

General Terms and Conditions

This agreement was last updated on 16th January 2023.

This agreement is between **GAMES WITHOUT FRONTIERS LIMITED** a limited liability company registered in Scotland (Registration No: SC558738) whose registered office is at Mount Parnassus, Harlaw Road, Currie, Edinburgh, Scotland EH14 6AS trading as GingrTech (“**GingrTech**”) and you (“**the Customer**”). You must be at least 18 years old to accept these Terms and Conditions, if you are not 18 years old then you cannot enter into a contract with us and cannot become a Customer. By clicking “Accept” to these Terms and Conditions, the Customer wishes to be bound by these Terms and Conditions. If the Customer does not agree to be bound by these Terms and Conditions, the Customer cannot order or use any Subscription Services. By completing and submitting an Order, the Customer is making a contractual offer to GingrTech which GingrTech is in its entire discretion entitled to either accept or reject. If GingrTech elects to accept the offer, GingrTech will send to the Customer an Order Confirmation which will conclude the contract between GingrTech and the Customer relating to the Subscription Services and any Professional Services listed in the Order. The contract (“**Agreement**”) between The Customer and GingrTech will comprise:

1. these Terms and Conditions;
2. the Order(s);
3. the Order Confirmation;
4. the Privacy Policy which is available here <https://gingr.tech/privacy-policy/> and;
5. the SLA which is available here <https://gingr.tech/service-level-agreement-sla/>

If there is any conflict between the terms of the Order and these Terms and Conditions, then the terms of the Order will prevail. The elements of the Contract will have precedence as follows:

1. the Order(s) in reverse chronological order;
2. these Terms and Conditions;
3. the Privacy Policy;
4. the SLA.

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PART ONE - SUBSCRIPTION SERVICES

1. Access to the Subscription Services.

GingrTech grants to the Customer a non-exclusive, royalty based, and where applicable sublicensable (as provided in Clause 8), term licence to use and sub-license the Subscription Services for the Customer's internal business purposes and for sale/licence to or use by Clients for the duration of this Agreement, subject to the following conditions:

1.1 The Subscription Services are located on the Platform. GingrTech has full administrative access rights to the Platform. Users may access the Subscription Services but have no right to administer the Platform or receive a copy of the object code or source code to the Software.

1.2 Users must have a reasonable speed Internet connection, and hardware and software that is compatible with the Subscription Services, as set out in the Documentation. None of these things are GingrTech's responsibility.

1.3 GingrTech may periodically Upgrade and Update the Services, in order to provide Users with a greater, evolving user experience. Some of these changes shall occur automatically, while others may require the Customer to schedule and implement the changes. The changes may also mean that Users need to upgrade their equipment in order to make efficient use of the Subscription Services. GingrTech shall provide the Customer with reasonable notification in advance in this case.

1.4 GingrTech recognises that the Customer may have legitimate business reasons for not Upgrading to a new version of the Subscription Services as soon as the version becomes available. However, GingrTech will not support old versions indefinitely. When an old version used by the Customer is at end-of-life or at GingrTech's discretion, GingrTech may remove the Customer's access to that version and Upgrade the Customer to a new version.

1.5 GingrTech has all required distribution rights to the Intellectual Property in the Software and the Documentation.

1.6 GingrTech shall be under no liability to the Customer in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of Force Majeure.

2. Conditions of Use

The Subscription Services provided to the Customer are non-exclusive, non-transferable (except as provided in Clause 8), and are for the Customer's internal business use only. The Customer's right to use the Subscription Services is subject to the following conditions: The Customer shall not:

2.1 Transfer to any other person any of its rights to use the Subscription Services;

2.2 Sell, license, rent or lease the Subscription Services except as provided for in this Agreement;

2.3 Make the Subscription Services available to anyone who is not a User;

2.4 Create any derivative works based upon the Subscription Services or Documentation;

2.5 Copy any feature, design or graphic in, or reverse engineer the Software (including without prejudice to the foregoing generality the graphical user interface and menu command hierarchy);

2.6 Access the Subscription Services (i) in order to build a competitive solution or to assist someone else to build a competitive solution; or (ii) if the User is an employee or contractor of a GingrTech competitor;

2.7 Use the Subscription Services in a way that breaches the terms of this Agreement (and in particular, but without prejudice to the foregoing, Clause 4);

2.8 Load test or security test the Subscription Services in order to test scalability and security;

2.9 Exceed any usage limits listed the applicable Order;

2.10 Amend, vary or change the terms of the EULA without GingrTech's consent.

3. User Content / Security

3.1 Users provide all data for use in the Subscription Services, and GingrTech is not obliged to modify or add to User Content except as specified in Clause 4. The Customer is solely responsible for User Content and the accuracy of User Content.

3.2 User Content belongs to the Customer or its licensors, and GingrTech makes no claim to any right of ownership in it.

3.3 GingrTech shall keep User Content confidential in accordance with Clause 17 of this Agreement.

3.4 Subject to the terms of Clause 4, GingrTech shall only be entitled to use User Content strictly as necessary to carry out its obligations under this Agreement, and for no other purpose. However, GingrTech:

3.4.1 may observe and report back to the Customer on the Customer's usage of the Subscription Services, and make recommendations for improved usage of the Subscription Services;

3.4.2 may identify trends and publish reports on its findings provided the reports include data aggregated from more than one site of the Customer and do not identify the Customer; and,

3.4.3 shall use reasonable endeavours to ensure that the data centre containing the User Content complies with ISO 27001.

