

# OPENDIALOG TERMS OF USE

These Terms of Use ("TOU") govern your access to and use of the Services offered by us or our Affiliates.

Prior to use of the Services, you are required to indicate your acceptance of these terms. By using the Service, or upon your agreement in writing to the Order Form for the Services, you indicate you have read, understand and agree to the terms and conditions of this TOU. If you use OpenDialog on behalf of an organization, you agree to these TOU on behalf of that organization and you represent that you have the authority to do so. In such cases, "Customer", "you" and "your", will refer to that organization. "OpenDialog", "us", "we" or "our" refers to OpenDialog AI Limited in accordance with this TOU.

## BACKGROUND

(A) OpenDialog is a supplier of software as a service and associated professional services.

(B) The Customer wishes to use OpenDialog's software as a service and receive OpenDialog's professional services and OpenDialog wishes to provide the same on the terms of this Agreement.

## DEFINITIONS AND INTERPRETATION

In this Agreement the following terms shall have the following meanings;

**Acceptance:** the Customer's acceptance of the OpenDialog Software in accordance with Clause 2.2

**Agreement:** the agreement for the supply of the OpenDialog Software and the Support Services to be provided by OpenDialog to the Customer including the Schedules

**Affiliate:** as to a Party, any other person that directly or indirectly controls, or is controlled by or under common control with such entity, with 'control' as applied to any person being the direct or indirect ownership of more than fifty percent (50%) of the equity or voting interest in such person

**Commencement Date:** the date specified in Order Form and any subsequent Schedules to this agreement

**Confidential Information:** any and all information (whether oral, written or in some other tangible or permanent form) disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") or that is otherwise obtained by the Receiving Party under or in connection with this Agreement and that is marked as confidential, by its nature is confidential or relates to the business or affairs of the Disclosing Party including any Licence Key

**Deliverables:** any and all software, documents, information, data, ideas, concepts, know-how, techniques and other material, things or items arising from or produced or supplied by OpenDialog in the course of the provision of the Support Services

**Data Retention Period:** the period in which OpenDialog will retain customer interaction data incl. conversation history within each opendialog instance. This will be 90 consecutive days, unless specified otherwise in the Order Form.

**Environment:** the hardware and/or location specified by OpenDialog in its Manuals

**Expenses:** any travel, accommodation, subsistence and other expenses incurred by OpenDialog in providing the Support Services

**Fee:** the fee payable in respect of the Initial Period as specified in the Order Form

**Initial Period:** the period specified in the Order Form and any subsequent Schedules to this agreement

**Intellectual Property Rights:** any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, Know-How, Look and Feel, domain names and all similar rights (whether or not registered or capable of registration and whether subsisting in any part of the world) together with any and all goodwill

relating or attached thereto and all extensions and renewals thereof

**Know-How:** know-how, confidential information, trade secrets, experience, drawings, designs, production methods, code, notes, flow charts discoveries, specifications, diagrams, technology, research, methods of formulation, results of tests and field trials, specifications of materials, composites of materials, formulae and processes and technical information including the benefit of all related obligations of confidentiality

**Knowledge Support:** assistance regarding use of the OpenDialog Software, as specified in the OpenDialog Maintenance and Support terms, provided to the Customer from time to time

**Key:** keys, codes or files provided by OpenDialog which allow the Customer to use the OpenDialog Software subject to the terms and conditions of this Agreement

**Look and Feel:** graphics, website navigation methods, HTML code, meta-tag structures and similar

**Maintenance and Support Terms:** the OpenDialog maintenance and support terms detailed in Schedule 2 and any subsequent Schedules to this Agreement

**Manuals:** the user manuals, help files, release notes and other documentation published by OpenDialog that are made available to the Customer in connection with the OpenDialog Software at any time

**OpenDialog Software:** the software as a service specified in the Order Form and any subsequent Schedules to this Agreement including any proprietary or third party software as may be supplied by OpenDialog pursuant to this Agreement from time to time, including any developments, modifications and/or variations thereto and including the Manuals

**Order Form:** the ordering document subject to this TOU between you and us for the supply of the Services, which describes the agreed upon OpenDialog Services, including, as applicable, the number of permitted conversations, the level of Support Services, and the applicable fees.

**Payment Terms:** the terms for payment of OpenDialog invoices specified in the Order Form and any subsequent Order Forms.

**Privacy Policy:** the information, found here: <https://opendialog.ai/privacy-policy/>, which describes how we use personal data you and your Authorized Users provide to us.

**Professional services:** shall comprise services which may include consultancy, research, design and discovery, user experience, iterative development support, as pertaining to the configuration and use of OpenDialog software.

**Schedule:** a schedule to, and forming part of, this Agreement

**Service Levels:** the service levels specified in the OpenDialog Maintenance and Support Terms

**Statement of Work (SOW):** shall comprise any written order by the Customer for the provision of professional services.

**Supply Agreement:** the Order Form and any subsequent Schedules to this agreement between the Customer and OpenDialog for the supply of the OpenDialog Software and other services

**Support Services:** the maintenance and support services specified in the OpenDialog Maintenance and Support Terms current from time to time

**Term:** the Initial Period

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- Headings are included in this Agreement for convenience only and do not affect its construction or interpretation.
- Any reference to a Clause or Schedule shall (unless expressly provided otherwise) be a reference to a Clause or Schedule to this Agreement. The Schedules shall have the same force and effect as if set out in the body of this Agreement. In the event of conflict between the terms in the body of this Agreement and the Schedules, the terms in the body of this Agreement shall take precedence.
- Any reference in this Agreement to any statute, law, statutory instrument, enactment, order, regulation or other similar instrument having the force of law shall be deemed to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal thereof.
- Any reference to the singular shall include the plural and vice versa and any reference to one gender shall include all genders including the neuter gender.
- Any reference to a person shall, unless the context otherwise requires, include natural persons, firms, partnerships, corporate bodies, unincorporated bodies, corporations, associations and all other legal persons of whatever kind howsoever constituted.
- the words "include", "including" and "included" shall, unless otherwise stated in this Agreement, be interpreted to mean "including, but not limited to".
- References to agreement, agreed, approval, consent or permit shall be interpreted to include, unless specifically stated otherwise, the words "such agreement, approval, consent or permission not to be unreasonably withheld, delayed or conditioned".

