

Erango agreement

PARTIES

1. Nicholas Associates Group Limited t/a Nicholas Associates Software, a company incorporated in England and Wales (registration number 03606174) having its registered office at Reginald Arthur House, Percy Street, Rotherham, S65 1ED (the "**Provider**"); and
2. An individual, organisation or other entity which wishes to utilise the services of Erango (the "**Customer**").

BACKGROUND

1. *The Customer wishes to make use of the Providers Erango platform.*

AGREEMENT

1. Definitions

- 1.1 In this Agreement, except to the extent expressly provided otherwise:

"Acceptance Criteria" means:

- (a) the Platform and Hosted Services conforming in material respects with the Hosted Services Specification; and
- (b) the Hosted Services being free from Hosted Services Defects;"

Access Credentials" means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"Anti-Corruption Laws" means all applicable anti-bribery and anti-corruption laws (including the Bribery Act 2010);

"Anti-Slavery Laws" means all applicable anti-slavery and anti-human trafficking laws (including the Modern Slavery Act 2015);

"Anti-Tax Evasion Laws" means all applicable anti-tax evasion laws (including the Criminal Finances Act 2017);

"API" means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00GMT on a Business Day;

"Change" means any change to the scope of the Services OR any change to this Agreement;

"Charges" means the following amounts:

- (a) the amount of charges specified in the billing document relating to the provision of services using the Erango platform;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Provider's standard time-based charging rates (as notified by the Provider to the Customer before the date of this Agreement) by the time spent by the Provider's personnel performing the Support Services (rounded down by the Provider to the nearest quarter hour);

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider OR at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- (b) the Customer Data;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"Customer Indemnity Event" has the meaning given to it in Clause 27.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement;

"Customer Representatives" means the person nominated in the Erango platform as being the Customer Representative;

"Customer Systems" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Customisation" means a customisation of the Hosted Services, whether made through the configuration or integration of software, or otherwise;

"Data Protection Laws" means the UK GDPR;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date of execution of this Agreement;

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under this Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means *Erango* which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having a material adverse effect on the operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in the Documentation];

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Licence Management Screen" means the screen in Erango that allows an admin to view and modify the number of purchased licences;

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Minimum Term" means, in respect of this Agreement, the period of 1 month beginning on the Effective Date;

"Personal Data" means personal data under any of the Data Protection Laws;

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider Confidential Information" means:

- (a) any information disclosed by or on behalf of the Provider to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (b) the financial terms of this Agreement;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Set Up Services" means the configuration, implementation and integration of the Hosted Services in accordance with Section 1 of Schedule 1 (Hosted Services particulars);

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome;

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Third Party Services" means any hosted, cloud or software-based services provided by any third party that are or may be integrated with the Hosted Services by the Provider from time to time in circumstances where the Customer must, in order to activate the integration, have an account with the relevant services provider or obtain activation or access credentials from the relevant services provider;

"UK GDPR" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Update" means a hotfix, patch or minor version update to any Platform software;

"Upgrade" means a major version upgrade of any Platform software; and

"User Interface" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

2. Term

- 2.1 This Agreement shall come into force upon the Effective Date. For clarity, the Effective Date will be earliest of
- (a) the date on which you, your employee, servant or agent first clicks "I agree" (or a similar button or checkbox clearly marked as such) or
 - (b) the date that you use or access Erango or
 - (c) the date that you create an account in Erango or
 - (d) the date that you place an order with Erango
- 2.2 This Agreement shall continue in force indefinitely subject to termination in accordance with Clause 30 or any other provision of this Agreement.

3. Set Up Services

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Provider shall use reasonable endeavours to ensure that the Set Up Services are provided in accordance with the timetable set out in Section 1 of Schedule 1 (Hosted Services particulars).
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations in this Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 28.1 the Provider will not be liable in any event to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.
- 3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

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5. Hosted Services

- 5.1 The Provider shall provide, or shall ensure that the Platform will provide, to the Customer the Access Credentials necessary to enable the Customer to access and use the Hosted Services.
- 5.2 The Provider hereby grants to the Customer a non-exclusive licence to use the Hosted Services by means of the User Interface and the API for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 5.3 The licence granted by the Provider to the Customer under Clause 5.2 is subject to the following limitations:
- (a) the User Interface may only be used through a Supported Web Browser;

- (b) the User Interface may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
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 - (d) the User Interface must not be used at any point in time by more than the number of concurrent users specified on *Licence Management Screen*, providing that the Customer may add or remove concurrent user licences in accordance with the licence change procedure defined by the Hosted Services; and
 - (e) the API may only be used by an application or applications approved by the Provider in writing and controlled by the Customer].
- 5.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 5.2 is subject to the following prohibitions:
- (a) the Customer must not sub-license its right to access and use the Hosted Services;
 - (b) the Customer must not permit any unauthorised person or application to access or use the Hosted Services;
 - (c) the Customer must not use the Hosted Services to provide services to third parties;
 - (d) the Customer must not republish or redistribute any content or material from the Hosted Services;
 - (e) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
 - (f) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.
- 5.5 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.
- 5.6 The parties acknowledge and agree that Schedule 3 (Availability SLA) shall govern the availability of the Hosted Services.
- 5.7 The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of the Access Credentials comply with Schedule 2 (Acceptable Use Policy).
- 5.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 5.9 The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may

use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.

