

HELIXSCRIBE TERMS OF SERVICE

BACKGROUND

- A This Terms of Service Agreement is entered into by and between you (the Customer) and Helixscribe Limited (the Company).
- B The Company provides a range of marketing services generated using artificial intelligence (the Services), via an online platform (the Platform) as more specifically described in this Agreement, and which the Customer wishes to use for itself and its Authorised Users.
- C The Customer accepts and agrees to be bound by the terms of this Agreement in relation to the performance of the Company's Services.

THE PARTIES AGREE:

1 Definitions

1.1 In this Agreement:

Applicable Laws	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction, including without limitation, the Data Protection Laws, the Consumer Protection from Unfair Trading Regulations 2008, the Business Protection from Misleading Marketing Regulations 2008 the Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing and UK Code of Broadcast Advertising;
Authorised Users	means those employees (including for this purpose only, individual third party contractors used alongside its regular workforce) of the Customer designated by the Customer on the Order Form as requiring access to the Platform;
Commencement Date	means the date specified in the Order Form or, if there is no date specified there, then the date on which the first Services are provided by the Company to the Customer;
Company	means Helixscribe Limited of 22 Stortford Hall Park, Bishops Stortford, United Kingdom, CM23 5AL
Company Indemnified Person	means: (a) the Company; (b) each direct and indirect sub-contractor of the Company; and

	(c) the officers, directors, employees, agents, successors, and assignees of the Company or any of the Company's direct or indirect sub-contractors;
Company Materials	means any and all works of authorship, including without limitation literary works, designs, drawings, logos, paintings, illustrations, sculptures, photographs and other artistic works, videos, films, sound recordings, animations, digital materials, computer software, software applications (including software programs and source code), products, discoveries, inventions, research, processes, systems, programs, formulae, component lists, operating and training manuals, databases, instructions, manuals, brochures, catalogues, know-how, data, databases, diagrams, charts, results, reports, information, methodologies, ideas, concepts, documents, models, prototypes, sketches, drawings, plans, photographs, specifications and studies supplied as part of the Services (either alone or jointly with others), but not including the Generated Content;
Confidential Information	means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
Consumer Prices Index	means the Consumer Prices Index as published by the UK Office for National Statistics;
Customer Materials	means all works, materials, data and software, which are proprietary to the Customer and are provided to the Company or uploaded or hosted on the Platform by the Customer or by any Authorised User, not including the Company Materials or the Generated Content;
Data Protection Laws	means any laws relating to privacy or to the processing, privacy and/or use of Personal Data, in each case as applicable to and binding on either party, including: <p>(a) the Data Protection Act 2018, the UK GDPR, and the Privacy and Electronic Communications Regulations 2003;</p> <p>(b) any laws which implement any such laws; and</p>

	(c) any laws that replace, extend re enact, consolidate or amend any of the foregoing;
Fees	means those fees which are set out as payable by the Customer on the Order Form and may comprise one-off charges or recurring charges;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder;
Generated Content	means any and all works of authorship, including without limitation literary works, designs, drawings, logos, paintings, illustrations, sculptures, photographs and other artistic works, videos, films, sound recordings, animations, digital materials, computer software, software applications (including software programs and source code), products, discoveries, inventions, research, processes, systems, programs, formulae, component lists, operating and training manuals, databases, instructions, manuals, brochures, catalogues, know-how, data, databases, diagrams, charts, results, reports, information, methodologies, ideas, concepts, documents, models, prototypes, sketches, drawings, plans, photographs, specifications and studies supplied as part of the Services either alone or jointly with others), generated wholly or in part using the Customer Materials;
Intellectual Property Rights	means copyright, rights related to copyright such as moral rights and performers' rights, design rights, database rights, databases, know-how, rights in inventions, patents, rights in Confidential Information, trade secrets, trade marks, trade names, domain names, business names, rights in get-up, rights in computer software and all similar rights of whatever nature wherever in the world arising and, in each case: a) whether registered or not; b) including any applications to protect or register such rights; c) including all renewals and extensions of such rights or applications; d) whether vested, contingent or future; and wherever existing;
Malware	means any code or device intended to interfere with or having the effect of interfering adversely with, the operation of any hardware or software, including any bugs, worms, logic bombs, trojan horses or any other such programs;
OpenAI	OpenAI UK Ltd, Suite 1, 3rd Floor, 11-12 St. James's Square, London SW1Y 4LB, United Kingdom; OpenAI OpCo, LLC at 3180 18th Street, San Francisco, CA, United States;

