

# Big Sofa Technologies Limited

## Terms and Conditions

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11 (LIABILITY).**

### 1. Definitions

1.1 In these terms and conditions the following definitions apply:

<b>Affiliate</b>	of a party means any entity which directly or indirectly owns or controls, is directly or indirectly owned or controlled by, or is in common ownership or control with, that party;
<b>Big Sofa</b>	means Big Sofa Technologies Limited (registered company number 08687045) with registered office address at: Finsgate, 5-7 Cranwood Street, London EC1V 9EE;
<b>Big Sofa Materials</b>	means the Platform, the Software and all documents, materials, data, proprietary software (and the media on which they are each recorded), which are owned by or licensed to Big Sofa at the date of the Contract or which are subsequently created by Big Sofa independently of the Contract, or which are subsequently created by Big Sofa as a result of performing the Services, other than the Output Data;
<b>Business Day</b>	means a day other than a Saturday, Sunday and public holidays in London, England;
<b>Commencement Date</b>	means the date on which provision of the Services commences;
<b>Confidential Information</b>	means any commercial, financial or technical information relating to the products, services, plans, know-how or trade secrets which is disclosed from one party to another before, on or after the Commencement Date, to the extent it is marked as confidential or proprietary or is of a nature that a reasonable person would consider it to be confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract and which includes (but is not limited to) the Software, the Platform, the Input Data and the Output Data;
<b>Contract</b>	means the agreement between Big Sofa and the Customer for the supply and purchase of the Services and/or the Software subject to and pursuant to these Terms and any Statement of Work signed in writing by both Big Sofa and the Customer;
<b>Customer</b>	means You, the customer who signs up for and accesses the Services via the Website and/or purchases the Software;

<b>Data</b>	means digital and video content;
<b>Force Majeure</b>	means acts, events, omissions or accidents beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, strike, lockout or boycott or other industrial action (involving the workforce of any party), malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, or default of suppliers or sub-contractors, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or materials required for performance of the Contract;
<b>Half-Year</b>	means each consecutive period of six months commencing on the Commencement Date;
<b>Input Data</b>	means all and any Data supplied by the Customer to Big Sofa in respect of the Services
<b>Intellectual Property Rights</b>	<p>means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:</p> <ul style="list-style-type: none"><li>(a) Whether registered or not;</li><li>(b) Including any applications to protect or register such rights;</li><li>(c) Including all renewals and extensions of such rights or applications;</li><li>(d) Whether vested, contingent or future;</li><li>(e) To which a party is or may be entitled; and</li><li>(f) In whichever part of the world existing.</li></ul>
<b>Licence</b>	means (if applicable) the licence of the Software supplied to the Customer by Big Sofa pursuant to these Terms;
<b>Malware</b>	means any malicious code, trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the provision of the Services;
<b>Platform</b>	means the Big Sofa Platform, the proprietary cloud based analytics platform on which Services are performed;
<b>Open Source Software</b>	means any third-party software provided under a licence which grants certain freedoms to the licensee;
<b>Output Data</b>	means Input Data in respect of which the Services have been performed and which is stored on the Big Sofa Platform to be accessed by the relevant

Customers;

<b>Services</b>	means the Data analysis services supplied by Big Sofa to the Customer pursuant to the Contract;
<b>Software</b>	means the digital and video and content analysis software in respect of which Big Sofa may grant a Licence to the Customer pursuant to these Terms;
<b>Statement of Work</b>	means a document setting out the specification of the Services to be provided by Big Sofa to the Customer as agreed in writing and signed by an authorised representative of each party;
<b>Terms</b>	means the standard terms and conditions of business of Big Sofa set out in this document;
<b>Value Added Tax or VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the supply of the Services;
<b>Website</b>	means <a href="http://www.bigsofatech.com">www.bigsofatech.com</a> ;

1.2 Unless the context otherwise requires:

1.2.1 each gender includes the others;

1.2.2 the singular includes the plural and vice versa

1.2.3 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.2.4 clause headings do not affect their interpretation;

1.2.5 general words are not limited by example; and

1.2.6 references to any legislation will be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## 2. Our Contract

2.1 By ticking the box to confirm that you agree to these Terms and/or accessing and/or using our Website and/or Platform or otherwise indicating your consent, you agree to be bound by these Terms and the documents referred to in them.

2.2 If you do not agree with any of these Terms you must stop using the Website and Platform immediately.

2.3 Proposals issued by Big Sofa are valid for thirty (30) calendar days from date of issue. Proposals do not constitute an offer to sell or supply; a Customer's indication via email or otherwise that it wishes to proceed with a particular proposal shall constitute an offer and a contract shall be formed on the basis of these Terms when Big Sofa confirms your username and password to access the Platform.

