

CKAN OPEN DATA PORTAL TERMS & CONDITIONS

IT IS AGREED as follows:

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these Conditions.

Acceptance Tests means the tests of any Bespoke Development performed under clause 6;

Agreement means these Conditions together with the attached Order;

API means, if selected by the Customer in the Order, the application program interface serving as the data feed between the Customer's CMS and the Portal;

Applicable Data Protection Law the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); the Electronic Communications (EC Directive) Regulations 2003; and any applicable superseding or replacement legislation;

Authorised User means any employee, subcontractor or agent of the Customer authorised by the Customer to access the Portal;

Bespoke Development means such additional functionality of the Portal as developed by Viderum, at the Customer's request, in accordance with clause 5;

Branding Materials means the branding of the Customer which shall contain the look and feel and images relating to any trade marks or logos which the Customer wishes to be applied to the Portal;

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

CMS means a content management system;

Commencement Date means the date set out in the Order;

Conditions means these terms and conditions as amended from time to time in accordance with clause 24.4;

Confidential Information means all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "Representatives") to the other party and that party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure;

Connectivity Requirements means such requirements as are made known by Viderum to the Customer from time to time to enable the Customer to access to the Portal (whether via an API or otherwise);

Customer means the customer, details of which are set out in the Order;

Data means any text, graphics, audio, visual and/or audio-visual material, data, database content or other content, information and materials, including the metadata relating to any such content, provided by the Customer to Viderum as part of the Customer's use of the Services, including any information derived from such information;

Deployment means the configuration and deployment of the Portal, and related work, referred to in clause 4;

Deployment Fees means the fees payable by the Customer for Deployment, as set out in the Order;

Development Fees means the fees payable by the Customer in connection with the Development Services, as set out in the applicable SOW;

Development Services means any development services carried out by Viderum in connection with the Portal, as agreed between the parties in accordance with clause 5;

Extensions means, where selected by the Customer in the Order, the additional functionalities of the Portal which Viderum shall integrate into the Portal under clause 4;

Fees means the Deployment Fees, Hosting Fees and (if applicable) Development Fees, Support Fees payable to Viderum in connection with the Services, as set out in the Order, any SOW and as otherwise agreed between the parties;

Go Live Date means the intended Go Live Date of the

Good Practice means the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged (in the United Kingdom) in activities of a similar scope and complexity to those that are the subject of this Agreement and under the same or similar circumstances;

Hosting means the cloud based hosting services to be provided by Viderum in connection with the Portal;

Hosting Fees means the fees payable by the Customer for Hosting, as set out in the Order;

Initial Term means the initial term of this Agreement as set out in the Order;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Maintenance means any error corrections, updates and upgrades that Viderum may provide or perform with respect to the Portal in accordance with clause 12;

Normal Business Hours means 8.30 am to 6.00 pm local UK time on Business Days;

Open Source Software means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition or any libraries or code licensed from time to time under the General Public Licence, or anything similar;

Order means the Customer's order for Services as set out in the Customer's written acceptance of Viderum's quotation overleaf;

Portal means the user interface (including any Extension(s) and Bespoke Development) made available to the Customer by Viderum in order for the Customer to manage and publish its Data;

Services means the Deployment, Maintenance, Hosting and any Support and/or Development Services (if applicable) to be performed by Viderum in accordance with this Agreement;

SOW means each statement of work the parties agree in accordance with clause 5;

Support means, if applicable, the support services to be provided by Viderum in connection with the Portal, by way of an agreed number of developer days per month for the Support Period, as described in the Order and clause 13;

Support Fees means the fees payable by the Customer for the Support during the applicable Support Period, as set out in the Order;

Support Period means the period of Support, as defined in clause 13.1; and

Term means the Initial Term and any Renewed Term (as defined in clause 21.1).

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5 A reference to **writing** or **written** includes faxes but not e-mail.