Personal Data	has the meaning given to personal data in the Data Protection Laws;
Platform	means the proprietary software platform accessible via the URL Helixscribe.ai developed by the Company for delivering the Services, together with all associated databases for storing Customer Materials;
Order	means an order from the Customer to purchase the Services in accordance with the terms of this Agreement;
Order Form	means the Order Form attached as Schedule 1;
Services	means those specific services selected by the Customer on the Order Form for provision by the Company under this Agreement and shall include all modifications, updates and extensions of those services made in accordance with the terms of this Agreement;
System Requirements	means the technical network and other conditions for the Company's supply of the Services via the Platform and the conditions of the Customer's access to, receipt of and use of the Platform;
Term	means the term of this Agreement as set out in clause 2.1.

2 Commencement and Term

2.1 This Agreement shall commence on the Commencement Date and shall continue for the duration of the Services specified in the Order Form (the Term), unless terminated in accordance with clause 14 or otherwise in accordance with this Agreement or is earlier terminated by agreement between the parties.

2.2 The terms of this Agreement shall also apply to any additional or changed Services agreed by the parties in the course of the Term, and shall apply to any renewal or extension of the Term.

3 Order for Services

3.1 The Customer may place an order for the Services with the Company by completing the Order Form, available on the Company's website, or supplied by the Company to the Customer on request.

3.2 Each Order by the Customer to the Company shall be an offer to purchase the Services subject to the terms of this Agreement.

3.3 If the Company is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.

- 3.4 The offer constituted by an Order shall remain in effect and capable of being accepted by The Company for [30] Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 3.5 The Company may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
 - 3.5.1 The Company's written acceptance of the Order; or
 - 3.5.2 The Company delivering or performing the Services or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 3.6 The Company may make a formal counter-offer by specifying that it is willing to complete the Order, subject to modifying certain of the terms and/or the Specification. Where the counter-offer is accepted in full by the Customer this shall form an Order within the meaning of these Terms and Conditions.
- 3.7 Notwithstanding clause 3.6, rejection by the Company of an Order, including any communication that may accompany such rejection, which is not clearly stated to be an conditional counter-offer capable of acceptance, shall not constitute a counter-offer capable of acceptance by the Customer.

4 Provision of the Services on the Platform

- 4.1 The Company shall make available the Services agreed in the Order Form from the Commencement Date for the duration of the Term subject to the terms of this Agreement.
- 4.2 The Company warrants to the Customer that:
 - 4.2.1 it shall provide the Services using reasonable care and skill;
 - 4.2.2 It shall provide the Services in accordance with any Applicable Laws.
- 4.3 The Company shall create the Generated Content as part of the Services. The Customer acknowledges that the Generated Content is generated by artificial intelligence. Artificial intelligence and machine learning are rapidly evolving fields of study. The Customer acknowledges that given the probabilistic nature of machine learning, use of the Content may in some cases generate inaccuracies in the Generated Content.
- 4.4 Subject at all times to the Customer complying with clauses 6.3 and 6.3.3, when the Company supplies the Generated Content as part of the Services, the Company:
 - 4.4.1 will use all reasonable efforts to ensure that it is free from defects, viruses and other malicious content;
 - 4.4.2 shall ensure that the supply of the Generated Content to the Customer shall not infringe the Intellectual Property Rights of any third party;
- 4.5 Other than as set out in this Agreement all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

- 4.6 The Customer warrants and represents to the Company that it has done such reasonable due diligence of the Services prior to the Commencement Date and takes sole responsibility for their suitability for its own intended purposes.
- 4.7 The Customer warrants that it has checked the System Requirements and that the Platform is suitable for its use. The Company makes no warranty regarding the suitability of the Platform for use on the Customer's own internal IT systems or that the Platform will be suitable for use, except in accordance with the System Requirements.
- 4.8 Time for performance of the Services is not of the essence, unless otherwise agreed with the Customer in the Order Form.

