



# Safelink Software as a Service Terms

PLEASE READ THESE TERMS CAREFULLY.

**When you access or use our Services, you agree to be bound by these Software as a Service Terms. If you are acting on behalf of a company or other legal entity, you agree that the company or legal entity will be bound by these Software as a Service Terms.**

**When you place an order for the Services through our website, a binding contract will be made between the Customer whose details are set out in that order, and Safelink (as defined below) and us for the Subscription you have selected when placing your order. These Software as a Service Terms apply to that contract. If the Customer does not agree to be bound by these Software as a Service Terms, you may not place an order with us, or access or use the Services.**

## Background

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These terms, combined with the Subscription Details, constitute a legal agreement (the **Agreement**) between you (the **Customer**) and Propelr Limited (trading as Safelink), a company registered in Jersey with registered number 104534 and whose office is at 7 Castle Street, St Helier, Jersey, JE2 3BT (**Safelink**).

## 1. Definitions and Interpretation

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

**Authorised Users:**

those employees and independent contractors of the Customer who are authorised by the Customer to use the Services.

**Business Day:**

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

**Confidential Information:**

all data or information (whether technical, commercial, financial or of any other type) in any form acquired under, arising from or in connection with, this Agreement, any information used in or relating to the business of the Customer (including the Customer Data) and any information used in or relating to the business of Safelink (including details of the Services and the results of any performance tests of the Services).

**Customer Data:**

the data inputted by the Customer, Authorised Users, Participants or Safelink on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Data Protection Legislation:**

any applicable laws and regulations relating to privacy or processing of personal data, which may include (as applicable to Safelink and/or the Customer):

- The European Union General Data Protection Regulation ((EU) 2016/679) (**GDPR**);
- the Data Protection Act 2018 (**DPA**) and the UK GDPR as defined in the DPA (**UK GDPR**);
- any laws or regulations supplementing or replacing the GDPR, UK GDPR or DPA;
- the Australian Privacy Act 1988;

- the laws implementing, supplementing or equivalent to those listed above in the jurisdictions in which Safelink and the Customer, (a) are established or (b) host, control or process Customer Data; and
- any relevant mandatory guidance or codes of practice issued by a regulator; including any amendments to these laws and regulations from time to time.

**Effective Date:**

as defined in the Subscription Details.

**Initial Subscription Term:**

the initial term of this Agreement which shall be for a fixed period of one year unless otherwise provided in the Subscription Details.

**Normal Business Hours:**

8.00 am to 6.00 pm local UK time, each Business Day.

**Participant:**

any person who is invited or otherwise authorised by the Customer to use the Services in accordance with this Agreement, excluding Authorised Users.

**Purpose:**

the Customer's purpose of operating virtual data rooms for Participants.

**Renewal Period:**

the period described in clause 13.1 unless otherwise provided in the Subscription Details.

**Services:**

the subscription services provided by Safelink to the Customer under this Agreement to provide the Software via the Website or any other website notified to the Customer by Safelink from time to time, as more particularly described in the Services Description.

**Services Description:**

the then-current description of the Services as made available at [www.safelinkhub.com](http://www.safelinkhub.com) or such other website address as may be notified to the Customer from time to time.

**Software:**

the online secure communications platform known as "Safelink" provided by Safelink as part of the Services.

**Subscriptions:**

the subscriptions purchased by the Customer, which entitle Authorised Users and Participants to access and use the Services in accordance with this Agreement, the details of which are provided in the Subscription Details.

**Subscription Details:**

the details of the Customer's Subscription with Safelink, including: the identity of the Customer, the Subscription Fees to be charged; and any specified scope of use or number of Authorised Users; which is agreed between the parties either via the online purchase process or a signed order form. Subscription Details will be based on one of the plans described on Safelink's website as at the Effective Date, unless otherwise agreed in writing between the parties.

**Subscription Fees:**

the subscription fees payable by the Customer to Safelink for the Services, as set out in the Subscription Details.

**Subscription Term:**

has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:**

Safelink's policy for providing support in relation to the Services as made available at [www.safelinkdatarooms.com/policies/support](http://www.safelinkdatarooms.com/policies/support) or such other website address as may be notified to the Customer from time to time.

**Third Party Provider:**

each third party that provides the Third Party Services to the Customer, as set out in the Subscription Details.

