

## FACIA

### Terms and Conditions

#### 1. Definitions

Except to the extent expressly provided otherwise, in the Agreement:

"**Account**" means an account enabling the Client to access and use the Hosted Services, including both back-office account and the API account;

"**Affiliate**" means an entity that controls, is controlled by, or is under common control with the relevant entity;

"**Agreement**" means the applicable Sales Order and Privacy Policy (including any amendments made therein from time to time) together with these Terms and Conditions including any Schedules, exhibits or other attachments hereof;

"**Business Day**" and "**Business Hours**" means any weekday other than a bank or public holiday in the United Kingdom; and the latter means the hours of 09:00 to 17:00 GMT (or BST during summertime) on a Business Day;

"**Charges**" means the following amounts:

- a) The amounts specified in the applicable Sales Order for provision of Services; and
- b) Such amounts as may be agreed in writing by the parties from time to time.

"**Charging Method**" means the method of payment of Charges agreed between the Client and the Provider and specified as such on the applicable Sales Order. The Charging Method available for the Services are:

- a) Pre-paid billing: wherein the Client shall pay upfront for an agreed amount of Hosted Services usage; and
- b) Cyclic billing: wherein the Client shall pay periodically for agreed usage of Hosted Services after an agreed cycle of billing; usage above the agreed commitment shall be paid as per actual; usage below the agreed commitment shall not be rolled over, refunded, or adjusted in any following month.

"**Client**" means the client listed in the applicable Sales Order, acting as the 'Controller' herein;

"**Client Data**" means all data, works and materials uploaded to or stored on the Platform by the Client; transmitted by the Platform at the instigation of the Client; supplied by the Client to the

Provider for processing, 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 Client;

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

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

**"Confidential Information"** means the information disclosed by either party, in writing, orally or otherwise, marked as confidential or which should have been reasonably understood to be confidential by the party in receipt of such disclosure;

**"Controller"** has the meaning given to it under the GDPR;

**"Customization(s)"** means a customization of the Hosted Services, whether made through the configuration or integration of software or otherwise;

**"Data Protection Laws"** means all applicable laws relating to the processing, privacy, and/or use of Personal Data including the *Data Protection, Privacy, and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019*, the *Data Protection Act 2018*, the *GDPR*, and the *Privacy and Electronic Communications (EC Directive) Regulations 2003*, including any laws that replace, extend, re-enact, consolidate, or amend any of the foregoing;

**"Documentation"** means any and all API documentation detailing the functions, classes, return types, arguments or any other information provided to effectively use the Hosted Services;

**"EEA"** means the European Economic Area including the UK;

**"Effective Date"** means the date of execution of the applicable Sales Order by the parties incorporating these Terms and Conditions;

**"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 the Agreement;

**"Force Majeure Event"** means any event beyond the reasonable control of a party (including a party's Affiliates and/ or subcontractors) including, but not limited to, the following: acts, events, omissions, or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs, or other industrial disputes, 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, epidemic or pandemic, or default of sub-contractors, to the extent that such event has

materially affected the ability of the party relying on the Force Majeure Event to perform its obligations in accordance with the terms of the Agreement;

“**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679), including the version of the same transposed into the UK law pursuant to the *European Union (Withdrawal) Act 2018*;

**"Hosted Services"** means online facial verification & OCR services deployed on Client's infrastructure as specified in the Hosted Services Specification, which will be made available by the Provider to the Client as a service via the internet in accordance with the Agreement;

**"Hosted Services Defect"** means a defect, error or bug in the Platform having an adverse effect on the appearance, 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 Client or any person authorized by the Client to use the Platform or Hosted Services; b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Client or by any person authorized by the Client;
- c) a failure of the Client to perform or observe any of its obligations in the Agreement;
- 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; and/or e) Client's failure to implement corrections to the Hosted Services Defect.

**"Hosted Services Specification"** means the specification for the Platform and Hosted Services as set out in Schedule1 and in the Documentation;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or un-registrable, registered or unregistered, including any application or right of application for such rights (including, without limitation, copyright and related rights, database rights, confidential information, trade secrets, know how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Personal Data"** has the meaning given to it under the GDPR;

**"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;

“**Processor**” has the meaning given to it under the GDPR;

"**Product(s)**" means any or all of the Services as are specified in the Agreement and may include the onsite or offsite Face liveness, Facial recognition

"**Provider**" means the party providing Hosted Services and listed as such in the applicable Sales Order, acting as a Processor herein;

"**Sales Order**" means, irrespective of its title, a cover document that sets out details of Services to be provided, duration of the Agreement, payment of Charges, and the applicable Charging Method, incorporating these Terms and Conditions signed by, and binding on, both parties;