2.4 Marketing and other descriptive matter relating to Services and Licences are illustrative only, and do not form part of the Contract. The Customer agrees that, in proceeding with a proposal, it has not relied upon any representation or statement by Big Sofa, or any employee or representative on its behalf, not set out in the Contract.

2.5 These terms apply to and form part of the Contract for the supply of Services and/or Licence(s) by Big Sofa to the Customer. They supersede any previously issued terms and conditions of supply.

2.6 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase order, confirmation of order, specification or other document, or which are implied by trade, custom or practice or course of dealing, will form part of the Contract.

2.7 No variation of the Terms or to any Contract documents including a proposal from Big Sofa or a Statement of Works will be binding unless expressly agreed in writing and executed by a duly authorised signatory of Big Sofa.

2.8 A Contract will be formed upon the earlier to occur of:

2.8.1 issue by Big Sofa to the Customer of a username and password for the Platform; or

2.8.2 the execution of a specific bespoke written agreement by both Big Sofa and the Customer.

### **3. Price and Payment**

3.1 The charges payable by the Customer to Big Sofa in consideration for Big Sofa's undertakings in these Terms shall comprise:

3.1.1 the licence fees for any Software ("the Software Licence Fee"); and

3.1.2 the charges for any Software support ("the Support Fee"); and

3.1.3 the charges for any other Services ("the Service Fee")

and in each case will be as set out in the relevant proposal or in default of such provision will be calculated in accordance with Big Sofa's standard scale of charges in force on the date of formation of the Contract.

3.2 The fees do not include Value Added Tax which will be charged in addition at the then applicable rate.

3.3 Big Sofa may increase any Service Fee, Software Licence Fee and/or the Support Fee not more than once in each consecutive period of twelve (12) months for the duration of the Contract and Big Sofa shall give as much notice of such increase as is reasonably practicable.

3.4 The Customer shall pay all invoices:

3.4.1 to Big Sofa's nominated bank account specified on the relevant invoice or as otherwise notified by Big Sofa to the Customer in writing;

3.4.2 within the payment terms specified on the relevant invoice;  
time of payment is of the essence.

3.5 Where sums due hereunder are not paid in full by the due date:

3.5.1 Big Sofa may, without limiting its other rights, charge interest on such sums in accordance with and at the rate specified pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;

3.5.2 Interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgement.

### **4. Provision of Services**

4.1 Big Sofa will provide the Services to the Customer in accordance with the Contract in all material respects.

4.2 The Services will begin on the Commencement Date and be performed for the period specified in the proposal or Statement of Works or until earlier termination of the Contract pursuant to clause 16.

4.3 Big Sofa shall not be liable for any delay in or failure of performance of the Services (including any failure to achieve any milestone or other date) so far as caused by an event of Force Majeure or the Customer's failure to perform its obligations under the Contract.

- 4.4 Big Sofa may make any changes to the Services:
- 4.4.1 needed to comply with applicable laws or safety requirements; or
  - 4.4.2 which do not materially affect the nature or quality of the Services;
- and will notify the Customer of such changes as soon as is reasonably practicable.

## 5. Big Sofa's Obligations

Big Sofa will:

- 5.1.1 perform the Services using reasonable care and skill;
- 5.1.2 use personnel who have appropriate skills and experience for their duties;
- 5.1.3 perform a single daily incremental back-up of data on its systems and the Platform;
- 5.1.4 obtain and maintain all licences, permits and other consents required for its performance of the Services; and
- 5.1.5 comply with all applicable laws and regulations.

## 6. Customer's obligations

- 6.1 The Customer shall pay the fees for the Services and the Licences in accordance with the Contract.
- 6.2 The Customer shall provide Big Sofa with all such facilities, information and assistance (ensuring that the information is complete and accurate) in each case as required to allow Big Sofa to perform the Services.
- 6.3 The Customer will also:
  - 6.3.1 co-operate fully with Big Sofa and follow Big Sofa's reasonable instructions in relation to the performance of the Services;
  - 6.3.2 comply with all applicable laws and regulations with respect to its activities under this Contract;
  - 6.3.3 carry out all its other obligations set out in the Contract in a timely and efficient manner; in the event of any delays in the Customer's provision of such assistance as agreed by the parties, Big Sofa may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 6.3.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Big Sofa, to perform its obligations under the Contract, including without limitation the Services;
  - 6.3.5 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
  - 6.3.6 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Big Sofa's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
  - 6.3.7 comply with the provisions of the software Licence(s), if applicable;
  - 6.3.8 obtain and maintain anti-virus software to high industry standard and ensure all Input Data is scanned by such anti-virus software prior to Input Data being uploaded to the Platform;
  - 6.3.9 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract, not:
    - 6.3.9.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform, the Software and/or such documentation (as applicable) in any form or media or by any means;
    - 6.3.9.2 attempt to translate, adapt, disassemble, reverse engineer, decompile, reverse compile, repair, replace or interfere with the Platform, the Software or any other aspect of the Services nor arrange or create derivative works based upon it/them; or
    - 6.3.9.3 allow the Platform or the Software or any part of it/them to be combined or merged with or become incorporated in any other program;

