

StoryTracker™ Terms and Conditions

These terms and conditions (“**Terms and Conditions**”) apply to the order by you (“**Customer**”) and supply of services by us to you in relation to our StoryTracker tool.

Billion Dollar Boy Limited (“**Supplier**”/“**we**”/“**us**”) is a company incorporated and registered in England and Wales with company number 08031315 whose registered office and main trading address is at 78 Whitfield Street, London, United Kingdom, W1T 4EZ (“**Supplier**”). Our VAT number is GB186274772.

If you are accepting these Terms and Conditions on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms and Conditions.

1. INTERPRETATION

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

Agreement: means these Terms and Conditions and the Order Form, which together set out the contract between the Supplier and the Customer in relation to the Services.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in Clause 2.2(f).

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

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 11.6 or Clause 11.7.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer’s behalf for the purpose of using the Services or facilitating the Customer’s use of the Services.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Initial Subscription Term: the initial term of the Agreement as set out in Paragraph 2 of the Order Form.

Minimum Notice Period: the notice period stated in Paragraph 3 of the Order Form.

Normal Business Hours: 9.00 am to 6.00 pm local UK time, each Business Day.

Order Form: an ordering document specifying the Services to be provided hereunder that is entered into between the Customer and the Supplier.

Payee: the Billion Dollar Boy entity specified at Paragraph 15 of the Order Form.

Renewal Period: the period described in Paragraph 3 of the Order Form.

Payment Schedule: the payment schedule described in Paragraph 13 of the Order Form.

Payment Terms: the payment terms described in Paragraph 14 of the Order Form.

Services: the services provided by the Supplier to the Customer under the Agreement via www.storytracker.co or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Order Form.

Software: the online software applications provided by the Supplier as part of the Services.

Subscriptions: the user subscriptions purchased by the Customer pursuant to Clause 9.1 which entitle Authorised Users to access and use the Services in accordance with the Agreement.

Subscription Fees: the subscription fees payable by the Customer to the Supplier for the Subscriptions, as set out the Order Form.

Subscription Start Date: the date included in Paragraph 1 of the Order Form.

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

Subscription Version: the version of the Software that the Customer has purchased access to pursuant to Clause 2.7 or Clause 9.1 as set out in Paragraph 4 of the Order Form.

Tracking Cap: the cap on the number of public Instagram accounts that can be tracked by a Customer when using the Services as set out in Paragraph 7 of the Order Form.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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 re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or 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. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
- 1.9. A reference to writing or written includes faxes and e-mail.
- 1.10. References to clauses and schedules are to the clauses and schedules of these Terms and Conditions; references to paragraphs are to paragraphs of the Order Form.

2. USER SUBSCRIPTIONS

- 2.1. Subject to the Customer purchasing the Subscriptions in accordance with Clause 3.3 and Clause 9.1 or arranging a free trial in accordance with Clause 2.7, the restrictions set out in this Clause 2 and the other terms and conditions of the Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 2.2. The Customer undertakes that:
 - (a) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of Subscriptions it has purchased from time to time (i.e. a cap of one Authorised User per Subscription applies) unless it is stated in Paragraph 6 of the Order Form that a higher cap on the number of Authorised Users per Subscription shall apply in which case the Customer shall not exceed that cap instead;
 - (b) in the event that a cap of one Authorised User per Subscription applies as per Clause 2.2(a), it will not allow or suffer any Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
 - (c) it will not allow the total number of social media accounts tracked by the Customer to exceed the Tracking Cap and, in the event the Tracking Cap is split by Subscription in Paragraph 7 of the Order Form, it will not allow the total number of tracked social media accounts tracked by a particular Subscription to exceed the number of tracked social media accounts allocated to that Subscription;
 - (d) it will only use the Services to track Instagram users who are social media influencers who are already endorsing Customer products or services on Instagram voluntarily or in connection with a paid partnership with the Customer and/or whom the Customer is potentially interested in partnering with in the future and ensure that the Authorised Users are aware of and comply with this restriction;
 - (e) each Subscription shall have a secure password for allowing access to the Services, that such passwords shall be changed no less frequently than every three (3) months and that each Authorised User shall keep any such passwords confidential;
 - (f) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request at any time or times;

- (g) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the login name and password relating to each Subscription, the Authorised Users given access to each Subscription and the Supplier's data processing facilities to audit compliance with the Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (h) if any of the audits referred to in Clause 2.2(g) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (i) if any of the audits referred to in Clause 2.2(g) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in Paragraphs 10 and 11 of the Order Form within ten (10) Business Days of the date of the relevant audit.