5 Authorised Users

- 5.1 The Company shall provide access to the Platform to the agreed number of Authorised Users specified in the Order Form. The Customer may at any time during the Term designate in writing further individuals in addition to those identified on the Order Form as Authorised Users subject to the written consent of the Company.
- 5.2 The Customer may grant only Authorised Users access to the Platform. The Customer is responsible for ensuring compliance by the Authorised Users with the terms of this Agreement (including the Policies) and shall be fully liable for the acts or omissions of the Authorised Users as if they were its own.
- 5.3 The Customer shall be responsible for any acts of unauthorised access to the Services where such access is gained by unauthorised use of an Authorised User's account. The Customer shall inform the Company immediately on becoming aware of any unauthorised access, whether through an Authorised User's account or otherwise.

6 Customer Materials

- 6.1 The Customer shall provide access to Customer Materials for the purposes of generating the Generated Content.
- 6.2 The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Materials and that its use (including use in connection with the Services) complies with all Applicable Laws and Intellectual Property Rights and do not infringe any third party Intellectual Property Rights.
- 6.3 The Customer shall (and procures that its Authorised Users shall) ensure that the Customer Materials are free from viruses and any Malware or any other material which:
- 6.3.1 is unlawful;
 - 6.3.2 is or contains material which is harmful, obscene, defamatory;
 - 6.3.3 is or contains material which infringes any third party's rights including any third party's Intellectual Property Rights;
 - 6.3.4 is or contains material which is of a harassing or offensive nature;
 - 6.3.5 contains sexually explicit or other offensive material;

- 6.3.6 promotes the use of unlawful violence against a person or property; or
 - 6.3.7 is or contains material which is discriminatory based on race, origin, belief, sexual orientation, physical or mental disability, age or any other illegal category.
- 6.4 In the event of any breach (or alleged breach) of clause 6.3, the Company may without prior notice:
- 6.4.1 disable or suspend the Services, including access to or use of the Platform that allows access to or use of any material which is causing (or is alleged to cause) a breach of clause 6.3; and/or
 - 6.4.2 delete any Customer Materials that are causing (or are alleged to cause) a breach of clause 6.3,
- clause 8.2 shall apply to such disabling of access as it applies in the case of any suspension or temporary discontinuance or modification of the Services under clause 8.2.
- 6.5 The Customer shall indemnify the Company against all claims, losses, costs or expenses (including all Data Protection Losses) incurred by the Company in consequence of any non-compliance by the Customer with the provisions in this clause 6.3.
- 6.6 The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Materials, including as necessary to ensure the continuation of the Customer's business(es). The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its and its Authorised User's needs) and extracts all necessary Customer Data from all Services prior to the termination or expiry of this Agreement or the cessation or suspension of any of the Services.
- 6.7 It is the Customer's responsibility to understand if software within the Customer Materials includes programs (including third party programs) that might access the Services or Customer Materials. The Company has no responsibility (howsoever arising, including in negligence) to prevent any such access nor for the consequences of such access (including the deletion or disclosure of Customer Materials, whether or not intended or authorised).
- 6.8 The Company shall not be responsible for and the Customer shall accept sole responsibility for the following matters:
- 6.8.1 the inputting and maintenance of the Customer Materials (except as otherwise expressly agreed by the parties) and its security and integrity;
 - 6.8.2 the taking of backups of the Customer Materials or any other data (and the Customer acknowledges that the Services not include any dedicated data back up or disaster recovery facilities and that the Customer should ensure it at all times maintains backups of all Customer Materials);
 - 6.8.3 except as otherwise agreed under this Agreement, extracting, transferring or recovering any data (including any Customer Materials) whether during or after the Term (or providing any assistance with any such activities).

6.9 To the maximum extent permitted by applicable law, the Company shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Materials hosted on the Platform.

7 Misuse of the Services

7.1 The Customer shall not use or allow the Platform to be used by its Authorised Users to license, sell, rent, transfer, host, outsource or permit timesharing or the provision of services to any third party.

7.2 The Customer may not perform any security testing of the Platform, including network discovery, port/service identification, vulnerability scanning, password cracking, remote access testing or penetration testing.

7.3 If the Customer or any Authorised User fails at any time to comply with the System Requirements or clauses 7.1 to 7.2 (inclusive) in any, including a trivial respect, the Company reserves the right without prior notice to suspend the Customer's (and Authorised Users') access to or use of the Platform either completely or to the extent the Company in its sole discretion deems necessary to ensure a safe and secure manner of providing its services to its customers in general. The Company shall be entitled to maintain the suspension until the Customer is able to remedy its non-compliance with clauses 7.1 to 7.2 (inclusive) and to demonstrate its future ability to comply with such clauses to the Company's reasonable satisfaction.