6.3.10 not licence, sell or otherwise deal in, commercially exploit, or encumber the Platform or the Software; or

6.3.11 not use the Platform or the Software on behalf of, or make it available to any third party, or allow or permit a third party to do so.

6.4 The Services, Platform and Software are provided at the Customer's request and the Customer is responsible for verifying that the Service, Platform and Software are suitable for its own needs.

6.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Big Sofa Materials and, in the event of any such unauthorised access or use, promptly notify Big Sofa.

6.6 The rights provided under the Contract are granted to the Customer only, and shall not be considered granted to any Affiliate of the Customer.

## **7. Big Sofa Warranties**

7.1 Big Sofa warrants and represents to Customer that:

7.1.1 Big Sofa has the right, power and authority to enter into the Contract and grant to Customer the rights (if any) contemplated herein and supply the Software and the Services;

7.1.2 the Software will be free from defects in workmanship and materials, and free from viruses and other malicious code when supplied; and

7.1.3 the Software does not infringe the Intellectual Property Rights of any third party.

7.2 The warranties and representations specified in this clause 7 are subject to clause 11 and clause 12.8 and the Customer giving notice to Big Sofa immediately upon becoming aware of the breach of warranty (or representation) together with all documented information, details and assistance as Big Sofa may reasonably request.

7.3 Big Sofa will not be liable for any failure of any Services to comply with its obligations under this Contract to the extent:

7.3.1 caused by the Customer's failure to comply with Big Sofa's instructions or the Customer's breach of this Contract in relation to the Services;

7.3.2 caused by Big Sofa following any document supplied by or instruction from the Customer;

7.3.3 where the Customer alters the Services or the results of the Services without Big Sofa's prior written agreement; or

7.3.4 where the Customer uses the Services or the Output Data after notifying Big Sofa that the Services do not comply with these Terms.

7.4 Customer acknowledges and agrees that:

7.4.1 Big Sofa is not and cannot be aware of the extent of any potential loss or damage to Customer resulting from any failure of the Software or any failure by Big Sofa to discharge its obligations under the Contract;

7.4.2 The Software has not been prepared to meet the Customer's individual requirements and that it cannot be tested in every operating environment so as to produce software which is error-free or operates without interruption;

7.4.3 No warranties are given in relation to any Open Source Software;

7.4.4 Big Sofa does not warrant or represent that the operation of the Software will be uninterrupted or error-free;

7.4.5 Big Sofa does not warrant or represent that the Software shall be compatible with the Customer's or any third party software or equipment;

7.4.6 Big Sofa is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Platform and Software may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4.7 Big Sofa shall not be liable under this clause 7, or otherwise, or be required to remedy any problem arising from or caused by any modification (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software by anyone other than Big Sofa without its express prior written consent.

7.4.8 The Contract shall not prevent Big Sofa from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Contract.

7.4.9 Except as set out in these Terms, Big Sofa gives no warranty in relation to the Services, the Platform or the Software; and

7.4.10 All other warranties and representations as to the Services, the Platform and the Software, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law; in particular, the terms implied by sections 13, 14 and 15 of the Supply of Goods and Services Act 1982 are expressly excluded.

7.5 Any warranties given by Big Sofa with respect to the performance of the Software shall be subject to Customer using the Software correctly in compliance with the Contract and shall not apply to the extent that:

- (a) the Customer has failed to install any update, fix or improvement which has previously been provided to it by Big Sofa;
- (b) the defect or error is wholly caused by any equipment or third party software used in connection with the Software.

7.6 Big Sofa undertakes to use all reasonable endeavours to remedy free of charge within ninety (90) days of written notification by the Customer to Big Sofa any fault arising from a breach of this clause 7. If Big Sofa rectifies any such fault by the provision, at Big Sofa's option, of replacement or additional materials or software within such time, such rectification shall constitute the Customer's sole and exclusive remedy for any breach of this clause 7.

7.7 To the extent a problem is found, upon investigation, not to be Big Sofa's responsibility under the provisions of these Terms, the Customer shall pay all reasonable and demonstrable costs and expenses incurred by Big Sofa in the course of or as a consequence of such investigation.