## 1. BASIS OF AGREEMENT

- 1.1. In consideration of the Customer paying the Fee, OpenDialog shall:
  - 1.1.1. grant the rights specified in Clause 2 to the Customer; and
  - 1.1.2. provide the Support Services to the Customer, on and subject to the terms and conditions of this Agreement.

## 2. RIGHT TO ACCESS AND USE THE OPENDIALOG SOFTWARE

- 2.1. Subject to Clause 2.2, and in consideration of the Customer paying the Fee, OpenDialog hereby grants to the Customer a non-exclusive, non-transferable and (subject to Clauses 2.6 and 2.8) non-sublicensable right to use the OpenDialog Software (in object code only) in the Environment during the Term in accordance with the terms and conditions of this Agreement.
- 2.2. If the Customer fails to pay any Fee in accordance with the terms of this Agreement or is otherwise in breach of its obligations under this Agreement, OpenDialog shall be entitled to suspend or terminate the whole or any part of this Agreement providing the Customer has been given 30 days' notice in advance of such suspension.
- 2.3. The right in Clause 2.1 is the Customer's sole right in relation to the OpenDialog Software. The Customer does not own or have any other rights in relation to the whole or any part of the OpenDialog Software and shall not purport or represent to do so.
- 2.4. Save as permitted by law or this Agreement, the Customer shall not be entitled to:
- 2.4.1. copy, translate, reverse engineer, reverse assemble, modify, adapt, create derivative works, decompile, merge, separate, disassemble, determine the source code of or otherwise reduce to binary code or any other human-perceivable form, the whole or any part of the OpenDialog Software;
- 2.4.2. use or permit the use of the whole or any part of the OpenDialog Software in such a way as to subject the whole or any part of the OpenDialog Software to an open source licence or scheme in which there is or could be interpreted to be a requirement that as a condition or consequence of its use or distribution, the OpenDialog Software could be disclosed or distributed in source code form, licensed for the purpose of making derivative works or redistributable at no charge.
- 2.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the OpenDialog Software and/or Manuals and, in the event of any such unauthorised access or use, promptly notify OpenDialog.
- 2.6. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the OpenDialog Software that:
- 2.6.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.6.2. facilitates illegal activity;
- 2.6.3. depicts sexually explicit images;
- 2.6.4. promotes unlawful violence;
- 2.6.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.6.6. is otherwise illegal or causes damage or injury to any person or property; and OpenDialog reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any software or material that breaches the provisions of this Clause.
- 2.7. OpenDialog reserves the right at any time to make any improvement, substitution or modification in the design, manufacture or configuration of the OpenDialog Software provided that any such improvement, substitution or modification shall not result in any material change in the functionality or performance of the OpenDialog Software.
- 2.8. If the Customer wishes to enter into an outsourcing facilities management or bureau services arrangement with a third party provider, (the "Outsourcing Service Provider"), Customer shall identify the Outsourcing Service Provider to OpenDialog, which hereby consents to the

Outsourcing Service Provider's use of the OpenDialog Software and Manuals and receipt of the Services in accordance with Clause 2.7 and subject to Clause 2.8 below.

- 2.9. The Outsourcing Service Provider will be permitted to use the OpenDialog Software and the Manuals solely for the purpose of providing services to Customer and its Affiliates as permitted under this Agreement but only once the Outsourcing Service Provider has entered into a written undertaking with OpenDialog (such undertaking to be in a form reasonably specified by OpenDialog).
- 2.10. The Customer may perform any of its obligations or exercise any of its rights under this Agreement by itself or through any Affiliate or (subject to Clause 2.9) Outsourcing Service Provider provided that:
- 2.10.1. any act or omission of any such person shall be deemed to be the act or omission of the Customer; and
- 2.10.2. any such performance and/or exercise shall be solely for the business purposes of the Customer and its Affiliates;
- 2.10.3. any claim from an Affiliate or an Outsourcing Service Provider shall be brought through the Customer and the exclusions of and caps on liability detailed in this Agreement shall apply in aggregate to all claims brought by the Customer, its Affiliates and any Outsourcing Service Provider.
- 2.11. Where third party suppliers are required to interface with or otherwise affect (or are affected by) the OpenDialog Software, OpenDialog shall at the Customer's request and expense co-operate with such suppliers and shall provide such information as such suppliers shall reasonably require (on such notice as is reasonable in the circumstances and subject to such reasonable conditions as to confidentiality, security and non-interference as OpenDialog may propose).
- 2.12. OpenDialog shall have the right during the term of this Agreement to audit and/or verify the Customer's use of the Software and compliance with this Agreement. Such audits shall be carried out not more than once in any year of the Term and on reasonable notice by OpenDialog and/or its selected external auditor at OpenDialog's cost. The Company shall provide OpenDialog and its audit team with access to its relevant records and facilities.
- 2.13. The Customer acknowledges that the OpenDialog Software may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. OpenDialog makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not OpenDialog. OpenDialog does not endorse or approve any third-party website nor the content of any of the third-party websites made available via the OpenDialog Software.