8 Changes to the Services

8.1 The Company may, at any time and without notice, temporarily discontinue or modify the Services or make changes to the Services or any part of them where:

8.1.1 this is necessary in the Company's sole discretion for the purpose of making modifications to the design, specifications, network connectivity or method of operation of the Platform in order to maintain its compliance with current security or other technical requirements or standards;

8.1.2 which are necessary to comply with any Applicable Laws.

8.2 In connection with any period of suspension or temporary discontinuance or modification of the Company's provision of the Services permitted by the terms of this Agreement:

8.2.1 the Company may delete or remove access to some or all of the Customer Materials stored on the Platform;

8.2.2 the Company shall provide as much notice as is reasonably possible taking into account the urgency of the situation, its potential effect on the Company's ability to continue providing Services to its customers generally and the need to maintain a safe and secure environment;

8.2.3 the Company shall not be liable for any loss or damage to the Customer including any liability it may incur to third parties; and

8.2.4 the Company shall be entitled to charge and be paid all Fees until the end of the period of suspension, discontinuance or modification.

8.3 The Customer acknowledges that the Services are subject to the limitations, delays and other technical issues which are inherent in the use of third party networks or communications facilities including the internet.

8.4 Where the Company would be required to make a change to the Services consequent on a change in the Applicable Laws which comes into force at any time after the Commencement Date, then the Company may instead terminate this Agreement by notice in writing of not less than 30 days, in which case this Agreement shall terminate at the end of that 30-day period.

9 Fees

9.1 The Customer shall pay the Fees set out in the Order Form including:

9.1.1 any one-off charges in respect of any agreed set-up activities or any additional licensing; and

9.1.2 any recurring charges in respect of the provision of the Services.

9.2 The Company may render an invoice for Fees at the following times:

9.2.1 in respect of any one-off charges indicated on the Order Form, on the earlier of the Commencement Date or the time indicated on the Order Form for that charge; and

9.2.2 in respect of any recurring charges in respect of the Services, monthly in advance as from the Commencement Date.

9.3 Unless stated to the contrary on the Order Form, it is a condition of this Agreement that the Customer should pay for the first month's Fees in advance on the Commencement Date.

9.4 Unless stated to the contrary, all Fees are exclusive of VAT or other charges imposed by law from time to time, and the Customer shall in addition pay such VAT and other charges at the rate and in the manner prescribed by law from time to time.

9.5 The Company may increase the Fees with effect from the first anniversary of the Commencement Date provided it has given the Customer at least 30 days' written notice. The Company may not increase the Fees by an amount greater than the percentage increase in the Consumer Prices Index over the 12-month period up to the time of giving written notice.

9.6 Unless stated to the contrary, the Company shall raise invoices in pounds sterling and the Customer shall make full payment in pounds sterling without set-off or deduction within 30 days of the date of the invoice.

9.7 Timely payment shall be of the essence and in addition to its other rights and remedies under the terms of this Agreement or at law, the Company may suspend any Services pending full payment. Clause 8.2 shall apply to such suspension as it applies in the case of any suspension or temporary discontinuance or modification of the Services under clause 8.2.

9.8 If any sum is not paid by the due date for payment as set out above, the Company may charge interest on any outstanding balance at the rate of 8% per annum above the base rate of the Bank of England such interest to accrue on a daily basis.

10 Intellectual Property Rights

10.1 The Customer shall retain ownership of all Intellectual Property Rights in the Customer Materials.

10.2 The Customer hereby grants the Company a non-exclusive, sub-licensable (including by multi-tier), worldwide, royalty-free licence to use, transmit, copy, install and otherwise utilise:

10.2.1 the Customer Materials; and

10.2.2 any software, materials and data made available to the Company (or those acting on its behalf) by or on behalf of the Customer or any Authorised User,

to the extent necessary to enable the Company to provide the Services and exercise its rights and perform its obligations under this Agreement.

