

This notice is made and these terms are published by Mattersmith Limited, a recognised body authorised and regulated by the Solicitors Regulation Authority with number 650058, incorporated in England and Wales with company number 11320618, whose email address is [info@mattersmithpro.com](mailto:info@mattersmithpro.com), and telephone number is +44 (0) 333 242 0546. Our website to which these terms of business refer is located at <https://www.mattersmith.co.uk> or such other website as we may notify you from time to time (**Website**). Mattersmith Limited is registered for VAT with VAT number 265 1779 76.

To help you decide whether Contractsmith is suitable for you, please see the information on the Website or contact us to discuss your requirements.

**(A) GENERAL TERMS**

**1. INTERPRETATION**

The definitions and rules of interpretation in Part (C) (*Glossary*) apply to these terms. If there is a conflict or inconsistency between these terms and the Order, the Order prevails to the extent of the conflict or inconsistency.

**2. APPLICATIONS FOR MEMBERSHIP**

2.1 We make available Contractsmith under one of four membership plans (each being a **Plan**): Trial, Membership, Associate, and Bespoke; the material features of the Trial, Membership, and Associate Plans are described on the Website, and the content of a Bespoke Plan must be agreed between us in an Order.

2.2 You may set-up your account for a Trial, Membership, or Associate Plan by following the process on the login page of Contractsmith.

2.3 To request a Bespoke Plan, you must send us a request via the Content form on the Website; promptly after receiving your request, we will (using the contact details you provide on the form), seek to agree with you the content of your Bespoke Plan in an Order.

**3. SCOPE AND DURATION OF YOUR PLAN**

3.1 The Agreement governs your use of the Service and Materials and comes into force in relation to a:

3.1.1 Trial, Membership, or Associated Plan (as appropriate), on the date on which you set-up your account; or

3.1.2 Bespoke Plan, on the date of the Order,

and continues for the Initial Term and each Renewal Term, subject to change of the Plan in accordance with clause 3.2, and to earlier termination of the Agreement in accordance with its terms (**Plan Period**).

3.2 You may change a Membership or Associate Plan via your profile settings on Contractsmith, or at any time by agreement of a Bespoke Plan, or, in the case of a Bespoke Plan, by an agreed variation of your Bespoke Plan.

3.3 A Trial Plan automatically converts to an Associate Plan for twelve (12) months at the end of the Trial Plan unless you either (i) change it in accordance with clause 3.2 or (ii) inform us in writing (and for this purpose e-mail or using the Contact Form suffices) that you wish to discontinue using the Service, in which case we will terminate your account.

**4. THE SERVICE AND MATERIALS**

**4.1 The role we fulfil**

4.1.1 We make available the Materials and provide any response to a question in connection with the Service or the Materials, for your information and not by way of legal advice, unless we have accepted you as a client in accordance with our normal procedures and we have an engagement letter with you in relation to the matter at hand.

4.1.2 You should not store or process documents, information, or materials in relation to which, or in respect of which, you require legal advice from us without first engaging us under an engagement letter; if you do so, in respect of ourselves as your adviser, the document, information, or materials may not be protected by legal professional privilege, nor any other form of protection that is available in respect of disclosure for the purpose of obtaining of legal advice.

4.1.3 You recognise that we may be asked the same or similar questions by other users of the Service, who may also be our clients, and we may answer them without restriction by reason only of your use of the Service and the Materials or information we may have provided to you under the Agreement.

4.1.4 Unless explicitly set out in the Order, the Agreement does not apply in respect of any advice, training, or support services (other than use of our support website at [Support](#)), which are subject to separate agreement between us.

**4.2 Our duty of care in relation to the Materials**

4.2.1 We accept a duty to take reasonable care in the preparation of the Materials for you information purposes, including with respect to (i) the legal validity of the Materials having regard to their subject matter, but disregarding any fact, matter, or circumstance applicable to your use or reliance on the Materials, and (ii) the suitability of the text of a document assembled in response to your answers to the Questionnaire (other than a Short Answer).

4.2.2 You acknowledge that the Materials are not, nor are they a substitute for, legal advice, and your use of or reliance on the Service or the Materials (or both) will not be supervised by us; if you are concerned about the suitability of the Materials for your requirements, you should seek legal advice, whether from us or another suitably qualified and experienced solicitor.

4.2.3 If the Materials contain an error or omission of which you are aware or ought reasonably to be aware, you must not use or rely on the Materials and must inform us as soon as reasonably practicable, and our liability to you (if any) for the error or omission shall be reduced by a fair and reasonable amount having regard to your actual or imputed knowledge under this clause.