"**Schedule**" means any schedule attached herein which form an integral part of these Terms and Conditions;

"**Services**" means any services that the Provider provides to the Client under the Agreement;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services in accordance with Provider's support policy, but shall not include the provision of training services;

"**Supported Web Browser**" means the browsers specified by the Provider for onsite or offsite verifications, and may include the current or latest release, from time to time, of Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider notifies to the Client in writing;

"**Term**" has the meaning given to it in the applicable Sales Order;

"**Termination for Cause**" means, subject to Clause 13, where the Agreement is terminated if either party (i) commits an act of misconduct involving dishonesty or breach of trust; (ii) willfully engages in conduct that is in bad faith and materially injurious to the other party including, but not limited to, misappropriation of Confidential Information, fraud or embezzlement; or (iii) commits a material breach of the Agreement;

"**Third Party Services**" means any or all Products or Services ancillary to the Hosted Service(s) and may include any Products or Services provided by the Provider's sub-processors;

"**UK**" means the United Kingdom;

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

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

"**US\$**" means the currency/Dollar of United States of America; and

“€” means the Euro currency used in majority countries of the European Union.

## 2. Hosted Services

- 2.1. An order for Hosted Services - deployed on the Client’s infrastructure must be placed using a Sales Order. The Provider shall prepare the Sales Order to reflect description of the type, particulars of the Product(s) being purchased, the applicable fees, the Charging Method and any other terms or conditions incidental to that Sales Order.
- 2.2. A Sales Order shall only be effective and binding when signed by both the parties.
- 2.3. Subject to Clause 2.4 and Clause 6.3, the Term shall renew, under the present Terms and Conditions or amendments thereof applicable at the time of renewal, for a further duration (of the Term) unless otherwise agreed between the parties in writing.
- 2.4. Where the Client has breached any of the terms of the Agreement during the Term, a renewal is subject to Provider’s express written consent and confirmation.
- 2.5. Subject to the terms and conditions set forth in this Agreement, the Provider grants to the Client a limited, non-exclusive, non-transferable, sub licensable, revocable, Term-limited license solely for access by means of an on-premises deployed Web Browser for the use by Client in accordance with the Documentation during the Term.
- 2.6. Except to the extent expressly permitted in this Agreement, the limited license granted by the Provider to the Client herein is subject to the following prohibitions:
  - 2.6.1. the Client must not resell
  - 2.6.2. the Client must not permit any unauthorized person to access or use the Hosted Services; (c) the Client must not republish or redistribute any content or material from the Hosted Services; and (d) the Client must not make or attempt to make any alteration to the Platform.
- 2.7. The Client shall use reasonable security measures to ensure that no unauthorized person may gain access to the Hosted Services.
- 2.8. The parties acknowledge and agree that Schedule 2 shall govern the availability of the Hosted Services.

- 2.9. The Client acknowledges that the Provider shall not be responsible for any data communicated to or transmitted to the Hosted Services. The Client shall use the Hosted Services exclusively for authorized and legal purposes consistent with all applicable laws, regulations and any acceptable use policy the Provider may make part of these Terms and Conditions from time to time.
- 2.10. All Intellectual Property Rights in the Hosted Services and the Documentation belong to, and shall remain vested in, the Provider, and the Client shall have no rights in or to the Software, the Documentation, or the Services other than the right to use them in accordance with the terms of this agreement. This Agreement does not grant the Client any rights to, or in, whether registered or unregistered, any patents, copyright, database right, trade secrets, trade names, trademark, or any other rights or licenses in respect of the Services or the Documentation. The Client agrees that it will not (a) modify, copy, decompile, disassemble, or reverse engineer, or cause any other party to modify, copy, decompile, disassemble, or reverse engineer Provider's software, technology, and/or other services; any of Provider's Intellectual Property Rights to third parties or sell, resell, rent, sublicense, or lease the Services to third parties; (c) otherwise violate the license grant or restrictions set forth herein; (d) use the Services to store or transmit malicious code; (e) interfere with or disrupt the integrity or performance of the Services, Provider's operations, or third-party's data contained therein, either directly or using third party technology; (f) alter, copy, move, or delete any tags or codes placed as part of the Services; (g) misappropriate any of Provider's software, technology, or other services; (h) use, permit, enable, or assist any third party to use the Services to create competing products or services.
- 2.11. The Client 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. The Client 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.
- 2.12. For the avoidance of doubt, the Client has no right to access any software code (including object code, intermediate code and/or source code), either during or after the Term.