2.3. The Customer 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, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4. The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement: (i) 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 de-compile, 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; or

- (d) subject to Clause 21.1, 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, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Clause 2.
- 2.5. The Customer shall prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6. The rights provided under this Clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.
- 2.7. If the Customer so requests, the Supplier may elect to make the Services available to the Customer on a trial basis free of charge for one (1) week (the “**Free Trial**”) in accordance with these Terms and Conditions and a suitably adjusted Order Form. Notwithstanding any other provision of these Terms and Conditions:
- (a) the Free Trial may be terminated at any time by the Supplier in its sole discretion;
 - (b) the Customer may be made aware of additional terms and conditions that apply to such a Free Trial and any such terms and conditions are incorporated into the Agreement by reference and are legally binding; and
 - (c) any Customer Data entered into the Software and any configurations or customisations made to the Services by the Customer during a Free Trial will be permanently lost unless the Customer purchases a subscription to the Services before the end of the Free Trial.

3. ADDITIONAL USER SUBSCRIPTIONS / INCREASED ACCOUNT TRACKING

- 3.1. Subject to Clause 3.2 and Clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional Subscriptions in excess of the number set out in Paragraph 6 of the Order Form or purchase an increase in the Tracking Cap set out in Paragraph 7 of the Order Form, and the Supplier shall grant access to the Services to such additional Authorised Users or apply such an increased Tracking Cap in accordance with the provisions of the Agreement.
- 3.2. If the Customer wishes to purchase additional Subscriptions or an increase in the Tracking Cap, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional Subscriptions or an increased Tracking Cap and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional Subscriptions or increased Tracking Cap within five (5) Business Days of its approval of the Customer’s request.
- 3.3. If the Supplier approves the Customer’s request to purchase additional Subscriptions or increase the Tracking Cap, the Customer shall, on receipt of the Supplier’s invoice, pay to the Supplier the relevant fees for such additional Subscriptions or increased Tracking Cap as set out in Paragraphs 10 and 11 of the Order Form respectively. Alternatively, if the Customer is paying their Subscription Fees by credit card pursuant to Clause 9.2(a), the Supplier shall be entitled to bill that credit card for the relevant amount on the date that the additional Subscriptions or increased Tracking Cap are activated. If such additional Subscriptions or increased Tracking Cap are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the

date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. SERVICES

- 4.1. The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of the Agreement.
- 4.2. The Supplier shall use commercially reasonable endeavours to make the Services available twenty four (24) hours a day, seven (7) days a week, except for:
 - (a) planned maintenance carried out during the maintenance window of 12am to 6am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least six (6) Normal Business Hours' notice in advance.

5. CUSTOMER DATA

- 5.1. The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 5.2. The Supplier shall follow archiving procedures for Customer Data in accordance with general industry practice. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier 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 the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under Clause 5.7).
- 5.3. The Supplier shall, in providing the Services, comply with its Privacy Policy relating to the privacy of the Customer Data available at <https://www.billiondollarboy.com/billion-dollar-boy-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 the Supplier in its sole discretion.
- 5.4. The parties acknowledge that:
 - (a) if the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation;
 - (b) Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject; and
 - (c) the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under the Agreement.