## **8. Failure of or delay in performance**

If Big Sofa is prevented or delayed in performing the Services by any cause attributable to the Customer or Customer fails to pay any sum when due, Big Sofa (without prejudice to its other rights):

8.1.1 may suspend performance of all or any of the Services until the Customer remedies its default, including disabling the Customer's username and password;

8.1.2 will not be liable for any costs or losses sustained by the Customer as a result of such suspension; and

8.1.3 may charge the Customer (and the Customer will pay in accordance with the Contract) costs or losses incurred by Big Sofa arising from the Customer's default.

## **9. Customer Warranties**

Customer warrants and represents that:

9.1.1 It has full right, power and authority to enter into the Contract, transfer the Input Data to Big Sofa, and comply with these Terms;

9.1.2 the Input Data has been lawfully obtained in compliance with all applicable laws and does not include anything that:

9.1.2.1 contains illegal, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive content;

9.1.2.2 facilitates illegal activity;

- 9.1.2.3 depicts sexually explicit images;
- 9.1.2.4 promotes unlawful violence;
- 9.1.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;  
or
- 9.1.2.6 is otherwise illegal or causes damage or injury to any person or property;
- 9.1.3 the Input Data is free from defects, errors, and Malware, and shall be scanned by industry standard anti-virus software prior to uploading to the Platform; and
- 9.1.4 the Input Data and any other materials supplied by it to Big Sofa does not infringe the Intellectual Property Rights of any third party; and
- 9.1.5 Big Sofa reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 9.

## **10. Software Licence Provisions (to apply where the Customer is taking a licence of the Software)**

- 10.1 The Software shall not include any updates/upgrades/new releases or new versions of the Software.
- 10.2 In consideration for the Customer paying the Software Licence Fee, Big Sofa grants Customer with effect from the Commencement Date a licence to use the Software for the duration of the Contract, subject to the following licence conditions:
  - 10.2.1 the licence is non-exclusive;
  - 10.2.2 the licence is non-transferable, non-sub-licensable, and non-assignable, in whole or in part, without the prior written consent of Big Sofa.;
  - 10.2.3 the benefit or burden of the licence shall not be novated in whole or in part without the prior written consent of Big Sofa; the Software may only be used in connection with Customer's own business purposes;
  - 10.2.4 the licence only relates to the use of the Software at Customer's principal place of business;  
and
  - 10.2.5 where Big Sofa permits the use of the Software by Customer outside the United Kingdom, Customer shall comply, at its own expense, with all applicable laws and regulations and obtain any applicable licences and consents relating to the import, export, installation or use of the Software.
- 10.3 Customer shall procure that its Affiliates and representatives:
  - 10.3.1 are aware of the obligations or restrictions imposed on Customer pursuant to these Terms, including (without limitation) pursuant to clauses 6.6 and 10.6; and
  - 10.3.2 comply with the provisions of these Terms, so as not to put Customer in breach of these Terms.
- 10.4 Customer's right to use the Software licensed under these Terms does not permit it to:
  - 10.4.1 distribute or resell the Software;
  - 10.4.2 use the Software to provide outsourcing or bureau services for any third party; or
  - 10.4.3 use the Software contrary to any restriction stated in these Terms or otherwise in a way that is not expressly permitted by this Contract.
- 10.5 Except to the extent such activities are expressly permitted by applicable English law or are expressly agreed by the parties in these Terms, Customer shall not:
  - 10.5.1 make copies of the Software, except for one back-up copy as is reasonably necessary, provided that Customer keeps accurate and up-to-date records of such copying containing such information as Big Sofa reasonably requests;
  - 10.5.2 translate, adapt, disassemble, reverse engineer or decompile the Software or any part of it, nor arrange or create derivative works based on the Software in whole or in part;
  - 10.5.3 make any modifications, additions, error corrections or enhancements to the Software in whole or in part;



- 10.5.4 permit the Software or any part of it to be combined or merged with or become incorporated in any other program;
  - 10.5.5 licence, sell or otherwise deal in the Software;
  - 10.5.6 allow the Software to become the subject of any charge, lien or encumbrance; or
  - 10.5.7 use the Software on behalf of, or make it available to any third party, or allow or permit a third party to do so.
- 10.6 The rights in the Software licensed to Customer do not include the right of Customer's Affiliates or any third party to use and have access to the Software and Customer shall ensure that all such use:
- 10.6.1 does not exceed Customer's permitted use;
  - 10.6.2 is controlled by Customer;
  - 10.6.3 is otherwise subject to and in accordance with these Terms.
- 10.7 Big Sofa's licence to Customer of the Software under these Terms does not transfer any rights in any Open Source Software or other third party software.
- 10.8 In relation to any Open Source Software, Customer agrees that Customer shall only use the Open Source Software strictly in accordance with the terms of the relevant licence applicable to that Open Source Software ("the OSS Licence"); to the extent that there is a conflict between these Terms and the terms of the OSS Licence, the terms of the OSS Licence shall prevail.