**Third Party Service Terms:**

The terms for the provision of the Third Party Services, as set out in clause 4 or as otherwise provided to the Customer by Safelink in writing.

**Third Party Services:**

the services to be provided by Third Party Providers, but to which Safelink will provide access to the Customer under this Agreement, as set out in the Subscription Details.

**Virus:**

any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Website:**

the website hosted and maintained by Safelink currently located at the URL <https://safelinkhub.com/>

- 1.2. Clause headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date.
- 1.7. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.8. A reference to writing or written includes e-mail.

## 2. Use of the services

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- 2.1. Subject to the terms and conditions set out in the Subscription Details and this Agreement, Safelink hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users and Participants to access and use the Services during the Subscription Term solely for the Purpose.
- 2.2. Safelink shall enable the Customer to access a Safelink Administrator Account (**Administrator Account**), which will include a console (**Admin Console**) that will permit the Customer to perform a number of administrative functions relating to the Software.
- 2.3. In relation to the Authorised Users and Participants, the Customer acknowledges and undertakes that:
- (a) it shall, and shall procure that its Authorised Users shall, limit access and use of the Services to Authorised Users and Participants;
  - (b) it will not allow the personal account of any Authorised User or Participant to be used by any individual who is not an Authorised User;
  - (c) each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed no less frequently than annually and that each Authorised User and Participant shall keep his password confidential; and
  - (d) if Safelink or the Customer ascertains that any password has been provided to any individual who is not an Authorised User or Participant, then without prejudice to Safelink's other rights, the Customer shall promptly disable such passwords and Safelink shall not issue any new passwords to any such individual.
- 2.4. The Customer shall not, and shall procure that Authorised Users and Participants shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - (b) facilitates illegal activity;
  - (c) depicts sexually explicit images;
  - (d) promotes unlawful violence;
  - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, or disability; or
  - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Safelink reserves the right, without liability or prejudice to its other rights to the Customer, to disable access to any material that breaches the provisions of this clause. References to unlawful or illegal activity include activity which is unlawful or illegal in any jurisdiction in which the Customer has made or intends to make the Services available to Participants.

- 2.5. The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the parties:
    - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
    - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
  - (c) use the Services to provide services to third parties except as described in the Purpose; or
  - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users as described in the Purpose; or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.
- 2.6. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Safelink.
- 2.7. The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to and shall not be considered granted to any subsidiary or holding company of the Customer or to any affiliated company of the Customer.

### 3. Services

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- 3.1. Safelink shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement.
- 3.2. Safelink shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 3.00 am UK time of weekends and Bank Holidays in England and Wales; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that Safelink has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 3.3. Safelink will, as part of the Services and at no additional cost to the Customer, provide the Customer with Safelink's standard customer support services during Normal Business Hours in accordance with the version of Safelink's Support Services Policy in effect at the time that the Services are provided. Safelink may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Safelink's then current rates. Save as otherwise agreed by Safelink, the standard support services will not include the support of any Third Party Services, the terms for which will be set out in the Third Party Service Terms.
- 3.4. If the Customer wishes to purchase additional Subscriptions, the Customer shall:

- (a) notify Safelink in writing, in which case, Safelink shall activate the additional Subscriptions within 5 Business Days of the Customer's request and issue an invoice to the Customer for the relevant fees, which shall be payable within 30 days of the invoice date; or
  - (b) order the additional Subscriptions via Safelink's website, in which case the Customer will pay for such additional Subscriptions by credit card at the time of the request and the additional Subscriptions will be activated as soon as the transaction has successfully completed, and payment has been received by Safelink.
- 3.5. Where additional Subscriptions are purchased by the Customer part way through the Initial Term or any Renewal Term (as applicable), such fees shall be pro-rated from the date of activation by Safelink for the remainder of the Initial Term or then current Renewal Term (as applicable).