1.6 Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

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- 1.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 2 **SERVICES**
- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with this Agreement. The Order shall only be deemed to be accepted when Viderum receives the signed quotation.
- 2.2 Viderum shall provide the Services to the Customer in accordance with the terms and conditions of this Agreement, and shall use its reasonable endeavours to allocate sufficient resources to the Services to enable it to comply with this obligation.
- 2.3 Viderum shall carry out the Services with reasonable skill, care and diligence and shall cooperate with the Customer in all matters relating to the Services.
- 3 **PORTAL RIGHTS**
- 3.1 Viderum has designed and developed the Portal and will, subject to the Customer's compliance with the terms and conditions of this Agreement, make it available, and permit access, to the Customer for the Term, in order for the Customer to upload, manage and publish its Data.
- 4 **CONFIGURATION AND DEPLOYMENT**
- 4.1 On or around the Commencement Date the Customer shall supply to Viderum its Branding Materials, in such format as Viderum may require, in order for Viderum to incorporate such Branding Materials into the Portal (and the Customer hereby grants to Viderum a non-exclusive, royalty-free licence in respect of the same). The Customer warrants that the Branding Materials will not infringe the Intellectual Property Rights, or any other rights, of any third party.
- 4.2 If applicable, Viderum will also integrate the Extension(s) into the Portal.
- 4.3 Following incorporation of the Branding Materials and the Extension(s) (if applicable), Viderum shall provide the Customer with access details, including a username and password, to the Portal.
- 4.4 Subject to the Customer's compliance with its obligations under this Agreement, Viderum will use its reasonable endeavours to deploy the Portal by the applicable Go Live Date but the Customer acknowledges that such date is an estimate only and time shall not be of the essence for Deployment.
- 4.5 If Deployment is delayed because of the Customer's acts or omissions, the Go Live Date shall be amended to take account of such delay in accordance. If Viderum can demonstrate that the delay has resulted in an increase in cost to Viderum of carrying out its obligations under this Agreement, Viderum may, at its sole discretion, notify the Customer that it wishes to increase the Fees by an amount not exceeding any such demonstrable cost.
- 5 **DEVELOPMENT SERVICES**
- 5.1 The Customer may, by giving written notice to Viderum, at any time during the Term, request Bespoke Development. In such circumstances Viderum and the Customer may agree an SOW for Development Services in accordance with the procedure set out in clauses 5.3 to 5.5 (inclusive). For the avoidance of doubt, Viderum shall not be bound to carry out any such Development Services unless agreed in an SOW.
- 5.2 Each SOW issued under this Agreement shall form part of this Agreement. In the event of any conflict between the terms of this Agreement and the SOW, the terms of this Agreement shall prevail unless the parties have expressly stated in the SOW that a particular provision is to override a conflicting provision in this Agreement.
- 5.3 Following receipt of the Customer's notice under clause 5.1, Viderum shall, within a reasonable time from receiving the written request, provide a draft SOW to the Customer of (without limitation):
- 5.3.1 the likely time required to implement the Bespoke Development;
- 5.3.2 the Fees associated with the Development Services;
- 5.3.3 a specification of the Bespoke Development to be developed by Viderum ("**Specification**"); and
- 5.3.4 any other impact of the change on the terms of this Agreement.
- 5.4 If the Customer wishes Viderum to proceed with the Development Services, within 45 days of receipt of the draft SOW from Viderum, the Customer shall provide to Viderum a signed version of the SOW, confirming its acceptance of the terms on which Viderum will provide the Development Services, or inform Viderum in writing that it does not require the Development Services.
- 5.5 An SOW shall not enter into force or be legally binding until it has been signed by an authorised representative of both parties to it.