4.2.4 The compilations of words and phrases in Doc Analyser have been created from our experience of the documents in respect of which they are intended to be used for search purposes, but we provide no assurance that the results of searches will be accurate or complete.

**4.3 Grant of licence to you**

Subject to your compliance with the Agreement, we hereby grant to you a non-exclusive, non-transferable licence during the Plan Period to permit your End Users to use the Service and the Materials for your internal business purposes or, in relation to a Trial Plan, for the sole purpose of evaluating the Service and the Materials, including research, study, and the provision of professional services to your clients and potential clients, provided you do not make copies on a systemic basis that is commercially prejudicial to us.

**4.4 Your responsibilities**

4.4.1 You are responsible for (a) all access to and use of the Service and the Materials on or through your account, whether authorised by you or not, except where the unauthorised access is due to our breach of this Agreement, and (b) in the course of using Precedents, for your selection of the Precedent and the answers to a Questionnaire.

4.4.2 You shall, and shall procure that each End User shall, keep the Security Information secure against unauthorised access or use, and not disclose any Security Information to any other End User or other third party, nor (without affecting the general nature of this clause) cause or permit any End User or other third party to use Security Information on behalf of an End User.

4.4.3 If any Security Information is disclosed or used without authorisation, or there are reasonable grounds to believe that to be the case, you must immediately notify us, giving reasonable details of the circumstances, including the Security Information the security, integrity, or confidentiality of which has or may have been compromised.

4.4.4 You must keep and maintain copies of all documents and other works, data and other materials that you upload to Contractsmith.

4.4.5 You must use the Service in accordance with Regulations, ensure that you have all necessary consents to upload any and all documents works, data, and other materials to Contractsmith, and are responsible for the legality, reliability, integrity, accuracy, and completeness of Your Data.

4.4.6 You hereby grant us a non-exclusive licence to use, store, and copy Your Data to the extent required to provide the Service, and we may grant sub-licences to our sub-contractors solely in connection with the services they provide to us.

4.4.7 Without affecting clause 10.4, you are responsible for retrieving and deleting Your Data.

4.4.8 You acknowledge that the purposes of Contractsmith is to help you review, negotiate, and manage legal documents only; it is not intended to be your sole repository of legal (or any other) documents, and it is your responsibility to make additional provision for their storage.

**4.5 What you must not do**

You must not:

4.5.1 exceed the number of End Users for which you are authorised from time to time;

4.5.2 except to the extent permitted by Regulations, adapt, translate, arrange, or alter Contractsmith, reverse engineer, decompile, or disassemble Contractsmith;

4.5.3 subject to clause 4.3 (*Grant of licence to you*), use the Service for the benefit of any third party, including for, or in connection with, the provision of services which consist in whole or part in use of the Service;

4.5.4 redistribute, retransmit, or disseminate the Service or the Materials, or do any unauthorised act in relation to the Service or the Materials;

4.5.5 circumvent or avoid the use of any security device or process designed to protect against unauthorised or unlawful use of the Service or the Materials; or

4.5.6 store, distribute, or transmit any documents or other works, data or other materials through the Service that is unlawful, harmful, threatening, defamatory, obscene, infringes the rights of third parties, is harassing or racially or ethnically offensive, facilitates illegal activity, or promotes discrimination.

**5. CHARGES**

5.1 In consideration of the provision of the Service, you must pay the Charges.

5.2 In respect of an Associate Plan, we may send you an invoice after you have opened your account and monthly thereafter during the Plan Period; Charges in respect of Bespoke Plans will be invoiced in accordance with the Order.

5.3 Charges must be paid within thirty (30) days after the date of the invoice by direct credit for same day value to the bank account stated in the invoice, subject to provision of the Service during that period.

5.4 Charges are exclusive of value added tax, which shall be added to the Charges and paid by you in accordance with this clause.

5.5 The charges for an Associate Plan in respect of a Renewal Term will be the then published price at the end of the then Renewal Term, without affecting your right to change your Associate Plan to a Membership Plan or (subject to agreement of an Order) to a Bespoke Plan or to terminate the Agreement.

5.6 The Charges for a Bespoke Plan during the Initial Term and any Renewal Term shall be determined in accordance with the Order.

**6. OUR PERFORMANCE**

**6.1 Quality**

We shall make sure that the Service meets the Specifications in all material respects and, in relation to a Bespoke Plan, complies with the Order.