3.5 GingrTech shall use reasonable endeavours to comply with the principles of the Privacy Legislation and in accordance with the Privacy Policy. For the purposes of the GDPR, GingrTech will be a Data Processor and the Customer will be the Data Controller of User Content.

3.6 Sharing of login/account details is not permitted unless expressly authorised in writing by GingrTech. Users must keep account details confidential and Users should not reveal their username or password to any unauthorised third parties. GingrTech accepts no liability for any losses or damages incurred as a result of account details being shared in breach of the terms of this Agreement. It is recommended that Users do not save login/account details in their internet browser.

3.7 Industry Best Practice security recommendations should be implemented at all times, such as (a) maintaining a recognised Cyber Essentials Certification IT systems such as <https://www.cyberessentials.ncsc.gov.uk> (b) Always implementing Strong, robust, difficult to break passwords, that are changed on a regular basis (c) that Users do not save account details in their internet browser. (d) Implementing Two Factor authentication at each endpoint where available.

3.8 Whereas as part of the Subscription Services, GingrTech may host email accounts or other online communications infrastructure or subscription accounts (including the GingrTech subscription itself) for Users, GingrTech accepts no responsibility and shall not be liable for third parties accessing such email, online communications accounts or subscription accounts by way of breaking or hacking passwords. It is the responsibility of Users to ensure that all email, online communications accounts and subscription accounts are properly protected with robust passwords. The terms of Clause 4 apply to the use of any such email, online communications accounts and subscription accounts.

4. Acceptable Usage Policy

4.1 Without prejudice to the generality of Clause 2.7, when using the Subscription Services; Users should do so in accordance with the following rules:

4.1.1 Users must not use obscene or vulgar language;

4.1.2 User Content may not contain any material that is unlawful or otherwise objectionable, such as racist, sexist, ageist, sectarian, or other such material (including that which may be in breach of rules, regulations or legislation in force in the United Kingdom or any other jurisdiction in which the Subscription Services can be lawfully accessed. This does not extend to material which may be automatically blocked in certain jurisdictions but that is lawful in the Customer's home country);

4.1.3 User Content may not contain any material that is intended to promote or incite violence or any other unlawful conduct against any group, individual or animal;

4.1.4 User Content may not infringe the Intellectual Property rights of any third party including, but not limited to, copyright, trademarks, patents and designs;

4.1.5 User Content may not contain any material that may contain viruses or other software or instructions that may damage or disrupt other software, computer hardware or communications networks;

4.1.6 User Content may not be used for unauthorised mass-communications such as "spam" or "junk mail"; and

4.2 GingrTech does not screen or pre-approve any User Content (although Users acknowledge that GingrTech may do so if it wishes).

4.3 GingrTech may edit a User Site to comply with the provisions of sub-Clause 4.1 without prior consultation. In cases of severe breaches of the provisions of sub-Clause 4.1, a User Site may be taken down and the relevant account may be suspended or terminated. The Customer will not be informed of the reasons for such alterations or take downs.

4.4 GingrTech accepts no responsibility or liability for any infringement of third party rights by Users.

4.5 GingrTech accepts no responsibility or liability for any breach of these terms by a User.

4.6 GingrTech will not be liable in any way or under any circumstances for any loss or damage that any User may incur as a result of GingrTech exercising its rights under this Agreement.

4.7 The Customer acknowledges that GingrTech may retain copies of any and all communications, information and User Content sent to GingrTech.

4.8 Users must comply with the terms of the Privacy Legislation at all times.

4.9 All Users including Customers or their Clients, which includes employees or contractors must enter into the EULA. Typically the EULA will be presented as a "click to accept" contract, but may be in paper or pdf format either for "wet ink" or electronic signature.

5. Intellectual Property

5.1 Subject to the exceptions in Clause 6 of this Agreement, all Content, that is not User Content, and the Database and the Software and the Documentation are the property of GingrTech, or GingrTech's

Affiliates or licensors. By continuing to use the Subscription Services the Customer acknowledges that such material is protected by applicable United Kingdom and international Intellectual Property and other laws.

5.2 You may not print, reproduce, copy, distribute, store or in any other fashion re-use Content from the Subscription Services for personal or educational purposes only unless otherwise given GingrTech's express written permission to do so. Specifically, the Customer agrees that it will not systematically copy Content from the Subscription Services with a view to creating or compiling any form of comprehensive collection, compilation, directory or database unless given GingrTech's express written permission to do so.

5.3 In the event that new inventions, designs or processes evolve in performance of or as a result of this Agreement, the Customer acknowledges that the same shall be the property of GingrTech.

5.4 Any trade mark, trade name or logo such as "Powered by GingrTech" or similar appearing on or in the Software is the property of GingrTech and must not be copied, obscured or removed from the Software.

6. User Content Intellectual Property

6.1 The Intellectual Property rights subsisting in the User Content belong to the User who uploaded the User Content unless it is expressly stated otherwise.

6.2 Where expressly indicated, certain Content available via the Platform and the Intellectual Property rights subsisting therein belongs to other parties.