- 5.6 Following agreement of the SOW under this clause 5, Viderum agrees to carry out the Acceptance Tests on the Bespoke Development. The Customer acknowledges and agrees that such Acceptance Tests shall only apply to Bespoke Development and do not relate to the basic functionality of the Portal (or any Extension(s)).
- 6 **ACCEPTANCE OF BESPOKE DEVELOPMENT**
- 6.1 The Acceptance Tests shall test compliance of the Bespoke Development with the applicable Specification. The form and detail of such tests shall be determined, and carried out, by Viderum with the assistance of the Customer if required.
- 6.2 If the Bespoke Development fails to pass the Acceptance Tests Viderum shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 6.3 If the Bespoke Development fails in some material respect to pass any repeated Acceptance Tests within four weeks from the date of its second submission to the Acceptance Tests, Viderum shall notify the Customer and the Customer may, by written notice to Viderum, choose at its sole discretion:
- 6.3.1 to fix a new date for carrying out further tests on the Bespoke Development on the same terms and conditions. If the Bespoke Development fails such further tests then the Customer may request a repeat test under this clause 6.3.1;
- 6.3.2 to permit integration of the Bespoke Development subject to change of acceptance criteria, amendment of the Specification and/or reduction in the applicable Fees as, after taking into account all of the relevant circumstances, is reasonable; or
- 6.3.3 if Viderum is unable to correct material defects within a period of 30 days from the commencement of Acceptance Tests under clause 6.3, to reject the Bespoke Development as not being in conformity with the Specification, and the Customer may terminate the applicable SOW.
- 6.4 Acceptance of Bespoke Development shall be deemed to have occurred on whichever is the earliest of:
- 6.4.1 any use of the Portal, following integration of the Bespoke Development, by the Customer in a live environment; or
- 6.4.2 successful completion of the Acceptance Tests under clause 6.1 or 6.3.
- 7 **ACCESS**
- 7.1 The Customer shall be solely responsible for its, and each Authorised User's, use of the Portal and its, and each Authorised User's, compliance with the terms and conditions of this Agreement and the terms of use, privacy policy and any other legal notices which are in place on the Portal from time to time.
- 7.2 The Customer is responsible for maintaining the confidentiality of its Portal account and all associated usernames and passwords. The Customer shall use and shall procure that each Authorised User shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Portal and shall notify Viderum of any such unauthorised access or use.
- 7.3 Without prejudice to Viderum's other rights and remedies, Viderum reserves the right to:
- 7.3.1 suspend or terminate access to the Portal if at any time any (actual or suspected) unauthorised use is made of the Portal and such use is attributable to the act or default of, or through, the Customer (or any Authorised User); and/or
- 7.3.2 require the Customer to change any or all of the usernames and/or passwords used by the Customer (and/or any Authorised User) in connection with its access to the Portal.
- 7.4 From time to time Viderum may limit the Customer's access to the Portal limiting:
- 7.4.1 the number of network calls that are made via the API (if applicable); and/or
- 7.4.2 the maximum file sizes for Data uploaded to the Portal.
- 7.5 Viderum reserves the right to impose additional Fees in respect of increased bandwidth costs required to accommodate the Customer's increased use of the Portal resulting from exceeding any limit(s) imposed by Viderum pursuant to clause 7.4.
- 7.6 Viderum reserves the right to:
- 7.6.1 modify its systems, network, system configurations and/or routing configuration; and/or
- 7.6.2 modify or replace any hardware or software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on Viderum's obligations under this Agreement and its provision of the Services.
- 8 **USE RESTRICTIONS**
- 8.1 The Customer shall not and shall procure that its Authorised Users shall not, except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- 8.1.1 interfere with or disrupt services or servers or networks connected to the Portal or attempt to interfere, in any manner, with the functionality or proper working of the API (if applicable);