- 5.5. The Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Agreement:
- (a) process that personal data only on the documented instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where “**Domestic UK Law**” means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (“**Applicable Laws**”). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled: (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - (c) assist the Customer, at the Customer’s cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Customer without undue delay on becoming aware of a personal data breach;
 - (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Laws to store the personal data; and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this Clause 5 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 5.6. Each party shall ensure that it has in place appropriate technical and organisational measures , to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- 5.7. The Customer consents to the Supplier appointing Google LLC (formerly known as Google Inc.), Google Ireland Limited, Google Asia Pacific Pte. Ltd., or any other entity that directly or indirectly controls, is controlled by, or is under common control with Google LLC (as applicable, “Google”), Host Gator.com LLC and the Payee (if a different entity to the Supplier) as third party processors of personal data under the Agreement. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 5.

- 5.8. 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 or rights under the Data Protection Legislation.
- 5.9. Without prejudice to the generality of Clause 5.8, the Customer will, where relevant, ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer that personal data in accordance with this agreement on the Customer's behalf.
- 5.10. Without prejudice to the generality of Clause 5.8 or 5.9, the Customer agrees to notify the individuals they wish to track using the Software that their social media posts will be tracked and stored and to obtain their consent to this before such tracking is commenced. The Client agrees not to use the Software to track any other individuals unless otherwise agreed in writing with the Supplier. The Supplier shall bear no responsibility whatsoever for notifying individuals that their social media posts are being tracked and stored by the Software or obtaining their consent to this although it may provide suggested wording or facilitate this process for the Customer. In the event that an individual later notifies the Customer that they object to the tracking or withdraws their consent the Customer agrees to stop tracking them using the Software immediately. The Customer shall remain liable to the Supplier for any failure to provide adequate notifications or secure adequate consents, or to respond sufficiently to any objections or withdrawals of consent, including under the Data Protection Legislation.

6. THIRD PARTY CONTENT

The Customer acknowledges that the Services may enable or assist it to access content of third parties that has been posted on third party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to any such content. The Supplier recommends that the Customer refers to the relevant third party website's terms and conditions and privacy policy prior to using any such content. The Supplier does not endorse or approve any third party website nor the content of any third party websites made available via the Services.

7. SUPPLIER'S OBLIGATIONS

- 7.1. The Supplier undertakes that the Services will be performed substantially in accordance with the description in the Order Form and with reasonable skill and care.
- 7.2. The undertaking at Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the undertaking at Clause 7.1, Supplier 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 7.1. Notwithstanding the foregoing, the Supplier:
 - (a) makes no warranties regarding the Customer's satisfaction with the Services;

- (b) does not warrant that the Customer's use of the Services will be available at all times, uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; 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.

7.3. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier and the Payee (if a different entity to the Supplier) with all necessary co-operation in relation to the Agreement and all necessary access to such information as may be required by the Supplier in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement;
- (c) carry out all other Customer responsibilities set out in the 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, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier'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.

9. CHARGES AND PAYMENT

9.1. The Customer shall pay the Subscription Fees for the Subscriptions to the Payee in accordance with this Clause 9 and the Order Form. Except as otherwise provided herein or an Order Form:

- (a) Subscription Fees are based on Services purchased and not actual usage;