#### 4. Third Party Services

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- 4.1. Where the Subscription Details include details of one or more Third Party Services, and subject to the Customer's payment of all Subscription Fees, Safelink will facilitate access by the Customer, to such Third Party Services.
- 4.2. The Customer acknowledges and agrees that the applicable Third Party Service Terms will apply to the Customer's use of the Third Party Services.
- 4.3. Unless otherwise agreed between the parties in writing, all restrictions on use that are applicable to the Subscriptions, such as a restriction on the number of Authorised Users, will apply equally to the use of the Third Party Services.
- 4.4. Where your Subscription Details state that you have selected a Subscription that includes access to features powered by artificial intelligence, or where Safelink has otherwise agreed in writing to provide such features to you, Safelink will provide you with access to the Azure OpenAI Service provided by Third Party Service Provider, Microsoft. The terms applicable to this Third Party Service are set out at <https://www.microsoft.com/licensing/terms> including (without limitation) the terms available at the links listed below:

<https://www.microsoft.com/licensing/docs/customeragreement> (UK version, via a CSP Partner)

<https://www.microsoft.com/licensing/terms/product/ForOnlineServices/all>

<https://learn.microsoft.com/en-us/legal/cognitive-services/openai/code-of-conduct>

<https://www.microsoft.com/licensing/docs/view/Microsoft-Products-and-Services-Data-Protection-Addendum-DPA>

<https://www.microsoft.com/licensing/docs/view/Service-Level-Agreements-SLA-for-Online-Services>

#### 5. Customer data

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- 5.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 5.2. Safelink shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at <https://safelinkhub.com/back-up-policy> or such other website address as may be notified to the Customer from time to time, as such document may be amended by Safelink in its sole discretion from time to time.
- 5.3. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Safelink to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Safelink in accordance with the archiving procedure described in its Back-Up Policy. Safelink shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Safelink to perform services related to Customer Data maintenance and back-up).
- 5.4. Safelink shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at [www.safelinkhub.com/privacy-policy](http://www.safelinkhub.com/privacy-policy) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Safelink in its sole discretion.
- 5.5. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 5.6. If Safelink processes any personal data (as defined in the GDPR) on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that for the purposes of the GDPR or UK GDPR the Customer shall be the data controller and Safelink shall be a data processor (where Data Controller and Data Processor have the meanings as defined in the GDPR) and without prejudice to the generality of clause 5.5 in any such case:
- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Safelink so that Safelink may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;
  - (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - (c) Safelink shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time unless Safelink is required by laws applicable to Safelink to process personal data (**Applicable Laws**). Where Safelink is relying on such Applicable Laws as the basis for processing personal data, Safelink shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Safelink from so notifying the Customer; and
  - (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (e) Safelink may process personal data outside of the United Kingdom or European Economic Area provided that the following conditions are fulfilled:
    - (i) the Customer and/or Safelink has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) Safelink complies with its obligations under the GDPR or UK GDPR (as applicable) by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) Safelink complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - (f) Safelink shall assist the Customer, at the Customer's cost, in responding to any request from a data subject (as defined in the GDPR) and in ensuring compliance with its obligations under the GDPR or UK GDPR (as applicable) with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (g) notify the Customer without undue delay on becoming aware of a personal data breach;
  - (h) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of this Agreement unless required by Applicable Law to store the personal data; and
  - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 5.
- 5.7. Safelink may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

## **6. Safelink's obligations**

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- 6.1. Safelink undertakes that the Services will be performed substantially in accordance with the Services Description and with reasonable skill and care.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Safelink's instructions, or modification or alteration of the Services by any party other than Safelink or Safelink's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Safelink will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, Safelink:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or errorfree; or that the Services or the information obtained by the Customer through the Services will meet the Customer's requirements;
  - (b) does not warrant that the Software or the Services will be free from Viruses; and



- (c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3. This Agreement shall not prevent Safelink from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products or services which are similar to those provided under this Agreement.
- 6.4. Safelink warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## 7. Customer's obligations

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- 7.1. The Customer shall:
- (a) provide Safelink with:
    - (i) all necessary co-operation in relation to this Agreement; and
    - (ii) all necessary access to such information as may be required by Safelink;in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
  - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
  - (c) 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, Safelink may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - (d) ensure that the Authorised Users and Participants use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's and any Participant's breach of this Agreement;
  - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Safelink, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
  - (f) comply at all times with the Third Party Service Terms;
  - (g) ensure that its network and systems comply with the relevant specifications provided by Safelink from time to time; and
  - (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Safelink's data centres, and 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.
- 7.2. Safelink shall not be liable for any loss, damage, delay or failure that results from the delay or failure of the Customer to comply with its obligations under this Agreement, and the time for performance of Safelink's obligations under this Agreement shall be extended as a result of any failure or delay by the Customer. The Customer shall reimburse Safelink on written demand for any costs or losses sustained as a direct or indirect result of the Customer's default under this Agreement. The Customer hereby indemnifies Safelink in full and on demand in respect of any claim made against Safelink by a Third Party Service Provider,

including as a result of the Customer's use or misuse of a Third Party Service or breach of the Third Party Service Terms.