- 2.13. All rights not expressly licensed to the Client herein are reserved by the Provider including, without limitation, all ownership and proprietary rights in Provider's technology and the Services. The Client acknowledges and agrees that Client's rights, in and to, Provider's Intellectual Property Rights including its technology and Services are limited to the license rights set forth herein. The Client shall never claim ownership or proprietary rights in Provider's technology or Services. All Intellectual Property Rights in any Customizations designed, developed, or implemented in accordance with the Agreement between parties shall always be the exclusive property of the Provider. The Client is not permitted to change or modify Provider's Intellectual Property Rights. Without limiting the foregoing, in the event of any change, modification, extension, or correction thereof, the Client hereby irrevocably assigns to Provider by way of present and future assignment with full title guarantee, any and all rights it may be deemed to have in any such change, modification, extension, or correction, and agrees to execute all documents necessary to implement and effect such assignment. To the extent that the Client is unavailable or unwilling to execute such documents then the Client hereby appoints the Provider as its attorney in fact for the purpose of executing the forgoing assignment(s).
- 2.14. The Client shall not (i) misappropriate any of the Provider's software, technology, or other services; (ii) use, permit, enable, or assist any third party to use the Services to create competing products or services; or (iii) use or modify any of Provider's Intellectual Property Rights unless otherwise agreed to by the Provider in a signed writing.

### **3. Additional Client Obligations**

- 3.1. Save to the extent that the parties have agreed otherwise in writing, the Client must provide to the Provider, or procure for the Provider, such cooperation, support and advice; and information and documentation as may be required from time to time for compliance with any applicable laws including the Data Protection Laws.
- 3.2. The Client shall ensure that the Client Systems are compatible with or support the Hosted Services, and continue to comply, throughout the Term with the requirements of Schedule 1 in all material respects, subject to any changes agreed in writing by the Provider.
- 3.3. The Client shall not, under any circumstances, white-label, resell, or pass off the Hosted Services without express written agreement with the Provider which may be subject to due discussions and negotiations.

3.4. The Client shall (a) as required by the Applicable Laws, provide notice to third parties about how data will be used and shared with the Provider and its downstream processors; (b) obtain and maintain valid consents for Provider to process third party data as required for use by the Provider in Client's privacy policy or as otherwise required; (c) not use the Services for unlawful, obscene, offensive, or fraudulent content or activity, such as sending unsolicited, abusive, or deceptive messages, viruses or harmful code, or violating third party rights; (d) be responsible for its employees, consultants, and agents that use the Hosted Services; (e) use the Hosted Services in compliance with all Applicable Laws. For purposes of this clause, "Applicable Laws" shall mean all laws, rules, regulations, treaties, and similar governmental obligations, including local, national and multinational laws, that are applicable to the party as the context requires.

#### 4. **Client Personal Data**

4.1. The Client warrants to the Provider that the Client Personal Data, when used by the Provider in accordance with the 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.

4.2. **Use of Material:** Upon receipt of signatures, the Service Provider may use the other Client name, trade name, trademark, and icons (collectively, the "Brands") for certain marketing and promotional purposes i.e., website, emails, case study etc. All use of Client's Brands by the Service Provider shall inure to the benefit of the Client owning the Brand. Notwithstanding the foregoing, the Client agrees that Provider may use Client's Brands for the purposes stated.

#### 5. **Integrations with Third Party Services**

5.1. The Client consents to integration of the Hosted Services with Third Party Services in order to provide a full set of Hosted Services.

5.2. The Provider may remove, suspend, or limit any Third-Party Services integration at any time in its sole discretion.

5.3. The Client acknowledges that the integration of Third-Party Services may entail the transfer of Client Data from the Hosted Services to the relevant Third Party Services.



## 6. Payments

- 6.1. The Client agrees to pay the Charges and fees set forth in the Sales Order in accordance with the payment terms set out. The Charges will be invoiced as set forth in the applicable Sales Order according to the agreed Charging Method which the Client shall pay to the Provider within a period of seven (7) days to allow for processing of payment and verification of supplier by the bank days following the issue of an invoice by the Provider.
- 6.2. If the Client does not pay the amount to the Provider as per the Clause 6.1 due to any reason whatsoever (including circumstances of an invoice being disputed by either party), the Provider may:
- a. charge the Client an interest on the overdue amount at the rate of eight percent (8%) per annum over and above the Bank of England's prevalent base rate from time to time (which interest shall accrue daily until the date of actual payment and be compounded at the end of each calendar month); unless this is tied to service interruption or defect from the provider;
  - b. claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; or
  - c. suspend the Services until the Client has paid the Charges (including any accrued interest, if any) or a resolution in writing has been reached between the parties.