- (b) payment obligations are non-cancellable and Subscription Fees are non-refundable; and
 - (c) the Subscription Version cannot be downgraded during the relevant Subscription Term.
- 9.2. There are two (2) options available in relation to payment of the Subscription Fees and the Customer will select their preference via the Order Form:
- (a) Payment by credit card. On or before the Subscription Start Date the Customer shall provide to the Payee valid, up-to-date and complete credit card details and other relevant contact and billing information requested by the Payee. The Customer hereby authorises the Payee to bill such credit card: (i) on or before the Subscription Start Date for the Subscription Fees payable in respect of the Initial Subscription Term, and (ii) subject to Clause 13.1, on each anniversary of the Subscription Start Date for the Subscription Fees payable in respect of the next Renewal Period in accordance with the Payment Schedule and Payment Terms. If the relevant Initial Subscription Term or Renewal Period is for one (1) year, the Customer may be given the option to split the Subscription Fees into four (4) equal quarterly instalments instead, and where this is agreed by the parties it shall be noted in the Order Form. In such a case the Customer hereby authorises the Payee to bill the first instalment on the Subscription Start Date or the anniversary of the Subscription Start Date (as applicable) and the subsequent instalments three (3) months later, six (6) months later and nine (9) months later respectively. Payment by quarterly instalments does not infer a quarterly subscription.
 - (b) Payment by bank transfer. On or before the Subscription Start Date the Customer shall provide to the Payee valid, up-to-date and complete contact and billing information as requested by the Payee, including approved purchase order information if applicable. Payee shall invoice the Customer: (i) on or before the Subscription Start Date for the Subscription Fees payable in respect of the Initial Subscription Term; and (ii) subject to Clause 13.1, at least thirty (30) days prior to each anniversary of the Subscription Start Date for the Subscription Fees payable in respect of the next Renewal Period in accordance with the Payment Schedule and Payment Terms. If the relevant Initial Subscription Term or Renewal Period is for one (1) year, the Customer may be given the option to split the Subscription Fees into four (4) equal quarterly instalments instead, and where this is agreed by the parties it shall be noted in the Order Form. In such a case the Payee shall invoice the Customer for the first instalment on the Subscription Start Date or at least thirty (30) days prior to the anniversary of the Subscription Start Date (as applicable) and the subsequent instalments at least thirty (30) days prior to the three (3) month, six (6) month and nine (9) month point of the relevant Initial Subscription Term or Renewal Period respectively. Payment by quarterly instalments does not infer a quarterly subscription. Unless otherwise stated in the Order Form, the Customer shall in all cases pay each invoice upon receipt of such invoice. Payment of each invoice shall be made by the Customer via bank transfer using the Payee bank account details stated on the invoice.
- 9.3. Customer is responsible for providing valid, complete and accurate credit card, billing and contact information to the Payee and notifying the Payee of any changes to such information.
- 9.4. If the Payee has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of the Supplier or the Payee:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services, and the Supplier shall be under no obligation to provide any or all of the Services while the amounts concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to four percent (4%) over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.5. All amounts and fees stated or referred to in the Agreement:

- (a) shall be payable in the currency stated on the invoice;
- (b) are, subject to Clause 12.3(b) and **Error! Reference source not found.**, non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Payee's invoice(s) and billed amounts at the appropriate rate where applicable.

9.6. The Supplier shall be entitled to increase the Subscription Fees and the fees payable in respect of the additional Subscriptions or an increase in the Tracking Cap purchased pursuant to Clause 3.3 at the start of each Renewal Period upon thirty (30) days' prior notice to the Customer and the Order Form shall be deemed to have been amended accordingly.

10. PROPRIETARY RIGHTS

The Customer acknowledges and agrees that as between the parties the Supplier owns all intellectual property rights in the Services. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any 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.

11. CONFIDENTIALITY

11.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the 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; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2. Subject to Clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.

- 11.3. 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 the Agreement.
- 11.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.6. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 11.7. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.8. No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.9. The above provisions of this Clause 11 shall survive termination of the Agreement, however arising.

12. LIMITATION OF LIABILITY

- 12.1. Except as expressly and specifically provided in the 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. No information, advice or services obtained by the Customer from the Supplier or through the Software shall create any warranty not expressly stated in these terms. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier 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 the Agreement; and
 - (c) the Services are provided to the Customer on an "as is" basis.
- 12.2. Nothing in the Agreement excludes the liability of the Supplier:
 - (a) for death or personal injury caused by the Supplier's negligence; or
 - (b) for fraud or fraudulent misrepresentation.

12.3. Subject to Clause 12.1 and Clause 12.2:

- (a) the Supplier 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, sales, business or revenue, loss of anticipated savings, loss of business opportunity or reputation, depletion of goodwill and/or similar losses, 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 the Agreement, whether or not such loss or damage is foreseeable, foreseen or known; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total Subscription Fees paid for the Subscriptions during the twelve (12) months immediately preceding the date on which the claim arose.