## 8. Charges and payment

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8.1. The Customer shall pay the Subscription Fees, if any, (including the fees for any additional Subscriptions under clauses 3.4 and 3.5) to Safelink in accordance with this clause 8 and the Subscription Details.

8.2. Subscription Fees shall be calculated based on the Subscriptions required by the Customer, and charged in accordance with the Subscription Details.

8.3. Where the Customer places an order for the Services via Safelink's website, the Subscription Fees shall be charged to the Customer's credit card when the order is placed (which shall be the due date for such payments). Safelink will attempt to collect the Subscription Fees for each Renewal Period on the first day of such Renewal Period (which shall be the due date for such payments), using the credit card details provided when the order was placed, or such updated credit card details as have been submitted to Safelink by the Customer via the Admin Console. The Customer is responsible for ensuring that payments can be collected from the credit card for which details have been provided.

8.4. Where the Subscription Details indicate that Safelink will send an invoice to the Customer, Safelink shall invoice the Customer:

- (a) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (b) subject to clause 13.1, on the first day of each Renewal Period for the Subscription Fees payable in respect of that Renewal Period,

and the Customer shall pay the Subscription Fees within 30 days of the date of the invoice issued by Safelink (the date 30 days after the invoice date being the due date for these payments).

8.5. If Safelink has not received payment on the due date, and without prejudice to any other rights and remedies of Safelink:

- (a) Safelink may, without liability to the Customer, disable the Customer's account and access to all or part of the Services and Safelink shall be under no obligation to provide any or all of the Services while the sums concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2% over the prevailing Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.6. All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 11.4(c) and 17, non-cancellable and non-refundable;

- (c) are exclusive of goods and sales tax (GST) and value added tax (VAT), which shall be added to Safelink's invoice(s) as appropriate at the appropriate rate.

8.7. Safelink shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon giving not less than 30 days' prior notice to the Customer. Any such increase may not exceed two (2) per cent plus the percentage increase in the UK Consumer Prices Index in the period beginning fifteen (15) months and ending three (3) months before the relevant Renewal Period.

## 9. Proprietary rights

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9.1. The Customer acknowledges and agrees that Safelink or its licensors own all intellectual property rights in the Services and the Website. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

9.2. Safelink confirms that it 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.

9.3. The Customer provides Safelink with permission to use the Customer's trade mark and/or trade name on its website and/or in its marketing materials.

## 10. Confidentiality

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10.1. 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:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2. 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 (except that each party may disclose the other party's Confidential information to those of its employees, officers, representatives and advisers who need to know such information for the purposes of exercising that party's rights or carrying out its obligations under this Agreement), or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Each party shall ensure that its employees, officers, representatives and advisers to whom it discloses the other party's Confidential Information are aware of that party's obligations under this clause 10.

- 10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5. This clause 10 shall survive termination of this Agreement, however arising.

## 11. Indemnity

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- 11.1. The Customer shall defend, indemnify and hold harmless Safelink against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
  - (a) this indemnity shall not cover Safelink to the extent that a claim under it results from Safelink's negligence or wilful misconduct;
  - (b) the Customer is given prompt notice of any such claim;
  - (c) Safelink provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (d) the Customer is given sole authority to defend or settle the claim.
- 11.2. Safelink shall defend the Customer, its officers, directors and employees against any claim that the Services or Website infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
  - (a) this indemnity shall not cover the Customer to the extent that a claim under it results from the Customer's negligence or wilful misconduct;
  - (b) Safelink is given prompt notice of any such claim;
  - (c) the Customer provides reasonable co-operation to Safelink in the defence and settlement of such claim, at Safelink's expense; and
  - (d) Safelink is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, Safelink may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become noninfringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4. In no event shall Safelink, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - (a) a modification of the Services by anyone other than Safelink; or
  - (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by Safelink; or
  - (c) the Customer's use of the Services after notice of the alleged or actual infringement from Safelink or any appropriate authority.
- 11.5. The foregoing and clause 12.4(b) state the Customer's sole and exclusive rights and remedies, and Safelink's (including Safelink's employees', agents' and sub-contractors')

entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## 12. Limitation of liability

