

Responsiv Terms and Conditions for Responsiv Cloud

for the provision by Responsiv Solutions Limited of Cloud Hosting, and Solutions Involving Cloud Hosting.

Part number RL0002O v1.1

August 2020 Edition

This Cloud Solutions Agreement between you and Responsiv Solutions, governs your use of and access to the Solution. The term "Agreement" refers collectively to these terms and conditions and, as applicable, (i) the Solution Description for the applicable Solution; (ii) if you purchased directly from Responsiv Solutions, any order form referencing or incorporating the Solution Description (an "Offer"); (iii) the Cloud Solutions Agreement Acceptable Use Policy ("AUP") as defined at Clause 24.

This Agreement is effective upon your (a) execution of a Solution Description or an Order Form; (b) acceptance of these terms pursuant to an online or offline process; (c) accessing or using the Solution; or (d) acceptance of terms between you and a reseller that reference this Agreement. "You," "your" or "Customer" means the end-user entity which you represent, and which may be further identified in the applicable Solution Description, Order Form, End User Acknowledgment Form or online order process, and includes any of your affiliates that expressly agree to, or are otherwise legally bound by, this Agreement. "Responsiv," "us," "we" or "our" means Responsiv Solutions Ltd, on behalf of itself and its suppliers and licensors. Your purchase of the Solution is solely for your internal business use and may not be resold.

1. DEFINITIONS

"Activation Instructions" means any instructions, user IDs, software license keys or passwords that Responsiv or the applicable Cloud Partner provides you to enable you to activate or access a specific Solution.

"Confidential Information" means (i) data you transmit to us or store as part of the Solution or information provided to us on an Order Form; (ii) Responsiv pricing and other Solution terms, Activation Instructions, marketing and sales information, know-how, audit and security reports, product development plans, data centre designs (including non-graphic information you may observe on a tour of a data centre), or other proprietary information or technology provided to you (including Software); and (iii) Trade Secrets or any information designated as Confidential. Information developed without reference to another party's Confidential Information, or that is a part of or enters the public domain or otherwise is made available to a party without a violation of confidentiality, will not be Confidential Information.

"Customer Content" means any information or data provided by you or your End Users in connection with your or your End Users' use of the Solution, including any text, software, music, sound, photographs, graphics, video, messages, files, attachments or other materials transmitted to us or stored or used on the Solution.

"End User" means each individual or entity that Customer has authorized to access and use a Solution, including any individual or entity that purchases a Customer Solution.

"Intellectual Property" means all patents, applications for patents, copyrights, moral rights, author's rights, rights of publicity, mask works, Trade Secrets, know-how, contract rights, licensing rights and/or any other intellectual or proprietary rights recognized by any jurisdiction, whether now existing or hereafter arising. Intellectual Property also includes corporate names, trade names, trademarks, service marks or other proprietary designations.

"Services" means any and all services performed by us, a Cloud Partner, or a combination thereof as described in one or more Solution Descriptions.

"Software" means any software, library, utility, tool or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by us in connection with a Solution. Software includes software locally installed on your systems and software accessed through the Internet or by other remote means including websites, portals and cloud-based solutions to utilize a Solution in accordance with this Agreement.

"Solution" means the combination of the Services performed and Software provided by us or our Cloud Partner to you pursuant to a Solution Description. Solutions include any Partner Solutions.

"Solution Description" means (i) a statement of work, Product Description, solution description or other agreement that references this Agreement or Cloud Partner Terms or (ii) a specification sheet or online description referenced in an Order Form .

"Third-Party Products" means any non-Responsiv or non-Cloud Partner software or services provided, made available or otherwise used in connection with the Solution, including any Customer Solution or any other Customer or third-party provided software, hardware or services.

"Trade Secret" means any Responsiv or Cloud Partner information not commonly known or available to the public, which (i) derives economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

2. QUOTES, ORDERING AND PAYMENT

- 2.1. If you purchased a Solution through a reseller, the terms and conditions of sale (including pricing) for the purchase will be as agreed between you and the reseller. This Clause 2 applies to direct sales only.
- 2.2. We will charge amounts for Solutions as set forth in the applicable Solution Description or Offer. Quoted prices will remain in effect only until the expiration date of the quote. All orders are subject to our acceptance. The number of systems, units (e.g., mailboxes, recipients, minutes, etc.) and End Users for which you have purchased Solution(s) is indicated on the Offer. Usage in excess of these numbers or for a period of time longer than the Term will result in Overage costs. The additional costs per billing period will be determined in accordance with the Overage charges defined in the original Offer. Responsiv does not give credits or refunds for charges already due or paid, except as

specified elsewhere in this Agreement. If Customer wishes to increase its Authorized Use, Customer must notify Responsiv in advance and pay any applicable charges.