**6.2 Availability**

Except in relation to a Trial Plan, Membership Plan, or where and for so long as the Service is suspended in accordance with clause 6.4 (*Suspension of the Service*), where the Service is unavailable for longer than one (1) Business Day in any calendar month, we shall refund a proportion of the Charges paid by you pro rata according to the proportion of the Plan Period which is represented by the aggregate period of the interruption or

suspension (and not only the excess of the period after the period of one (1) Business Day).

**6.3 Exclusions**

We give no assurance or guarantee that your use of Contractsmith will be uninterrupted or error-free or that Contractsmith or the Materials will meet your requirements, and we are not liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

**6.4 Suspension of the Service**

We may suspend access to or use of the Service and the Materials if we determine that it is appropriate to do so where:

- 6.4.1 you fail to pay the Charges when due;
- 6.4.2 use of the Service or the Materials is in breach of the Agreement, poses a security risk or a risk to the integrity of the Service, including where the confidentiality of Security Information has been or may reasonably be believed to have been compromised, is adversely impacting or may adversely impact (as appropriate) the Service, or is in breach of Regulations;
- 6.4.3 we determine (acting reasonably) that we need to do so to comply with Regulations or a requirement or demand of a competent authority; or
- 6.4.4 it is necessary or desirable to avoid or prevent infringement of the property or rights of any third party,

and we shall use reasonable endeavours to notify you before the suspension takes effect or as soon as reasonably practicable thereafter.

**7. SUPPORT**

- 7.1 We shall use reasonable endeavours to correct defects in Contractsmith that are reported to us as soon as reasonably practicable or (at our election) in the next release of Contractsmith.
- 7.2 We will answer requests for assistance in the use of Contractsmith, which may take the form of referring you to information on [Support](#), and otherwise as more particularly provided in an Order.
- 7.3 Defects can be reported and requests for assistance can be sent to us at [info@mattersmithpro.com](mailto:info@mattersmithpro.com), but you are encouraged to use the Contact Us form on [Support](#).

**8. CHANGES**

Aspects of the Service or the Materials may be changed or withdrawn from time to time without notice; where any such variation materially and adversely affects the quality of the service you receive, you may terminate the Agreement by giving at least thirty (30) days' prior notice to be served within fourteen (14) days after the variation first takes effect, and in default of notice within that period, your right to terminate the Agreement because of that variation lapses.

**9. TERMINATION**

- 9.1 We may at any time discontinue the Service, in which case we shall provide as much notice as is reasonable up to sixty (60)

days and the Agreement terminates on the date of discontinuance.

- 9.2 We may terminate the Agreement by notice to you (i) for any reason with effect from the date of the notice, provided the notice is served within twenty (20) Business Days after the Commencement Date, in which case we shall refund any Charges paid by you, or (ii) after the occurrence of a Sanction Event, in which case we shall refund the Charges (if any) pre-paid by you in respect of the unexpired period of your Plan.
- 9.3 Either party may terminate the Agreement by giving not less than thirty (30) days' notice to expire at the end of the Initial Term or a Renewal Term.
- 9.4 Where you have an Associate Plan and you receive less than thirty (30) days' notice of an increase to the Charges which takes effect in respect of the next Renewal Term, you may, within seven (7) days after receipt of the first invoice (for the increased Charges) during that Renewal Term, terminate the Agreement by giving us seven (7) days' notice, and where you do so, you will not be liable to pay the Charges in respect of the Renewal Term (for which a credit note will be issued as appropriate); in default of notice to terminate the Agreement under this clause within such period, your right to terminate the Agreement in relation to that increase lapses and the Agreement will remain in force.
- 9.5 Either party may by giving notice to the other terminate the Agreement as from the date of expiry of the notice if the other commits a material breach of the Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) days after the other has given notice containing details of the breach and requiring the breach to be remedied.
- 9.6 Except to the extent prohibited by Regulations, either party may at any time, by notice to the other, terminate the Agreement as from the date of expiry of the notice if an Insolvency Event occurs in relation to the other.