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- 12.1. This clause 12 sets out the entire financial liability of Safelink (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this Agreement;
  - (b) in respect of any use made by the Customer of the Services or any part of them; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2. Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Safelink shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Safelink by the Customer in connection with the Services, or any actions taken by Safelink at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - (c) the Services are provided to the Customer on an "as is" basis.
- 12.3. Nothing in this Agreement excludes the liability of Safelink:
- (a) for death or personal injury caused by Safelink's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 12.4. Subject to clause 12.2 and clause 12.3:
- (a) Safelink shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits (whether direct or indirect), loss of business, depletion of goodwill or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
  - (b) Safelink's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## 13. Term and termination

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- 13.1. This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of one year (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

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

- 13.2. Where the Subscription Details specify that the Lite plan applies, Safelink may terminate the Customer's Subscription at any time on the provision of not less than 30 days written notice.
- 13.3. Where Safelink has amended the Agreement or the Services in accordance with clause 17, the Customer may terminate this Agreement in accordance with the provisions of that clause.
- 13.4. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
  - (a) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
  - (b) the other party fails to pay any amount due under this Agreement on or before the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors 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;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party 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;
  - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
  - (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.4(c) to clause 13.4(i) (inclusive); or

- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.5. On termination of this Agreement for any reason:

- (a) all rights and licences granted under this Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- (c) subject to Safelink's obligations as a data processor under the Data Protection Legislation, Safelink may destroy or otherwise dispose of any of the Customer Data in its possession unless Safelink receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Safelink shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, 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). The Customer shall pay all reasonable expenses incurred by Safelink in returning Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

13.6. The parties intend the following clauses to survive termination: 5 (to the extent necessary), 1.1, 8 (to the extent of any unpaid obligations), 10, 11, 12, 13.3, 15, 16, clauses 17.3 to 27 (inclusive).

#### 14. **Publicity and Marketing**

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14.1. The Customer agrees that Safelink may in on its website and in any of its marketing material refer to the Customer as a customer of Safelink (including reproducing the Customer's logo for such purpose) and may refer to the type of services that Safelink has provided to the Customer.

#### 15. **Force majeure**

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

#### 16. **Conflict**

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If there is an inconsistency between any of the provisions in the main body of this Agreement and the Subscription Details or Services Description, the provisions in the Subscription Details shall prevail.

## 17. Variation

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- 17.1. Safelink may modify the Terms of this Agreement at any time, at its sole discretion on the provision of written notice to the Customer by e-mail. The Customer must review the updated Agreement as soon as possible after notification, and the Customer's continued use of the Services after such notification shall be deemed to indicate the Customer's agreement to be bound by the new terms of the Agreement.
- 17.2. Safelink may change or discontinue all or any part of the Services at any time. Safelink will notify the Customer by email of any changes to the Services that materially affect the Subscription.
- 17.3. If the Customer does not agree to be bound by the new terms of the Agreement, or is not happy with any changes made to the Services, the Customer may terminate the Agreement by notice in writing within 30 days of Safelink's notice of the relevant change.

## 18. Waiver

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

## 19. Rights and remedies

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

## 20. Severance

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If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention. If the parties do not agree to amend the provision, it shall, to the extent required, be deemed not to be a part of this Agreement, and it shall not affect the validity and enforceability of the other provisions of this Agreement.

## 21. Entire Agreement

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- 21.1. This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.
- 21.2. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or



understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

## **22. Assignment**

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- 22.1. The Customer shall not, without the prior written consent of Safelink, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 22.2. Safelink may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **23. No partnership or agency**

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Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **24. Third party rights**

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This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **25. Notices**

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- 25.1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in this Agreement.
- 25.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9:00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received 3 days from the date of posting.
- 25.3. A notice sent by email shall be deemed to have been received upon receipt by the sender of a confirmation email from the recipient, and if no confirmation of receipt is received within 24



hours of sending the email, the sender shall send a further copy by first class, recorded delivery post. An automated response (for example an out of office reply) does not constitute a confirmation email from the recipient.

25.4. In each case, if the deemed receipt time occurs either on a day that is not a Business Day or after 5.00pm on a Business Day, then the notice shall not in fact be deemed to have been received until 10.00am on the next Business Day (such times being local time at the address of the recipient).

**26. Governing law**

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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.

**27. Jurisdiction**

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