's claims for payment:

- (a) the Customer must give Auraya notice of the disputed amount (with its reasons for the dispute) within 10 Business Days of the date of the invoice;
- (b) the Customer must pay Auraya any undisputed amount; and
- (c) the parties must first use the procedures specified in clause 15 to attempt to resolve the dispute.

6. Users

6.1 Administrator and Authorized Users

To use the Subscription Service, the Customer must designate an Administrator and Authorized Users.

6.2 Administrator

- (a) The Customer must nominate a representative who will be referred to as the Administrator who will be responsible for administering the Subscription Service for the Customer and undertaking activities as specified in this Agreement on behalf of the Customer in connection with Customer's use of the Subscription Service.
- (b) The initial Administrator is specified in Schedule 1.
- (c) The Customer may replace the Administrator by giving Auraya notice of the person's removal and replacement, which includes details of the name of the new Administrator and the effective date of the appointment.

6.3 Authorized Users

- (a) Each Authorized User requires a unique username and password.
- (b) The Administrator is responsible for setting up designated users as Authorized Users, allocating usernames and allocating passwords to Authorized Users and removing Authorized Users on behalf of the Customer.
- (c) The Customer may replace, add, or remove Authorized Users as it considers appropriate and is not required to notify Auraya of any changes to its Authorized Users.
- (d) The Administrator is responsible for informing each Authorized User of the Authorized User's username and password.

6.4 Confidentiality of Usernames and Passwords

- (a) The Customer must keep confidential each username and password and ensure that the Administrator and each Authorized User keeps confidential usernames and passwords.
- (b) The Customer must take reasonable precautions to protect usernames and passwords against the theft, loss, or fraudulent use of such usernames and passwords.
- (c) The Customer must promptly (within 2 Business Days) notify Auraya of:
 - (i) any unauthorized or fraudulent use of any of the usernames and passwords of any Personnel of the Customer;
 - (ii) any breach of clause 6.4(a); and
 - (iii) any breach of security, suspected theft, loss of the usernames and passwords of any Personnel of the Customer.

6.5 Responsibility for Use of Usernames and Passwords

The Customer is responsible for all acts or omissions committed by or under the usernames issued to the Authorized Users and will indemnify and keep indemnified Auraya for all Loss suffered or incurred by Auraya by acts or omissions of the Customer's users or failure of the Customer or any of its users to keep usernames and passwords confidential.

6.6 Requirements for Authorized Users

Auraya may change requirements for Authorized Users at any time by giving the Customer reasonable prior notice of the change without affecting any commitments previously applicable under this Agreement.

7. Customer's Responsibilities

7.1 Scope and Purpose of Access and Use

The Customer agrees to use the Subscription Service solely for the purposes identified in this Agreement and only for proper business purposes in accordance with and as contemplated by this Agreement and applicable legislation including, without limitation, laws, and regulations in relation to privacy, international communications, and the exporting and importing of data.

7.2 Connectivity

- (a) The Customer is responsible for acquiring and maintaining internet connectivity in order to access the Subscription Service and use the Subscription Service.
- (b) The Customer acknowledges that problems with the internet, including equipment, software, or network failures, impairments, or congestion may prevent, interrupt, or the Customer's access to the Subscription Service. The Customer is responsible for ordering, installing, maintaining the proper functioning of, and paying for any communications connections at the Customer's terminals or other access devices at the Customer's sites.

7.3 Technical Specifications

The Customer must comply with all technical specifications and with all security and operating guidelines, procedures, and protocols provided to the Customer by Auraya including the Documentation or otherwise notified by Auraya to the Customer.

7.4 Customer Data Transmissions

- (a) The Customer is solely responsible for the accuracy, quality, integrity, legality, adequacy, and reliability of all Customer Data used by the Customer in connection with the Subscription Service or provided to Auraya under this Agreement.
- (b) The Customer at all times retains ownership of all the Customer Data.
- (c) The Customer agrees to back up separately all Customer Data from the Subscription Service.
- (d) The Customer is solely responsible for ensuring that any processing of the Customer Data by the Subscription Service (including any processing undertaken by Auraya) is in compliance with all applicable laws.
- (e) The Customer is solely responsible for maintaining adequate controls over its processing and data transmissions up to but excluding transmissions within the Subscription Service.
- (f) The Customer acknowledges and agrees that Auraya is not responsible for checking, verifying, or editing the content or completeness of the information transmitted through the Subscription Service.

7.5 Unauthorized Access

The Customer must not, and must ensure that its Personnel do not, attempt to gain or allow access to any data, files, or programs to which they are not entitled under this Agreement, and that if such access is obtained, and Auraya's Confidential Information has been compromised, the Customer must immediately return such materials to Auraya and comply with clause 10 in relation to the materials.

7.6 Restrictions

The Customer must not do any of the following:

- (a) make any Subscription Service or Software available to, or use any Subscription Service or any component of the Subscription Service for the benefit of, anyone other than the Customer, unless expressly stated otherwise in Schedule 1 in which case the use must be limited to the benefit of the Customer and the person named in Schedule 1;