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- 8.1.2 attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Portal;
- 8.1.3 attempt to re-use, reproduce, reverse compile, disassemble, reverse engineer, attempt to discern any software, including source code, used by or otherwise relating to the Portal, or otherwise reduce to human perceivable form all or any part of the Portal; or
- 8.1.4 access all or any part of the Portal in order to build a product or service which competes with the Portal.
- 8.2 The Customer will, in relation to its use (and that of its Authorised Users) of the Portal, ensure that such use is in compliance with all reasonable instructions, directions and training provided by Viderum from time to time.
- 8.3 The Customer warrants that it will not use the Portal:
- 8.3.1 in any way that breaches any applicable local, national or international law or regulation;
- 8.3.2 in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;
- 8.3.3 for the purpose of harming and/or harassing or attempting to harm and/or harass anyone in any way;
- 8.3.4 to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam); or
- 8.3.5 to knowingly transmit any data, send or upload any material that contains viruses, malicious code, Trojans, worms, time-bombs, logic bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code that could adversely affect the operation of the Portal and/or the Services.
- 9 **DATA**
- 9.1 Throughout the Term the Customer may upload, or make available via an API, to the Portal, such Data as it determines appropriate.
- 9.2 The Customer grants Viderum a non-exclusive, royalty-free licence to:
- 9.2.1 reproduce, adapt, translate, distribute, publish, publicly perform, create derivatives from and display the Data on the Portal; and
- 9.2.2 make the Data available to end users in accordance with clause 9.2.1 in order for such end users to download, make copies of and/or otherwise use such Data.
- 9.3 The Customer shall not store, distribute or transmit any Data through the Portal that:
- 9.3.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- 9.3.2 facilitates illegal activity;
- 9.3.3 depicts sexually explicit images;
- 9.3.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities;
- 9.3.5 infringes any third party's Intellectual Property Rights, other proprietary rights or rights of publicity or privacy; or
- 9.3.6 violates any law, statute, ordinance or regulation.
- 9.4 The Customer shall indemnify Viderum and keep Viderum indemnified and hold Viderum harmless against any and all damages, liabilities, costs, expenses and/or losses arising out of or relating to any claim or action that the normal operation, possession or use of the Data by Viderum, in connection with the Portal and/or the Services, infringes a third party's Intellectual Property Rights, their right to privacy or any other rights.
- 10 **PERSONAL DATA**
- 10.1 To the extent that the Data contains any personal data, it is agreed that for the purposes of Applicable Data Protection Law, the Customer is the data controller and Viderum is the data processor.
- 10.2 As data controller, the Customer warrants that it is entitled, and has obtained all requisite permissions, to require Viderum to process such personal data as contemplated by this Agreement and appoints Viderum as data processor to process personal data on its behalf for the purposes of providing the Services.
- 10.3 Both parties shall at all times, in relation to their activities under this Agreement, comply with Applicable Data Protection Law and any other relevant data protection and privacy legislation in force from time to time as applicable.
- 10.4 Viderum undertakes to the Customer that it shall:
- 10.4.1 comply at all times with Applicable Data Protection Law;
- 10.4.2 process the personal data only in accordance with these this Agreement and the Customer's lawful instructions;
- 10.4.3 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
- 10.4.4 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality;