6.3 The third party Content described in this Clause 6, unless expressly stated to be so, is not covered by any permission granted by Clause 5 of these Terms and Conditions to use Content.

6.4 For the avoidance of doubt, the Database (excluding the User Content therein) shall not be considered User Content.

7. Third Party Intellectual Property

7.1 Unless otherwise expressly indicated, all Intellectual Property rights including, but not limited to, Copyright and Trademarks, in Content belong to the manufacturers or distributors of such products as may be applicable.

7.2 Subject to Clause 5 the Customer may not reproduce, copy, distribute, store or in any other fashion re-use Content unless otherwise indicated on the Subscription Services or the Documentation or unless given express written permission to do so by the relevant manufacturer or supplier.

8. Sub-licences and Client Sharing

8.1 The Customer agrees:

8.1.1 not to represent itself as agent of GingrTech for any purpose, nor pledge GingrTech's credit or give any condition or warranty or make any representation on GingrTech's behalf or commit GingrTech to any contracts or otherwise incur any liability on behalf of GingrTech howsoever arising;

8.1.2 not without GingrTech's prior written consent, make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of the Subscription Services which are inconsistent with those contained in the Documentation or any promotional material supplied by GingrTech;

8.1.3 to observe all reasonable directions and instructions given to it by GingrTech in relation to the promotion and advertisement of the Subscription Services to the extent that such promotions or advertisements refer to the Subscription Services; and

8.1.4 not to make any written statement as to the quality or manufacture of the Subscription Services without prior written approval of GingrTech.

8.1.5 that the Software shall contain the words "Powered by GingrTech" or such other similar wording as is prescribed by GingrTech from time to time. The Customer shall ensure that this wording is not removed or obscured from/in the Software.

8.2 GingrTech undertakes and agrees with the Customer:

8.2.1 to meet all Orders for the quantity of Sub-licenses as the Customer requires and is entitled to grant from time to time in accordance with this Agreement; and

8.2.2 to provide the Customer with reasonable technical support to enable the Customer to promote, resell and distribute the Subscription Services in accordance with the relevant Order.

8.3 Where the Customer is entitled to grant Sub-licenses the number shall be unlimited unless specified differently in the Order.

8.4 The Sub-licence shall be in the form of the EULA.

8.5 The Customer is not entitled to amend, vary or change the terms of the EULA without GingrTech's consent.

8.6 Any Sub-licence requires an additional Order to be completed. The terms of each Sub-licence will be as agreed in the relevant Order;

8.7 The Customer shall supervise and control Use of the Subscription Services by Users in accordance with the terms of this Agreement;

8.8 The sums to be paid by the Customer to GingrTech in respect of the purchase/supply of Sub-licenses shall be calculated in accordance with the relevant Order.

8.9 The Customer shall supervise and control use of the Subscription Services by Users in accordance with the terms of this Agreement and the EULA.

8.10 The Customer will where required by GingrTech, enforce the terms of the Sub-licence for GingrTech's benefit.

8.11 Notwithstanding that the Customer has granted a Sub-licence, the Customer will remain liable to GingrTech under this Agreement.

9. Subscription Services Warranties

9.1 GingrTech warrants that:

(i) the Subscription Services will function substantially as described in the Documentation; and

(ii) GingrTech owns or otherwise has the right to provide the Subscription Services to the Customer and where required a Client under this Agreement. The remedies set out in this Clause 9 are the Customer's exclusive remedies for breach of either warranty.

9.2 If the Subscription Services do not function substantially in accordance with the Documentation, GingrTech shall, at its option, either

(i) modify the Subscription Services to conform to the Documentation; or

(ii) provide a workaround solution that will reasonably meet the Customer's requirements. If neither of these options are commercially feasible, either party may terminate the relevant Order under this Agreement, in which case GingrTech shall refund to the Customer all fees pre-paid to GingrTech under the relevant Order for unused Subscription Services.

9.3 If the normal operation, possession or use of the Subscription Services by the Customer is found to infringe any third party Intellectual Property right or GingrTech believes that this is likely, GingrTech shall, at its option, either

(i) obtain a license from such third party for the benefit of the Customer;

(ii) modify the Subscription Services so that they no longer infringe; or

(iii) if neither of these options are commercially feasible, terminate the relevant Order under this Agreement, in which case GingrTech shall refund to the Customer all fees pre-paid to GingrTech under the relevant Order for unused Subscription Services.

9.4 However, GingrTech has no warranty obligations for:

9.4.1 the extent that Software has been modified by the Customer or any third party, unless the modification has been approved in writing by GingrTech;

9.4.2 a version of the Subscription Services that has passed its end-of-life date (see Clause 1.4); or,

9.4.3 problems in the Subscription Services caused by any Third Party Software or hardware, by accidental damage or by other matters beyond GingrTech's reasonable control.

PART TWO - PROFESSIONAL SERVICES

10. Professional Services Warranties

GingrTech warrants that:

(i) the Professional Services shall substantially conform to the applicable Order; and

(ii) the Professional Services shall be performed with reasonable skill, care and diligence. The remedies set out in this Clause 10 are the Customer's exclusive remedies for breach of either warranty. If the Professional Services do not conform to the Order or are not performed with reasonable skill, care and diligence, GingrTech shall re-perform the Professional Services to the extent necessary to correct the defective performance.