**10. CONSEQUENCES OF TERMINATION**

- 10.1 Termination of the Agreement does not affect the rights or liabilities of the parties which have accrued in accordance with this clause or otherwise have accrued due on or before termination, and does not affect the continuance in force of clauses, 12 (*Confidentiality*), 13 (*Intellectual Property Rights*), 14 (*Your Indemnity*), and 15 (*Our liability*), which survive termination of the Agreement.
- 10.2 Your right to use the Service ends immediately on termination of the Agreement but you may retain and use the Materials acquired prior to the date of termination on the same terms that applied immediately before termination, and where the Agreement terminates under clause 9.1, we will refund you any pre-paid Charges in respect of the remaining period of the Plan Period.
- 10.3 During the ninety (90) days following termination of the Agreement you must retrieve and delete Your Data (other than data held in automatically generated archive or back-up libraries (**Archive Data**)).
- 10.4 We may delete Your Data after the end of that period of ninety (90) days and may retain Archive Data where it is not reasonably practicable to identify and destroy the Archive Data, in which case we shall not access that Archive Data without your consent.

**11. WARRANTIES**

- 11.1 Each party warrants to the other that it has full right, power, and authority to enter into, and perform its obligations under, the Agreement.

- 11.2 You warrant that you are not, and none of your Affiliates is, a designated person for the purposes of the law of the whole or part of the United Kingdom relating to sanctions or subject to a sanction imposed under the law of any other country, state, territory, or international organisation, and you must notify us immediately if you or any of your Affiliates becomes a designated person or subject to such a sanction.
- 11.3 All warranties, conditions, or terms not set out in the Agreement which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise (other than as to the title to goods and statutory interest) are hereby excluded except to the extent they may not be excluded or limited by law.
- 12. CONFIDENTIALITY**
- 12.1 Each party undertakes to the other in relation to the Confidential Information of the other to keep confidential all Confidential Information; not to disclose Confidential Information without the other's prior written consent except to those of its employees who need to know the Confidential Information and otherwise in accordance with the Agreement; and not to use Confidential Information except for the purposes of the Agreement (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage).
- 12.2 Clause 12.1 does not apply to Confidential Information to the extent that it is or was already in the possession of the other free of any duty of confidentiality on the date of its disclosure; in the public domain, other than because of a breach of this clause; or required to be disclosed pursuant to Regulations or in connection with proceedings before a court or for the purpose of receiving legal advice, but only to the extent and for the purpose of that disclosure.
- 12.3 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of this clause and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of this clause.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1 Ownership**
- All Intellectual Property Rights subsisting in or relating to Contractsmith and the Materials are owned by us or our licensors (as appropriate), and all rights are reserved save as set out in the Agreement, and all Intellectual Property Rights subsisting in or relating to Your Data are owned by you or your licensors (as appropriate).
- 13.2 Non-infringement**
- We warrant that neither the Materials nor the provision of the Service infringe any Intellectual Property Rights.
- 13.3 Your protection**
- We shall defend you against, or at our option settle, any claim that use of the Materials or use of the Service in accordance with the Agreement infringes any Intellectual Property Rights (**Claim**), and shall be responsible for any damages, reasonable costs (including legal fees), and expenses finally awarded against you because of or in connection with any Claim or payable under a settlement of the Claim approved by us in writing.
- 13.4 Procurement of right to use**
- 13.4.1 If a Claim occurs or may occur, we may at our expense procure for you the right to continue using the Materials or the Service in accordance with the Agreement, render the Materials or the Service non-infringing, or replace the Materials, in any case without affecting our obligations or liabilities under the Agreement.
- 13.4.2 Where we are unable, using reasonable efforts, to cure an infringement, we may terminate the Agreement and refund any pre-paid Charges in respect of the remaining period of the Plan Period.
- 13.5 Safeguards**
- Where you claim under this clause, you must comply with the following provisions.
- 13.5.1 As soon as reasonably practicable, you shall notify us of the Claim.
- 13.5.2 You shall take all reasonable steps and ensure that all reasonable assistance is given to us to avoid or mitigate any liability in relation to the Claim.
- 13.5.3 You shall not without our prior written consent admit liability, make any offer, promise, compromise, or settlement, or fail to appeal any judgment in relation to the Claim.
- 13.5.4 At our request, you shall surrender to us or our insurers the conduct in your name of the defence, settlement, or counterclaim (as appropriate) of the Claim, in which case you shall be kept fully informed as to the conduct of the defence, settlement, or counterclaim.
- 14. YOUR INDEMNITY**
- You shall on demand indemnify and keep us indemnified (on an after tax basis) and hold us harmless in respect of all loss, damage, cost, and expense incurred or sustained by us, including a regulatory fine or penalty, and against any claim brought against us by any third party, because of or connected with any use of or reliance on Materials by a third party disclosed by you or your breach of clause 4.5.6.
- 15. OUR LIABILITY**
- 15.1 The following provisions of this clause set out our maximum liability in respect of a breach of the Agreement and a tortious act or omission (including negligence), breach of statutory duty or misrepresentation in connection with the Agreement, and all other liability is excluded except to the extent it may not be excluded or limited by law.
- 15.2 Nothing in the Agreement affects our liability for death or personal injury, fraud, wilful default, breach of clause 12 (*Confidentiality*), under clause 13 (*Intellectual Property Rights*) or any other liability to the extent it may not be excluded or limited by law.
- 15.3 Our total liability in connection with any one event or series of related events shall not exceed three million pounds (£3,000,000).
- 15.4 Our liability shall be reduced fairly and equitably having regard to the contribution (if any) to your loss or damage of any other person who is responsible or liable to you in respect of that loss or damage, and for the purpose of assessing a contribution of that kind, no account shall be taken of (a) any limit on the liability of that person contained in any agreement made before the loss or