*The Client acknowledges that any suspension shall not reduce or negate the Client's obligation to pay any unpaid Charges.*

- 6.3. The Client acknowledges and agrees that, in case of pre-paid billing, any unused or unprocessed balance in the Client's account on the last day of each Term shall automatically expire at the end of each Term and the Client shall, (i) neither be entitled to a refund or credit of the same (ii) nor will the Client be entitled to rollover any unused or unprocessed balance into any extended Term (or another or future agreement/arrangement with the Provider) unless the Client pays twenty-five percent (25%) of the unused or unprocessed balance (this percentage of the amount will not be added to the rolled-over amount).

## 7. Confidentiality Obligations

- 7.1. The parties understand and agree that in connection with the negotiation and performance of this Agreement, each party may have had or have access to or may have been or be exposed to, directly or indirectly, private or Confidential Information of the other party including, but not limited to, trade secrets, computer

programs and code, scripts, algorithms, features and modes of operation, inventions (whether or not patentable), techniques, processes, methodologies, schematics, testing procedures, software design and architecture, design and function specifications, analysis and performance information, documentation, details of its products and services, as well as names and expertise of, and information relating to, vendors, employees, consultants, customers and prospects, know-how, ideas, and technical, business, pricing information, financial and marketing information and strategies and any other information that the receiving party reasonably should know is confidential. Both parties shall:

- a. keep the other party's Confidential Information strictly confidential using the same degree of care to protect the other party's Confidential Information as that party uses to protect its own Confidential Information of a similar nature;
  - b. not disclose the other party's Confidential Information to any person without that other party's prior written consent, and even then, only under conditions of confidentiality approved in writing by the party whose Confidential Information is being disclosed;
  - c. act in good faith at all times in relation to the other party's Confidential Information; and d) not use any of the other party's Confidential Information except for the purpose it was divulged to the receiving party.
- 7.2. Notwithstanding Clause 7.1, a party's Confidential Information may be disclosed by the receiving party to its 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 the Agreement and who are bound by a written agreement or any executed non-disclosure agreement to protect the confidentiality of the disclosed Confidential Information.
- 7.3. No obligations are imposed by this Clause 7 with respect to a party's Confidential Information if that Confidential Information:
- a. is available to a party on a non-confidential basis from a source that is not and was not bound by a confidentiality agreement with respect to the Confidential Information;
  - b. at the time of the disclosure or thereafter is lawfully obtained from publicly available sources generally known by the public (other than as a result of a disclosure by the receiving party or its representative); or
  - c. has been independently acquired or developed by a party without violating its obligations under this Agreement or under any applicable law, or is obtained by either 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.

- 7.4. The restrictions in this Clause 7 do not apply to the extent if 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 recognized stock exchange.
- 7.5. Upon the termination of the Agreement, each party must immediately cease to use the other party's Confidential Information; within thirty (30) days to allow for substitution of product Business Days following the date of receipt of a written request for termination from the other party, the relevant party shall destroy or return to the other party (at the other party's option) all media, tangible or intangible, containing the other party's Confidential Information, and must delete or destroy the other party's Confidential Information.
- 7.6. The provisions of this Clause 7 shall continue in force for five (5) years following the termination of the Agreement.
- 7.7. The parties shall not make any public disclosures relating to the Agreement or the contents of the Agreement (including disclosures in press releases, public announcements, and/or marketing materials) without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed.

## **8. Data Protection**

- 8.1. Each party shall comply with the Data Protection Laws with respect to the processing of the Personal Data under the Agreement and the Provider shall only process the Client Data on the documented instructions of the Client as set out in the Agreement or any other document agreed by the parties in writing.
- 8.2. Notwithstanding any other provision of the Agreement, the Provider may process the Client 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 Client of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 8.3. The Client warrants to the Provider that it has the legal right to disclose all Personal Data to the Provider under or in connection with the Agreement, moreover, the Client shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, the Personal Data of data subjects falling

within the categories and of the types specified in Sales Order; and the Provider shall only process the Client Data for the purposes specified in Schedule 5.