- 10.4.5 remain entitled to appoint third party sub-processors. Where Viderum appoints a third party sub-processor, it shall, with respect to data protection obligations: (i) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Viderum; and (ii) remain fully liable the Customer for all acts and omissions of the third party;
- 10.4.6 notify the Customer without delay after becoming aware that it has suffered a personal data breach;
- 10.4.7 at the Customer's cost, permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit Viderum's data processing activities to enable the Customer to verify and/or procure that Viderum is complying with its obligations under this clause 10;
- 10.4.8 assist the Customer in responding to requests from data subjects who are exercising their rights under Applicable Data Protection Law;
- 10.4.9 assist the Customer in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable): (i) notifying a supervisory authority that the Customer has suffered a personal data breach; (ii) communicating a personal data breach to an affected individual; (iii) carrying out an impact assessment; and (iv) where required under an impact assessment, engaging in prior consultation with a supervisory authority; and
- 10.4.10 unless applicable law requires otherwise, upon termination of this Agreement delete all personal data provided by the Customer to Viderum.
- 11 **SECURITY**
- 11.1 Viderum shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to the Data, Viderum's systems and related networks or resources, in accordance with Good Industry Practice.
- 11.2 Viderum shall perform scheduled back-ups, provide routine and emergency data recovery and manage the archiving process in accordance with its own established back-up and archiving procedures. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups.
- 11.3 In the event of any loss or damage to Data, the Customer's sole and exclusive remedy shall be for Viderum to use reasonable commercial endeavours to restore the lost or damaged Data from the latest back-up of such Data maintained by Viderum in accordance with the archiving procedure described above in clause 11.1. Viderum shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party.
- 12 **MAINTENANCE AND AVAILABILITY**
- 12.1 In relation to all use of, or connection to, the Portal by the Customer, the Customer shall comply with such requirements of Viderum as Viderum may specify from time to time, including but not limited to compliance with the Connectivity Requirements.
- 12.2 The Customer is responsible for configuring its information technology, computer programmes, network connections (including (if applicable) the API) and servers in order to access the Portal and shall, at all times, ensure that, at its own cost, it has an appropriate and secure internet connection of suitable bandwidth to enable access to the Portal in order to upload and make the Data available via the same.
- 12.3 The Customer acknowledges that:
- 12.3.1 complex software is never wholly free from defects, errors and bugs, and Viderum gives no warranty or representation that the Portal will be wholly free from such defects, errors and/or bugs;
- 12.3.2 Viderum does not warrant or represent that the Portal will always be available, accessible, error-free, uninterrupted or that the contents will always be accurate;
- 12.3.3 the transmission of information via the Internet is not completely secure and as such Viderum cannot guarantee the security of any Data transmitted to the Portal. Any transmission is at the Customer's own risk; and
- 12.3.4 it shall be solely responsible for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet
- 12.4 Viderum assumes no responsibility and shall not be liable for any loss or damage caused by a virus, or other technologically harmful material that may infect the Customer's computer systems or other equipment or other property on account of its access to, use of, or browsing of, the Portal, and website linked to it.