12.4. In the defence or settlement of any claim brought against the Supplier, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Agreement on two (2) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer beyond that provided at Clause 13.5.

12.5. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer for any claims, actions, proceedings, losses, damages, expenses or costs (including without limitation court costs and legal fees) to the extent that they arise out of or in connection with:

- (a) a modification of the Services by anyone other than the Supplier; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services after notice of an alleged or actual infringement of any intellectual property right, including any patent, copyright, trade mark, database right or right of confidentiality, or the Data Protection Legislation, whether from the Supplier or any appropriate authority.

13. TERM AND TERMINATION

13.1. The Agreement shall, unless otherwise terminated as provided in Clause 12.4, commence on the Subscription Start Date and shall continue until all Subscriptions hereunder have expired or have been terminated in accordance with this Clause 13. The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

13.2. Except as otherwise specified in an Order Form, the Subscription(s) will commence on the Subscription Start Date, continue for the Initial Subscription Term and thereafter automatically renew for successive Renewal Periods, unless:

- (a) either party notifies the other party of termination, in writing, providing notice of at least the Minimum Notice Period before the end of the Initial Subscription Term or any Renewal Period, in which case the Subscription(s) shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period notice period; or

- (b) the Subscription(s) are otherwise terminated in accordance with the provisions of the Agreement.

13.3. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) 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 fourteen (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 13.3(c) to Clause 13.3(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.

13.4. On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (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) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with Clause 5.5(e), unless the Supplier receives, no later than ten (10) days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (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 the Supplier in returning or disposing of 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.

13.5. In the event that the Subscription(s) are terminated part way through an Initial Subscription Term or Renewal Period and the Customer has paid for Services in advance which will no longer be supplied, no refunds will be given unless the Subscription(s) are being terminated under Clause 12.4, in which case the Supplier shall refund the Customer a pro rata amount that reflects the unused portion of the Services.

14. **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the 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 the Supplier 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.

15. **CONFLICT**

If there is an inconsistency between any of the provisions in these Terms and Conditions and the Order Form, the Order Form shall prevail.

16. **VARIATION**

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. **WAIVER**

No failure or delay by a party to exercise any right or remedy provided under the 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.

18. RIGHTS AND REMEDIES

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

19. SEVERANCE

- 19.1. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.
- 19.2. If any provision or part-provision of the Agreement is deemed deleted under Clause 19.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. ENTIRE AGREEMENT

- 20.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2. Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.
- 20.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

21. ASSIGNMENT

- 21.1. The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 21.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

22. NO PARTNERSHIP OR AGENCY

Nothing in the 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).

23. THIRD PARTY RIGHTS

- 23.1. This agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the

Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, except that the Payee may enforce Clause 8(a) and Clause 9 of this agreement.

23.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

24. **NOTICES**

24.1. Any notice required to be given under the 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 the Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Agreement.

24.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am 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 at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25. **GOVERNING LAW**

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.

26. **JURISDICTION**

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

SCHEDULE 1

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. PROCESSING BY THE SUPPLIER

1.1. SCOPE, NATURE AND PURPOSE OF PROCESSING

The scope, nature and purpose of the processing of personal data is the provision of Services to the Customer under the Agreement.

1.2. DURATION OF THE PROCESSING

The duration of the processing will correspond to the term of the Agreement.

2. TYPES OF PERSONAL DATA

Identity Data: First names, last names, and usernames and similar identifiers

Contact Details: Addresses, phone numbers, email addresses

Social Media Profile Data: Social media handle, social media posts in the form of photographs and videos posted on Instagram Stories

Transaction Data: Orders and payments

Financial Data: Bank account information, credit card details

Technical information: Information regarding Authorised Users' use of the Services, including login time and date, username and password, internet protocol (IP) address, browser type and version, operating system and platform]

Communications Data: Information regarding Authorised Users' communication preferences

3. CATEGORIES OF DATA SUBJECT

Customer employees (including casual or temporary workers), Customer subcontractor employees, and Instagram users with public profiles.