damage occurred, (b) the amount actually recovered from that person, or (c) for the fact that the other person is unable to discharge the amount of the contribution.

- 15.5 Any claim must be made against us, and not against any employee or other person acting on our behalf.
- 15.6 In accordance with the SRA Rules, we maintain professional indemnity insurance, details of which are available on request.

**16. GENERAL**

**16.1 Entire agreement**

The Agreement constitutes the entire agreement between you and us relating to its subject matter, and supersedes all representations, including all pre-contract representations, misrepresentations, and misstatements negligently or innocently made, agreements, negotiations, or understandings relating to its subject matter, except that this clause does not affect the liability of either party for any fraudulent misrepresentation.

**16.2 Force majeure**

Our obligations under the Agreement shall be suspended for so long as and to the extent that their performance is prevented, hindered, or delayed by any event which is beyond our reasonable control, including acts of God, war, terrorism, fire, and natural disasters.

**16.3 Remedies cumulative**

Our and your rights under the Agreement are cumulative and (unless otherwise provided in the Agreement) are not exclusive of any rights or remedies provided by law or in the Agreement.

**16.4 Notices**

- 16.4.1 Any notice to be given under the Agreement shall be in writing, and shall either be delivered by hand, e-mail or sent by first class pre-paid post (or in the case of overseas post, by airmail). Delivery by courier shall be regarded as delivery by hand.
- 16.4.2 Notices (other than notices sent via e-mail) shall be sent to the registered office or principal place of business of the relevant party to the Agreement, marked for the attention of the company secretary or other officer of the party, or the person (if any) nominated for the purpose in the Order.
- 16.4.3 A notice shall be deemed to have been served if:
- (a) delivered by hand at the address referred to in clause 16.4.2, at the time of delivery;
  - (b) sent by first class pre-paid post to the address provided for by clause 16.4.2, at the expiration of two (2) Business Days after the time of posting;
  - (c) sent by airmail to the address provided for by clause 16.4.2, at the expiration of seven (7) Business Days after the time of posting; or
  - (d) sent by e-mail (with receipt confirmed), immediately, except that if the e-mail produces an automated response reporting a failure to deliver, delayed delivery to the intended recipient, or an

“out of office” (or similar) notification, the notice shall not be taken to have been served.

- 16.4.4 If a notice would otherwise be deemed to have been delivered outside working hours (being 9.00 am to 5.00 pm) on a Business Day under the preceding provisions of this clause, it shall be deemed to have been delivered at the opening of such normal working hours on the next Business Day.

- 16.4.5 In proving service of the notice, it shall be sufficient to show that delivery by hand was made or that the envelope containing the notice was properly addressed and posted in accordance with this clause.

- 16.4.6 A party may notify the other of a change to its name, relevant person, or address for the purposes of this clause, provided that such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than seven (7) days after the date on which notice is deemed to have been served, the date falling seven (7) Business Days after notice of any such change is deemed to have been given.

- 16.4.7 For the avoidance of doubt, the parties agree that the provisions of this clause do not apply in relation to the service of any claim form, application notice, order, judgment, or other document relating to or in connection with any proceedings.

**16.5 Waiver**

Any failure or neglect by either party to enforce any of the provisions of the Agreement shall not be construed nor deemed to be a waiver of that party's rights and does not affect the validity of the whole or part of the Agreement nor prejudice that party's rights; any waiver by either party of its rights under the Agreement does not operate as a waiver in respect of any subsequent breach.

**16.6 Invalidity**

If any provision of the Agreement is held to be illegal, invalid, or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of the Agreement and the legality, validity, and enforceability of the remainder of the Agreement shall be unaffected.