## 11. Liability

- 11.1 Big Sofa does not exclude its liability in the Contract:
- 11.1.1 for death or personal injury caused by its negligence; or
  - 11.1.2 for breach of the term implied by section 2 of the Supply of Goods and Services Act 1982;
  - 11.1.3 for fraud or fraudulent misrepresentation; or
  - 11.1.4 for any loss or liability which may not be lawfully excluded.
- 11.2 Subject to clause 11.1, the total aggregate liability of Big Sofa in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for any default under or relating to this Contract (whether in compensation for any breach or otherwise) in any Half-Year when added to all liability of Big Sofa in respect of all other defaults by it which occurred in the same Half-Year, shall not in any event exceed a sum equal to the total charges payable to Big Sofa for Services rendered during that Half-Year.
- 11.3 Subject to clause 11.1, Big Sofa shall not be liable for:
- 11.3.1 any loss, damage, cost, liability or expense which arises from, or from:
    - 11.3.1.1 any mistake;
    - 11.3.1.2 defect;
    - 11.3.1.3 Malware;
    - 11.3.1.4 poor quality of or inaccuracy in, any program, electronic communication or other content, or other materials or items specified or supplied by or on behalf of the Customer; all of the foregoing shall be for the sole account of the Customer; or
  - 11.3.2 any failure to perform, or delay in performing, any Services which is caused or contributed to by a breach by the Customer of its obligations under the Contract; Big Sofa shall be entitled to rely on all information and materials provided by the Customer (or its agents or Affiliates) without verifying the same.
- 11.4 Subject to clause 11.1, neither party will be liable (whether in compensation for any breach or pursuant to any indemnity and whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise for:
- 11.4.1 pure economic loss;
  - 11.4.2 loss of revenue or expected profit;
  - 11.4.3 any special, indirect or consequential loss, damages, charges or expenses;

- 11.4.4 loss or corruption of data or use of any asset;
- 11.4.5 loss of goodwill or reputation;
- 11.4.6 loss or interruption of business;
- 11.4.7 management time; or
- 11.4.8 any loss which could have been prevented or reduced by procedures and precautions implemented by the other party (or which would generally be implemented by a person exercising a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a reasonably and appropriately skilled and experienced person in the same or similar circumstances); and in each case, however arising under the Contract.

11.5 The Customer shall defend, indemnify and keep indemnified and hold harmless Big Sofa from and against any losses, damages, liability, costs (including, without limitation, court costs and legal fees) and expenses incurred by Big Sofa as a result of or in connection with any action, demand or claim in respect of the Input Data or any other materials specified or supplied by or on behalf of the Customer to Big Sofa or arising from the provision of the Services to the Customer, save as a result of Big Sofa's negligence or wilful default.

## 12. Intellectual Property Rights

12.1 Nothing in the Contract will affect the rights (including Intellectual Property Rights) in Big Sofa Materials which are and shall remain owned by and vested in Big Sofa or its licensor(s).

12.2 To the extent that Big Sofa Materials are used or incorporated into the Services, Platform or Software supplied as part of the Services then the parties acknowledge and agree that the Customer is licensed to use the same upon the terms set out in clause 12.4.

12.3 Except as expressly stated otherwise, the Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the all or any part of the Big Sofa Materials.

12.4 Big Sofa hereby grants to the Customer for the duration of the Contract a royalty-free, worldwide licence to use Big Sofa Materials solely to the extent necessary to use the Output Data. The Customer:

- 12.4.1 will not use Big Sofa Materials for any other purpose;
- 12.4.2 will not modify or reverse engineer or take any similar action in relation to Big Sofa Materials or the Software;
- 12.4.3 will not sub-license or assign any rights granted to it pursuant to this clause 12.4.

12.5 Customer owns all Intellectual Property rights in the Input Data and all those arising in the Output Data created during the course of the Services. The Customer hereby grants to Big Sofa and its Affiliates a royalty-free, worldwide-licence to use the Input Data in order to perform Big Sofa's obligations under these Terms, provided that Big Sofa shall not:

- 12.5.1 use the Input Data for any other purpose save with Customer's express written consent;
- 12.5.2 sub-licence or assign any rights granted to it pursuant to this clause 12.5.

12.6 Each party agrees not to conceal, modify, remove or destroy in any way any proprietary markings of the owner of any Intellectual Property Rights and any such markings shall be reproduced in any permitted copies or back-ups made of the Software, the Input Data, the Output Data or Big Sofa Materials.