- (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Subscription Service, or use the Subscription Service or any or any component of the Subscription Service for timesharing or service bureau purposes or otherwise for the benefit of a third party;
- (c) directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms, architecture, structure, or other elements relevant to the Subscription Service; modify, translate, or create derivative works based on the Subscription Service or any component of the Subscription Service (except to the extent expressly permitted by Auraya;
- (d) obliterate, alter or remove any proprietary notices or labels or any digital rights management information in any part of the Subscription Service;
- (e) use the Subscription Service to store or transmit infringing, defamatory, slanderous, libelous, or otherwise unlawful or tortious material, or to store or transmit material in breach of Privacy Laws;
- (f) use the Subscription Service to build a similar or competitive product or service or for obtaining unauthorized access to the Services;
- (g) allow access to, provide, divulge, or make available the Auraya's Intellectual Property Rights to any person;
- (h) disclose or publish, without Auraya's prior consent, performance or capacity statistics or the results of any benchmark test performed on the Subscription Service;
- (i) use, or encourage, promote, facilitate, or instruct others to use, the Subscription Service for any illegal, harmful, fraudulent, infringing, or offensive use, or to transmit, store, display, distribute or otherwise make available content that is illegal, harmful, fraudulent, infringing or offensive including:
 - (i) any activities that are illegal, that violate the rights of others, or that may be harmful to others, Auraya's operations or reputation, including disseminating, promoting or facilitating child pornography, offering or disseminating fraudulent goods, services, schemes, or promotions, make-money-fast schemes, ponzi and pyramid schemes, phishing, or pharming;
 - (ii) content that infringes or misappropriates the Intellectual Property Rights or proprietary rights of others;
 - (iii) content that is defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable, including content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts; and
 - (iv) content or other computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including viruses, Trojan horses, worms, time bombs, or cancelbots;
- (j) use the Service to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (**system**) including:
 - (i) accessing or using any system without permission, including attempting to probe, scan, or test the vulnerability of a system or to breach any security or authentication measures used by a system;
 - (ii) monitoring data or traffic on a system without permission; and
 - (iii) forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route (but the legitimate use of aliases and anonymous remailers is not prohibited by this provision);

- (k) make network connections to any users, hosts, or networks unless the Customer has permission to communicate with them including:
 - (i) monitoring or crawling of a system that impairs or disrupts the system being monitored or crawled;
 - (ii) denial of Service (DoS), namely inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective;
 - (iii) interfering with the proper functioning of any system, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques;
 - (iv) operating network services like open proxies, open mail relays, or open recursive domain name servers;
 - (v) using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions;
- (l) distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations, including commercial advertising and informational announcements;
- (m) alter or obscure mail headers or assume a sender's identity without the sender's explicit permission;
- (n) otherwise use or copy the Subscription Service or any component of the Subscription Service.

7.7 Acceptable Use Policy

- (a) Without limitation to clauses 7.1, 7.5 and 7.6, the Customer represents and warrants that the Customer will also comply with any acceptable use policy introduced by Auraya and agrees that the policy (as amended from time to time) is incorporated into and forms part of this Agreement.
- (b) To the extent that there is any inconsistency between clauses 7.1, 7.5 and 7.6 and any acceptable use policy introduced by Auraya, the terms of the acceptable use policy will prevail to the extent of the inconsistency.

7.8 Indemnity

The Customer agrees to indemnify and keep indemnified Auraya against any Losses in connection with any claim or action that arises from an alleged breaches of clauses 7.1 to 7.7 or otherwise from the Customer's use of the Subscription Service.

7.9 Monitoring Use of Subscription Service

- (a) Although Auraya has no obligation to monitor the Customer's use of the Subscription Service, Auraya may do so, and the Customer authorizes Auraya to do so.
- (b) Auraya may investigate breaches of clauses 7.1, 7.5 and 7.6 or misuse of the Subscription Service; or remove, disable access to, or modify any content or resource that breaches clauses 7.1, 7.5 and 7.6.
- (c) Auraya may report any activity that Auraya suspects breaches any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Auraya's reporting may include disclosing appropriate customer information.
- (d) Auraya may also cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged breaches of clauses 7.5 and 7.6.

7.10 **Suspension**

Auraya may suspend or prohibit any use of the Subscription Service if it believes the use may be (or is alleged to be) in breach of clauses 7.1 to 7.7.

8. **Intellectual Property Rights**

8.1 **Ownership**

The Customer acknowledges and agrees that:

- (a) the Subscription Service and the Intellectual Property Rights in the Subscription Service are owned by Auraya; and
- (b) except for the limited rights to access and use the Subscription Service granted to the Customer under this Agreement, the Customer does not have or acquire under this Agreement any right, title or interest in the Subscription Service or the Intellectual Property Rights in the Subscription Service.

8.2 **Warranty**

Auraya warrants that it is entitled to provide and license the Subscription Service and the Intellectual Property Rights in or associated with the Subscription Service to the Customer as provided under this Agreement.

8.3 **Infringement Claims**

If any claim is made by any person that use of the Subscription Service by the Customer in accordance with the Agreement infringes the Intellectual Property Rights or moral rights of any person, Auraya must, at its own expense:

- (a) obtain the rights for the Customer to continue using the Subscription Service without infringement, or modify or replace the Subscription Service so that the Subscription Service is functionally equivalent and non-infringing; and
- (b) indemnify the Customer against all Loss incurred or suffered by the Customer arising from or related to any claim, suit, or action brought against the Customer by another person that the Subscription Service infringes the Intellectual Property of that person.

8.4 **Exclusions**

Auraya's indemnification obligations under clause 8.3 do not apply in any of the following circumstances:

- (a) if the Subscription Service is modified by any person other than Auraya, but solely to the extent the alleged infringement is caused by such modification;
- (b) if the Subscription Service is used in combination with any product supplied by a person other than Auraya, but solely to the extent the alleged infringement is caused by such combination;
- (c) if the Customer does not use the Subscription Service in accordance with the Documentation or the use is otherwise unauthorized by Auraya;
- (d) if the Customer does not notify Auraya promptly of the claim;
- (e) if the Customer settles or makes any admissions with respect to a claim without Auraya's prior consent.

8.5 **Exclusive Remedy**

Clause 8.3 states Auraya's sole liability and the Customer's exclusive remedy for any infringement of Intellectual Property Rights in connection with the Subscription Service under this Agreement.