- 2.3. Solutions are invoiced in accordance with the applicable Solution Description or Offer beginning on the Activation Date. Invoices are due and payable within 15 days from the invoice date. Responsiv reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998, as amended from time to time. Late payment fees are recalculated every 30 days based on your current outstanding balance, which may include any previously accrued and unpaid late payment fees. Customer will pay all reasonable legal fees associated with collection of overdue amounts.
- 2.4. If any authority imposes on the Solution a duty, tax, levy, or fee, then Customer agrees to pay that amount, as specified in an invoice, or supply exemption documentation. If any authority imposes a customs duty, tax, levy, or fee for the import into or the export, transfer, access, or use of the Solution outside the country in which the original Solution was procured, then Customer agrees that it is responsible for, and will pay, any amount imposed.
- 2.5. Responsiv may vary any Fee from time to time.
- 2.6. Time for payment shall be of the essence and no payment shall be deemed to have been received by Responsiv until it has received cleared funds.
- 2.7. The Customer shall make all payments due under the Confirmation without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

3. ACTIVATION

- 3.1. With respect to certain Solutions, after our receipt and acceptance of an order (whether placed directly with Responsiv or through a reseller), you will receive Activation Instructions. The date Activation Instructions are transmitted or, in the event Activation Instructions are not required, the effective date of the applicable Solution Description or the date an offer is executed is the "Activation Date." You are required to provide, maintain and monitor one dedicated email address for the receipt of notices and other communications related to the Solution.

4. TERMINATION

- 4.1. The Contract (including this Agreement) may be terminated immediately by Responsiv if the Customer commits any material breach of any term of the Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 14 days of a written request to do so from Responsiv,
- 4.2. If you purchased multiple Solutions, termination of an individual Solution will not terminate this Agreement unless the circumstances giving rise to termination generally affect all purchased Solutions.
- 4.3. Notwithstanding the foregoing, we may terminate this Agreement or the affected Solutions upon written notice to you, and without further liability if
 - 4.3.1. you are overdue on your payment obligations for 30 days or more ;
 - 4.3.2. you violate the AUP or the Cloud Partner's AUP;
 - 4.3.3. a change in our relationship with a third-party Software or technology provider or Cloud Partner has had a material adverse effect on our ability to provide the Solution;
 - 4.3.4. you declare bankruptcy, are adjudicated bankrupt or a receiver or trustee is appointed for you or substantially all of your assets or
 - 4.3.5. you purchased through a reseller and as applicable: the agreement between you and such reseller expires or is terminated, the agreement between Responsiv and such reseller expires or is terminated or your reseller is overdue on its payment obligations to Responsiv.
- 4.4. Upon expiration of the Term for all Solutions purchased pursuant to this Agreement, either party may terminate this Agreement by providing 30 days written notice. Upon termination of this Agreement, all rights and obligations under this Agreement will automatically terminate except for rights of action accruing prior to termination, payment obligations and any obligations that expressly or by implication are intended to survive termination.

5. TERM AND RENEWAL

- 5.1. The "Term" for any Solution begins on the Activation Date and extends for the period indicated in the Solution Description or Offer (or, if you purchased through a reseller, the applicable period in our order with the reseller). If you purchased directly from Responsiv, unless you decline auto-renewal in writing at least thirty (30) days prior to the expiration of the Term or unless auto-renewal is explicitly disclaimed in a Solution Description or an Offer, we may automatically renew this Agreement and the related Solution(s) for a successive Term at our then-current list price. By continuing to use the Solution(s) beyond the expiration of the applicable Term, we may renew this Agreement and the related Solution(s) at our discretion for a successive Term at our then-current list price. If you purchased through a reseller, the terms and conditions of renewal for the purchase will be as agreed between you and the reseller, provided the reseller has properly procured the Solution(s) on appropriate terms from Responsiv

6. LICENSE

- 6.1. To the extent Software is provided as a part of the Cloud Solution, such Software is provided subject to the license agreement that accompanies the Software, and in the absence of such license, Responsiv-branded Software is subject to Responsiv's Software License Agreement available on request. Customer shall be liable for any breach of this Agreement by any End User.

7. CLOUD PARTNERS

- 7.1. Should you purchase a Solution from Responsiv that is performed by a member of Responsiv's cloud partner program (a "Cloud Partner") your Solution (a "Partner Solution") may be governed by additional terms and conditions that will be presented on your Offer ("Cloud Partner Terms").