**16.7 Assignment and sub-contracting**

You shall not without our prior written consent assign, transfer, charge, dispose of, deal with, or sub-contract your rights or obligations under the Agreement.

**16.8 Address for service**

As soon as reasonably practicable after being requested to do so by us, you shall irrevocably appoint an agent for service of process in England and Wales satisfactory to the us (acting reasonably), and you hereby irrevocably consent to service of process on such person at such address.

**16.9 Amendment**

- 16.9.1 Subject to clause 16.9.2, we may from time to time amend these terms and any such amendment shall take effect from the date on which the revised form of the document is first made available for inspection by us on the Website or such earlier date as we notify to you.
- 16.9.2 We may not amend these terms where and to the extent the amendment would change to your detriment clauses 13 (*Intellectual Property Rights*), 15 (*Our Liability*), or in any other way entitle us to render no performance at all or performance substantially different than that which ought reasonably to be expected by you.

**16.10 Third party beneficiaries**

The Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.

**17. GOVERNING LAW**

The Agreement, and any non-contractual obligations arising in connection with the Agreement, shall be governed by and construed in accordance with English law.

**18. JURISDICTION**

The courts of England and Wales shall have exclusive jurisdiction to hear and determine any action, suit, or proceedings, and to settle disputes, which may arise out of or in connection with the Agreement, and you and we irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**(B) DATA PROCESSING TERMS**

**19. APPLICATION**

- 19.1 This Part (B) (*Data processing terms*) applies to the processing of personal data by us while operating Contractsmith and providing the Service, and by you during your use of the Service; our respective roles in doing so are described below.
- 19.2 Any personal data that you provide to us for the purpose of your instructions to us as your solicitor, which may be included in Your Data, and which we may process in the course of providing legal advice, are subject to your engagement letter with us applicable to those instructions (and not the Agreement); where Your Data which you make available to us includes documents and other works, data and other materials we require to provide you with legal advice, we will take a copy, store and use them separately from your account on Contractsmith.

**20. DATA PROCESSING**

- 20.1 We process all personal data that we obtain for operating Contractsmith and providing the Service for our own account, and we do so as the controller in relation that personal data and those purposes; the personal data we obtain is confined to contact details of individuals, and we process the fact of, and content of messages, sent and received in the course of the Service.
- 20.2 Subject to clause 20.1, you process all personal data included in Your Data using the Service as controller for your own purposes, and the details of the processing are as follows:
- 20.2.1 the subject matter of the processing is Your Data for the writing and management of your documents;

- 20.2.2 the duration of the processing is determined by your use of the Service;
- 20.2.3 the nature and purpose of the processing by us is the processing that is reasonably required to provide the Service;
- 20.2.4 the type of personal data included in Your Data is determined by you; and
- 20.2.5 the categories of the data subjects are determined by you.

20.3 Where we process Relevant Personal Data on your behalf as part of the Service we do so as your processor.

**21. COMPLIANCE**

You and we must comply with Data Protection Regulations.

**22. DOCUMENTED INSTRUCTIONS**

- 22.1 Subject to clause 22.3, we shall, and shall procure that any person doing so under our authority shall, process Your Data in accordance with your documented instructions only; the processing of Relevant Personal Data in accordance with the provision of the Service is deemed to be in accordance with those instructions.
- 22.2 We shall inform you if, in our opinion, your instructions would breach Data Protection Regulations having regard to the information then in our possession.
- 22.3 Clause 22.1 does not apply to processing which we or any person doing so under our authority is obliged to perform under Regulations, provided that reasonable prior notice of the Regulations is given to you by us except where and to the extent Regulations prevent or restrict the giving of notice on important ground of public interest.

**23. SECURITY AND CONFIDENTIALITY**

Your Data shall be subject to clause 12 (*Confidentiality*), and we shall:

- 23.1 apply security measures to protect against unauthorised or unlawful access to Your Data, including encryption of data at rest and in transit, and to back-up and restore backed-up data in a timely manner in the event of a physical or technical incident;
- 23.2 take reasonable steps to ensure the reliability of Relevant Personnel and that they process personal data in relation to the Services in accordance with this Part (B) (*Data Processing Terms*);
- 23.3 ensure that Relevant Personnel are aware of our obligations under Data Protection Regulations and of the importance of guarding against accidental, unauthorised, or unlawful processing of, access to, loss of, or damage to personal data, and are subject to appropriate duties of confidentiality; and
- 23.4 appoint a person to be responsible for security and data protection matters and provide the name of the person to you on request.