11. The Customer's Responsibilities

The Customer shall provide GingrTech with all information, access, and full good faith cooperation reasonably necessary to enable GingrTech to deliver the Professional Services and shall do anything that is identified in the Order as the Customer's responsibility. If the Customer fails to do this, GingrTech shall be relieved of its obligations to the extent that the obligations are dependent upon the Customer's performance.

PART THREE - GENERAL

12. Term of the Agreement

This Agreement starts on the date specified in the first relevant Order which has been the subject of an Order Confirmation and ends when GingrTech is no longer obliged to provide the Customer with Subscription Services or Professional Services under any Order.

13. Payments

13.1 The Customer shall pay the fees listed in, and in accordance with, the relevant Order.

13.2 If the Customer initially purchases Subscription Services for a term, and subsequently orders an additional product, the purchase price for the additional product, where appropriate, shall be pro-rated so that the added subscriptions terminate on the same day as the initial subscription.

13.3 The fees for the any Subscription Term will be as specified in the Order. GingrTech reserves the right to change fees from time to time and any such changes may affect the Customer's recurring fees after any initial Subscription Term if specified. Increases in price will be reflected in the Customer's recurring fees for the Services.

14. Termination and Suspension

14.1 The Customer may terminate rights granted to a license subscription under a particular Order only after expiry of the initial term specified in the Order. Such notice must be given in writing not less than 30 days prior to the date of expiry of the said initial term (time being of the essence) otherwise the subscription will continue indefinitely on a monthly basis unless specified at the normal fee rate on the Order unless the fee rate after the initial period is specified to be different on the Order. Termination applies to the Subscription Services licencing element only and does not include any Professional Services element contained on the Order. Professional Services element includes data conversion and/or on-site training that are itemised separately on the Order. Professional Services will only be terminated when a settlement of 100% of these service costs have been recovered by GingrTech.

14.2 Either party may terminate rights granted under a particular Order if the other breaches any material term of the Order (including a material term of this Agreement insofar as it applies to the Order) and the breach is not cured within 30 days of written notice. The Customer's breach of Clause 2.9 of this Agreement shall be considered a material breach.

14.3 Instead of terminating rights granted to the Customer under an Order, GingrTech may suspend the provision of Subscription Services to the Customer for a period of up to 45 days. At any time during that period, GingrTech may terminate the rights granted to the Customer.

14.4 Sections 2.4, 2.5, 3.3, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, 18, 22, 23 and 24 continue after this Agreement ends.

14.5 If GingrTech terminates an Order under this Agreement because of non-payment by the Customer, all unpaid fees for the remainder of the Subscription Term immediately fall due for payment.

14.6 Upon termination of this Agreement (except in the case of termination due to the Customer's material breach of this Agreement), the Customer will be given restricted access for a period of ten days in which to recover their User Content. GingrTech can provide a Customer Content recovery service to the Customer, should they wish to use it. GingrTech reserves the right to charge for this service.

14.7 GingrTech may retain User Content in backup media for an additional period of up to 12 months after the date of termination of this Agreement, or longer if required by law, provided it makes no further use of such User Content (except as provided for herein or as is required by law), keeps the User Content confidential in accordance with Clause 17, and supplies the Customer with a copy of the most recent backup of the User Content within 30 days of the Customer's request (at the Customer's cost).

14.8 Termination also covers the eventuality of data migration for any other reason including ceasing to offer the services or changing suppliers.

15. Warranty Disclaimer

15.1 Except as expressly provided in this Agreement, the Subscription Services, Software and Professional Services are provided with no other warranties of any kind, and GingrTech disclaims all other warranties, express or implied, including without limitation any warranty of merchantability or fitness for a particular purpose. GingrTech does not warrant that the use of the Subscription Services shall be uninterrupted or error-free.

16. Limitation of Liability

16.1 Neither party shall be liable under this Agreement for any indirect, special, incidental, punitive or consequential damages (including without limitation damages for loss of goodwill, work stoppage, computer failure or malfunction, lost or corrupted data, lost profits, lost business or lost opportunity), or any other similar damages under any theory of liability (whether in contract, tort/delict, strict liability or any other theory), even if the other party has been informed of this possibility. The Customer assumes all responsibility for the selection of the Subscription Services, Software and Documentation necessary to achieve the Customer's intended results, and for the use and results of the Subscription Services or work product. Each party's total liability for any direct loss, cost, claim or damages of any kind related to this Agreement or the relevant Order shall not exceed the amount of the fees paid or payable by the relevant party under such relevant Order during the period of 12 months before the event giving rise to such loss, cost, claim or damages. However, there is no limitation on direct loss, claim or damages arising as a result of an infringement of either party's Intellectual Property rights by the other party, or a breach of Clause 17 or Clause 22 of this Agreement by the other party.

16.2 GingrTech's liability under this Agreement (except where provided otherwise in this agreement to a lesser extent) shall be limited to the amount of professional indemnity insurance underwritten in the name of GingrTech which shall be £1,000,000. This limitation shall not apply to a breach of Clauses 21 or 22.