8. CUSTOMER SOLUTIONS

- 8.1. If you provide End Users any non-Responsiv software or services (including management services) with, through or using the Solution (a "Customer Solution"), you must provide your End Users with this Agreement and your End Users must agree that their use of the Customer Solution is subject to the terms and conditions of this Agreement.
- 8.2. You are responsible for any Customer Solution, including,
 - 8.2.1. controlling the access to, and use and security of, the Customer Solution and the data residing in or processed via the Customer Solution, including the use of appropriate encryption;
 - 8.2.2. maintaining the security of the passwords and other measures used to protect access to any end-user account;
 - 8.2.3. properly configuring the Solution to work with the Customer Solution and taking your own steps to maintain appropriate back-up of the Customer Solution, including the use of appropriate archiving; and
 - 8.2.4. properly handling and processing notices claiming that the Customer Solution violates a person's rights. Customer agrees to indemnify and hold Responsiv harmless from and against any claims by End Users using the Customer Solution against Responsiv relating to the Customer Solution.

9. CUSTOMER OBLIGATIONS

- 9.1. You are responsible for keeping your account permissions, billing and other account information current. If you purchased directly from Responsiv, you must pay when due the amounts for the Solution stated in the applicable Solution Description or other agreement between you and Responsiv. If you purchased from a reseller, you must pay when due the amounts for each Solution stated in the applicable agreement between you and the reseller.
- 9.2. Certain Solutions may contain features designed to interoperate with Third-Party Products or Cloud Partner services. If the Third-Party Product or Cloud Partner services are no longer made available by the applicable provider, we may stop providing the related Solution feature and you will not be entitled to any refund, credit or other compensation.
- 9.3. In our performance of the Solution, we may obtain information related to your use of the Solution. You agree that we may use such information in an aggregated, anonymized form to assist in improving and optimizing various aspects of the Solution or in support of generic marketing activities related to the Solution.
- 9.4. You represent and warrant that you have obtained all rights, permissions and consents necessary to use and transfer any Customer data or End User data within and outside of the country in which you are located in connection with our (or our Cloud Partners') performance of the Service or your use of the Software (including providing adequate disclosures and obtaining legally sufficient consents from your employees, agents, contractors and End Users).
- 9.5. You are responsible for the data and software you use or store in the cloud, including its maintenance, operation and compatibility in and with the cloud, and any third-party claims regarding the same. You understand and agree that neither Responsiv nor the Cloud Partners have control over the content of the data processed and that Responsiv (or the Cloud Partner, as applicable) performs the Services on your behalf.
- 9.6. If you or an End User transmits data to a third-party website or other provider that is linked to or made accessible by the Solution, you and the End User consent to our or the Cloud Partners, as applicable, enabling such transmission, but such transmission and any related interaction is solely between you and the third-party website or provider and may be subject to additional terms and conditions provided by the third-party website or provider. Neither Responsiv nor the Cloud Partners will be responsible for any disclosures, modifications or deletions of your data resulting from any such transmission. Neither Responsiv nor the Cloud Partners make any warranties about, or will have any liability for, such third-party websites or providers.
- 9.7. You must use reasonable security precautions in connection with your use of the Solution and comply with the AUP and laws and regulations applicable to your use of the Solution. You must cooperate with our reasonable investigation of Service outages, security issues and any suspected breach of this Agreement. We may revise the AUP to add or modify restrictions on use of the Solutions, provided that the changes are commercially reasonable, consistent with industry norms and apply to all customers.
- 9.8. You will be deemed to have taken any action that you permit, enable or facilitate any person or entity to take related to this Agreement or any use of any Solution. You are responsible for the use of the Solutions by any End User and any person who gains access to your or any End User's data or the Solution as a result of your failure to use reasonable

security precautions, even if the use was not authorized by you. You will ensure that End Users comply with your obligations under this Agreement and that the terms of your agreement with each End User are consistent with this Agreement and are legally enforceable. If you become aware of any violation of your obligations under this Agreement by an End User, you will immediately terminate such End User's access to the Solution.

- 9.9. You are responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Solution and for ensuring that the equipment is compatible with the Solution. You are responsible for properly configuring and using the Solution and taking your own steps to maintain appropriate security, protection and back-up of your data and software, including the use of appropriate encryption, back-up and archiving. You acknowledge that the Solutions are not intended to replace and do not replace the need for you to maintain regular data back-ups or redundant data archives. You are responsible for maintaining back-up copies of your data that may be stored or processed by us in the course of our provision of Solutions. You understand and agree that we are not responsible for any loss or corruption of your data or software. You remain responsible for properly handling and processing notices claiming that your data or software violates a person's rights.
- 9.10. In connection with certain Solutions, we may provide you with hardware, software, equipment or other property ("Equipment"). The Equipment is our sole property and we may immediately take possession of the Equipment following the termination or expiration of this Agreement. You will
 - 9.10.1. keep the Equipment free and clear of any lien and not pledge as security or otherwise encumber the Equipment;
 - 9.10.2. use the Equipment only to access the Solution and comply with our reasonable Equipment use instructions;
 - 9.10.3. not remove, relocate or move the Equipment from the specific location where it was first installed without our prior written approval;
 - 9.10.4. provide adequate, secure and proper space at your facility to install Equipment, it being agreed that we are not obligated to install Equipment in poorly ventilated, air conditioned or inadequately maintained room(s);
 - 9.10.5. be responsible for risk of loss and damage to the Equipment equal to the present value of the Equipment's fair market value;
 - 9.10.6. not remove, cover or alter plates, labels or other markings on the Equipment; and
 - 9.10.7. provide a secure link such as a static IP address for the Equipment.