9. Privacy

9.1 Compliance with Privacy Laws

- (a) Each party must comply with the Privacy Laws applicable to it including obtaining appropriate consent from an individual to allow Personal Information of an individual to be disclosed to the other party (including the party's Personnel) and used by the other party (including its Personnel) and other persons engaged by the party to the extent necessary to allow the other party to exercise its rights or perform its obligations under this Agreement.
- (b) Without limitation to clause 9.1(a), the Customer must provide notices to, and obtain any consents from, third parties as required by applicable law, rule or regulation in connection with Auraya's processing of Customer Data via the Subscription Service including any notices and consents required under Privacy Laws.

9.2 Transfer of Customer Data to Auraya

Without limitation to clause 9.1, the Customer must ensure that and warrants that it obtains all consents from individuals as required under Privacy Laws to transfer Personal Information to Auraya as required for the purposes of Auraya providing services under this Agreement including processing Customer Data.

9.3 Privacy Breaches

Each party must report and manage Eligible Data Breaches in accordance with its policies or procedures in compliance with the Privacy Laws applicable to it.

9.4 Data Protection Laws

- (a) If this Agreement is subject to the Data Protection Laws (as defined in Schedule 4), Schedule 4 applies to this Agreement.
- (b) In the extent of any inconsistency between clauses 9.1 to 9.3 inclusive, Schedule 4 prevails to the extent of the inconsistency.

10. Confidentiality

10.1 Obligations of Confidentiality

The Recipient must:

- (a) keep all Confidential Information of the Discloser secure and confidential unless disclosure is permitted by this clause or required by law or by order of any Court;
- (b) subject to paragraph (f) below, limit access to the Confidential Information of the Discloser to Personnel on a strictly need to know basis for the Permitted Purpose
- (c) not knowingly use Confidential Information in any way that would be harmful to the best interests of the Discloser;
- (d) only use Confidential Information for the Permitted Purpose;
- (e) not copy, in whole or in part, any Confidential Information without the prior consent of the Discloser except where such copy is made for the Permitted Purpose; and
- (f) ensure that all Personnel to whom Confidential Information is disclosed are legally bound under the terms and conditions of their employment or engagement agreements to keep the Confidential Information confidential and not to use the Confidential Information except for the Permitted Purpose.

10.2 Return of Confidential Information

Subject to compliance with applicable laws relating to document and data retention, at the request of the Discloser or on expiry or termination of this Agreement, the Recipient must return to the

Discloser any documents disclosed to or made by the Recipient under this Agreement which embody Confidential Information of the Discloser.

10.3 Confidentiality of Agreement

Except to the extent that a party is required to disclose this Agreement under applicable laws or by a court or other tribunal, the parties agree to keep the terms of this Agreement confidential and to only disclose the terms of this Agreement for the Permitted Purpose and subject to the requirement specified in clause 10.1(f).

10.4 Public Statements

Except to the extent required by law, court order or administrative determination or demand applicable to a party, no party may make any statement in respect of or relating to this Agreement or the arrangements implemented by this Agreement (in any form or media) unless it has obtained the prior consent of the other parties which consent must not be unreasonably withheld or delayed.

11. Warranties, Indemnities and Liability

11.1 Warranties

Each party represents and warrants that:

- (a) it has full legal capacity and power to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
- (b) this Agreement constitutes its legal, valid, and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally); and
- (c) it has obtained or will obtain all licenses, permits and third-party authorizations necessary for it to perform its obligations under this Agreement.

11.2 Exclusion of Implied Terms

Subject to clause 11.3, any term, condition or warranty which would otherwise be implied in this Agreement is excluded.

11.3 Non-Excludable Terms

This Agreement does not exclude or limit any guarantee, condition, warranty, or implied term that cannot be excluded, modified, or limited under applicable law. However, if applicable law allows an implied guarantee, condition, warranty, or term to be limited, the liability of the parties is limited to the maximum extent allowed under the applicable law.

11.4 Limitation of Liability

Subject to clauses 11.2, 11.3 and 11.5, the aggregate liability of each party in respect of any actual Loss incurred or suffered by the other party and arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, will not exceed the total Fees paid or payable by the Customer to Auraya under this Agreement in the 12 months immediately preceding the event causing the liability.

11.5 Exclusions from Limitation

The limitation under clause 11.4 does not apply to:

- (a) a claim for indemnity under clause 6.5, clause 7.8 or clause 8.3;
- (b) a breach of clause 9;
- (c) a breach of clause 10;
- (d) Loss of any kind resulting from the willful or fraudulent acts or omissions of a party or its Personnel;

- (e) a claim for or in relation to death or bodily injury; and
- (f) a claim for or in relation to damage to tangible property.

11.6 Exclusions of Certain Loss

To the extent permitted by law neither party will be liable to the other party in respect of:

- (a) any indirect, special or consequential loss;
- (b) any loss of revenues, profits, contracts, business, or anticipated savings; or
- (c) any special, punitive, exemplary losses,

regardless of whether such losses were within the contemplation of the parties at the date of this Agreement.

11.7 Claims in Relation to Customer Data

The parties expressly acknowledge and agree that Auraya will not be liable to the Customer in respect of any Loss arising from any errors or omissions in the Customer Data.

11.8 Contribution

The liability of a party (**first party**) for any Loss sustained by the other party (including for breach of warranty or under an indemnity) will be reduced proportionately to the extent that any person other than the first party or its Personnel caused or contributed to the Loss.