17. Confidentiality

17.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement and any Order. A party's Confidential Information shall not be deemed to include information that

(i) is now, or subsequently becomes, through no act or failure to act on the part of receiving party (the "Receiver"), generally known or available;

(ii) is known by the Receiver at the time of receiving such information, as evidenced by the Receiver's records;

(iii) is subsequently provided to the Receiver by a third party, as a matter of right and without restriction on disclosure; or

(iv) is required to be disclosed by law, provided that the party to whom the information belongs is given prior written notice of any such proposed disclosure.

17.2 Subject to clauses 17.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party (other than to a consultant or a Sub-contractor for the purposes of this Agreement and which consultant or Sub-contractor shall have entered into undertakings of confidentiality in relation to the Confidential Information on terms no less onerous than those contained in this Clause 16), or use the other's Confidential Information for any purpose other than to carry out its obligations under this Agreement.

17.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

17.4 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 a 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 17.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

17.5 No party shall make, or permit any person to make, any public announcement concerning this 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.

17.6 This clause 17 shall survive termination of this Agreement or any Order, howsoever arising.

18. Indemnification by GingrTech

18.1 GingrTech shall indemnify and hold harmless the Customer its Clients, its Affiliates, directors and employees from any damages finally awarded against the Customer (including, without limitation, reasonable costs and legal fees incurred by the Customer) arising out of any third party suit, claim or other legal action alleging that the use of the Subscription Services or Documentation by the Customer (other than User Content – see Clauses 4 and 18) infringes any copyright, trade secret or United Kingdom patent, ("Legal Action"). GingrTech shall provide reasonable assistance in the defence of such Legal Action.

18.2 However, GingrTech shall have no indemnification obligations for any Legal Action arising out of: (i) a combination of the Subscription Services and/or Software with software or products not supplied, or approved in writing by GingrTech; (ii) any repair, adjustment, modification or alteration to the Subscription Services by the Customer or any third party, unless approved in writing by GingrTech; or (iii) any refusal by the Customer to install and use a non-infringing version of the Subscription Services offered by GingrTech under Clause 9.2(ii). Clause 9.2(ii) and this Clause 18 state the entire liability of GingrTech with respect to any Intellectual Property infringement by the Subscription Services or Software or Documentation.

18.3. The Customer shall give written notice to GingrTech of any Legal Action no later than 30 days after first receiving notice of a Legal Action, and shall give copies to GingrTech of all communications, notices

and/or other actions relating to the Legal Action. The Customer shall give GingrTech the sole control of the defence of any Legal Action, shall act in accordance with the reasonable instructions of GingrTech and shall give GingrTech such assistance as GingrTech reasonably requests to defend or settle such claim. GingrTech shall conduct its defence at all times in a manner that is not adverse to the Customer's interests. the Customer may employ its own counsel to assist it with respect to any such claim. The Customer shall bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with GingrTech or its counsel, or because GingrTech fails to assume control of the defence. The Customer shall not settle or compromise any Legal Action without GingrTech's express written consent. GingrTech shall be relieved of its indemnification obligation under Clause 18 if the Customer materially fails to comply with Clause 18.2.

19. Indemnification by the Customer

19.1 The Customer shall indemnify and hold harmless GingrTech, its Affiliates, directors, and employees from any damages finally awarded against GingrTech (including, without limitation, reasonable costs and legal fees incurred by GingrTech) arising out of any third party suit, claim or other legal action (including but not limited to any governmental investigations, complaints and actions) in connection with the User Content, including, without limitation, any action for infringement of any trademark, copyright, trade secret, right of publicity or privacy (including defamation), patent or other proprietary right with respect to the User Content ("Legal Claim").

19.2. GingrTech shall give written notice to the Customer of any Legal Claim no later than 30 days after first receiving notice of a Legal Claim, and shall give copies to the Customer of all communications, notices and/or other actions relating to the Legal Claim. GingrTech shall give the Customer the sole control of the defence of any Legal Claim, shall act in accordance with the reasonable instructions of the Customer and shall give the Customer such assistance as the Customer reasonably requests to defend or settle such claim. The Customer shall conduct its defence at all times in a manner which is not adverse to GingrTech's interests. GingrTech may employ its own counsel to assist it with respect to any such claim. GingrTech shall bear all costs of engaging its own counsel, unless engagement of counsel is necessary because of a conflict of interest with the Customer or its counsel, or because the Customer fails to assume control of the defence. GingrTech shall not settle or compromise any Legal Claim without the Customer's express written consent. The Customer shall be relieved of its indemnification obligation under Clause 19 if GingrTech materially fails to comply with Clause 19.1.

20. Publicity

20.1 GingrTech may list the Customer as a customer and use the Customer's logo on GingrTech's website, on publicly available Customer lists, and in media releases, unless such consent is withheld by the Customer. Such consent is not to be unreasonably withheld.

21. Miscellaneous

21.1 This Agreement represents the entire express agreement of the parties, and supersedes any prior or current agreements or understandings, whether written or oral. If there is a conflict between the Agreement and an Order, the Order shall prevail.

21.2 This Agreement may not be changed or any part waived except by written agreement between the parties.

21.3 This Agreement shall be governed by the laws of Scotland or England and Wales. The parties consent to the exercise of exclusive jurisdiction of the Courts of Scotland or England and Wales, as decided by GingrTech, for any claim relating to this Agreement.