5.10 The Customer must not use the Hosted Services:

- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

5.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

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7. Scheduled maintenance

7.1 The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 7.

7.2 The Provider shall where practicable give to the Customer at least 5 Business Days' prior written notice via the Hosted Service of scheduled maintenance that will, or is likely to, affect the availability of the Hosted Services or have a material negative impact upon the Hosted Services.

8. Support Services

8.1 The Provider shall provide the Support Services to the Customer during the Term.

8.2 The Provider shall provide the Support Services with reasonable skill and care.

8.3 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue.

9. Customer obligations

9.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.

9.2 The Customer must provide to the Provider, or procure for the Provider, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

10. Customer Systems

- 10.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements of Section 2 of Schedule 1 (Hosted Services particulars) in all material respects, subject to any changes agreed in writing by the Provider.

11. Customer Data

- 11.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
- 11.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 11.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken.

12. Integrations with Third Party Services

- 12.1 The Hosted Services are integrated with certain Third Party Services and the Provider may integrate the Hosted Services with additional Third Party Services at any time.

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14. No assignment of Intellectual Property Rights

- 14.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

15. Representatives

- 15.1 The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in this Agreement will be given by a Provider Representative to a Customer Representative, and the Customer:
- (a) may treat all such instructions as the fully authorised instructions of the Provider; and
 - (b) must not comply with any other instructions in relation to that subject matter.
- 15.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in this Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:
- (a) may treat all such instructions as the fully authorised instructions of the Customer; and

- (b) may decline to comply with any other instructions in relation to that subject matter.

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18. Charges

- 18.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 18.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 18.2.
- 18.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 18.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation , providing that no such variation shall constitute a percentage increase that exceeds 8% over the percentage increase, since the date of the most recent variation of the relevant element of the Charges under this Clause 18.4 (or, if no such variation has occurred, since the date of execution of this Agreement), in the Retail Prices Index (all items) published by the UK Office for National Statistics.

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21. Payments

- 21.1 The Provider shall issue invoices for the Charges to the Customer from time to time during the Term
- 21.2 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 21.3 If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
 - (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

22. Confidentiality obligations

22.1 The Provider must:

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Customer Confidential Information; and

22.2 The Customer must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information; and

22.3 Notwithstanding Clauses 22.1 and 22.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

22.4 No obligations are imposed by this Clause 22 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

22.5 The restrictions in this Clause 22 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

22.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.

22.7 Within 10 Business Days following the date of effective termination of this Agreement, the relevant party must:

- (a) irreversibly delete from its media and computer systems all copies of the other party's Confidential Information (and ensure that the other party's Confidential Information is irreversibly deleted from the media and computer systems of all persons to whom the relevant party has directly or indirectly disclosed that Confidential Information);
- (b) ensure that no other copies of the other party's Confidential Information remain in the relevant party's possession or control;

subject in each case to any obligations that the relevant party has under this Agreement to supply or make available to the other party any data or information, and providing that the relevant party shall have no obligation under this Clause 22.7 to delete or to cease to possess or control any of the other party's Confidential Information to the extent that the relevant party is required by applicable law to retain that Confidential Information.

22.8 The provisions of this Clause 22 shall continue in for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

23. Publicity

23.1 Neither party may make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed

23.2 Nothing in this Clause 23 shall be construed as limiting the obligations of the parties under Clause 22.

24. Data protection

24.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

24.2 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

24.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement:

- (a) the Personal Data of data subjects falling within the categories specified in Section 1 of Schedule 7 (Data processing information); and
- (b) Personal Data of the types specified in Section 2 of Schedule 7 (Data processing information).

24.4 The Provider shall only process the Customer Personal Data for the purposes specified in Section 3 of Schedule 7 (Data processing information).

24.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 24.