12. Force Majeure

12.1 Notification of Force Majeure Event

Except as otherwise provided under this Agreement where a party is unable wholly or partly by reason of a Force Majeure Event to carry out its obligations under this Agreement and that party:

- (a) gives the other party notice of the effect of the Force Majeure Event on the performance of its obligations as soon as practicable after becoming aware of the same, including reasonably full particulars insofar as known, of the extent to which that party is unable to perform; and
- (b) uses reasonable and timely efforts where practicable to minimize the effect of the Force Majeure Event on the performance of their obligations

the obligations of that party, performance of which is prevented by the Force Majeure Event, are suspended, so far and so long as the party's performance is prevented by the Force Majeure Event.

12.2 Obligations to Pay Money Not Affected

The Customer's obligation to pay Fees or other amount payable under this Agreement, will not be excused or suspended by a Force Majeure Event.

12.3 Termination of Participation due to Force Majeure Event

If a Force Majeure Event continues to prevent performance of the obligations of a for more than 30 consecutive days, either party may terminate this Agreement by giving at least 60 days' notice to the other party.

13. Suspension and Termination

13.1 Suspension

- (a) If the Customer fails to make any payment within 14 days of the date on which the payment is due or is in breach of its other obligations under this Agreement, other than in connection with a bona fide dispute over payment for services, Auraya may by providing not less than 7 days' notice to the Customer suspend:

- (i) the Customer's access to the Subscription Service; and
 - (ii) the Customer's license to use the Subscription Service,
- with effect from the date of the notice or later date specified in the notice.
- (b) Auraya will resume the Customer's access to the Subscription Service and license to use the Subscription Service when the Customer has paid all outstanding amounts due to Auraya in full or has rectified the breach to the reasonable satisfaction of Auraya.
 - (c) Auraya may charge a reasonable amount to recover its costs of suspending and resuming the Customer's access to the Subscription Service.

13.2 Termination for Breach or Insolvency Event

Without limitation to the rights of Auraya under clause 13.1, a party may terminate this Agreement by notice effective immediately (or effective from any later date that it may nominate) if:

- (a) the other party breaches any of its obligations under this Agreement and the breach is not rectified, if it can be rectified, within 14 days;
- (b) the other party breaches any of its obligations under this Agreement and the breach is not capable of rectification; or
- (c) the other party commits, or is the subject of, an Insolvency Event.

13.3 Effect of Expiry or Termination

If this Agreement expires or is terminated:

- (a) the Customer's right to access and use the Subscription Service will cease with effect from the effective date of expiry or termination;
- (b) the Customer must pay all Fees which have been invoiced by Auraya in accordance with the payment terms for that invoice; or where the effective date of expiry or termination is less than 14 days from the date of the invoice, by the effective date of expiry or termination or later date allowed by Auraya;
- (c) Auraya may issue an invoice for all Fees which the Customer will incur or be liable to pay up to the effective date of expiry or termination and the Customer will pay the invoice within 14 days of the date of the invoice or where the effective date of expiry or termination is less than 14 days from the date of the invoice, by the effective date of expiry or termination or later date allowed by Auraya;
- (d) each party must comply with clause 10.2;
- (e) each party will be regarded as discharged from any further obligations under this Agreement; and
- (f) each party may pursue any additional or alternative remedies provided by law or equity.

13.4 Disengagement

- (a) Following termination or expiry of this Agreement, for the period specified in Schedule 1, Auraya will do all things reasonably requested by the Customer that are necessary (such as data migration and cooperation with other suppliers of the Customer) to disengage the Subscription Service and for the Customer to migrate to a new system.
- (b) The Customer will pay Auraya's standard hourly professional services fee applicable at the date the disengagement services are requested for all disengagement services.
- (c) Invoices for disengagement services are payable within 30 days of the date of invoice.

13.5 Survival of Clauses

Clauses 10, 11, 13.3, 13.4, 14 and 15 and any other clauses intended to survive termination or expiry of this Agreement will continue to operate following the termination or expiry of this Agreement.

14. Notices

14.1 Form and Mode of Delivery of Notices

Any notice, demand, consent, or other communication given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorized by the sender;
- (b) must either be delivered to the intended recipient by post or by hand or email to the address or email specified in Schedule 1 or to the address or email number last notified by the intended recipient to the sender.

14.2 Time of Delivery of Notice

Any notice, demand, consent, or other communication given or made under this Agreement will be taken to be duly given or made as follows:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post, two Business Days after the date of posting; and
- (c) in the case of an email, on receipt by the sender of a confirmation of receipt of the email by the recipient's information technology systems or if the recipient's information technology systems do not issue receipts, 4 hours after the email has been sent,

but if the result is that a Notice would be taken to be given or made on a day which is not a Business Day or is later than 4.00pm New South Wales time, it will be taken to have been duly given or made on the next Business Day.

15. Dispute Resolution

15.1 Parties to negotiate in good faith

Each party must always try to resolve in good faith any disputes that arise under or about this Agreement.

15.2 Prohibition on Legal Proceedings until Completion of Process Under this Clause

Neither party can begin legal action (except interlocutory or urgent relief for breach of clauses 7.6 or 10 or for infringement of Intellectual Property Rights by the other party) against the other party unless and until this clause 15 has first been observed.

15.3 Notification of Dispute

If a party believes there is a dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity, or termination (**Dispute**) then that party must notify the other that a Dispute exists, and give reasonable details of the nature of that Dispute.

15.4 Meeting

The parties must then meet at a time and place identified by the party issuing the notice (which can include a meeting via Internet), within 7 days of notification of the Dispute, to attempt to resolve the Dispute.

15.5 Representatives at Meeting

Each party must nominate a representative in writing to represent that party at that discussion and must ensure that person has authority to settle the Dispute on that party's behalf.