21.4 The Customer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of GingrTech. GingrTech may not withhold such consent in the case of an assignment by the Customer of its rights and obligations to an entity that has acquired all, or substantially all of the Customer's assets, or to an assignment that is part of a genuine corporate restructure. Any assignment in breach of this Clause is void.

21.5 The parties shall comply with the Export Laws and Regulations at all times.

21.6 The parties shall comply at all times with the provisions of the United Kingdom Anti-terrorism, Crime and Security Act 2001, and the United Kingdom Bribery Act 2010 and the United States Foreign Corrupt Practices Act and all analogous legislation applicable in any other relevant jurisdiction.

22. Data Processing

22.1 The provisions of this Agreement shall apply to the processing of the Personal Data carried out for the Customer by GingrTech, and to all Personal Data held by GingrTech in relation to all such processing whether such Personal Data is held at the date of this Agreement or received afterwards.

22.2 This Agreement shall continue in full force and effect for so long as GingrTech is processing Personal Data on behalf of the Customer.

22.3. GingrTech is only to process the Personal Data received from the Customer:

22.3.1 for the purposes of this Agreement and not for any other purpose;

22.3.2 to the extent and in such a manner as is necessary for those purposes; and

22.3.3 strictly in accordance with the Agreement or otherwise with the express written authorisation and instructions of the Customer (which may be specific instructions or instructions of a general nature or as otherwise notified by the Customer to GingrTech).

22.4 All instructions given by the Customer to GingrTech shall be made in writing and shall at all times be in compliance with the GDPR and other applicable laws. GingrTech shall act only on such written instructions from the Customer unless GingrTech is required by law to do otherwise (as per Article 29 of the GDPR).

22.5. GingrTech shall promptly assist the Customer (where the Customer cannot do this itself via the Subscription Services) in complying with a legitimate data subject request to amend, transfer, delete, or otherwise dispose of Personal Data. Where permitted to do so by law, GingrTech may charge a reasonable fee for providing such assistance.

22.6. Schedule 1 sets out the scope, nature and purpose of processing by GingrTech, the duration of processing and the types of Personal Data and categories of data subject.

22.7 Both Parties shall comply at all times with the GDPR and other applicable laws and shall not perform their obligations under this Agreement or any other agreement or arrangement between themselves in such way as to cause either party to breach any of its applicable obligations under the GDPR.

22.8 The Customer hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.

22.9 GingrTech agrees to comply with any reasonable measures required by the Customer to ensure that its obligations under this Agreement are satisfactorily performed in accordance with any and all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.

22.10 GingrTech shall provide all reasonable assistance (at the Customer's cost) to the Customer in complying with its obligations under the GDPR with respect to the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments, and in dealings with the ICO.

22.11 When processing the Personal Data on behalf of the Customer, GingrTech shall:

22.11.1 not process the Personal Data outside the European Economic Area (all EU member states, plus Iceland, Liechtenstein, and Norway) ("EEA") other than the United Kingdom (which shall be permitted) without the prior written consent of the Customer and, where the Customer consents to such a transfer to a country that is outside of the EEA, to comply with the obligations of Data Processors under the provisions applicable to transfers of Personal Data to third countries set out in Chapter 5 of the GDPR by providing an adequate level of protection to any Personal Data that is transferred;

22.11.2 not transfer any of the Personal Data to any third party without the written consent of the Customer and, in the event of such consent, the Personal Data shall be transferred strictly subject to the terms of a suitable agreement, as set out in Clause

22.11.3 process the Personal Data only to the extent, and in such manner, as is necessary in order to comply with its obligations to the Customer or as may be required by law (in which case, GingrTech shall inform the Customer of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);

22.11.4 implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;

22.11.5 make available to the Customer any and all such information as is reasonably required and necessary to demonstrate GingrTech's compliance with the GDPR; and

22.11.6 inform the Customer immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.

22.12 GingrTech shall, at the Customer's cost, assist the Customer in complying with its obligations under the GDPR. In particular, the following shall apply to data subject access requests, complaints, and data breaches.

22.13 GingrTech shall notify the Customer without undue delay if it receives:

22.13.1 a subject access request from a data subject; or

22.13.2 any other complaint or request relating to the processing of the Personal Data.

22.14 GingrTech shall, at the Customer's cost, cooperate fully with the Customer and assist as required in relation to any subject access request, complaint, or other request, including by:

22.14.1 providing the Customer with full details of the complaint or request;

22.14.2 providing the necessary information and assistance in order to comply with a subject access request;

22.14.3 providing the Customer with any Personal Data it holds in relation to a data subject (within the timescales required by the Customer); and

22.14.4 providing the Customer with any other information requested by the Customer.

22.15 GingrTech shall notify the Customer immediately if it becomes aware of any form of Personal Data breach, including any unauthorised or unlawful processing, loss of, damage to, or destruction of any of the Personal Data.

22.16 The Customer shall be liable for, and shall indemnify (and keep indemnified) GingrTech in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, GingrTech and any Sub-Processor arising directly or in connection with:

22.16.1 any non-compliance by the Customer with the GDPR or other applicable legislation;

22.16.2 any Personal Data processing carried out by GingrTech or Sub-Processor in accordance with instructions given by the Customer that infringe the GDPR or other applicable legislation; or

22.16.3 any breach by the Customer of its obligations under this Agreement, except to the extent that GingrTech or Sub-Processor is liable under sub-Clause 22.15.