**24. ASSISTANCE**

- 24.1 We shall without undue delay, and in any event no later than reasonably required to enable you to fulfil your duties under Data Protection Regulations:

- 24.1.1 provide such information as you may reasonably require in relation to Relevant Personal Data or its processing and allow for and contribute to audits, including inspections, conducted by you or another auditor mandated by you;
  - 24.1.2 pass on to you any enquiries or communications (including subject access requests) from data subjects relating to their Relevant Personal Data or its processing;
  - 24.1.3 provide information in our possession or control as processor that is required to respond to any such data subject; and
  - 24.1.4 report to you any security incidents or breaches relating to the Relevant Personal Data and provide such information as you may reasonably require in relation to the incident or breach.
- 24.2 Subject to clause 24.1, in return for a reasonable charge in respect of such assistance, we shall assist you with the conduct of a data protection impact assessment in relation to Relevant Personal Data, and responding to requests of data subjects to exercise their rights in respect of the processing of their Relevant Personal Data.
25. **SUB-PROCESSORS**
- 25.1 Where and to the extent Contractsmith, including the processing of Relevant Personal Data, relies on Cloud Services:
- 25.1.1 the policies and procedures of the Sub-processors providing the Cloud Services, and the terms having effect from time to time between us and such Sub-processors, in relation to the processing of personal data as part of the Cloud Services shall be included in the Agreement (with such changes as are necessary being deemed to be made), and which shall apply to any processing of Relevant Personal Data in the course of those Cloud Services to the exclusion of any provisions to the contrary in the Agreement; and
  - 25.1.2 the manner in which and the extent to which you exercise or are entitled to exercise rights under the Agreement in respect of Relevant Personal Data processed as part of the Cloud Services shall be subject to those policies, procedures and terms.
- 25.2 We are liable for a breach of this addendum caused by the acts or omissions of third parties who process Relevant Personal Data as part of the Service.
- 25.3 After the Commencement Date, we will not without your prior specific written consent engage a sub-contractor or confer on any other third party authority to process Relevant Personal Data, including in the course of Cloud Services, and if you do consent, without first entering into a contract with that person under which they agree to comply with obligations the same as those set out in the Agreement so far as material in relation to the processing of Relevant Personal Data.
- 25.4 The third parties on which we rely from time to time to process Relevant Personal Data are included in our privacy policy published on the Website and you hereby consent to those third parties so disclosed at the Commencement Date.

26. **DATA PROTECTION TERMINATION EVENTS**

Where a Data Protection Termination Event occurs, we may terminate the Agreement and refund Charges pre-paid in respect of for the period remaining of the Plan Period.

27. **OVERSEAS TRANSFERS**

We will not transfer any Relevant Personal Data to any country or territory outside of the UK or to any international organisation except in the ordinary course of providing the Service and then only in accordance with Data Protection Regulations.

(C) **GLOSSARY**

28. **DEFINITIONS**

In the Agreement, unless the context otherwise requires, capitalised expressions in these terms have the meaning given to them and the following definitions apply:

**Affiliate** means, in relation to any company, partnership, or other person, including either you or us, any other company, partnership, or other person who Controls, is Controlled by, or is under common Control with, that company, partnership, or other person (including either you or us), and **Control** means the beneficial ownership of more than fifty per cent (50%) of the issued share capital of, or the legal power to direct or cause the direction of, the company, partnership, or other person in question, and **Controlled** shall be construed accordingly.

**Agreement** means the agreement between us relating to your use of Contractsmith incorporating these terms, and, in the case of a Bespoke Plan, the Order relating to the Bespoke Plan.

**Business Day** means Monday to Friday excluding public and bank holidays in England and Wales.

**Charges** means the fees payable in consideration of the Service, which in the case of an Associate Plan, are stored in our records within Contractsmith, and in the case of a Bespoke Plan, are set out in the Order.

**Cloud Services** means services supporting Contractsmith, including by way of platform-as-a-service or infrastructure-as-a-service (as those expressions are defined by The National Institute of Standards and Technology in the USA or any replacement body).

**Commencement Date** means, in relation to a Trial, Membership, or Associate Plan, the date on which your account on Contractsmith is opened, and in the case of a Bespoke Plan, the date of the applicable Order.

**Confidential Information** means in relation to a party, all information and trade secrets relating to that party's business which come into the possession of the other pursuant to the Agreement, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the other as of the Commencement Date, and including, in our case, the features of Contractsmith and the Materials.