10. CUSTOMER LICENSE GRANT TO RESPONSIV

- 10.1. Customer grants to Responsiv (and the Cloud Partners, if applicable) the necessary rights to operate any Customer-provided software, including a non-exclusive, royalty-free license (which shall terminate upon termination of the applicable Solution) to install, deploy, use, execute, reproduce, display, perform and run such software (including, without limitation, guest operating systems and application programs), as are reasonable or necessary for Responsiv or the Cloud Partner, if applicable, to perform or provide the Solution. As between you and Responsiv or you and the Cloud Partner, you are responsible for providing, updating, uploading and maintaining any Customer-provided software and paying all fees associated therewith, including any software license and maintenance fees. If, in order to provide the Solution, we or our Cloud Partner, as applicable, are required to install, patch, manage or otherwise use or access software that you license from a third-party software vendor, then you represent and warrant that you have obtained a written license agreement with the vendor that permits us to perform these activities.
- 10.2. Customer grants to Responsiv or Responsiv's Cloud Partner, as applicable, a non-exclusive, royalty-free license to access, use, reproduce, modify, perform, display and distribute Customer and End User data as is reasonable or necessary for Responsiv or Cloud Partner to perform or provide the Solution. It is Customer's responsibility to obtain, at its own expense, all licenses, consents and approvals required to grant to Responsiv (or Responsiv's Cloud Partner) the rights and licenses in this Agreement.

11. HIGH-RISK DISCLAIMER

- 11.1. The Solutions may not be used in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines or any other application in which the failure of the Solutions could lead directly to death, personal injury or environmental or property damage (collectively, "**High-Risk Activities**")

12. SUSPENSION, DELETION AND MODIFICATION

- 12.1. We may suspend all or part of the Solution or your access to or use of data stored in the cloud
 - 12.1.1. if you (or the reseller, from which you purchased) default on payment obligations for 15 days or more;
 - 12.1.2. upon receipt of a law-enforcement request; or
 - 12.1.3. when we have a commercially reasonable belief that you have breached this Agreement or that your use of the Solution poses an imminent security risk or may subject Responsiv to liability .
- 12.2. We will use commercially reasonable efforts to give you at least 24 hours' notice of a suspension unless we (or the Cloud Partner) determine in our commercially reasonable judgment that a suspension on shorter or contemporaneous notice is necessary to protect us, the Cloud Partner or our customers.

- 12.3. For customers purchasing a Responsiv-delivered Solution, we may delete your Customer Content
 - 12.3.1. 60 days following any termination by us pursuant to Clause 4 of this Agreement, or
 - 12.3.2. if you (or the reseller, from which you purchased) fail to renew an applicable Solution Description within 60 days of expiration. For customers purchasing a Partner Solution, the retention and deletion of Customer Content will be governed by the applicable Cloud Partner Terms.
- 12.4. If we are providing the Solution in connection with a trial program such as a demo, evaluation, pilot or proof of concept (a "Trial"), immediately following the conclusion of the Trial we may delete Customer Content stored in the cloud without any obligation to return Customer Content to you. If, however, immediately following the conclusion of the Trial you renew the Solution for the standard term, we will keep Customer Content in the cloud in accordance with this Agreement.
- 12.5. We or the Cloud Partner may modify the functionality or features of the Solution at any time, provided that the modification does not materially denigrate the functionality of the Solution (as described in the applicable Solution Description) during the Term. We or the Cloud Partner will not be liable to you or any third-party for any such modification. From time to time, we or the Cloud Partner may change the location where the Solution is delivered; provided, however, we or the Cloud Partner will remain responsible for the delivery of the Solution.
- 12.6. It may be necessary for us or the Cloud Partner to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Solution or result in a partial or complete outage of the Solution. Although we cannot guarantee that you will receive advance notice of repairs or maintenance, we will endeavour to provide at least 7 days' notice of scheduled updates and patches or such notice as is set forth in the applicable Cloud Partner Terms.
- 12.7. Responsiv may withdraw a Cloud Solution on 12 months' notice, unless otherwise stated in an Offer. Responsiv will continue to provide the Cloud Service for the remainder of the unexpired term or work with the Customer to migrate to another Responsiv offering.