- 8.4. The Provider shall only process the Client Data during the Term and afterwards for the periods required by the applicable law subject to the other provisions of this Clause 8.
- 8.5. The Provider shall ensure that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 8.6. The Provider and the Client shall each implement appropriate technical and organizational measures to ensure an appropriate level of security for the Client Data, including those measures specified in Schedule 5.
- 8.7. The Provider is hereby authorized by the Client, as at the Effective Date, to engage third parties to process the Client Data. The Provider shall inform the Client at least fourteen (14) days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Client objects to any such changes before their implementation, the Client may terminate the Agreement on seven (7) days' written notice to the Provider, providing that such notice must be given within the period of the seven (7) days following the date that the Provider informing the Client 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.
- 8.8. The Client acknowledges that the Client Data may be transferred outside the EEA in connection with exercise of this Agreement, SSCs and that the appropriate consents (from any user(s) or end-user(s)) for any such potential transfer shall be acquired by the Client. For this, the Provider may also require a separate data processing agreement to be entered into with the Client as and when required by the applicable Data Protection Laws.
- 8.9. The Provider shall assist the Client 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, prior consultation in relation to high-risk processing, and fulfillment of the Client's obligation to

respond to requests exercising a data subject's rights under the Data Protection Laws.

- 8.10. If any changes or prospective changes to the Data Protection Laws results in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data as set out under the Agreement, then the parties shall promptly use their best endeavors to agree such variations to the Agreement as may be necessary to remedy such non-compliance.

## 9. Warranties

- 9.1. Each party represents and warrants to the other party that, to the best of its knowledge:
- a. the signatory signing this Agreement on its behalf has the right to sign this Agreement;
  - b. this Agreement does not and shall not conflict with any other agreement entered into by it; and

Except for the foregoing warranties, and to the fullest extent permissible under the applicable law, both parties disclaim all representations and warranties, express or implied, concerning or related to this Agreement including, but not limited to, any implied terms concerning satisfactory quality, fitness for a particular purpose and reasonable care and skill. The Provider does not warrant, guarantee, or make any representations regarding the use, the results of the use, or the benefits of the services, or any information contained therein or otherwise provided pursuant to this Agreement, except as expressly provided herein. No personnel of the Provider is authorized to make any expansion, modification, or addition to this limitation or the exclusion of representations, warranties, and other terms in this Agreement. In the event of any breach of the representations and warranties contained in this Agreement (save for any fraudulent misrepresentation), the sole and exclusive liability of the breaching party shall be to use commercially reasonable efforts to promptly correct such breach.

- 9.2. The Provider warrants to the Client that:
- a. the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfillment of the Provider's obligations under the Agreement;
  - b. the Platform will incorporate security features reflecting the requirements of good industry practice: and

- c. that the Hosted Services or on-premise services (which need to be defined), when used by the Client in accordance with the Agreement, will not breach any laws, statutes, or regulations applicable under the English law and will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

9.3. The Client acknowledges that:

- a. use of the Hosted Services / on-premise services is at the Client's sole risk, that the Provider cannot and does not warrant that the service will meet all requirements of the Client, or that the operation of the Hosted Services will be uninterrupted or error-free.
- b. the Hosted Services on-premise and anything related thereto are provided "as is" and "as available", with all faults and without warranty of any kind, and Provider hereby expressly disclaims all warranties and conditions with respect to the Hosted Services and anything related thereto, either express, implied or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, of satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment, and of non-infringement of third party rights. No oral or written information or advice given by the Provider, or its Affiliate shall mean or intend to create a warranty, express or implied.
- c. complex software is never wholly free from defects, errors, bugs etc. nor entirely free from security vulnerabilities; and subject to the other provisions of the Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure or that the Hosted Services will be wholly free from defects, errors and/or bugs or that such defects shall be corrected promptly by the Provider;
- d. the Hosted Services / on-premise 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.
- e. the Provider may not be able to ensure exactly 100% accuracy in results or go by the sharp 15-second verification time; these figures may vary slightly as the verification process can be delayed owing to heavy website traffic or the clarity of the verification document.
- f. the payment of Charges shall not depend on the use or non-use of the Hosted Services and all the Charges once committed are payable, non-refundable, non-cancellable, and irrevocable except as otherwise provided in the applicable Sales Order.

- g. it has had the opportunity to obtain independent legal advice in connection with the execution of this Agreement and has read this Agreement in its entirety, understands its contents, and is signing this Agreement freely and voluntarily, without duress or undue influence on the Client from the Provider or any other party.

9.4. The Client acknowledges that since Personal Data of its consumers or end-users will be provided to the Provider for processing, the Client warrants to be solely responsible to obtain or acquire its consumers' or end-users' consent, to ensure any compliance with Data Protection Law, before passing the Personal Data to the Processor. In such a case, the Client shall maintain and enforce a privacy policy which is in line with the Data Protection Laws.