12.7 Each party hereby asserts its right (if any) to be identified as the author of any work which that party creates and to object to derogatory treatment of that work pursuant to section 78 of the Copyright, Designs and Patents Act 1988.

12.8 Notwithstanding clause 7.1.3 (and subject always to the provisions of clause 11) in no event shall Big Sofa, its employees, agents and sub-contractors be liable to the Customer to the extent that a third party alleges infringement of its intellectual property rights in the Software where the alleged infringement is based on:

- 12.8.1 any modification of the Software by anyone other than Big Sofa; or
- 12.8.2 the Customer's use of the Software in a manner contrary to the instructions given to the Customer by Big Sofa; or
- 12.8.3 the Customer's use of the Software after notice of the alleged or actual infringement from Big Sofa or any appropriate authority.

### **13. Data Protection**

- 13.1 The parties agree to comply with the data processing terms set out in Schedule A.
- 13.2 The Customer indemnifies and shall keep indemnified and hold harmless Big Sofa from and against any regulatory fines, losses, damages, liability, costs (including legal fees) and expenses which Big Sofa may incur or suffer as a result of or arising from any breach by Customer of its obligations under Schedule A, or from any actions of Customer's clients, or users of Big Sofa's Platform given access by the Customer.

### **14. Confidentiality**

14.1 Subject to clause 14.1.4, each party shall keep confidential all Confidential Information of the other party, not make the other's Confidential Information available to any third party, and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause 14 will not apply to:

- 14.1.1 any information which was or comes into the public domain other than through any act or omission of the receiving party;
- 14.1.2 any information which was in the other party's lawful possession before the disclosure;
- 14.1.3 any information independently developed by the other party without using information supplied by the first party, such independent development to be shown by written evidence; or
- 14.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.1.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

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

14.3 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

14.4 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

14.5 This clause 14 shall remain in force for a period of five (5) years from the date of termination of the Contract, however arising.

### **15. Force Majeure**

- 15.1 Failure to pay or be paid is not Force Majeure.
- 15.2 A party will not be liable under the Contract if it is delayed in or prevented from performing its obligations or from carrying on its business under the Contract due to Force Majeure, provided that it:
  - 15.2.1 promptly notifies the other of the Force Majeure event and its expected duration; and
  - 15.2.2 uses reasonable endeavours to minimise the effects of that event.
- 15.3 If, due to Force Majeure, a party:

15.3.1 is or will be unable to perform a material obligation; or  
15.3.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 30 days;  
the other party may, within thirty (30) days, terminate this Contract on immediate notice.

## 16. Termination

16.1 The Contract may be terminated with immediate effect at any time by either party on written notice to the other if:

16.1.1 the other commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is irremediable, or (if such breach is remediable) not remedied within thirty (30) days of written notice requiring that party to do so;

16.1.2 the other:

- (i) suspends or threatens to suspend payment of its debts,
- (ii) is unable to pay its debts as they fall due, or
- (iii) is unable to pay its debts (being a company) within the meaning of s123 of the Insolvency Act 1986 or (being an individual) within the meaning of s268 of the Insolvency Act 1986 or (being a partnership) there is any partner to whom any of the foregoing applies;

16.1.3 the other:

- (i) commences negotiation with all or any class of creditors for rescheduling of its debts, or
- (ii) makes a proposal for or enters into any compromise or arrangement with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction;

16.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

16.1.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

16.1.7 a receiver or administrative receiver may be or is appointed in relation to the other or any of its assets;

16.1.8 any creditor or encumbrancer of the other attaches, takes possession of, or any distress, execution or similar process is levied or enforced on or sued against, all or any part of the other's assets, and such attachment or process is not discharged within fourteen (14) days;

16.1.9 the other takes or suffers any action equivalent or similar to clauses 16.1.2 to 16.1.8 (inclusive) in any jurisdiction;

16.1.10 the other suspends trading, ceases to carry on all or a substantial part of its business, or threatens to do either;

16.1.11 the other (being an individual) dies or ceases to be capable of managing his own affairs; or

16.1.12 the other is subject to an event of Force Majeure under clause 15.

16.2 In addition to its rights under clause 16.1, Big Sofa may terminate the Contract at any time:

16.2.1 on three (3) months' written notice to the Customer;

16.2.2 immediately on written notice to the Customer if the Customer has failed to pay any amount due under the Contract on the due date;

16.2.3 if there is a material change in the management, ownership or control of the Customer which in the reasonable opinion of Big Sofa is likely to materially affect the Customer's ability or willingness to

comply with the Contract.