13. INTELLECTUAL PROPERTY AND COPYRIGHT

- 13.1. For the purposes of this Agreement Intellectual Property Rights are defined as patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 13.2. Except for information created or otherwise owned by you or licensed by you from third-parties, including all information provided by you to us through the Solution or for use in connection with the Solution, all right, title, and interest in the Intellectual Property embodied in the Solution, including the know-how and methods by which the Solution is provided and the processes that make up the Solution, will belong solely and exclusively to us or our licensors or our Cloud Partners, and you will have no rights in any of the above, except as expressly granted in this Agreement. Any Intellectual Property developed by us during the performance of the Solution will belong solely and exclusively to us and/or our licensors or Cloud Partners.

14. CONFIDENTIALITY AND PUBLICITY

- 14.1. Confidential Information is information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of either party, trade secrets including, without limitation, technical data and know-how relating to the business of either party or any of their suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) business plans, details of suppliers, customers, pricing schemes, pricing, terms of business, strategic intentions, company marketing plans, sales forecasts, financial details, regulatory results, employee details, invention details, intellectual property, product plans and designs and including (but not limited to) information created, developed, received or obtained in connection with a Contract, whether or not such information (if in anything other than oral form) is marked confidential.
- 14.2. Each party shall, during the term of this Agreement and thereafter, keep confidential all Confidential Information, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party.

- 14.3. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature.
- 14.4. Responsiv shall be entitled to make a public announcement concerning this agreement and to include the Customer in its client list without the prior written consent of the Customer.

15. ASSIGNMENT

- 15.1. You may not assign this Agreement or any respective rights or obligations to a third-party without our prior written consent. We may assign, sell or otherwise transfer our rights under this Agreement upon our sale of a business, product line or substantially all of our assets, provided the transferee agrees to perform the obligations under this Agreement. We may subcontract or delegate in whole or in part this Agreement, provided that we remain responsible for the performance of the Solution. For purposes of this Agreement, any change of control will be deemed an assignment.

16. EXPORT

- 16.1. Customer agrees to comply with all applicable export and import laws and regulations, including E.U. and U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users.
 - 16.1.1. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("Export Control Laws"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
 - 16.1.2. Each party undertakes: a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

17. GENERAL TERMS

- 17.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and shall be referred to the exclusive jurisdiction of the English courts.
- 17.2. This Agreement, the schedules and the documents annexed as appendices to this Agreement or otherwise referred to contain the whole agreement between the parties relating to the subject matter of this agreement and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 17.3. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 17.4. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.5. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.6. In entering into this Agreement, neither party is relying on any representation (whether it was made negligently or innocently) not specified in this Agreement, including but not limited to any representation concerning: a) the performance or function of the Program, other than as expressly warranted in (Warranty and Exclusions); b) the experiences or recommendations of other parties; or c) any results or savings that Customer may achieve.
- 17.7. The Agreement and intellectual property indemnification terms of Customer's other agreements with Responsiv (such as any Services Agreements) do not apply to Solutions supplied under this Agreement.
- 17.8. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.9. No right or cause of action for any third party is created by this Agreement, nor is Responsiv responsible for any third party claims against Customer, except as permitted in (21.2 Items for Which Responsiv May Be Liable).
- 17.10. 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 term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 17.11. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.
- 17.12. Each party confirms it is acting on its own behalf and not for the benefit of any other person or legal entity.

- 17.13. Neither party shall be liable to the other for any delay in performing its obligations if the delay is caused by circumstances beyond its reasonable control, provided that the other party is promptly notified in writing. This clause shall not relieve either party of its obligations under this Agreement (including payment), but rather will only excuse a delay in performance. In the case of a delay arising under this clause, Customer acknowledges and agrees that its data may not be recoverable and accepts responsibility for re-entry of such data.
- 17.14. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation:
- 17.14.1. neither party will bring a legal action, regardless of form, for any claim arising out of or related to this Agreement more than two years after the cause of action arose; and
- 17.14.2. upon the expiration of such time limit, any such claim and all respective rights related to the claim lapse.
- 17.15. Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement.
- 17.16. Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.
- 17.17. We are not responsible for determining whether any Third-Party Product used in the performance of the Solution satisfies the local regulatory requirements of the country in which the Third-Party Product is delivered, and we are not obligated to provide any Software or perform any Services where we become aware that the resulting Software or Services do not satisfy local regulatory requirements.
- 17.18. Any revisions to this Agreement (other than to the AUP) ("Revisions") are not effective until the underlying Solution Description or Offer is renewed or extended following the date we publish the Revisions on our website.
- 17.19. If there is a conflict between the terms of any of the documents that comprise this Agreement, the documents will prevail in the following order: (i) Offer (ii) the Solution Description, (iii) these terms and conditions, the (iv) AUP; provided, however, that for Partner Solutions, as between Customer and the Cloud Partner, the Partner Terms will prevail over any of the terms of any of the documents that comprise this Agreement. Prevailing terms will be construed as narrowly as possible to resolve the conflict while preserving as much of the non-conflicting terms as possible, including preserving non-conflicting provisions within the same paragraph, section or sub-section.
- 17.20. The failure by us to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers must be in writing to be effective.