10.3 The Company shall retain ownership of all Intellectual Property Rights in the Company Materials and the Generated Content. The Customer hereby assigns to the Company with full title guarantee all Intellectual Property Rights in relation to the Generated Content, if any (and waives any equivalent rights to the extent permissible by law) immediately on their coming into existence, for the full duration of such rights, wherever in the world enforceable and whenever created. Further, to the extent that full legal title to the Intellectual Property Rights in the Generated Content shall fail automatically to belong to the Company, the Customer shall hold such rights on trust for the Company absolutely, and shall (notwithstanding the prior termination of this Agreement for any reason) forthwith at the request of the Company execute any document or do anything required by the Company to vest in it (or as it shall direct) the full legal title to the Intellectual Property Rights to enable it (or its nominee) to enjoy the benefit of such rights.

10.4 The Company grants to the Customer a non-exclusive licence of the Intellectual Property Rights in the Company Materials and the Generated Content for the Customer to use, modify and adapt for its own marketing purposes for the Term.

10.5 Save for the foregoing, the Customer may not use the Company Materials or Generated Content without further express licence of the Company.

10.6 The Customer agrees to credit the Company as the author of the Generated Content, where used by the Customer, by including the copyright notice on the Generated Content:

Helixscribe Limited (c).

10.7 Subject to clauses 10.8, 10.9, 10.10 and 13, the Company shall at its discretion defend at its own expense any claim brought against the Customer by any third party alleging that the supply of the Generated Content by the Company to the Customer infringes any third party Intellectual Property Rights (an **IP Claim**).

10.8 The provisions of clause 10.7 shall be the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

10.9 The provisions of clause 10.7 shall not apply where the IP Claim relates to the use of the Customer Materials, or where the Customer is in breach of clause 6.3.3.

10.10 The provisions of clause 10.7 shall not apply unless the Customer:

- 10.10.1 promptly notifies the Company upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
 - 10.10.2 makes no comment or admission and takes no action that may adversely affect the Company's ability to defend or settle the IP Claim;
 - 10.10.3 provides all assistance reasonably required by the Company subject to the Company paying the Customer's reasonable costs; and
 - 10.10.4 gives the Company sole authority to defend or settle the IP Claim as the Company considers appropriate.
- 10.11 The Customer shall indemnify, keep indemnified and hold harmless the Company (on the Company's own behalf on behalf of each Company Indemnified Person) from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by it or by any Company Indemnified Person as a result of or in connection with any action, demand or claim that the transmission, receipt, copying, installation, use, possession or other utilisation of the Customer Materials in accordance with this Agreement infringes the Intellectual Property Rights of any third party.

11 Data protection

- 11.1 Any Customer Materials containing any Personal Data of the Customer will be dealt with in line with the Company's Privacy Policy, which explains what personal information the Company will collect from the Customer, how and why it collects, store, uses and shares such information, the Customer's rights in relation to the use of its personal information and how to contact the Company and supervisory authorities if the Customer has a query or complaint about the use of its personal information.
- 11.2 In order to generate the Generated Content the Company makes use of third-party proprietary software owned by OpenAi. The Company will anonymise the Customer Materials before sharing any information with OpenAi in order to generate the Generated Content.
- 11.3 The Company may monitor, collect, store and use information on the use and performance of the Services (including Customer Materials) to detect threats or errors to the Services and/or the Company's operations and for the purposes of the further development and improvement of the Company's services, provided that such activities at all times comply with the Privacy Policy referred to therein.

12 Confidentiality

- 12.1 Each party agrees that it may use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under this Agreement and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 12.
- 12.2 Subject to clause 12.5, each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under this Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential

Information is disclosed is aware of its confidential nature and complies with this clause 12 as if it were a party.

- 12.3 Subject to clause 12.5, each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 12.4 Each party shall indemnify the other from and against any losses, damages, liability, costs (including legal fees) and expenses which the other party may incur or suffer as a result of or arising from any breach of its obligations under this clause 12.
- 12.5 To the extent any Confidential Information is Personal Data, such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any Data Protection Laws.

13 Limitation of liability

- 13.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.
- 13.2 The maximum liability of the Company to the Customer in any 12-month period starting with the Commencement Date shall not exceed a sum equal to the Fees paid by the Customer to the Company in that 12-month period.
- 13.3 Except as expressly stated in this Agreement, and subject to clause 13.4, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 13.4 Notwithstanding any other provision of this Agreement, the Company's liability shall not be limited in any way in respect of the following:
 - 13.4.1 death or personal injury caused by negligence;
 - 13.4.2 fraud or fraudulent misrepresentation;
 - 13.4.3 breach of any obligation as to title implied by:
 - (a) section 12 of the Sale of Goods Act 1979;
 - (b) section 2 of the Supply of Goods and Services Act 1982; or
 - (c) section 8 of the Supply of Goods (Implied Terms) Act 1973;
 - 13.4.4 any other losses which cannot be excluded or limited by applicable law;