16.3 On termination of the Contract for any reason:

16.3.1 the Customer will immediately pay all invoices of Big Sofa then outstanding and not disputed in good faith;

16.3.2 Big Sofa will, within seven (7) Business Days, invoice the Customer for all fees and charges incurred by the Customer during the period prior to termination but not yet invoiced, and the Customer will pay such invoice within a further seven (7) Business Days (unless the invoice is disputed in good faith);

16.3.3 Subject to clause 16.3.5, all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease all use of the Big Sofa Materials;

16.3.4 Subject to clause 16.3.5, each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;

16.3.5 Big Sofa will retain all Customer Data stored upon the Platform for six (6) months from termination and will transfer it in accordance with the Customer's instructions, at the Customer's cost, after which time such information shall be deleted by Big Sofa;

16.3.6 the accrued rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination, shall will not be affected or prejudiced; and

16.3.7 clauses which expressly or by implication are to survive termination will do so.

## 17. General

17.1 Unless expressly stated otherwise, time is not of the essence of any date or period specified in these Terms.

17.2 If there is an inconsistency between any of the provisions in the main body of this Contract and the schedules, the provisions in the main body of this Contract shall prevail.

17.3 Customer acknowledges that these Terms apply to all access of the Website and to the Platform as part of any free trial (other than those requiring payment of fees for the Services) and any free trial may be terminated at any time without notice.

17.4 All payments by the Customer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

17.5 The parties are independent businesses and not principal and agent, partners, or employer and employee. Neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17.6 If any part of these Terms is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Terms and the remaining provisions of the Terms will otherwise remain in full force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17.7 Notices under the Contract will be in writing and sent to the persons and addresses confirmed as key contact by the Customer. They may be given and, if correctly addressed, will be deemed received:

17.7.1 by first class post: two Business Days after posting;

17.7.2 by airmail: seven Business Days after posting;

17.7.3 by hand: on delivery;

17.7.4 by email: on receipt of a delivery or read receipt mail from the correct address.

17.8 No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17.9 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

17.10 Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

17.11 Each party shall comply with applicable anti-bribery laws relating to prevention of bribery and corruption as updated from time to time and each shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.

17.12 The Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

17.13 The Contract constitutes the entire agreement between the parties in relation to its subject matter, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.14 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.15 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

17.16 The Contract will bind and benefit each party's successors and personal representatives.

17.17 The Contract 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) will be governed by the law of England and Wales and all disputes shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

## Schedule A

### 1. Data processing terms

#### Interpretation

1.1 The following definitions apply in this Schedule A:

**Access Requests:** requests made by a data subject to exercise any rights of data subjects under the Data Laws in relation to Disclosed Data.

**Appropriate Safeguards:** such legally enforceable mechanism(s) for transfers of Disclosed Data as may be permitted under the Data Laws from time to time.

**Disclosed Data:** any information relating to a data subject received by Big Sofa from or on behalf of the Customer in connection with the performance of Big Sofa's obligations under this agreement.

**Controller:** has the meaning given to that term (or the term 'data controller') in the Data Laws.

**Data Breach:** any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Disclosed Data.

**Data Laws:** the Data Protection Act 1998 and the General Data Protection Regulation.

**data subject:** an identified or identifiable natural person.

**GDPR Date:** 25 May 2018 (or such other date on which the General Data Protection Regulation first has binding legal effect in the United Kingdom).

**Processor:** has the meaning given to that term (or the term 'data processor') in the Data Laws.

**Sub-Processor:** another Processor engaged by Big Sofa for carrying out processing activities in respect of Disclosed Data on behalf of the Customer.

1.2 Schedule A shall survive termination or expiry of this agreement and continue:

- (a) indefinitely in the case of clauses 1.1, 1.2, 1.15 and 1.16; and
- (b) until 12 months following the termination or expiry of this agreement in the case of all other clauses of Schedule A.

### Controller and Processor

1.3 The parties acknowledge that the Customer is the Controller and Big Sofa is the Processor in respect of any Disclosed Data.

1.4 Big Sofa shall process the Disclosed Data:

- (a) in compliance with the obligations of Processors under the Data Laws;
- (b) in accordance with the terms of this agreement.

1.5 The Customer warrants that:

- (a) it shall comply with all Data Laws in connection with the processing of Disclosed Data and the exercise and performance of its rights and obligations under this agreement;
- (b) all Disclosed Data to be used in connection with the Services, prior to such data being provided to Big Sofa, shall comply in all respects with the Data Laws;
- (c) all instructions given by the Customer to Big Sofa in respect of the Disclosed Data shall be in accordance with the Data Laws; and
- (d) it is satisfied that Big Sofa's processing operations are suitable to enable Big Sofa to process Disclosed Data, and Big Sofa has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of the Data Laws.