## 3. CONFIDENTIALITY AND DATA PROTECTION

- 3.1. Each party shall:
- 3.1.1. keep the other party's Confidential Information confidential;
- 3.1.2. not use the other party's Confidential Information except for the purposes of this Agreement without the prior written consent of the other party; and
- 3.1.3. not divulge the other party's Confidential Information to any third party except for the purposes of this Agreement and shall procure

that each such third party is aware of and complies with these obligations as to confidentiality.

- 3.1.4. The provisions of Clause 3.1 shall not apply to any Confidential Information that the Receiving Party can show:
- 3.1.5. is in the public domain other than as a result of a breach of this Agreement or any other obligations of confidentiality;
- 3.1.6. is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;
- 3.1.7. is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or
- 3.1.8. was developed independently of and without reference to any confidential information disclosed by the disclosing party.
- 3.2. Neither party shall make or issue any announcement or public circular relating to the subject matter of this Agreement without the prior written approval of the other save that OpenDialog and any VAR or OEM partner as applicable shall be entitled to publicise the relationship formed by the parties' collaboration under this Agreement.
- 3.3. Each party agrees to comply with the provisions of Schedule 1 (Data Protection).
- 3.4. OpenDialog will retain customer interaction data incl. conversation history within each OpenDialog instance inline with the Data Retention Period. Once the Data Retention Period is reached, the oldest daily dataset will be removed on a daily basis.

## 4. PROVISION OF SUPPORT SERVICES

- 4.1. OpenDialog shall provide the Support Services in accordance with the OpenDialog Maintenance and Support Terms.

## 5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. As between OpenDialog and the Customer, all rights, title and interest (including all Intellectual Property Rights) in and to the OpenDialog Software and the Manuals (the "OpenDialog Elements") shall remain vested in OpenDialog absolutely. Other than as expressly stated herein, this Agreement does not grant the Customer any rights to any Intellectual Property Rights, or any other rights or licences in respect of the OpenDialog Elements.
- 5.2. The Customer shall not delete or in any manner alter the copyright notices, trademarks, logos or related notices or other proprietary rights notices appearing on OpenDialog Elements.
- 5.3. Subject to Clauses 5.4, 5.5 and 5.6 below and the Customer's compliance with the terms of this Agreement, OpenDialog agrees to indemnify the Customer against any claims, suits or proceedings brought by a third party against the Customer that the OpenDialog Software as delivered to the Customer when used within the scope of this Agreement directly infringes the Intellectual Property Rights of such third party (an "Infringement Claim").
- 5.4. Subject to Clauses 5.5 and 5.6 below and the Customer's compliance with the terms of this Agreement, OpenDialog shall pay all direct damages, costs and expenses (including reasonable legal fees) finally awarded against the Customer by a court of competent jurisdiction (or settlements agreed to in writing by OpenDialog) directly attributable to such Infringement Claim.
- 5.5. OpenDialog's obligations under Clauses 5.3 and 5.4 are expressly conditioned on the Customer:

- 5.5.1. notifying OpenDialog in writing promptly after the Customer becomes aware of an Infringement Claim;
- 5.5.2. allowing OpenDialog sole control of the investigation, defence, and settlement of such Infringement Claim;
- 5.5.3. cooperating fully and assisting OpenDialog in the investigation, defence, and settlement of such Infringement Claim (as reasonably requested by OpenDialog); and
- 5.5.4. making no admission of liability or fault itself or on behalf of OpenDialog.
- 5.6. Notwithstanding the foregoing, OpenDialog shall have no liability for any Infringement Claim arising in whole or in part from:
- 5.6.1. modification of the OpenDialog Software by anyone other than OpenDialog;
- 5.6.2. use or combination of the OpenDialog Software without OpenDialog's written permission with any other equipment, data, services or software where in the absence of such use the OpenDialog Software alone would not have given rise to the Infringement Claim;
- 5.6.3. use of the OpenDialog Software not in accordance with this Agreement or in a manner other than for which it was intended;
- 5.6.4. use of OpenDialog Software for which OpenDialog has provided the Customer with modifications or substitutes where use of such modification or substitute would have prevented the Infringement Claim;
- 5.6.5. the Customer's continued use of the OpenDialog Software after termination or expiration of this Agreement; or
- 5.6.6. any Infringement Claim based on the Customer's activities occurring subsequent to its giving of notice of any claimed infringement unless OpenDialog shall have given the Customer written permission to continue to use the allegedly infringing OpenDialog Software.
- 5.7. In the event that any Infringement Claim is made by a third party or in OpenDialog's sole judgement is likely to be made, OpenDialog may at its discretion either:
- 5.7.1. procure for the Customer the right to continue to use the OpenDialog Software and/or the Deliverables; or
- 5.7.2. replace or modify the OpenDialog Software and/or the Deliverables to avoid infringement.
- 5.8. This Clause 6 states the entire obligation and liability of OpenDialog with respect to infringement of third party Intellectual Property Rights.
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- 6. WARRANTIES**
- 6.1. The Customer warrants that:
- 6.1.1. it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement; and
- 6.1.2. it owns or has any licence necessary to enable OpenDialog to use any materials and/or information provided by the Customer under or in connection with this Agreement.
- 6.2. Subject to Clauses 6.3 and 6.4 OpenDialog warrants that:
- 6.2.1. it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement;
- 6.2.2. the Support Services shall be provided with reasonable skill and care;
- 6.2.3. it shall provide the Support Services in accordance with the Service Levels; and
- 6.2.4. it shall use generally accepted industry best practice to ensure that no virus, time bomb, trap door or other equipment or software disabling device is introduced by it into the OpenDialog Software.
- 6.3. Notwithstanding any other provision of this Agreement, OpenDialog does not warrant that the operation of the OpenDialog Software shall be uninterrupted or error free, or that the OpenDialog Software, the Support Services, and/or the information obtained by the Customer through its use of such will meet the Customer's requirements.
- 6.4. Except as expressly set out in this Agreement, OpenDialog excludes all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise to the fullest extent permitted by applicable law.
- 6.5. In the event of any breach of the warranties at clauses 6.2.1, 6.2.2 and 6.2.4, the Customer's sole remedy shall be to require OpenDialog to correct the Software.
- 6.6. In the event of any breach of the warranties at clauses 6.2.2. and 6.2.3 and 6.2.4, the Customer's sole remedy shall be to require OpenDialog to re-perform the relevant Support Services.
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- 7. LIABILITY**
- 7.1. Save as provided within Clause 7.4, OpenDialog's total aggregate liability in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) ("Claims") shall not exceed one hundred per cent (100%) of the aggregate Fees paid or payable by the Customer during the period of twelve (12) months prior to the date that such liability arose.
- 7.2. Save as provided within Clause 7.4, OpenDialog shall not be liable for any Claim to the extent that the Claim relates to:
- 7.2.1. loss of profits;
- 7.2.2. loss of goodwill;
- 7.2.3. loss of anticipated savings;
- 7.2.4. loss of revenue or business opportunity;
- 7.2.5. loss of data or use of data;
- 7.2.6. injury to reputation;
- 7.2.7. third party losses; or
- 7.2.8. any loss or damage which does not arise as a direct and natural consequence of the default in question, including any indirect, incidental, special, exemplary, punitive or consequential loss or damage,
- 7.3. in each case regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether OpenDialog knew or had reason to know of the possibility of the loss, injury or damage in question.
- 7.4. Nothing in this Agreement shall limit or exclude either party's liability:
- 7.4.1. for death or personal injury resulting from negligence;
- 7.4.2. for fraud or fraudulent misrepresentation;
- 7.4.3. for damage suffered by the other party as a result of any breach by the other party of the conditions as to title and quiet enjoyment implied by applicable law;
- 7.4.4. for breach of Clause 3.1 (Confidentiality) (excepting for the avoidance of doubt Clauses 3.2 and 3.3);
- 7.4.5. for breach by the Customer of OpenDialog's Intellectual Property Rights; or
- 7.4.6. for any other liability the exclusion or limitation of which is not permitted by applicable law.
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- 8. TERM AND TERMINATION**
- 8.1. This Agreement shall commence on the Commencement Date and shall continue for the Initial Period.
- 8.2. This agreement shall auto-renew unless either party gives 2 months' written notice.
- 8.3. Either party shall be entitled to terminate this Agreement at any time upon notice in writing to the other if the other party commits a material breach of this Agreement which remains un-remedied (if capable of remedy) for more than thirty (30) days after such notice.
- 8.4. Either party shall be entitled to terminate this Agreement forthwith upon notice in writing to the other party if the other party:
- 8.4.1. makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event; and/or
- 8.4.2. is in breach of any of the obligations of confidentiality specified in Clause 3.
- 8.5. Upon the termination or expiry of this Agreement for whatever reason:
- 8.5.1. the Customer will immediately cause all copies of the OpenDialog Elements to be removed from all computer equipment in its possession or under its control and return to OpenDialog or destroy (if authorised by OpenDialog in writing to do so) all such copies and any other OpenDialog Confidential Information and cause an officer of the Customer to certify in writing that it has done so; and
- 8.5.2. each party's rights, liabilities and obligations under this Agreement (including the rights granted at Clause 2.1) shall cease, except that each party's rights, liabilities and obligations that have accrued prior to such termination or expiry or that are expressly or by implication intended to come into force upon or remain in force following such termination or expiry shall survive any such termination or expiry.
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- 9. FEES AND PAYMENT**
- 9.1. The Customer shall pay the Fees to OpenDialog in accordance with the Order Form.
- 9.2. All amounts and fees stated or referred to in this Agreement:-
- 9.2.1. are non-cancellable and non-refundable; and
- 9.2.2. are exclusive of value added tax or any similar sales or other tax in any applicable jurisdiction, which shall be added to OpenDialog's invoice(s) at the appropriate rate if applicable.
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- 10. FORCE MAJEURE**
- 10.1. Save in respect of payment obligations, neither party shall be liable to the other for any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay arises due to an event outside that party's reasonable control, provided always that the party so affected promptly notifies the other, in writing, of the cause and likely duration of the failure or delay, and provided further that such party takes reasonable steps to mitigate any impact of such

event, for example using its disaster recovery plans.

- 10.2. If either party fails to perform or is delayed in performing its obligations under this Agreement due to such event for a period greater than forty five (45) days or notifies the other in writing that it reasonably anticipates that it will fail to perform or, be delayed in performing its obligations for a period greater than forty five (45) days, then the unaffected party shall be entitled to terminate this Agreement forthwith upon written notice.

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## 11. NON-SOLICITATION

- 11.1. For the duration of this Agreement and for a period of twelve (12) months thereafter neither party shall without the written consent of the other actively solicit or entice away (or seek to solicit or entice away) from the employment of the other, any person employed by the other. This Clause shall not prevent either party from making general, non-specific solicitations for employment via a newspaper, the Internet or any other media or from hiring any employee of the other party who responds to such solicitation.