9.5. All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the Agreement.

## **10. Client Indemnities**

The Client 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 Client. Further, the Client shall:

- a. provide to the Provider all such assistance as may be reasonably requested by the Provider;
- b. allow the Provider, when the Provider so requires, the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties; and
- c. not admit liability to any third party or settle any disputes or proceedings involving a third party without the prior written consent of the Provider, and the Provider's obligation to indemnify the Client shall not apply unless the Client complies with the requirements of this Clause.

## **11. Limitations and Exclusions of Liability**

- 11.1. This clause 11 sets out the entire financial liability of the Provider (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Client:
- a. arising under or in connection with this Agreement (including under any indemnity);
  - b. in respect of any use made by the Client of the Hosted Services and Documentation or any part of them; and

- c. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

Nothing in the agreement shall limit or exclude

- i. any liability for death or personal injury resulting from negligence;
- ii. any liability for fraud or fraudulent misrepresentation;
- iii. any liabilities in any way that are not permitted under applicable law;
- iv. any liabilities that may not be excluded under applicable law; or
- v. breach of any restrictions mentioned at Clause 2.7 to Clause 2.14 inclusive (except Clause 2.9).

11.2. Subject to Clause 11.1:

- a. the Provider shall not be liable whether in contract (including under any indemnity), tort (including for negligence or breach of statutory duty), misrepresentation, restitution, or otherwise under or in connection with this Agreement for:
  - i. any loss of profits, loss of business, loss of anticipated savings, loss of business opportunity, depletion of goodwill, or loss or corruption of data or information or similar losses (in each case, whether direct or indirect); or
  - ii. any special, direct or indirect, or consequential loss, costs, damages, charges or expenses;
- b. the Provider's total aggregate liability (in respect of any event or series of related events) in contract (including under any indemnity), tort (including negligence or breach of statutory duty), misrepresentation, restitution, or otherwise under or in connection with this Agreement shall not exceed the lesser of:
  - i. US\$ 5,000; or
  - ii. the total amount paid or payable by the Client to the Provider under the Agreement in the 3-month period preceding the commencement of the event or events.

11.3. 11.3 The Client shall not be liable to the Provider in respect of any losses arising out of a Force Majeure Event; loss of profits, income, revenue, or business opportunities; any special, indirect, or consequential loss or damages.

## 12. Force Majeure Event



- 12.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 12.2. 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 the Agreement must promptly notify the other party and inform the other party of the period for which it is estimated that such failure or delay will continue.
- 12.3. A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.
- 12.4. No Force Majeure Event shall prevent the Client to pay the Charges agreed herein.

### 13. **Term and Termination**

- 13.1. Subject to other clauses herein, the Agreement shall commence in full force and effect on the Effective Date for duration of the Term and shall automatically renew for a period equivalent to the Term unless terminated in accordance with the provisions herein.
- 13.2. The Agreement shall stand terminated if either party gives to the other party a thirty (30) days prior written notice of termination.
- 13.3. Either party may terminate the Agreement for cause (the “**Termination for Cause**”) by giving the other party a written notice within fourteen (14) days of establishing the breach and notifying them to remedy such breach within seven (7) days of the notifying of the breach. If the affected party fails to notify the party-in-breach within seven (7) days of the establishment or if the party-in-breach fails to remedy the said breach within the stated fourteen (14) day period, the Agreement shall stand terminated.

### 14. **Effects of Termination**

- 14.1. Upon the termination of the Agreement, all of the provisions of the Agreement shall cease to have effect, and all licenses and user rights granted under this Agreement shall immediately terminate and the Client shall, and shall procure that all authorized users shall, immediately cease all use of the Hosted Services and/or the Documentation, and the Provider may remotely disable the Client’s access to the

Hosted Services, save that the following provisions of the Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 6, 7, 8, 9.3, 10, 11, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24 and 25. Each party shall return and make no further use of any equipment, property, Documentation (in the case of the Client), and other items (and all copies of them) belonging to the other party. However, this does not apply if there was termination without cause by the Provider. There shall be no termination without cause or interruption of service without cause.

- 14.2. If the provider terminates this agreement without cause they shall refund the client the remaining paid amount of the balance and allow for 60 days in order for the client to find an alternative solution as well as pay 8% annually for all Paid and consumed amounts.
- 14.3. Except to the extent that the Agreement expressly provides otherwise, 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 this Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 14.4. Without prejudice to the parties' other legal rights, within fifteen (15) days following the termination of the Agreement, the Provider shall be entitled to receive from the Client all Charges, fees, and expenses accrued or incurred under this Agreement up to the date of termination, and the Client shall pay to the Provider any outstanding, due, or agreed Charges in respect of Hosted Services (whether or not taken or delivered) provided to the Client before the termination of the Agreement (i-e until the last day this Agreement remains in effect). This is not applicable however to termination without cause.
- 14.5. In case of Termination for Cause, the Provider shall refund, subject to Clause 14.3, any Charges paid by the Client to the Provider in respect of Services that were to be provided to the Client during the remainder Term.