15.6 Commencement of Legal Proceedings

If the parties cannot resolve the Dispute within 14 days of the issuance of the notice (or such longer period as is agreed by the parties), a party may commence legal action. Except as permitted under clause 15.7, a party must not commence legal proceedings relating to a dispute in

connection with this Agreement unless that party has first complied with clauses 15.1 to 15.5 inclusive.

15.7 Permitted Proceedings

This clause 15 does not prevent a party from seeking urgent interlocutory relief.

15.8 Continued Performance

Each party must continue to perform its obligations under this Agreement irrespective of the existence of a dispute.

16. General

16.1 Assignment

A party may not assign the rights and obligations arising under this Agreement without the prior consent of the other parties whose consent will not be unreasonably withheld or delayed.

16.2 Relationship of Parties

The parties are independent contracting parties, and nothing in this Agreement makes any party the agent or legal representative of any other for any purpose, nor does it grant a party any authority to assume or to create any obligation on behalf of or in the name of any other party.

16.3 Entire Agreement

This Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior oral or written representations and agreements.

16.4 Further Assurances

Each party must do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

16.5 Severability

If any provision of this Agreement is invalid or unenforceable, such provision is deemed deleted but only to the extent of such invalidity or unenforceability and the remaining provisions of this Agreement remain in full force and effect.

16.6 No Implied Waiver

A waiver by a party of a breach of any provision of this Agreement must be in writing signed by that party and does not constitute a waiver of any succeeding breach of the same or any other provision.

16.7 Costs and Taxes

Each party bears its own costs arising out of the negotiation, preparation, and execution of this Agreement.

16.8 Amendment

Any modification, alteration, change or variation of any term and condition of this Agreement must be in writing and executed by all of the parties.

16.9 Counterparts

This Agreement may be executed in counterparts.

16.10 Governing Law and Jurisdiction

This Agreement is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of courts of New South Wales, Australia and courts hearing appeals from those courts.

Schedule 1

Item	Detail
Initial Subscription Term	Minimum 12 months
Extended Subscription Term	Minimum 12 months
Software used by the subscription service	<p>(a) ArmorVox™ – Voice Biometric software, including text-dependent, text-independent and text-prompted plus fast cross-matching for speaker identification applications and model detection for use in Telephony or digital channels;</p> <p>(b) EVA for Contact Centre – solution template; and</p> <p>(c) EVA Forensics – solution template; and</p> <p>(d) EVA Digital – solution Template: and</p> <p>Such other operating system software necessary to run the Solution templates and SAAS service.</p>
Professional Services	Auraya professional services as described in an agreed SOW.
Customer Administrator	(e) TBA
Benefit of Subscription Service (Clause 7.6(a) and 7.6(b))	The service is restricted to the Customer's own in-house and any outsourced contact centers operating on behalf of the Customer.
Disengagement Period (Clause 13.4)	TBA

Schedule 2

Subscription Service Description

Specification for service; see attached Documentation (namely, product description and architectural diagram) describing the proposed service.

To interact with SaaS Services and utilize its features, Customer is responsible for the procurement and management of secure resilient connectivity to the SAAS service from the Contact centre platform and any other service utilising the Auraya SaaS.

Auraya makes no guarantees of AWS Availability or Customer internet connectivity or Customer telephony or recording systems. Any system downtime caused by AWS availability in the selected region or Customer system availability will not count against any subscription service availability calculations.

If the two AWS availability zones become unavailable for an extended period (greater than 24 hours), then Auraya will use reasonable efforts to re-establish a service from an alternative availability zone.

Any scheduled maintenance will be undertaken during normal business hours in NSW with reasonable efforts undertaken to keep service downtime to a minimum in Customer peak periods and reasonable efforts to coordinate any necessary downtime to minimize business impacts for Customer.

Auraya and Customer representatives will meet at least quarterly to review system performance and response times to issues. Auraya will present a report setting out the key metrics of number of transactions, number of correct acceptance, number of rejects, number of existing enrollees and new enrollees added, speed of the system. Auraya will also provide a report on industry best practice with respect to EVA Forensics, EVA for Contact Centre, and EVA Digital features and functionality available for Customer to use.

Service Level Agreement

This Service Level Agreement (SLA) outlines the performance attributes of the SaaS Service and how service availability is measured and tracked. In case of any conflicts among this SLA, or the Agreement, the terms of this SLA shall govern. The service will be delivered from two availability zones in the selected AWS region. Auraya recommends that the VBaaS be delivered from the same Availability Zone as your Amazon Connect service. This colocation ensures that if the AWS Availability Zones supporting your contact center are available, EVA will also be available.

This SLA applies to components of the SaaS Services used in processing of Transactions.

DEFINITIONS -

"Outage" occurs when the SaaS Services are unavailable, preventing any Transaction processing through the Client Application. Outages resulting from exceptions outlined in Section 5 (Exceptions) of this SLA will not affect System Availability. -

"Service Usage Report" is the billing report sent to the Customer for billing purposes. -

"Severity 1 Event" signifies when the SaaS Services are down, or not functioning, without a current workaround available. -

"Severity 2 Event" denotes an event that results in severely reduced SaaS Services capacity or makes an important function unusable, significantly restricting operation or use of the SaaS Services. -

"Severity 3 Event" is a medium-to-low impact event involving partial or non-critical functionality loss, with an acceptable workaround available. -

"Downtime" for the period is the percentage calculated using the formula:
$$\text{Downtime}\% = (100\% - \text{Availability}\%)$$

2. AVAILABILITY

Availability Commitment: Auraya aims to maintain System Availability above 99.5% during each Monthly Billing Period. A "Root Cause Analysis" report will be produced for each Outage affecting System Availability. Root-Cause Analysis reports will be the authoritative records for determining outage events.