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- 12.5 Viderum shall use commercially reasonable endeavours to make the Portal available 99.5% of the time on a twenty-four hours a day, seven days a week basis, except for:
- 12.5.1 planned maintenance carried out during the maintenance window of 8 pm to 10 pm UK time; and
- 12.5.2 unscheduled maintenance performed outside Normal Business Hours, provided that Viderum has used reasonable endeavours to give the Customer as much advance notice as is reasonably practicable and which Viderum shall use reasonable endeavours to ensure is performed during the above maintenance window except where urgent unscheduled maintenance is necessary.
- 12.6 Viderum will, as part of the Maintenance and at no additional cost to the Customer, provide the Customer with Viderum's standard customer services during Normal Business Hours in accordance with Viderum's customer services policy in effect at the time the Services are provided.
- 13 **SUPPORT**
- 13.1 Viderum shall, where selected by the Customer in the Order, as part of the Services, provide the Customer with Support for the period agreed and specified in the Order ("**Support Period**"). Any support provided outside of the Support Period will be charged on a time and materials basis (at Viderum's standard rates then in force).
- 14 **CUSTOMER OBLIGATIONS**
- 14.1 The Customer warrants that it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer.
- 14.2 The Customer shall:
- 14.2.1 provide Viderum with:
- (a) all necessary and timely and efficient co-operation in relation to this Agreement; and
- (b) all necessary access to such information, resource, personnel and systems as may be reasonably required by Viderum;
- in order to provide the Services, including but not limited to Data, the API (if applicable), security access information and configuration services;
- 14.2.2 comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 14.2.3 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, Viderum may adjust any agreed timetable or delivery schedule as reasonably necessary; and
- 14.2.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Viderum, its contractors and agents to perform their obligations under this Agreement.
- 15 **FEES AND PAYMENT**
- 15.1 In consideration of performance of the Services the Customer shall pay to Viderum the Fees, as set out in the Order.
- 15.2 The Customer shall reimburse Viderum for all actual, reasonable travel costs and expenses including airfares, hotels and meals incurred by Viderum in performance of the Services.
- 15.3 All amounts and Fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to Viderum's invoice(s) at the appropriate rate.
- 15.4 Viderum shall invoice the Customer in accordance with the payment terms in the Order (and any SOW in respect of Development Services) and the Customer shall pay each invoice submitted by Viderum in full and cleared funds within 21 days of the date of the invoice (unless otherwise agreed between the parties in writing), to a bank account nominated in writing by Viderum.
- 15.5 If the Customer fails to make any payment due to Viderum under this Agreement by the due date for payment, then, without limiting Viderum's remedies under clause 20, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 16 **INTELLECTUAL PROPERTY RIGHTS**
- 16.1 Except as otherwise agreed between the parties in an Order and/or a SOW (as applicable), subject always to the remainder of this clause 16, all Intellectual Property Rights in the Portal (including without limitation, any Extensions and Bespoke Development) and in all materials connected with the Services belong to Viderum or its licensors. Furthermore all Intellectual Property Rights in the processes, techniques, applications and systems used in connection with the Portal which enable Viderum to operate the Portal, and/or provide the Services, or as otherwise generated by Viderum, shall belong to Viderum. Nothing in this Agreement assigns any such Intellectual Property Rights to the Customer and the only right the Customer has in relation to such Intellectual Property Rights, is the right to use them in accordance with the terms of this Agreement.
- 16.2 Viderum acknowledges that the Customer shall own all Intellectual Property Rights in the Branding Materials and the Data.
- 16.3 Viderum confirms that it (or its licensors) has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 17 **INDEMNITY**
- 17.1 Viderum shall indemnify the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Customer's use of the Portal in accordance with this Agreement. The indemnity given under this clause 17.1 will not apply if the infringement arises directly or indirectly out of:
- 17.1.1 any Open Source Software, which the Customer acknowledges is used in the development of the Portal;
- 17.1.2 the Customer's acts or omissions, misuse, negligence, wilful default or breach of this Agreement;
- 17.1.3 any feature of the Bespoke Development which was specified by the Customer in the applicable Specification;
- 17.1.4 the failure on the part of the Customer to mitigate its loss; and/or
- 17.1.5 any factors or elements which may be relevant to the Portal but which are outside of Viderum's control.
- 17.2 The Customer shall immediately notify Viderum, giving full particulars, if any of the following matters comes to its attention:
- 17.2.1 any actual, suspected or threatened infringement of the Portal;
- 17.2.2 any claim made or threatened that exploitation of the Portal infringes the rights of any third party; or
- 17.2.3 any other form of attack, charge or claim to which the Portal may be subject.
- 17.3 In respect of any claim under clause 17.1 and/or the matters listed in clause 17.2:
- 17.3.1 Viderum shall, in its absolute discretion, decide what action, if any, to take;
- 17.3.2 Viderum shall have exclusive control over, and conduct of, all claims and proceedings;
- 17.3.3 The Customer shall not make any admissions other than to Viderum and shall provide Viderum with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
- 17.3.4 Viderum shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.
- 18 **CONFIDENTIALITY**
- 18.1 Each party may be given access to Confidential Information from 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:
- 18.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 18.1.2 was in the other party's lawful possession before the disclosure;
- 18.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 18.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 18.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 18.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Where necessary to allow Viderum to meet its obligations under this Agreement, Viderum may share the Customer's Confidential Information with subcontractors appointed by it, providing that the recipient of that information is required to implement suitable safeguards to protect the confidentiality of that information.
- 18.3 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.
- 18.4 This clause 18 shall survive termination of this Agreement, however arising.
- 18.5 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written