## **15. Non-Solicitation of Personnel**

The Client shall not, without the prior written consent of the Provider, either during the Term or within the period of six (6) months post-termination or within six (6) months following the end of the Term, engage, employ or solicit for engagement or employment any employee, subcontractor etc. of the Provider who has been involved in any way in the negotiation or performance of the Agreement. Notwithstanding the foregoing, both parties agree that each party may publicly post job offerings in the normal course of business, and such posting and any

employment or engagement resulting therefrom shall not breach the prohibitions in this paragraph.

## **16. Notices**

- 16.1. Any notice given under the Agreement must be in writing, whether described as "written notice" in the Agreement or otherwise.
- 16.2. Any notice given by either party under the Agreement must be sent by email using the relevant contact details which may be updated from time to time by a party giving written notice of the update to the other party.
- 16.3. A party receiving from the other party a notice via email must acknowledge receipt by email promptly, and in any event within three (3) Business Days.

## **17. Subcontracting**

- 17.1. To the extent otherwise stated herein, neither party shall subcontract any of its obligations under the Agreement without the prior written consent of the other party, provided that the other party must not unreasonably withhold or delay the giving of such consent.
- 17.2. Notwithstanding the provisions of this Clause 17, but subject to any other provision of the Agreement, the Client acknowledges and agrees that the Provider may subcontract the performance of any part of the Hosted Services to a reputable third party in pursuance of Clause 5, this however must be done after written approval from the Client.

## **18. Assignment**

- 18.1. Neither party shall assign, transfer or otherwise deal with its contractual rights and/or obligations under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, provided that the Provider may assign the entirety of its rights and obligations under the Agreement to any Affiliate of the Provider or to any successor, all or a substantial part of the business of the Provider from time to time.
- 18.2. Nothing in the Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Client, or from the Client to the Provider.

18.3. Either party shall remain responsible to the other party for the performance of any assigned obligations.

**19. No waivers**

19.1. No breach of any provision of the Agreement shall be waived except with the express written consent of the party not in breach.

19.2. No waiver of any breach of any provision of the 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 the Agreement.

**20. Severability**

20.1. If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions shall continue in full force and effect.

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

**21. Third Party Rights**

21.1. The Agreement is for the benefit of the parties and is not intended to benefit or be enforced by any third party.

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

**22. Variation**

The Agreement may not be varied except by means of a written document signed by or on behalf of both parties.

**23. Entire Agreement**

23.1. The Agreement shall constitute the entire agreement between the parties in relation to the subject matter, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of the subject matter.

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

23.3. The provisions of this Clause 23 are subject to Clause 11.

#### **24. Law and Jurisdiction**

24.1. The Agreement shall be governed by and construed in accordance with the laws of England and Wales.

24.2. Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts in London, England.

#### **25. Interpretation**

25.1. The headings of the Clauses herein are for reference only and shall not affect the interpretation of any of the terms of the Agreement.

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

**SCHEDULE 1 (On-Premises Services Particulars)****1. Specification of Hosted Services**

Liveness Detection, Face Matching, Passport Detection & OCR services using the power of AI to prevent identity theft. This is an on-premises deployment on Client's infrastructure.

**2. Client Systems**

Clients may integrate with their website or smartphone applications.

**3. Financial Provisions**

Regardless of any other clause herein, the Agreement shall only become effective on payment, to the Provider, of the setup fee and/or any other Charges as provided for in the applicable Sales Order.

**4. Representatives**

The Client shall ensure that all instructions given by the Client in relation to the matters contemplated in the Agreement will be given by a Client Representative to a Provider Representative, and the Provider:

- a. may treat all such instructions as the fully authorized instructions of the Client; and
- b. may decline to comply with any other instructions in relation to that subject matter.

**5. Contractual Notices**

For any contractual notices, the Client shall communicate with the Provider at: [legal@facia.ai](mailto:legal@facia.ai)

## **SCHEDULE 2 (Availability SLA)**

### **1. Introduction to Availability SLA**

1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Services. 1.2 In this Schedule 2, "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 Provider.

### **2. Availability**

2.1 The Provider shall use all reasonable endeavors to ensure that the uptime for the 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.

2.3 The Provider shall report each calendar month's uptime measurements to the Client in writing, only upon Client's written request, within ten (10) Business Days following such request from the Client.