3. NOTIFICATION AND REPORTING COMMITMENTS

The service levels are measured by the following parameters: service request response time, workaround resolution time, and fix resolution time. The details are as follows:

Severity	Response Time	Workaround Resolution Time	Fix Resolution Time
Severity 1	1 hour	4 hours	24 hours
Severity 2	8 hours	48 hours	120 hours
Severity 3	24 hours	96 hours	240 hours

a. Auraya Notifications: Auraya will send email notifications to the Customer and in case of a Severity 1 Outage and Auraya will also phone the nominated client representative. Notifications will be directed to Customer contacts and any other contacts designated by the Customer in writing to Auraya. Initial and subsequent notifications will be dispatched at Auraya discretion.

b. Target Impact Mitigation Times: Auraya will make commercially reasonable efforts to mitigate the impact of Outages from the time of detection and will keep Customer informed of progress in resolving the Outage.

4. MAINTENANCE

a. Scheduled Maintenance: Auraya reserves the right to conduct Scheduled Maintenance on the SaaS Services within a "Scheduled Maintenance Window". Auraya may request an extension of the Maintenance Window if necessary. Scheduled Maintenance will not affect System Availability or contribute to an Outage.

b. Urgent Maintenance: Urgent Maintenance may temporarily impact SaaS Services quality or availability but will not count against System Availability. Auraya will provide notice of Urgent Maintenance to Customer as soon as practically possible.

5. EXCEPTIONS

Downtime resulting from specific conditions will not be considered a reduction in System Availability or an Outage:

- a. Scheduled Maintenance
- b. Outages on the Internet and/or Public Switched Telephone Network
- c. Downtime caused by Customer systems as demonstrated and verified by Auraya.
- d. Customer's failure to provide required data or telephony connectivity
- e. Force Majeure events as defined in the Agreement.

Schedule 3

The Fee schedule is fixed for the Initial Subscription Term.

Fees

Subscription Fees

Monthly

EVA solution templates plus access to the SAAS Service within the agreed AWS availability zone. The Subscription Fee is based on a minimum commitment of 12 months. The \$100,000 annual Subscription fee is paid upfront on the Commencement date and on each anniversary date.

\$8333.33

Overage Fee

\$0.12/per
transaction

Overage fee for all transactions over 50,000 in any month is paid monthly in arrears.

“Transaction” is a single enrolment process, verification process, cross match process, synthetic voice detection process, where the process can consist of up to 3 minutes of net audio capture from a single phone call or digital interaction.

Professional Services Fees

As detailed in an agreed SOW

All fees are quoted in US Dollars and are exclusive of GST, Sales Tax, VAT, import duties etc.

Fees for Professional Services

Fees for the Auraya services required to establish the Subscription service and the services to manage the software and hardware to meet the contracted resilience and availability and account management to report on the system is included in the monthly subscription service fee.

Any other professional services requested from time to time by the Customer will be charged at the then current professional services fee.

Schedule 4

Data Processing Agreement – Clause 9.4

1. Definitions

1.1 In this Schedule the following terms have the following meanings unless the context otherwise requires:

- 1.1.1 words defined in clauses 1 to 16 inclusive of this Agreement have the same meaning in this Schedule;
- 1.1.2 words defined in the Data Protection Laws (as defined in clauses 1.1.3 of this Schedule) have the same meaning in this Schedule; and
- 1.1.3 the following additional definitions also apply:

- **Data Loss Event** any event that results, or may result, in unauthorized access by or disclosure to unauthorized third parties of the Personal Data held by Auraya under this Schedule, and/or actual or potential loss, damage, corruption and/or destruction of Personal Data in breach of this Schedule, including any Personal Data Breach.
- **Data Subject Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Laws to access their Personal Data.
- **Data Protection Laws** means the EU Data Protection Laws or the UK Data Protection Laws as applicable.
- **EEA** means the European Economic Area.
- **EU Data Protection Laws** means all applicable laws, regulations and regulatory rules which govern the processing of Customer Data and privacy including:
 - (a) the EU GDPR (as amended or replaced from time to time) as applicable in a jurisdiction within the EEA from time to time;
 - (b) all guidance and/or codes of practice issued from time to time by the ICO in an applicable jurisdiction within the EEA from time to time; and
 - (c) any relevant rulings from time to time of the ICO or applicable courts within a jurisdiction within the EEA from time to time.
- **EU GDPR** means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Customer Data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law generally or the law of any jurisdiction within the EEA as amended or replaced from time to time.
- **ICO** means the UK's Information Commissioner Office (or such organization which may replace such a body) or an equivalent person or organization in a relevant jurisdiction in the EEA.
- **Purpose** means the Customer's access to and use of the Subscription Service.
- **Personnel** means, in relation to Auraya only, Personnel as defined in clause 1.1 of this Agreement and any officer, employee, agent, contractor, consultants or director of a Sub-Processor.
- **SCC** means:
 - (a) in relation to the EU Data Protection Laws – the EU Commission Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 as set out in the Annex to Commission Implementing Decision (EU) 2021/914 as amended or replaced from time to time; and
 - (b) in relation to the UK Data Protection Laws – the ICO's International Data Transfer Agreement for the transfer of Customer Data from the UK and/or (ii) the ICO's International Data Transfer Addendum to or such alternative clauses as may be approved by the UK from time to time.
- **UK Data Protection Laws** means all applicable laws, regulations and rules which govern the processing of Customer Data and privacy in the United Kingdom or as applicable to subjects of the United Kingdom including:

- (a) the Data Protection Act 2018 (as amended or replaced from time to time);
- (b) the UK GDPR (as amended or replaced from time to time);
- (c) all guidance and/or codes of practice issued from time to time by the ICO; and
- (d) any relevant rulings from time to time of the Information Commissioner or of the Courts of England and Wales relating to the processing of Personal Data.