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## 12. DISPUTE RESOLUTION

- 12.1. Without prejudice to the termination provisions in Clause 9, if a party believes in good faith that the other party (Defaulting Party) has breached any material term of this Agreement, that party (Aggrieved Party) will notify the Defaulting Party, in writing setting out in reasonable detail the nature of the alleged breach (Notice of Breach). If the Defaulting Party does not dispute the validity of the Notice of Breach, it will promptly undertake to cure the breach described therein. If the Defaulting Party disputes the validity of the Notice of Breach then the parties will comply with the following provisions.
- 12.2. Any dispute to be resolved under this Clause 12 will first be submitted for resolution to the representatives of each Party then charged with the administration of this Agreement. If such representatives are unable to resolve the dispute within ten (10) Business Days after the date on which the Notice of Breach is received by the Defaulting Party, then, the dispute will be submitted to the Directors (or persons of comparable authority) of each party for resolution. If such Directors are unable to resolve the dispute within ten (10) Business Days after the date on which the Notice of Breach is received by the Defaulting Party, then each party will be free to pursue

whatever remedies hereunder, at law or in equity may be available to it in respect of the subject matter of the dispute.

- 12.3. Notwithstanding anything in this Agreement to the contrary, the cure period provided in this Agreement for any breach which is the subject of a dispute submitted for resolution in accordance with this Section will be suspended during foregoing dispute resolution procedures and commence to run on the day after the dispute has been resolved in favour of the Aggrieved Party or the dispute resolution procedures have been exhausted, whichever is applicable.

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## 13. GENERAL

- 13.1. Nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between the parties. Neither party shall be entitled to bind or pledge the credit of the other or sign any document, enter into any agreement or make any promise on behalf of the other or in any way indicate that it is entitled to do so without the prior written consent of the other.
- 13.2. OpenDialog shall be entitled to subcontract any of its obligations under this Agreement to a third party provided, always, that OpenDialog shall remain primarily responsible for the acts or omissions of such third party under this Agreement.
- 13.3. The Customer may not may not assign, transfer, mortgage, charge, sub-license or otherwise dispose of the whole or any part of this Agreement without the prior written consent of OpenDialog.
- 13.4. Any notice or written communication given under or in relation to this Agreement shall be given in writing and shall be delivered by hand (in which case it shall be deemed to have been given at the time of delivery) or sent by special delivery post (in which case it shall be deemed to have been given on the second day after posting) to the other party at its address set out above or to such other address as it has previously notified to the sending party in writing, or by email (in which case it shall be deemed to have been given when sent, unless a mail non-delivery notification has been received by the sender).
- 13.5. Save as expressly stated in this Agreement, the remedies available to the parties under this Agreement shall not limit or exclude any other rights that either party may have against the other.
- 13.6. The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any

term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.

- 13.7. The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 13.8. This Agreement contains all the terms agreed by the parties relating to its subject matter and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this Agreement except as set out in this Agreement. Each party acknowledges and accepts that, in entering into this Agreement, it has not relied upon any representation, undertaking or promise except as set out herein.
- 13.9. Save where expressly stated otherwise, nothing in this Agreement shall confer any right or benefit upon any person who is not a party to it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.10. No variation of or amendment to this Agreement shall be effective unless made in writing and signed by authorised representatives of the parties.
- 13.11. This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together will constitute one and the same instrument.
- 13.12. This Agreement (including non-contractual disputes or claims) is governed by English law and the parties hereby accept the exclusive jurisdiction of the English courts. If incorporated outside England and Wales the Customer hereby appoints the entity set forth in the Order Form as its agent for the service of process in England in connection with this Agreement, service upon whom shall be deemed completed whether or not received by the Customer

# SCHEDULE 1: DATA PROTECTION

In Schedule 1 the following definitions apply:

**Data Controller:** has the meaning set out in the Data Protection Legislation;

**Data Processor:** has the meaning set out in the Data Protection Legislation;

**Data Protection Legislation:** means all applicable data protection and privacy laws, including, without limitation, the Data Protection Act 2018, the Data Protection Directive 95/46/EC (as the same may be superseded by the General Data Protection Regulation 2016/679 (the "GDPR")), the Privacy and Electronic Communications Directive 2002/58/EC and all national legislation implementing or supplementing the foregoing and all associated codes of practice and other guidance issued by any applicable data protection authority, all as amended, re-enacted and/or replaced and in force from time to time;

**Personal Data:** has the meaning set out in the Data Protection Legislation and relates only to personal data of which the Customer is the Data Controller and in relation to which OpenDialog is providing the Services under this Agreement; and

**Process:** and other derivations such as "processed" and "processing" means any use of or processing applied to any Personal Data and includes "processing" as defined in the Data Protection Legislation.

**Services:** means the services contemplated under the terms of this Agreement to be provided by OpenDialog during the duration of the Agreement including but not limited to the Special Terms and Professional Services Scope in the Order Form and Maintenance and Support terms in Schedule 2.

## 1. AGREEMENT

- 1.1. The Parties agree that the performance of the services anticipated under this Agreement and in particular the Services set out in the Order Form and 2 may involve the processing of Personal Data as follows:
  - 1.1.1. Receipt, analysis, storage, duplication, deletion of Personal Data necessary for the provision of the Services
  - 1.1.2. Applicable personal data may include: title, first name, last name, address, date of birth, health information, financial pension details of clients or prospective clients of the Customer or beneficiaries or dependants of the same,
- 1.2. Such use of Personal Data will be until the earliest of (i) expiry/termination of this Agreement or (ii) the date upon which processing is no longer necessary for the purposes of either party performing its obligations under this Agreement.

## 2. WARRANTIES

- 2.1. Each party warrants to the other that it (or its applicable Affiliate) has complied with, and

undertakes to continue to comply with, the Data Protection Legislation at all times.