18. THIRD PARTY NOTICES

- 18.1. The Solution may include third party code that Responsiv, not the third party, licenses to Customer under this Agreement. Notices, if any, for the third party code ("Third Party Notices") are included for Customer's information only.
- 18.2. Responsiv Solution may contain IBM software and services and You agree to be bound to the terms contained in the specific IBM Program Licence Document ("LI") and other licencing files, including NOTICES files that accompany or are included in these Programs.

19. NOTICES

- 19.1. Any notice (other than for or in court proceedings) given to a party under or in connection with this contract shall be in writing and shall be a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or b) sent by email to its main contact.
- 19.2. Any notice shall be deemed to have been received: a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service and c) if sent by email, immediately on transmission (provided no error message is generated).

20. WARRANTY AND EXCLUSIONS

- 20.1. The Solution, together with all third-party products and open source software provided by Responsiv, is provided "as is." Responsiv (including its affiliates, contractors, and agents, and each of their respective employees, directors, and officers), on behalf of itself and its licensors, Cloud Partners and suppliers (collectively and together with Responsiv, the "Responsiv Parties"), makes no express or implied warranty with respect to the Solution or any of the software or services included therein, including but not limited to any warranty
- 20.1.1. of merchantability, fitness for a particular purpose, suitability or non-infringement;
- 20.1.2. relating to the performance of software (including whether the software is or will be secure, accurate, complete, without error, or free of viruses, worms or other harmful components or program limitations, or that any errors in the software will be corrected) or our performance of the services (including whether the services are or will be uninterrupted, timely or without error) or the security of the solution or whether the Solution is suitable for high-risk activities;

- 20.1.3. regarding the results to be obtained from the Solution (including the accuracy, quality, reliability, suitability, completeness, truthfulness, usefulness or effectiveness of any reports, data, results or other information obtained or generated by you related to your use of the software) or the results of any recommendation by us or
- 20.1.4. arising out of any course of dealing or trade usage. Any warranty on a third-party product is provided by the publisher, provider or original manufacturer, whether or not such third-party product is designated by us as "certified," "approved" or otherwise. In the event we are providing the Solution in connection with a trial, the Solution is provided "as is" and "as available" without any warranties.
- 20.2. The Customer accepts responsibility for
 - 20.2.1. testing its IT system and components and ensuring their compatibility with the Solution and
 - 20.2.2. the selection of the Solution to achieve its intended results and acknowledges that the Solution has not been developed to meet the individual requirements of the Customer.
- 20.3. With respect to your or End User's use of the software, you assume the entire cost of all necessary servicing, repair, or correction of problems caused by viruses or other harmful components, unless such problems or viruses are the direct result of our gross negligence or wilful misconduct .
- 20.4. You agree that the operation and availability of the systems used for accessing and interacting with the Solutions, including telephone, computer networks and the internet, or for transmitting information can be unpredictable and may, from time to time, interfere with or prevent access to or use or operation of the Solutions. We will not be liable for any such interference with or prevention of your or End User's access to, or use of, the Solutions or the impact such interference or prevention may have on our ability to perform the Solutions
- 20.5. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.
- 20.6. These warranties are Customer's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, any implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, and any warranty or condition of non-infringement.

21. LIMITATION OF LIABILITY

- 21.1. The limitations and exclusions in this Section 21 (Limitation of Liability) apply to the full extent they are not prohibited by applicable law without the possibility of contractual waiver.
- 21.2. Items for Which Responsiv May Be Liable
 - 21.2.1. Responsiv's entire liability for all claims in the aggregate for any damages and losses that may arise as a consequence of the fulfilment of its obligations under or in connection with this Agreement or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfilment of such obligations (if Responsiv is at fault) or of such cause, for a maximum amount equal to the charges (if the Program is subject to fixed term charges, up to twelve months' charges) Customer paid for the Program that has caused the damages. This limit also applies to any of Our Cloud Partners and suppliers. It is the maximum for which Responsiv or its Cloud Partners and suppliers are collectively responsible.
 - 21.2.2. The above limitation will not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Responsiv is legally liable.
- 21.3. Items for Which Responsiv Is Not Liable
 - 21.3.1. Under no circumstances is Responsiv or any of its staff or associates or its Cloud Partners and suppliers liable for any of the following, even if informed of their possibility:
 - 21.3.1.1. loss of, or damage to, data;
 - 21.3.1.2. incidental, exemplary or indirect damages, or for any economic consequential damages;
 - 21.3.1.3. special, incidental, exemplary, or indirect damages or consequential damages; or
 - 21.3.1.4. wasted management time or lost profits, business, revenue, goodwill, or anticipated
 - 21.3.1.5. lost profits, business, revenue, goodwill, or anticipated savings, even if they arise as an immediate consequence of the event that generated the damages.
 - 21.3.2. The limitation and exclusion of liability herein agreed applies not only to the activities performed by Responsiv but also to the activities performed by its suppliers and staff, and represents the maximum amount for which Responsiv as well as its suppliers and Cloud Partners are collectively responsible.
 - 21.3.3. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is Responsiv responsible for any third party claims against Customer except as permitted by the Limitation of Liability section above for bodily injury (including death) or physical harm to real or tangible personal property caused by Responsiv's negligence for which Responsiv is legally liable to that third party.