2. Appointment

- 2.1 In consideration of their compliance with their respective obligations under this Schedule and the remainder of this Agreement, the Customer appoints Auraya to process, and Auraya agrees to process the Customer Data for the Purpose during the Subscription Term.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Laws:
 - 2.2.1 Auraya is a Processor and the Customer is a Controller; and
 - 2.2.2 the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Law.
- 2.3 The only processing that Auraya is authorized by the Customer to do is as required for the Purpose.
- 2.4 The parties will comply with all applicable requirements of the Data Protection Laws. This Schedule is in addition to, and does not relieve, remove or replace, any party's obligations under the Data Protection Laws.
- 2.5 Without prejudice to the generality of clause 2.4 of this Schedule, the Customer will ensure that it has a valid legal basis in accordance with Data Protection Laws to enable lawful transfer of the Personal Data to Auraya for the duration of this Agreement and for the Purpose.

3. Obligations of Auraya

- 3.1 Without prejudice to the generality of clause 2 of this Schedule, Auraya will, in relation to the Customer Data:
 - 3.1.1 process Customer Data only:
 - 3.1.1.1 only to the extent, and in such manner, as is necessary for the Purpose or otherwise in accordance with the Customer's written instructions;
 - 3.1.1.2 Auraya will not process the Personal Data for any other purpose or in a way that does not comply with this Schedule or the Data Protection Laws; or
 - 3.1.1.3 as required by the Data Protection Laws or any other applicable law or any regulatory body and if Auraya is required by the Data Protection Laws or any other applicable law or any regulatory body to process the Customer Data, Auraya will promptly notify the Customer before processing the Customer Data unless prohibited by Law;
 - 3.1.2 immediately inform the Customer if it believes any instruction or processing is likely to breach any Data Protection Laws or other applicable law;
 - 3.1.3 not act in any way so as to cause the Customer to breach of any of its obligations under the Data Protection Laws;

- 3.1.4 comply promptly with any of the Customer's written instructions requiring Auraya to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorized processing;
- 3.1.5 at the written direction of the Customer (and unless required by an applicable law to retain such Customer Data) securely delete or return all Personal Data and copies of Personal Data from all systems of Auraya:
 - (a) after the completion of the processing under this Schedule;
 - (b) following termination or expiry of this Schedule; or
 - (c) in any circumstance where the Customer is required to do so by the Data Protection Laws,

and provide written confirmation of this to the Customer;

- 3.1.6 notify the Customer immediately if Auraya or any of its Personnel or Sub-Processors are requested to do any act which would infringe the Data Protection Laws; and
- 3.1.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 3 of this Schedule and make such records available on request to the Customer.

3.2 Auraya will designate its own data protection officer if required by the Data Protection Laws.

4. Obligations of Customer

4.1 Without prejudice to the generality of clause 2 of this Schedule, the Customer must:

- 4.1.1 not direct Auraya to undertake any activity that would result in Auraya breaching any Data Protection Law;
- 4.1.2 notify Auraya if any person has withdrawn any consent that person has given the Customer in relation to the processing of that person's Personal Data;
- 4.1.3 must notify Auraya if the Customer has or has a reasonable basis to conclude that it has or may breach any applicable Data Protection Law which would cause Auraya to breach or possibly breach any Data Protection Law.

5. Security

- 5.1 Auraya must at all times ensure that it has in place appropriate technical and organisational measures to protect against unauthorized or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data and against accidental or unlawful loss, destruction, alteration, disclosure of, or damage to, Personal Data.
- 5.2 Auraya must implement such measures to ensure a level of security which is appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage of Personal Data. The measures in place must ensure an appropriate level of security having regard to the nature of the Customer Data to be protected, the risk involved, the state of technological development and the cost of implementing any measures.

6. Data Protection Impact Assessment

- 6.1 If required by the Customer, Auraya must provide reasonable assistance to the Customer (at the Customer's cost) in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- 6.1.1 a systematic description of the envisaged processing operations and the purpose of the processing;
- 6.1.2 an assessment of the necessity and proportionality of the processing operations;
- 6.1.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 6.1.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

7. Data Loss Event

- 7.1 Auraya must immediately (and in any event within the relevant period specified in the Data Protection Laws of becoming aware of such Data Loss Event or potential Data Loss Event) notify the Customer of any Data Loss Event or potential Data Loss Event.
- 7.2 Where Auraya becomes aware of a Data Loss Event or potential a Loss Event, it must, at the same time as notifying the Customer or, if that is not if given the nature of the Data Loss Event, within a reasonable period, also provide the Customer with the following information:
 - 7.2.1 description of the nature of the Data Loss Event, including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
 - 7.2.2 the likely consequences; and
 - 7.2.3 a description of the measures taken or proposed to be taken to address the Data Loss Events including measures to mitigate its possible adverse effects.
- 7.3 Immediately following any Data Loss Event, the parties will co-ordinate with each other to investigate the matter.
- 7.4 Auraya will at its own cost and at no additional cost to the Customer co-operate with the Customer, including:
 - 7.4.1 assisting with any investigation;
 - 7.4.2 providing access to Auraya's facilities, systems and its Personnel;
 - 7.4.3 take reasonable and prompt steps to mitigate the effects and to minimize any damage resulting as a result of the Data Loss Event or otherwise required by the Customer; and
 - 7.4.4 make available all relevant records, logs, files, its Personnel and other materials required to comply with Data Protection Laws or reasonably required by the Customer.
- 7.5 Auraya's obligation to notify under clause 7.1 of this Schedule includes the provision of further information to the Customer, as details become available.
- 7.6 Auraya must not inform any third party or regulator of any such Data Loss Event without first obtaining the Customer' prior written consent (except where Auraya is required to do so by the Data Protection Laws).
- 7.7 Subject to any requirement of the Data Protection Laws to the contrary, Auraya agrees that the Customer has the sole right to determine:
 - 7.7.1 whether to provide notice of the Data Loss Event to any Data Subjects, the ICO, other regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and