22.17 GingrTech shall be liable for, and shall indemnify (and keep indemnified) the Customer in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Customer arising directly or in connection with GingrTech's Personal Data processing activities that are subject to this Agreement:

22.17.1 only to the extent that the same results from GingrTech's or a Sub-Processor's breach of this Agreement; and

22.17.2 not to the extent that the same is or are contributed to by any breach of this Agreement by the Customer.

22.18 The Customer shall not be entitled to claim back from GingrTech or a Sub-Processor any sums paid in compensation by the Customer in respect of any damage to the extent that the Customer is liable to indemnify GingrTech or Sub-Processor under sub-Clause 22.15.

22.19 Nothing in this Agreement (and in particular, this Clause 22) shall relieve either party of, or otherwise affect, the liability of either party to any data subject, or for any other breach of that party's direct obligations under the GDPR. Furthermore, GingrTech hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.

22.20 In the event that GingrTech appoints a Sub-Processor, GingrTech shall:

22.20.1 enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same or similar obligations as are imposed upon GingrTech by this Agreement; and

22.20.2 ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR.

23. Feedback

23.1 The Customer hereby acknowledges that upon submitting Feedback to GingrTech, the Customer automatically grants to GingrTech a worldwide, perpetual, irrevocable, royalty free licence to use that Feedback in any way GingrTech deems appropriate including, but not limited to:

23.1.1 The use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of the Feedback; and

23.1.2 The creation, use, publication, distribution, transmission, broadcasting, licensing, sub-licensing, leasing, lending and sale of any derivative works based upon the Feedback.

23.2 GingrTech's use of the Feedback shall not bestow any rights or interests upon the Customer whatsoever.

24. Change Orders

24.1 If the Customer wishes to amend the scope of an Order, the parties will use all reasonable endeavours to agree to a Change Order. Each Change Order shall detail the requested changes to the applicable task, responsibility, duty, budget, work programme or other matter. The Change Order will become effective upon the execution of the Change Order by both parties and will include a specified period of time (as agreed upon by the parties) within which GingrTech will implement the changes and any increase in price.

24.2 Both parties agree to act in good faith and promptly when considering a Change Order requested by the other party. GingrTech reserves the right to postpone effecting material changes in the scope of Professional Services until such time as the parties agree to and execute the corresponding Change Order.

25. Entire Agreement

25. This Agreement and each Order comprises the entire Agreement between the Parties and supersedes all previous agreements between the Parties. This Agreement can only be altered or amended by either an Order or a Change Order.

PART FOUR - DEFINITIONS

26. Glossary

26.1 **"Affiliate"** means an entity which controls, is controlled by, or is under common control with, a party, and control means the ability to vote 50% or more of the voting securities of any entity or otherwise having the ability to influence and direct the policies and direction of an entity;

26.2 **"Client"** means a company, individual, partnership, Affiliate or other legal person which has entered into a contract or contracts with the Customer to purchase or lease or use the Subscription Services and/or the Professional Services or any part of them respectively in terms of an Order and this Agreement;

26.3 **"Content"** means any text, graphics, images, audio, video, software, data compilations including, but not limited to, text, graphics, logos, icons, sound clips, video clips, data compilations, page layout, underlying code and software and any other form of information capable of being stored in a computer that appears on, is uploaded to or forms part of the Subscription Services or the Platform; BUT excluding User Content;

26.4 **"Database"** means the database stored on the Platform which contains inter alia User Content;

26.5. **"Data Controller"**, **"Data Processor"**, **"Personal Data"**, **"processing"** and **"data subject"** shall have the meanings ascribed to them in the GDPR;

26.6 **"DPA"** means the Data Protection Act 2018 and any modification, amendment or re-enactment thereof;

26.7 **"Documentation"** means user documentation provided electronically by GingrTech for use with the Subscription Services, as periodically updated;

26.8 **“EAR”** the United States the Export Administration Act and the Export Administration Regulations, 15 C.F.R. parts 730 – 774;

26.9 **“EULA”** means an End User Licence Agreement, the current version of which is located here <https://gingr.tech/eula/>;

26.10 **“Export Laws and Regulations”** means all applicable foreign, United Kingdom, European Union, and United States export laws and regulations, including, without limitation, (1) ITAR and (2) EAR and (3) the laws of Export Control of the United Kingdom and the European Union and the United Arab Emirates (in particular, but without prejudice to the foregoing, Federal Law Number 13 of 2007 as amended) and (4) any United Nations Security Council Resolution and/or any other regulation, whether international, national or domestic, and whether enforceable or not;

26.11 **“Feedback”** means all comments, suggestions, requests, requirements, improvements, feedback, or other input the Customer provides regarding any products or Services owned or supplied by GingrTech, its Affiliates and licensees;

26.12 **“Force Majeure”**, means circumstances beyond the control of GingrTech which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to supply the Subscription Services and or the Professional Services, materials, breakdown of Local Equipment and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lockouts and whether between either of the parties hereto and any or all of its employees and/or any other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer);