21.4. Nothing in this clause shall limit or exclude any liability for fraud.

22. INDEMNIFICATION

- 22.1. We will defend and indemnify you from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable legal fees) arising out of or relating to any third-party claim or action that the Solution (excluding Third-Party Products and open source software) infringes or misappropriates that third-party's Intellectual Property rights enforceable in the country in which the Solution is sold to you.
- 22.2. In addition, if we receive prompt notice of a claim that, in our reasonable opinion, is likely to result in an adverse ruling, then we will, at our option,
- 22.2.1. obtain a right for you to continue using the Software or that allow us to continue performing the Services;
 - 22.2.2. modify the Software or Services to make them non-infringing;
 - 22.2.3. replace the Software or Services with a non-infringing equivalent; or
 - 22.2.4. refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonably depreciated or pro rata refund for the allegedly infringing Software.
- 22.3. Notwithstanding the foregoing, we will have no obligation under this Clause 22 for any claim resulting or arising from
- 22.3.1. modifications of the Software or Services that were not performed by or on behalf of us;
 - 22.3.2. the combination, operation or use of the Software or Services in connection with a Third-Party Product (the combination of which causes the claimed infringement); or
 - 22.3.3. our compliance with your written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by you.
- 22.4. This Clause 22 states Customer's exclusive remedies for any third-party Intellectual Property claim or action, and nothing in this Agreement or elsewhere will obligate us to provide any greater indemnity to Customer.
- 22.5. You will defend and indemnify the Responsiv Parties from and against any claims, damages, liabilities, losses, costs and expenses (including reasonable legal fees) arising out of or relating to any third-party claim or action relating to
- 22.5.1. your failure to obtain or maintain any appropriate license, Intellectual Property rights or other permissions, regulatory certifications or approvals associated with technology or data provided by you, or associated with Software, Third-Party Products or other components directed or requested by you to be installed or integrated as part of the Solution;
 - 22.5.2. your breach of this Agreement or violation of any applicable law, regulation or order;
 - 22.5.3. any inaccurate representation regarding the existence of an export license or any allegation made against the Responsiv Parties due to your violation or alleged violation of applicable Control Laws;
 - 22.5.4. you providing any Excluded Data to Responsiv;
 - 22.5.5. tax liabilities that are your responsibility pursuant to Clause 2;
 - 22.5.6. your use of the Solution;
 - 22.5.7. the failure of any End Users to comply with your obligations under this Agreement; and
 - 22.5.8. your provision of your own services, software, technology or solution.
- 22.6. Each party will defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or wilful misconduct in the course of performing its obligations under this Agreement.

23. INDEMNIFICATION PROCEDURE

- 23.1. The indemnified party will
- 23.1.1. promptly notify the indemnifying party in writing of any claim;
 - 23.1.2. grant the indemnifying party sole control of the defence and resolution of the claim; and
 - 23.1.3. cooperate with the indemnifying party, at the indemnifying party's expense, in defending and resolving the claim. Failure to provide prompt notice, however, will not affect the indemnifying party's obligations to the extent the failure does not materially prejudice the indemnifying party's ability to defend the claim.
- 23.2. In no event will an indemnifying party consent to the entry of any judgment or enter into any settlement with respect to any third-party claim without the prior written consent of the indemnified party (not to be unreasonably withheld) unless the judgment or settlement involves only the payment of money damages, without admission of fault, and expressly and unconditionally releases the indemnified party from all liabilities and obligations with respect to the claim.