- 7.7.2 whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

8. Data Subject Requests, Complaints and Third-Party Rights

- 8.1 Auraya will assist the Customer in, and take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to:

- 8.1.1 comply with:

8.1.1.1 the rights of Data Subjects under Data Protection Laws, including responding to any Data Subject Requests; and

8.1.1.2 information or assessment notices served on the Customer by the ICO or other relevant regulator under the Data Protection Laws; and

- 8.1.2 ensure compliance with the Customer's obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.

- 8.2 Auraya will notify the Customer immediately and in any case by the end of the next Business Day if it receives:

8.2.1 a Data Subject Request (or purported Data Subject Request);

8.2.2 a request to rectify, block or erase any Personal Data;

8.2.3 a complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to Auraya's or the Customer's compliance with the Data Protection Laws;

8.2.4 a request from any third party for the disclosure of the Customer Data (including where where compliance with such request is required or purported to be required by applicable law);

8.2.5 any communication from the ICO or any other regulatory authority in connection with Personal Data processed under this Schedule; or

8.2.6 any other notice or request in connection with or relating to the Customer Data that Auraya is processing under this Schedule.

- 8.3 Auraya's obligation to notify under clause 8.2 of this Schedule includes the provision of further information to the Customer, as details become available.

- 8.4 Subject to any requirement of the Data Protection Laws to the contrary, Auraya will not respond to any complaint, communication or request made unless the Customer' direct it to do so in writing.

- 8.5 Auraya will provide the Customer (at no additional cost to the Customer) with reasonable co-operation and assistance in relation to the Customer's obligations under Data Protection Laws and any complaint, communication or request made (and insofar as possible within the timescales reasonably required by the Customer) including providing:

8.5.1 the Customer with full details and copies of the complaint, communication or request;

8.5.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Request within the relevant timescales set out in Data Protection Laws;

- 8.5.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject; and
- 8.5.4 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

8.6 Auraya must not disclose the Personal Data to any Data Subject or to a third party other than in accordance with the Customer's written instructions, or as required by applicable law.

9. Sub-Processors

9.1 Auraya is not permitted to subcontract any activity that will involve a third party processing the Personal Data without the Customer prior consent.

9.2 Auraya may only authorize a third party (each a **Sub-Processor**) to process the Personal Data if:

- 9.2.1 the Customer provides prior written consent prior to the appointment of each Sub-processor;
- 9.2.2 Auraya enters into a written contract with the Sub-Processor that contains terms substantially the same as those set out in this Schedule, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer written request, provides the Customer with copies of such contracts;
- 9.2.3 Auraya maintains control over all Personal Data it entrusts to each Sub-Processor; and
- 9.2.4 the Sub-Processor's contract terminates automatically on termination of this Agreement for any reason.

9.3 Where the Sub-Processor fails to fulfil its obligations under such agreement, Auraya remains fully liable to the Customer for the Sub-Processor's performance of its Agreement obligations.

9.4 On the Customer's written request, Auraya will audit a Sub-Processor's compliance with its obligations regarding the Customer's Personal Data and provide the Customer with the audit results.

10. International Data Transfers

10.1 Auraya will not transfer any Personal Data outside of the UK or European Economic Area, as applicable without the prior written consent of the Customer (which may be withheld in its absolute discretion).

10.2 If any Personal Data transfer between the Customer and Auraya requires execution of the SCC to comply with the Data Protection Laws (where the Customer is the entity exporting Personal Data to Auraya outside the UK and EEA), the parties will complete all relevant details in, and execute, the SCC and take all other actions required to legitimize the transfer.

11. Confidentiality

11.1 Auraya must ensure that all Customer Data is treated as Confidential Information in accordance with clause 10 of this Agreement.

12. Auraya Personnel

12.1 Auraya must:

- 12.1.1 ensure that its Personnel do not process Customer Data except in accordance with this Schedule;

- 12.1.2 ensure that the Personal Data is not made available by default to all employees, workers or contractors of Auraya or any sub-contractor and only to such individuals as are strictly required in order to meet the obligations under this Schedule have access to the Personal Data; and
- 12.1.3 take reasonable steps to ensure the reliability and integrity of its Personnel who have access to the Personal Data;
- 12.1.4 ensure that any of its Personnel authorized to process the Personal Data are:
 - 12.1.4.1 are aware of and comply with Auraya's duties under this Schedule;
 - 12.1.4.2 are subject to appropriate confidentiality undertakings with Auraya or any Sub-Processor;
 - 12.1.4.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Schedule; and
 - 12.1.4.4 have undergone adequate training in the use, care, protection and handling of Personal Data.

13. Rights of the Customer

- 13.1 The Customer is entitled, on giving not less than 10 Business Days' notice to Auraya, to inspect, appoint representatives to inspect, or to permit regulators, auditors or the ICO (or their representatives) to attend, access and/or inspect all facilities, equipment, documents and electronic data relating to the processing of Customer Data by Auraya under this Schedule.
- 13.2 The Customer acknowledges and agrees that all information to which it has access or which it learns during an audit is the Confidential Information of Auraya and must treat such information in accordance with clause 10 of this Agreement.
- 13.3 Except in respect of a regulator (who will be permitted unfettered access), the Customer will carry out such audit during Auraya's usual business hours.