### **3. Exceptions**

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 Paragraph 2.1:

- a. a Force Majeure Event;
- b. a fault or failure of the Client's computer systems or networks;
- c. any breach by the Client of the Agreement; or
- d. scheduled maintenance carried out in accordance with the Agreement.

### **SCHEDULE 3 (Maintenance SLA)**

#### **1. Introduction**

This Schedule 3 sets out the service levels applicable to the Maintenance Services.

#### **2. Scheduled Maintenance Services**

2.1. The Provider shall, where practicable, give to the Client at least ten (10) Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact on the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

2.2. The Provider shall ensure, to the extent possible, to provide all scheduled Maintenance Services outside Business Hours.

#### **3. Updates**

3.1. The Provider shall give to the Client a written notice of the application of any security Update to the Platform and at least fourteen (14) Business Days' prior written notice of the application of any non-security Update to the Platform.

3.2. The Provider shall apply Updates to the Platform as follows:

- a. third party security Updates shall be applied to the Platform promptly following release by the relevant third party, provided that the Provider must act reasonably to decide not to apply any particular third party security Update;
- b. the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
- c. other Updates shall be applied to the Platform in accordance with any timetable notified by the Provider to the Client or agreed by the parties from time to time.

#### **4. Upgrades**

4.1. The Provider may produce Upgrades at least once in each calendar year during the Term.

4.2. The Provider shall give to the Client at least ten (10) Business Days' prior written notice of the application of an Upgrade to the Platform.

4.3. The Provider shall apply each Upgrade to the Platform within any period notified by the Provider to the Client or as agreed by the parties in writing.



## **SCHEDULE 4 (Support SLA)**

### **1. Introduction**

This Schedule 4 sets out the service levels applicable to the Support Services.

### **2. Help Desk**

- 2.1. The Provider shall make available to the Client all the time (24 hours each day) an help desk for support in accordance with the provisions of this Schedule 4.
- 2.2. The help desk support shall be charged separately per month other than the billing.
- 2.3. The Client may use the help desk for the purposes of requesting and, where applicable, receiving the Support Services; and the Client must not use the help desk for any other purpose.
- 2.4. The Provider shall ensure that the help desk is accessible through email, by use of Provider's web-based chat, and, if these are not available, through telephonic (or Skype) call.
- 2.5. In addition, the Provider shall provide a telephone number for the Client to report critical issues outside of Business Hours.
- 2.6. The Client shall ensure that all requests for Support Services that it may make shall be made through the help desk.

### **3. Response and Resolution**

- 3.1. Issues raised through the Support Services shall be categorized as follows:
  - a. High: Hosted Services (on-premises) are inoperable or a core function of the Hosted Services is unavailable or malfunctioning (such as passing replays as live)
  - b. Medium: Hosted Services (on-premise) are inoperable or a core function of the Hosted Services has severe restricted functionality.
  - c. Low: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired.
- 3.2. The Provider shall determine, acting reasonably, into which category an issue falls.
- 3.3. The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable/timeline for action in relation to the request.

#### 4. Support Levels

Support Type	Response	Resolution Time
Basic	Normal	2 Business Days
	Urgent	1 Business Day
Priority	Normal	1 Business Day
	Urgent	4 Business Hours

#### 5. Provision of Service Support

The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing

#### 6. Limitations on Support Services

6.1. Regardless of the Support Type the Client has opted for, the total Business Hours spent by the personnel of the Provider providing the Support Services during any calendar month exceeds twenty (20) then:

- (a) the Provider will cease to have an obligation to provide Support Services to the Client during the remainder of that calendar month;
- (b) the Provider may agree to provide Support Services to the Client during the remainder of that calendar month, but the provision of those Support Services may be subject to additional Charges.

This is not applicable in case the hours were consumed due to reported cases of defects or bugs from the provided services.

6.2. The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

- (a) the improper use of the Hosted Services by the Client; or
- (b) any alteration to the Hosted Services made without the prior consent of the Provider.

**SCHEDULE 5 (DATA PROCESSING INFORMATION)****1. Categories of Data Subject**

- a) Client's Face data

**2. Purposes of Processing**

All Personal Data will be used to perform identity verifications and spoof checks.

**3. Security Measures for Personal Data**

All the data is transmitted over Secure Sockets Layer (SSL) and stored in secure data centers which are SSAE compliant and ISO certified. All personal information is securely stored using either AES 256-bit or SHA-256 cryptographic hash algorithm for maximum protection; TLS encryption for data encryption while the same is in transition.