**Contractsmith** means the proprietary web-based application operated by us from time to time, as more particularly described on the Website.

**Data Protection Regulations** means Regulations relating to data protection and information privacy.

**Data Protection Termination Event** means any of the following, namely: (i) you do not consent to the appointment of any sub-contractor under paragraph 25.3; (ii) an instruction from you is necessary to

enable you to meet mandatory legal requirements and a Sub-processor is not able to accommodate the changes required to comply with the instruction, or (iii) we cannot comply with the Agreement in relation to the processing of Relevant Personal Data due to terms having effect between us and Sub-processors.

**End User** means an individual authorised by us or you to use Contractsmith through your account.

**Initial Term** means the initial fixed period of your Plan commencing in each case on the Commencement Date, which in relation to a Trial Plan is fourteen (14) days, a Membership Plan is twelve (12) months, an Associate Plan is the period you select when setting up your account and which is stored within our records within Contractsmith, and in a Bespoke Plan, the period set out in the Order.

**Insolvency Event** means each and any of the following in relation to a party (a) any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a party; (ii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a party or any of its assets; (iii) the enforcement of any security over any assets of a party; or (iv) the attachment, sequestration, distraining upon or execution over or affecting any material asset of a party, which in any case is not withdrawn or dismissed as soon as reasonably practicable; (b) the party is unable to pay its debts as they fall due or is insolvent, or the other party perceives (acting reasonably) that to be the case; (c) the party enters into a composition or arrangement with any creditor, or its creditors or any class of them; or (c) any analogous event occurs in any jurisdiction in which the party is incorporated or established.

**Intellectual Property Rights** means any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill.

**Materials** means any or all documents and other works, data and other materials which are published by us on Contractsmith and obtained or accessed by you through use of the Service in accordance with the Agreement.

**Order** means an order for subscription to a Bespoke Plan in such form as we may require, signed by both parties, and **date of the Order** is the last date on which the Order has been signed by both parties.

**Precedents** means the document assembly tool forming part of Contractsmith.

**Questionnaire** means the questionnaire to be completed in respect of a template published on Precedents, and **Short Answer** means the free text entered by an End User in response to a question forming part of a Questionnaire.

**Regulations** means all legislation, and all rules or regulations of any kind, including orders, instructions or directions of a competent authority, and all related official guidance, whether enacted or enforced by any competent authority.

**Relevant Personal Data** means personal data within Your Data.

**Relevant Personnel** means our representatives and personnel who have access to Relevant Personal Data.

**Renewal Term** means, in relation to a Plan, each successive period equal to the Initial Term beginning after the end of the Initial Term and

each successive period, except as may be agreed otherwise in a Bespoke Plan and subject to clause 3.3 in the case of a Trial Plan.

**Sanction Event** means a breach of clause 11.2 or the occurrence of any event requiring to be notified to us under that clause.

**Security Information** means the passwords and other log-in details used in connection with the Service to access the Service.

**Service** means access to Contractsmith.

**Specifications** means the description of Contractsmith published by us from time to time, including on the Website.

**Sub-processor** means any company, partnership or other entity authorised by us in accordance with the Agreement to process Relevant Personal Data, including a sub-contractor of ours and any other third party which is a party to a contract under which such processing is authorised to take place.

**Your Data** means the documents and other works, data and other materials uploaded by you or on your behalf to Contractsmith from time to time, or any of them.

## 29. REFERENCES

The headings are for convenience only and shall not affect the interpretation of the Agreement, and references to:

- 29.1 **we** or **us**, are to Mattersmith Limited; and
- 29.2 **you**, are to the individual who has requested to use the Service, or the legal or other person, including partners in a partnership or members of an unincorporated association, on whose behalf that person is acting when doing so, including (as the context requires) where we have accepted their request;
- 29.3 **clauses** and the **Schedules** are to clauses of, and the schedules to, the Agreement;
- 29.4 **includes** or **including** means that the following words are to be construed without limitation to the generality of the preceding words;
- 29.5 any document (including the Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with the Agreement;
- 29.6 **writing** includes any method of reproducing words in a legible and non-transitory form, including e-mail;
- 29.7 **rights** includes the rights and remedies of the party in question;
- 29.8 the singular includes the plural and vice versa; and
- 29.9 words and phrases that are defined in Data Protection Regulations have the meaning in the Data Protection Regulations, including **personal data**, **processing**, **disclosure**, **controller**, and **processor**.