24. CLOUD SOLUTIONS AGREEMENT ACCEPTABLE USE POLICY

- 24.1. This Cloud Solutions Agreement Acceptable Use Policy (the "AUP") sets forth certain limitations and restrictions required in connection with your use and your End Users' use of (a) the Solutions, and (b) any online portal, console, dashboard or similar interface used in accessing the Solutions (the "Portal").
- 24.2. We may revise this AUP from time to time to add or modify restrictions on your use or your End Users' use of the Solutions or the Portal
- 24.3. If you or your End Users violate this AUP, we may suspend or terminate your use or your End Users' use of the Solutions.
- 24.4. Terms used in this AUP that are capitalized and not otherwise defined have the meanings set forth in the Responsiv Cloud Solutions Agreement.
- 24.5. You are prohibited from
 - 24.5.1. attempting to use or gain unauthorized access to our or to any third-party's networks or equipment;
 - 24.5.2. permitting other individuals or entities to copy the Solutions;
 - 24.5.3. providing unauthorized access to or use of Activation Instructions;
 - 24.5.4. attempting to probe, scan or test the vulnerability of the Solutions or of a system, account or network of Responsiv or any of our customers or suppliers;
 - 24.5.5. interfering or attempting to interfere with service to any user, host or network;
 - 24.5.6. engaging in fraudulent, offensive or illegal activity of any nature;
 - 24.5.7. uploading any content, or engaging in any activity, that is pornographic, obscene, harassing, abusive, slanderous or defamatory or that encourages, promotes or expresses racism, hatred, bigotry or violence;
 - 24.5.8. engaging in any activity that infringes the intellectual property rights or privacy rights of any individual or third-party;
 - 24.5.9. transmitting unsolicited bulk or commercial messages;
 - 24.5.10. intentionally distributing worms, Trojan horses, viruses, corrupted files or any similar items;
 - 24.5.11. restricting, inhibiting or otherwise interfering with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Solutions (except for tools with safety and security functions); or
 - 24.5.12. restricting, inhibiting, interfering with or otherwise disrupting or causing a performance degradation to any Responsiv (or Responsiv supplier) facilities used to deliver the Solutions.
- 24.6. We may investigate suspected violations of this AUP. We may report suspected violations of this AUP to applicable law-enforcement authorities or third-parties and may cooperate with any investigation of illegal activities associated with your use or your End Users' use of the Solutions, the Portal, the system or network, or any violation of this AUP.

25. GENERAL DATA PROTECTION

- 25.1. Business Contact Information is business-related contact information disclosed by Customer to Responsiv or Cloud Partner(s), including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.
- 25.2. Business Contact Personnel are Customer employees and contractors to whom the Business Contact Information relates.
- 25.3. Customer authorizes Responsiv or Cloud Partner(s) to process and use Business Contact Information within Responsiv and its partners in support of Customer including the provision of support services, and for the purpose of furthering the business relationship between Customer and Responsiv, including, without limitation, contacting Business Contact Personnel (by email or otherwise) and marketing Responsiv products and services (the "Specified Purpose");
- 25.4. Responsiv agrees that all Business Contact Information will be processed in accordance with the GDPR and will be used only for the Specified Purpose.
- 25.5. To the extent required by the GDPR, Customer represents that it has obtained (or will obtain) any consents from (and has issued (or will issue) any notices to) the Business Contact Personnel as are necessary in order to enable Responsiv or any Cloud Partner to process and use the Business Contact Information for the Specified Purpose.
- 25.6. Customer authorizes Responsiv to transfer Business Contact Information outside the European Economic Area, provided that the transfer is made on contractual terms approved by the Data Protection Authority or the transfer is otherwise permitted under the Data Protection & Electronic Communications Legislation.
- 25.7. For purposes of this Item "Personal Data" has the meaning set out in the Data Protection Law and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which Responsiv or a Cloud Partner is providing services under this Contract. In the context of GDPR the term means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological,

genetic, mental, economic, cultural or social identity of that person. The following provisions apply in the event that one party makes Personal Data available to the other:

- 25.7.1. Neither party will request Personal Data beyond what is necessary to fulfil the purpose(s) for which it is requested. The purpose(s) for requesting Personal Data must be reasonable. Each party will agree in advance as to the type of Personal Data that is required to be made available.
- 25.7.2. Each party acknowledges that it is solely responsible for determining and communicating to the other the appropriate technological, physical and organizational security measures required to protect Personal Data.
- 25.7.3. Each party will ensure that Personal Data is protected in accordance with the security safeguards communicated and agreed to by the other.
- 25.7.4. Each party will ensure that any third party to whom Personal Data is transferred is bound by the applicable terms of this section.
- 25.8. Additional or different services required to comply with the Laws will be deemed a request for new services.
- 25.9. Each party agrees that Personal Data will only be used, accessed, managed, transferred, disclosed to third parties or otherwise processed to fulfil the purpose(s) for which it was made available.
- 25.10. Access Requests
 - 25.10.1. Each party agrees to reasonably cooperate with the other in connection with requests to access or amend Personal Data.
 - 25.10.2. Each party agrees to reimburse the other for any reasonable charges incurred in providing each other assistance.
 - 25.10.3. Each party agrees to amend Personal Data only upon receiving instructions to do so from the other party or its personnel.
 - 25.10.4. Each party will promptly return to the other or destroy all Personal Data that is no longer necessary to fulfil the purpose(s) for which it was made available, unless otherwise instructed by the other or its personnel or required by law.