- 2.2. In respect of the parties' rights and obligations under this Agreement regarding the Personal Data, the parties hereby acknowledge and agree that the Customer is the Data Controller (or acting as agent on behalf of an Affiliate that is a Data Controller) and OpenDialog is the Data Processor and accordingly OpenDialog agrees that it shall process all Personal Data in accordance with its obligations pursuant to this Schedule 1.
- 2.3. OpenDialog warrants that it shall:
  - 2.3.1. only process the Personal Data in order to provide the Services contemplated herein and shall act only in accordance with this Agreement and the Customer's written instructions issued from time to time;
  - 2.3.2. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by the processing, in particular protection against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed pursuant to this Agreement;
  - 2.3.3. take reasonable steps to ensure the reliability of any of its staff who will have access to the Personal Data and ensure that anyone who accesses it shall respect and maintain all due confidentiality;
  - 2.3.4. not engage any sub-processors in the performance of the Services without the prior written consent of the Customer and otherwise in accordance with this Schedule 3 at all times;
  - 2.3.5. not cause or permit any Personal Data to be transferred or processed outside the UK or European Economic Area without first seeking the instructions of the Customer, which may include the requirement to execute the Standard Contractual Clauses for transfers from Data Controllers to Data Processors approved by the Commission pursuant to Decision 2010/87/EU, as amended by Commission Implementing Decision (EU) 2016/2297;
  - 2.3.6. immediately notify the Customer of any actual or alleged incident of unauthorised or accidental disclosure of or access to any Personal Data or other breach of this Agreement by any of its staff, sub-processors or any other identified or unidentified third party;
  - 2.3.7. where applicable in respect of any Personal Data processed pursuant to this Agreement, provide full cooperation and assistance to the Customer in ensuring compliance with:
- 2.4. the Customer's obligations to respond to requests from any data subject(s) seeking to exercise its/their rights under Data Protection Legislation,

including by notifying the Customer of any written subject access requests OpenDialog receives relating to the Customer's obligations under the Data Protection Legislation; and

- 2.5. the Customer's obligations set out under Articles 32 – 36 of the GDPR (or the equivalent provisions under Data Protection Legislation) to:
- 2.6. ensure the security of the processing;
- 2.7. notify the relevant supervisory authority, and any data subject(s), where relevant, of any breaches relating to Personal Data;
- 2.8. carry out any data protection impact assessments ("DPIA") of the impact of the processing on the protection of Personal Data; and
- 2.9. consult the relevant supervisory authority prior to any processing where a DPIA indicates that the processing would result in a high risk in the absence of measures taken by the Customer to mitigate the risk;
- 2.10. make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this provision and allow for and contribute to any audits, including inspections, conducted by the Customer or another auditor mandated by the Customer; and
- 2.11. at the request of the Customer, delete or return to the Customer all Personal Data processed pursuant to this Agreement at the end of the Term.

## 3. INDEMNITIES

- 3.1. Without prejudice to any other rights or remedies of the Customer in the event of a breach of Clause 1 or Clause 3 of this Agreement by OpenDialog but subject to Clause 7 of this Agreement, OpenDialog agrees to indemnify and keep indemnified and defend at its own expense the Customer (and any applicable Affiliate Data Controller that Customer is acting as agent for due to its capacity as service company for such Affiliate) against all direct costs, claims, damages or expenses incurred by the Customer or for which the Customer (or any Affiliate) may become liable due to any failure by the Data Processor or its employees or agents to comply with any of its obligations under this Agreement.
- 3.2. OpenDialog shall ensure that any person (including any sub-processors) it engages to provide services on its behalf in connection with this Agreement does so only on the basis of a written contract which imposes on such person terms equivalent to those imposed on OpenDialog in this Schedule 3 ("Relevant Terms"). OpenDialog shall procure the performance by such person of the Relevant Terms and shall be directly liable to the Customer for any breach by such person of any of the Relevant Term

# SCHEDULE 2: MAINTENANCE AND SUPPORT TERMS

## Service Description & Terminology Definition:

**Business Day:** 09:00 and 17:00 Monday to Friday excluding public holidays in the Nominated Country in the TimeZone

**End of Life Procedure:** the procedure for sunseting versions of the OpenDialog Software published from time to time.

**Fault:** a failure of the Software, due to errors in the code, to perform in accordance with the description in the specification or, if none, with the Manuals.

**First Line Support:** The services provided by or on behalf of the Customer in response to an initial notification of a suspected Fault. These services include, but may not be limited to, call-logging and validation, determination of whether a solution is contained in product information.

**Second Line Support:** the services provided by or on behalf of the Customer to attempt to reproduce and correct the suspected Fault and/or determine the hardware or software application causing the Fault. Any member of the Second Line Support Helpdesk can log a suspected Fault, but the Customer shall ensure that the Customer personnel who are dealing with diagnosis and resolution of the suspected Fault ("Customer Personnel") have sufficient skills, training and competency reasonably expected of personnel working in a support environment.

**Third Line Support:** the services provided by OpenDialog to resolve Faults where such Faults cannot be resolved by the Customer. All references to errors in the Agreement or in this Schedule in respect of the Software shall, where applicable, be references to Faults as defined herein.

**Initial Response:** consists of an acknowledgment by OpenDialog of the initial notification of the incident, communication of an incident reference number, and the allocation of a Priority level.

**Nominated Country:** United Kingdom 'UK'

**Service Hours:** the hours chosen by the Customer in this Agreement or other applicable agreement accordance with the following:

- **Standard Support:** Business Day
- **Extended Support:** 07:00 to 09:00 and 17:00 to 19:00 Monday to Friday in the Time Zone excluding public holidays in the Nominated Country in the Time Zone
- **Complete Support:** any time outside Standard Support and (if chosen by the Customer) Extended Support

**Time Zone:** United Kingdom (GMT)

**Workaround:** a method, action or procedure recommended by OpenDialog which in OpenDialog's reasonable judgement avoids the effects of a Fault on a temporary basis.

## 1. SUPPORT COMMUNICATION

- 1.1. The Customer shall provide First Line Support and Second Line Support.
- 1.2. OpenDialog shall provide Third Line Support
- 1.3. All references to Support Services in this Schedule shall be references to Third Line Support
- 1.4. Call Escalation to Third Line Support
- 1.5. If Second Line Support cannot resolve the Customer support request, the Customer can escalate the Fault to Third Line Support at OpenDialog within the Support Hours set forth under Service Levels below.