26.13 **“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679) as amended, replaced, supplemented or adopted into United Kingdom Legislation;

26.14 **“ICO”** means the UK’s supervisory authority, the Information Commissioner’s Office;

26.15 **“Industry Best Practice”** means the standard of care, attention, diligence, expertise, knowledge, methods and practice expected of a competent and experienced professional in the IT and Cyber Security profession;

26.16 **“Intellectual Property”** means patents, trademarks, trade name, service mark, copyright, trade secrets, know-how, process, technology, development tool, ideas, concepts, design right, domain names, moral right, database right, methodology, algorithm and invention, and any other proprietary information (whether registered, unregistered, pending or applied for);

26.17 **“Local Equipment”** means the Customer or User’s own on-premise equipment including hardware and software environment which is used in connection with the Software Services, which comprise of, but is not limited to – server computers (whether virtual or not), Desktop PC’s, Laptops or any other portable device, storage systems and relative hardware, firmware, operating software, operating system software, networking software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure, internet connection, broadband availability and infrastructure, routers, Printers, associated peripheral devices or accessories whether fixed or portable;

26.18 **“Order”** means a document generated by the Customer, or generated by GingrTech and accepted in writing by the Customer, that describes the Subscription Services and/or Professional Services being purchased and/or licensed by the Customer in terms of this Agreement and any additional conditions pertaining thereto;

26.19 **“Order Confirmation”** means a written confirmation from GingrTech to the Customer accepting an Order;

26.20 **“Platform”** means the hardware and software environment in which the software element of the Subscription Services operates, which comprises cloud computing services, mirroring/duplicating/back-up and storage systems and relative hardware operating software, virtual machine software (where relevant), operating system software, database software, anti-virus and security software, switches, power supplies and telecommunications infrastructure;

26.21 **“Privacy Legislation”** means the GDPR, the DPA, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. (as amended or replaced from time to time);

26.22 **“Privacy Policy”** means GingrTech’s policy relating to User Content and compliance with (amongst others) the DPA and the GDPR from time to time, the current version of which is located here <https://gingr.tech/privacy-policy/>;

26.23 **“Professional Services”** means the training, consulting, development and other professional services identified on an Order but does not include the Subscription Services;

26.24 **“SLA”** means a Service Level Agreement in the form set out in Part 5 of these terms;

26.25 **“Software”** means the GingrTech proprietary operating software and the Third Party Software written in object and source code residing on and used for operating the Platform and the Subscription Services as Updated and Upgraded from time to time;

26.26 **“Sub-licence”** means a licence of Subscription Services or any part thereof granted by the Customer to a Client in terms of this Agreement and in the form of the EULA;

26.27 **“Sub-Processor”** means a sub-processor appointed by GingrTech to process the Personal Data;

26.28 **“Sub-Processing Agreement”** means an agreement between GingrTech and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor, as described in Clause 22;

26.29 **“Subscription Services”** means the hosted Customer experience solutions identified in an Order, and any modifications periodically made by GingrTech, but does not include the Professional Services;

26.30 **“Subscription Term”** means the period of time during which GingrTech is required to provide the Customer with the Subscription Services as specified in the relevant Order;

26.31 **“Third Party Software”** means software other than the Software which belongs to third parties and in relation to which GingrTech has the right to grant sub-licenses;

26.32 **“Update”** means any update, update rollup, service pack, feature pack, critical update, security update, or hotfix that is used to improve or to fix a software product;

26.33 **“Upgrade”** means a software package that replaces an installed version of a product with a newer version of the same product, typically leaving existing customer data and preferences intact while replacing the existing software with the newer version;

26.34 **“User”** means the Customer and its Clients and any of their employees, or a person to whom the Customer or a Client has outsourced services, that has permission to access the Subscription Services as a named user and is not employed by GingrTech and acting in the course of their employment;

26.35 **“User Content”** means any text, graphics, images, audio, video, software, data compilations and any other form of information capable of being stored in a computer that appears on, is uploaded to the Platform or the Subscription Services and has been uploaded by a User. In the context of role playing games, User Content shall also refer to the responses, statements, questions, answers and actions, gestures whether written, verbal or physical which any User makes, creates, issues, implies, asks or gives during the use of the Subscription Services;

26.36 **“User Site”** means a partition/tenancy on the Platform created by GingrTech for a User or Users accessing the Subscription Services which shall contain User Content and shall be hosted on the Platform;

SCHEDULE 1

Processing, Personal Data And Data Subjects

1. Processing by GingrTech

1.1 Scope: Data will be processed in order to provide the Subscription Services and Professional Services, as set out in this Agreement.

1.2 Nature:

- (i) Collection of data in relation to transactions with customers,
- (ii) requests for further information (marketing).

1.3 Purpose of Processing:

- (i) Transaction fulfilment and statutory obligations to regulatory bodies.
- (ii) To provide customers with further knowledge of products and services.

1.4 Duration of the Processing: the term of the Agreement or such later date as may be specified or required by law.

1.5 Types of Personal Data: Names, billing addresses, email addresses, Companies, social media account names.

1.6 Categories of Data Subject: Employees, Associates, Friends and acquaintances.

2. Rights and Obligations of Data Controller

The rights and obligations of the Data Controller set out in this Agreement and the GDPR and DPA