14 Termination

- 14.1 Either party may terminate this Agreement at any time by giving notice in writing to the other party if:
 - 14.1.1 the other party commits a material breach of this Agreement and such breach is not remediable;

- 14.1.2 the other party commits a material breach of this Agreement which is not remedied within 30 days of receiving written notice of such breach; or
- 14.2 The Company may additionally terminate this Agreement at any time by giving notice in writing to the Customer if the Customer:
 - 14.2.1 has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after the other party has received notification that the payment is overdue.
 - 14.2.2 ceases all or a significant part of its business or indicates that it intends to do so;
 - 14.2.3 is unable to pay its debts or becomes subject to an insolvency procedure or has a receiver or administrator appointed over any of its assets, becomes subject to a company voluntary arrangement, winding-up petition, moratorium, restructuring plan or scheme of arrangement, or goes into liquidation, including in each case any analogous procedure in any jurisdiction; or
 - 14.2.4 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clause 14.2.3 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 14.3 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

15 **Consequences of termination**

- 15.1 Upon termination or expiry of this Agreement for any reason:
 - 15.1.1 the obligation on the Company to provide any Services and any rights and licences granted by the Company under this Agreement shall immediately terminate (including, for the avoidance of doubt, any rights granted to Authorised Users to access the Platform);
 - 15.1.2 the Customer shall immediately pay all sums outstanding to the Company; and
 - 15.1.3 each party shall return to the other party and make no further use of any materials, software or other items (excluding Customer Materials, which is addressed in clause 15.4) whatsoever (or of any copies of them) belonging to the other party and/or provided by it pursuant to this Agreement.
 - 15.1.4 the Company shall cease all further performance of the Services;
 - 15.1.5 the licence granted by the Company to the Customer to the Company Materials and Generated Content shall cease;
 - 15.1.6 the Customer shall destroy or return (at the Company's election) all Confidential Information in its possession or under its control and all copies of such information.

- 15.2 Termination or expiry of this Agreement for any reason is without prejudice to any rights or liabilities which have accrued prior to the date of termination.
- 15.3 Termination or expiry of this Agreement shall not affect those provisions which expressly or by necessary implication are intended to survive termination of this Agreement including clauses 10 to 13 (inclusive).
- 15.4 At the Customer's request, or at the Company's discretion, the Company shall securely dispose of all Customer Materials in the Company's possession or control processed in relation to the Services (or any part) which have ended except to the extent that any Applicable Law requires the Company to store such Customer Materials. The Company shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Materials undertaken in accordance with this Agreement.

16 **General**

- 16.1 **Assignment.** The Customer shall not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the prior written consent of the Company.
- 16.2 **Force Majeure.** Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than one month, either party may terminate this Agreement by written notice to the other party.
- 16.3 **Entire agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral. Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. Nothing in this Agreement shall limit or exclude any liability for fraud.
- 16.4 **Further Assurance.** The Customer shall at the request of the Company execute such documents and take any action reasonably necessary to carry out the provisions of this Agreement.
- 16.5 **Priority of Terms.** In the event of any conflict or inconsistency between different parts of this Agreement, these terms shall have priority over the Order Form.
- 16.6 **Equitable Remedies.** Each party recognises that any breach or threatened breach of this Agreement may cause irreparable harm to the Company for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the Customer agrees that the Company may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.
- 16.7 **Variation.** No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.
- 16.8 **Assignment.** No party may assign, novate or otherwise dispose of any or all of its rights or obligations under this Agreement without the other party's prior written consent.

- 16.9 **No partnership or agency.** The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.
- 16.10 **Severance.** If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 16.11 **Waiver.** No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 16.12 **Dispute resolution.** If any dispute arises between the parties out of or in connection with this Agreement, the matter shall be referred to senior representatives of each party who shall use their reasonable endeavours to resolve it. If the dispute is not resolved within 14 days of the referral being made, the parties shall resolve the matter through mediation in accordance with the CEDR Mediation Rules. Until the parties have completed the above steps, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief.
- 16.13 **Third party rights.** A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.
- 16.14 **Governing law and Jurisdiction.** This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

Schedule 1
ORDER FORM