1.6. The Customer Second Line Support Desk shall contact Third Line Support using the following contact details: Email: support@opendialog.ai

1.7. and/or such other contact details as OpenDialog may notify the Customer from time to time. The Customer should contact OpenDialog by email except in the case of Priority 1 Faults where contact shall be either by email or by telephone.

1.8. OpenDialog is not required to provide the Support Services directly to the Customer authorised users of the Software unless required as set out in this Schedule or otherwise agreed in writing by OpenDialog.

## 2. SUPPORT SERVICES

2.1. Included Support:

2.1.1. Third Line Support comprising support and maintenance of the OpenDialog Software including the supply of bug fixes in accordance with the Service Levels below, and the right to receive periodic upgrades by way of major or minor releases. Each release shall be accompanied by a release notice detailing any issues resolved. Third Line Support is provided for any version of the OpenDialog Software until after at least 6 months' notice of withdrawal of a version is issued by OpenDialog, in accordance with the End of Life Procedure, and OpenDialog undertakes that each version will be supported for a minimum of 3 years from its official release date, as specified in its release note.

2.2. Service Levels:

2.2.1. Support Hours: OpenDialog shall provide support during Service Hours. Any assistance required outside of Service Hours shall be provided pursuant to a SOW or as otherwise agreed in writing (which shall include email).

2.2.2. The Support Services during Complete Support, if chosen by the Customer, will be provided for Priority 1 Faults only, and will consist of a consultant with a mobile telephone and a laptop computer with access to the OpenDialog Software and technology infrastructure (if required).

2.2.3. The Customer shall raise all issues via the OpenDialog Help Desk set forth under Call Escalation above and shall confirm the issue and provide any additional information by an email to the email address set forth above. Such information shall include detailed steps to describe and replicate the issue, details of investigations carried out including Workarounds attempted by the Customer, and system event logs and process logs, in line with OpenDialog's issue logging procedure which is provided via the OpenDialog Customer portal. All support requests are to be in English and support shall be provided in English. OpenDialog shall assign an appropriate Priority Level to the issue. The Customer can request a change to such assignment and, if OpenDialog does not agree to such change, the Customer can escalate the issue in accordance with the process set forth in Clause 21.

2.3. The Customer shall:

2.3.1. permit OpenDialog at all reasonable times to access and use free of charge such of the Customer's personnel, premises, facilities and assistance as OpenDialog may reasonably require for the provision of the Support Services; and

2.3.2. provide OpenDialog with such information as OpenDialog may reasonably require for the provision of the Support Services (including without limitation any information regarding security, health and safety and hazardous or dangerous substances, materials and equipment). All such information shall be provided in a timely manner and shall use all reasonable endeavours to ensure that such information is complete and accurate.

2.3.3. The Support Services provide for remote support, which may include remote log on and access to the Customer's systems and OpenDialog shall provide assistance via telephone/email and, if required, remote access. If on-site support is required to resolve a Fault or otherwise to resolve problems such support shall be supplied via a SOW approved by the Customer and time and expenses shall be chargeable at OpenDialogs current rates as detailed in the SOW.

2.4. Issues shall be addressed according to Priority.

2.5. Definition of Issue Priority:

2.5.1. **Priority 1:** The entire Software-as-a-Service is not working due to a critical issue or the Software-as-a-Service has been underperforming against a Performance Benchmark by more than 15% for 30 minutes consecutively

2.5.2. **Priority 2:** A substantial part of the Software-as-a-Service is not working and there is no viable Workaround.

2.5.3. **Priority 3:** There are one or more issues that are causing inconvenience, but the Software-as-a-Service is substantially working or a Workaround has been provided.

2.5.4. **Priority 4:** There is a minor issue or a suggestion for a change in functionality or appearance of the Software-as-a-Service.

2.6. The target response times associated with each issue Priority are, from the time of notification of the issue, set out below, and the target resolution times associated with an issue that is determined to be a Fault are, from the time of determination of the cause of the Fault, set out below:

2.6.1. **Priority 1:** Response within one hour. OpenDialog will use reasonable endeavours and Continuous Effort, within Service Hours, to resolve the Fault within 12 Service Hours.

2.6.2. **Priority 2:** Response within three hours. Fault resolved by the end of the following three Business Days.

2.6.3. **Priority 3:** Response within one Business Day. Bug fix scheduled for the next available release.

2.6.4. **Priority 4:** OpenDialog shall consider such issues or requests in the light of other Customer requirements and will advise what action

## 3. KNOWLEDGE SUPPORT

3.1. Knowledge Support can be booked by contacting your OpenDialog Account Manager and is delivered by OpenDialog support.

3.2. Customers can use no more than 24 hours of Knowledge Support per calendar month.

3.3. Knowledge Support requests can be booked in blocks of 4 hours.

3.4. Notice of 10 working days is required for the provision of Knowledge Support.

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#### 4. TRAINING

- 4.1. Training Services comprises:
  - 4.1.1. Training material provided to the Customer by OpenDialog Support.
  - 4.1.2. Time limited access to a dedicated training workspace for use by the Customer.
- 4.2. Access to the training platforms can be requested, where it has been procured, by emailing: support@opendialog.ai and will be provisioned within 3 working days.