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- consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 19 **LIMITATION OF LIABILITY**
- 19.1 This clause 19 sets out the entire financial liability of Viderum (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 19.1.1 any breach of this Agreement;
- 19.1.2 any use made by the Customer of the Services; and
- 19.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 19.2 Except as expressly and specifically provided in this Agreement all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Agreement.
- 19.3 Nothing in this Agreement excludes or limits the liability of Viderum for:
- 19.3.1 death or personal injury caused by Viderum's negligence;
- 19.3.2 fraud or fraudulent misrepresentation; or
- 19.3.3 any other liability which cannot lawfully be excluded or limited.
- 19.4 Subject to clause 19.3:
- 19.4.1 Viderum shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 19.4.2 Viderum's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with:
- (a) the Development Services, shall be limited to the Development Fees paid under the SOW to which the claim (or series of connected claims) relates;
- (b) the Support, shall be limited to the Support Fees paid during the applicable Support Period to which the claim (or series of connected claims) relates; and
- (c) any other performance or contemplated performance of this Agreement, shall be limited to the Deployment Fees and Hosting Fees paid by the Customer during the 12 months immediately preceding the date on which the claim (or series of connected claims) arose.
- 20 **SUSPENSION**
- 20.1 Without affecting any other right or remedy available to it, Viderum reserves the right to suspend the Customer's access to and use of the Portal and/or the Services (or any part thereof) at any time if, in its reasonable opinion, the Customer has failed to comply with any of the provisions of this Agreement, including without limitation the Customer's failure to pay the Fees in accordance with clause 15, or if the operation or integrity of the Portal and/or the Services are threatened (or any part thereof), pending adequate remedy by the Customer.
- 21 **TERM AND TERMINATION**
- 21.1 The Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with this clause 20, shall continue in force for the Initial Term and shall automatically extend for successive 12-month periods ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term. A party may give written notice to the other party, not later than 60 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 21.2 Either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 21.2.1 the other party commits a material breach of any term of this Agreement, and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 21.2.2 the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 21.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 21.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 21.2.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 21.2.6 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 21.2.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 21.2.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- 21.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.2.2 to clause 21.2.8 (inclusive).
- 21.3 Unless otherwise agreed in writing between Viderum and the Customer, on expiry or termination of this Agreement all SOWs shall be deemed to have expired or terminated, as the case may be. For the avoidance of doubt, termination of any SOW shall not affect any other SOW or this Agreement.
- 22 **EFFECT OF TERMINATION**
- 22.1 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 22.2 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 22.3 On termination of this Agreement for any reason:
- 22.3.1 Viderum shall immediately cease provision of the Services;
- 22.3.2 all rights granted under this Agreement shall immediately terminate and Viderum will terminate access to, and the Customer will cease all use of, the Portal and the Services;
- 22.3.3 any sums owing by the Customer shall become immediately due and payable;
- 22.3.4 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
- 22.3.5 if Viderum receives, no later than 10 days after the effective date of the termination or expiry of this Agreement, a written request for the delivery to the Customer of the most recent backup of the Data, Viderum shall use reasonable commercial endeavours to deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer at that time, provided that the Customer has, at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). Once such ten-day period has expired or Viderum has, at the Customer's request, delivered to the Customer the most recent backup of the Data (as applicable), Viderum shall promptly expunge from Viderum's System and otherwise destroy or dispose of all of the Data in its possession or control.
- 23 **FORCE MAJEURE**
- Viderum 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,

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without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Viderum 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. If a delay or failure continues beyond 30 days, the Customer may terminate this Agreement (and/or the applicable SOW) in whole or in part.

Agreement or its subject matter or formation (including non-contractual disputes or claims).

24 GENERAL

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

24.2 Severance.

24.2.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

24.2.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24.3 **Entire agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

24.4 **Variation.** No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative.

24.5 Assignment.

24.5.1 The Customer shall not, without the prior written consent of Viderum, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

24.5.2 Viderum may at any time assign, transfer, charge, subcontract or deal in any other manner, with all or any of its rights or obligations under this Agreement without the consent of the Customer.

24.6 **No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

24.7 **Third-party rights.** No one other than a party to this Agreement shall have any right to enforce any of its terms.

24.8 Notices.

24.8.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

24.8.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

24.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24.9 Governing law and jurisdiction.

24.9.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24.9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this