- 24.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws).
- 24.7 The Customer hereby authorises the Provider to make the following transfers of Customer Personal Data:
- (a) the Provider may transfer the Customer Personal Data internally to its own employees, offices and facilities, providing that such transfers must be protected by appropriate safeguards;
 - (b) the Provider may transfer the Customer Personal Data to its third party processors in the jurisdictions identified in Section 5 of Schedule 7 (Data processing information) and may permit its third party processors to make such transfers, providing that such transfers must be protected by any appropriate safeguards identified therein; and
 - (c) the Provider may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.
- 24.8 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 24.9 Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information.
- 24.10 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 24.11 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 24.12 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate this Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 24.
- 24.13 As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data.
- 24.14 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to

assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

- 24.15 The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.15.
- 24.16 The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay.
- 24.17 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 24 and the Data Protection Laws. The Provider may charge the Customer for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.17.
- 24.18 The Provider shall, at the choice of the Customer, delete all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 24.19 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 24. The Provider may charge the Customer for any work performed by the Provider at the request of the Customer pursuant to this Clause 24.19.
- 24.20 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

25. Warranties

- 25.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
 - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 25.2 The Provider warrants to the Customer that:
- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;

- (b) the Hosted Services will be free from known Hosted Services Defects and that new defects are remedied by the provision of support services;
- (c) the Platform will be scanned for known viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (d) the Platform will incorporate security features reflecting the requirements of good industry practice.

25.3 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

25.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

26. Acknowledgements and warranty limitations

26.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

26.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

26.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

26.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

27. Indemnities

27.1 The Customer must:

- (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
- (b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;

- (c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
- (d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

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27.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of this Agreement(a "**Customer Indemnity Event**").

27.4 The Provider must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 27.3 shall not apply unless the Provider complies with the requirements of this Clause 27.4.

27.5 The indemnity protection set out in this Clause 27 shall be subject to the limitations and exclusions of liability set out in this Agreement.

28. Limitations and exclusions of liability

28.1 Nothing in this Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

28.2 The limitations and exclusions of liability set out in this Clause 28 and elsewhere in this Agreement:

- (a) are subject to Clause 28.1; and
- (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

28.3 The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

28.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

28.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.

28.6 Neither party shall be liable to the other party in respect of any loss of use or production.

28.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

28.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software

28.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

28.10 The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed

the total amount paid and payable by the Customer to the Provider under this Agreement in the 3 month period preceding the commencement of the event or events.

29. Force Majeure Event

29.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

29.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

29.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

30. Termination

30.1 The Provider may terminate this Agreement by giving notice to the Customer and the agreement will end at the end of the current billing period. The

Customer may terminate this Agreement by giving notice to the Provider and the agreement will end at the end of the current billing period.

31. Effects of termination

- 31.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 5.11, 14, 21.2, 21.3, 22, 23, 24, 26, 27, 28, 31, 32, 33.1, 33.2, 33.5, 33.6, 34.1, 34.5, 35.1, 35.4, 36, 38, 39, 40, 41, 42, 43, 44 and 45.
- 31.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

32. Deliberately Blank

33. Anti-corruption

- 33.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Corruption Laws in relation to this Agreement.
- 33.2 Save to the extent that applicable law requires otherwise, each party must promptly notify the other if it becomes aware of any events or circumstances relating to this Agreement that will or may constitute a breach of the Anti-Corruption Laws (irrespective of the identity of the person in breach).
- 33.3 The Provider shall use all reasonable endeavours to ensure that all persons that:
- (a) provide services to the Provider (including employees, agents and subsidiaries of the Provider); and
 - (b) are involved in the performance of the obligations of the Provider under this Agreement,
- will comply with the Anti-Corruption Laws; and the Provider shall maintain written contracts with all such persons, and shall ensure that each of those contracts includes express requirements on the provider of services to comply with the Anti-Corruption Laws.
- 33.4 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Corruption Laws; and the Provider undertakes to:
- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
 - (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.
- 33.5 Nothing in this Agreement shall prevent either party from reporting a breach of the Anti-Corruption Laws to the relevant governmental authorities.
- 33.6 Any breach of this Clause 33 shall be deemed to constitute a material breach of this Agreement.

34. Anti-slavery

- 34.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Slavery Laws.
- 34.2 The Provider shall ensure that all persons that provide services or supply products to the Provider, where such services or products are used in the performance of the obligations of the Provider under this Agreement, will comply with the Anti-Slavery Laws; and the Provider shall maintain written contracts with all such persons, and shall ensure that each of those contracts includes express requirements on the provider of services or supplier of goods to comply with the Anti-Slavery Laws.
- 34.3 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Slavery Laws; and the Provider undertakes to:
- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
 - (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.
- 34.4 Any breach of this Clause 34 shall be deemed to constitute a material breach of this Agreement.

35. Anti-tax evasion

- 35.1 Each party warrants and undertakes to the other that it has complied and will continue to comply with the Anti-Tax Evasion Laws.
- 35.2 The Provider shall ensure that all employees, agents and persons that provide services to the Provider, when acting in such capacity in connection with this Agreement, will comply with the Anti-Tax Evasion Laws.
- 35.3 The Provider warrants that it has in place its own policies and procedures designed to ensure the compliance of the Provider with the Anti-Tax Evasion Laws; and the Provider undertakes to:
- (a) acting reasonably, maintain and enforce those policies and procedures during the Term;
 - (b) promptly following receipt of a written request for the same from the Customer, provide copies of the documentation embodying those policies and procedures to the Customer.
- 35.4 Any breach of this Clause 35 shall be deemed to constitute a material breach of this Agreement.