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#### 5. EXCLUDED ITEMS

- 5.1. This section is not intended to exclude the Customer from maintenance, but is intended to allow OpenDialog at its discretion to make an additional charge on a time and materials basis plus reasonable expenses at OpenDialogs, then, current published rates if it is found that the work done by OpenDialog during the 'Support Services' does not relate to a Fault. The Support Services shall not include any service in respect of the following, which may be provided by OpenDialog under a chargeable services arrangement:
- 5.2. use of the OpenDialog Software otherwise than as permitted or contemplated by this Agreement;
- 5.3. any modification of the OpenDialog Software made by any person other than OpenDialog unless otherwise agreed in writing by OpenDialog and, if required, verified by OpenDialog;
- 5.4. the installation and/or implementation of any release which cannot be performed remotely by OpenDialog;
- 5.5. all work undertaken outside Service Hours (if so requested by the Customer);
- 5.6. where the Customer requests a person from OpenDialog to attend at the relevant site or where a site visit is reasonably required because adequate dial-in access is not provided by the Customer.

- 5.7. all work undertaken on any Customer Fault and for any work undertaken by OpenDialog to evaluate any proposed changes to the platform or the use of any other software or hardware on the platform or with the OpenDialog Software pursuant to a Change Request. For the purposes of this clause Customer Fault shall include, but shall not be limited to:-
- 5.8. defects or errors resulting from incorrect implementation or configuration of the OpenDialog Software if carried out by the Customer;
- 5.9. incorrect use of the OpenDialog Software or operator error;
- 5.10. any changes to the operating environment made by the Customer;
- 5.11. failure properly to maintain and administer the platform and/or the environment;
- 5.12. where the data structure has changed outside of such changes as are reasonably envisaged by the functionality of the OpenDialog Software;
- 5.13. failure to implement any release supplied by OpenDialog to correct the Fault unless such release is demonstrated to cause other issues and/or Faults when tested;
- 5.14. use of the OpenDialog Software with any software or hardware which could, in the reasonable opinion of OpenDialog, adversely affect the operation of the OpenDialog Software unless such use has been approved in writing in advance by OpenDialog;
- 5.15. persistent failure to read the Manuals correctly;
- 5.16. persistent failure to use reasonably skilled and trained operators, administrators and maintenance personnel;
- 5.17. where the request for support is a request for services outside the scope of this Agreement such as, but not limited to, where the request would:
- 5.18. persistently result in additional training of the Customer personnel other than through agreed training courses;
- 5.19. result in a change in functionality of the OpenDialog Software;

- 5.20. result in a Customer specific modification of the OpenDialog Software otherwise than for the purposes of the Support Services; or
- 5.21. where the Customer delays or defaults in any of its obligations under this Agreement.

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#### 6. REQUEST FOR CHANGE

- 6.1. A request to alter the Support Services. A Request for Change can be initiated by OpenDialog or the Customer.
- 6.2. As part of initiation and delivery of the Services, a Change Control Board will be formed, comprising a Customer representative and a OpenDialog representative. The Change Control Board will have joint authority to accept or reject the Request for Change.
- 6.3. Following acceptance of a Request for Change, an amendment to this agreement will be created to document the change of scope.
- 6.4. Where agreement cannot be reached, the Escalation Process will be used

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#### 7. RELATIONSHIP

- 7.1. A regular relationship review shall be held to agree priorities, monitor SLA performance and to escalate any non-performance issues.

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#### 8. ESCALATION PROCESS

- 8.1. If the Customer is dissatisfied with the service received through normal helpdesk channels, the first point of escalation shall be with your OpenDialog Account Manager;
- 8.2. The second point of escalation shall be to OpenDialog's Operations Director;
- 8.3. The third point of escalation shall be OpenDialog's Chief Executive Officer



# SCHEDULE 3: SAAS SERVICE LEVEL AGREEMENT

In this Schedule 3 the following definitions apply:

**Actual Uptime:** shall mean the total minutes in the reporting month that the OpenDialog Software was actually available to Authorised Users for normal use.

**Maintenance Downtime:** shall mean the total minutes in the reporting month during which OpenDialog shall maintain the Service, as notified at least 48 hours in advance to the Customer

**Emergency Downtime:** shall mean the total minutes in the reporting month during which the OpenDialog Software shall be unavailable in order to resolve a critical issue

**Scheduled Downtime:** shall mean the total minutes in the reporting month represented by the Maintenance Downtime plus Emergency Downtime

**Scheduled Uptime:** shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

## 1. SERVICE LEVEL STANDARD

- 1.1. OpenDialog Software will be available to Customer for normal use no less than 99.9% of the Scheduled Uptime.

## 2. CALCULATION

- 2.1.  $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$  (as calculated by rounding to the second decimal point)

## 3. PERFORMANCE CREDIT

- 3.1. Where Percentage Uptime is equal to or greater than 99.9%, no Performance Credit will be due to the Customer.
- 3.2. Where Percentage Uptime is less than 99.9%, Customer shall be due a Performance Credit
- 3.3. The Performance Credit shall be in the amount of 5% of the monthly Fee (as calculated on a monthly basis for the reporting month)

- 3.4. The Performance Credit shall increase by a further 5% for each full 1% reduction in Percentage Uptime, up to a maximum of 15%

## 4. EXAMPLE CALCULATION

- 4.1. Assuming the reporting month is February 2012 (41,760 minutes).
- 4.2. Assuming a single Maintenance Window from Midnight to 2:00 a.m. (equals Scheduled Downtime of 120 minutes) during the month.
- 4.3. Scheduled Uptime equals 41,640 minutes (total minutes of 41,760 less 120 minutes of Scheduled Downtime).
- 4.4. Assuming Actual Uptime of 41,140 minutes. A Percentage Uptime is calculated as follows:  $(41,140 / 41,640) * 100 = 98.8\%$ .
- 4.5. The threshold of 99.9% less the Percentage Uptime of 98.8% = 1.1%.
- 4.6. The difference is greater than a 1% reduction therefore, Customer is due 10% of the monthly Fee as a Performance Credit