### Instructions and details of processing

1.6 Where Big Sofa processes Disclosed Data on the Customer's behalf, Big Sofa shall:

- (a) process the Disclosed Data only in accordance with the Customer's documented instructions (unless required to do otherwise by the Data Laws);
- (b) notify the Customer if the Data Laws require Big Sofa to process Disclosed Data other than in accordance with the Customer's documented instructions; and
- (c) notify the Customer if Big Sofa believes that an instruction infringes the Data Laws.

1.7 Big Sofa's processing of Disclosed Data shall consist of:

- (a) reviewing, analysing and assessing video content, using varying technical and non-technical methods, of participants in studies and projects commissioned by the Customer and/or Customer's clients;
- (b) relating to participants in the studies/projects commissioned by the Customer and/or Customer's clients;
- (c) which shall be processed for the duration of this agreement; and
- (d) for the purpose of providing the Customer with reports and specific data regarding the video content and the particular study or projects aims.

### Technical and organisational measures

1.8 Big Sofa shall implement and maintain appropriate technical and organisational measures:



- (a) in relation to its processing of Disclosed Data; and
- (b) as from the GDPR Date, taking into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Access Requests relating to Disclosed Data.

#### Using staff and other processors

1.9 Big Sofa shall:

- (a) not engage any Sub-Processor for carrying out any processing of Disclosed Data without the Customer's authorisation;
- (b) appoint Sub-Processors only under a written contract containing materially the same obligations as in Schedule A; and
- (c) as from the GDPR Date, ensure that all Big Sofa personnel authorised to process Disclosed Data are subject to binding written contractual obligations to keep the Disclosed Data confidential (except where disclosure is required in accordance with the Data Laws).

#### Assistance with Customer's compliance and data subject rights

1.10 Big Sofa shall refer all Access Requests it receives to the Customer without undue delay.

1.11 As from the GDPR Date, Big Sofa shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to Big Sofa) to the Customer in ensuring compliance with the Customer's obligations under Data Laws with respect to:

- (a) security of processing;
- (b) data protection impact assessments;
- (c) prior consultation with a supervisory authority regarding high-risk processing; and
- (d) notification to the supervisory authority and/or communications to data subjects by the Customer in response to a Data Breach;

provided the Customer shall pay Big Sofa for providing the assistance on a time and materials basis in accordance with Big Sofa's then-current standard hourly rates.

#### International data transfers

1.12 The Customer agrees that Big Sofa may transfer Disclosed Data:

- (a) relating to individual participants in the projects commissioned by the Customer, including video content recorded by or on behalf of participants, their names and other contact details which may include email addresses and telephone numbers;
- (b) for the purpose of our third party suppliers carrying out elements of the processing and analysing of the data in order to produce deliverables for our clients, for storage purposes, and/or for the purpose of our colleagues (also employed by the Big Sofa group of companies) in other jurisdictions reviewing and

carrying out our contracted services in respect of the data;  
(c) to countries outside the United Kingdom;

provided all such transfers shall (to the extent required by Data Laws) be protected by way of Appropriate Safeguards and be in accordance with Data Laws. The provisions of Schedule A shall be the Customer's documented instructions.

#### Records, information and audit

1.13 Big Sofa shall, in accordance with Data Laws:

- (a) maintain written records of all categories of processing activities carried out on behalf of the Customer; and
- (b) make available to the Customer such information as is reasonably necessary to demonstrate Big Sofa's compliance with the obligations of Processors under Data Laws, and allow for and contribute to audits, including inspections, by the Customer for this purpose, subject to the Customer:
  - (i) giving Big Sofa reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
  - (ii) ensuring that all information obtained or generated by the Customer in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the supervisory authority or as otherwise required by applicable laws);
  - (iii) ensuring that such audit or inspection is undertaken during Big Sofa's normal business hours with minimal disruption to Big Sofa's or any Sub-Processor's business; and
  - (iv) paying Big Sofa for assisting with the provision of information and allowing for and contributing to inspections and audits on a time and materials basis in accordance with Big Sofa's then-current standard hourly rates.

#### Breach notification

1.14 In respect of any Data Breach involving Disclosed Data, Big Sofa shall promptly notify the Customer, and provide the Customer with details, of the Data Breach.

#### Deletion or return of Disclosed Data

1.15 Big Sofa shall, at the Customer's written request, either delete or return all the Disclosed Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

- (a) the end of the performance of the relevant services; or
- (b) once processing by Big Sofa of any Disclosed Data is no longer required for the purposes of this agreement;

and Big Sofa shall delete existing copies (unless storage of any data is required by applicable laws, or unless Big Sofa is a Controller in relation to that data at the relevant time).

1.16 Big Sofa acknowledges that the Disclosed Data is the confidential information of the Customer.