36. Notices

- 36.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 36.2 Any notice given by one party to the other party under this Agreement must be:
- (a) sent by recorded signed-for post;

(b) sent by email; or

using the relevant contact details set out in Section 3 of Schedule 1 (Hosted Services particulars).

36.3 The addressee and contact details set out in Section 3 of Schedule 1 (Hosted Services particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 36.

36.4 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.

37. Subcontracting

37.1 Subject to any express restrictions elsewhere in this Agreement, the Provider may subcontract any of its obligations under this Agreement.

37.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

37.3 Notwithstanding the provisions of this Clause 37 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

38. Assignment

38.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under this Agreement.

38.2 Save to the extent expressly permitted by applicable law, the Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under this Agreement without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed, providing that the Customer may assign the entirety of its rights and obligations under this Agreement to any Affiliate of the Customer or to any successor to all or a substantial part of the business of the Customer from time to time.

39. No waivers

39.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

39.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

40. Severability

40.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

40.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

41. Third party rights

41.1 This Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.

41.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

42. Variation

42.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party.

43. Entire agreement

43.1 The main body of this Agreement and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

43.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

43.3 The provisions of this Clause 43 are subject to Clause 28.1.

44. Law and jurisdiction

44.1 This Agreement shall be governed by and construed in accordance with English law.

44.2 Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.

45. Interpretation

45.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

45.2 The Clause headings do not affect the interpretation of this Agreement.

45.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

45.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

1. Set Up Services

The customer version of Erango will be setup and ready to use by the creating account within 1 business day after the receipt of the initial payment or the beginning of a trial period.

2. Customer Systems

The customer must use either, Microsoft Edge, Google Chrome or Mozilla Firefox and they must be either the current or previous major version.

At the point of the end user's device, there should be a minimum internet connection speed of 2Mbps to ensure service availability

Any additional add-ons for a browser are not supported, including but not limited to, Ad blockers and power saving.

3. Contractual Notices

Customer Contractual Notices will be sent to the nominated account in Erango.

Provider Contractual Notices can be sent to

support@nicholasassociatesgroup.co.uk

or

Nicholas Associates Group Limited Registered Office.

SCHEDULE 2 (ACCEPTABLE USE POLICY)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
 - (a) the use of the Erango product, any successor website, and the services available on that website or any successor website (the "**Services**"); and
 - (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to *Nicholas Associates Group Limited* (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.
- 1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.
- 1.5 You must be at least 12 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 12 years of age.
- 1.6 Users can be added that are under the age of 18 to be registered in the system and to use the system
- 1.7 By adding users below the age of consent for GDPR, you agree that you have captured the consent of the parent/guardian

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
 - (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
 - (a) be libellous or maliciously false;
 - (b) be obscene or indecent;

- (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
- (d) infringe any right of confidence, right of privacy or right under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
- (g) be in contempt of any court, or in breach of any court order;
- (h) constitute a breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) constitute a breach of official secrets legislation; or
- (k) constitute a breach of any contractual obligation owed to any person.

3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

4. Graphic material

- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question.
- 4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.
- 4.3 Content must not be pornographic or sexually explicit.

5. Factual accuracy

- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.

6. Negligent advice

- 6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional advisory services.
- 6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

7. Etiquette

- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.

- 7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content does not duplicate other content available through the Services.
- 7.8 You must ensure that Content is appropriately categorised.
- 7.9 You should use appropriate and informative titles for all Content.
- 7.10 You must at all times be courteous and polite to other users of the Services.

8. Marketing and spam

- 8.1 You must not use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.
- 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
- 8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.
- 8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.
- 8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

9. Regulated businesses

- 9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.
- 9.2 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.
- 9.3 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

10. Monitoring

10.1 You acknowledge that we do not actively monitor the Content or the use of the Services.

11. Data mining

11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

12. Hyperlinks

12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

13. Harmful software

13.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

13.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 3 (AVAILABILITY SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 3 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 3, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use all reasonable endeavours to ensure that the uptime for the Hosted Services is at least 99% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using any reasonable methodology.

3. Exceptions

- 3.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Section 2.1:
 - (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Customer's computer systems or networks;
 - (d) any breach by the Customer of this Agreement; or
 - (e) scheduled maintenance carried out in accordance with this Agreement.

SCHEDULE 7 (DATA PROCESSING INFORMATION)

<https://www.erango.co.uk/data-processing-information>