

### 1. DEFINITIONS

1.1. "Charges" means the fees payable by You to Us for use of the Services and which may comprise setup charges (the one off charge You pay to Us when the Service is first set up), subscription charges (recurring charges You pay to Us for use of the Service), enhanced support charges (for the provision of higher levels of customer support) and professional services charges (the charges that are due for any training or professional services that We provide in the fulfilment of an Order).

1.2. "Contract" means the same as in section 2.2.

1.3. "Contract Year" means the period of 365 days from the commencement of a Contract and subsequent annual renewals.

1.4. "Enhanced Support" means additional support available for purchase as described in section 12.2

1.5. "Order" is defined in section 2.1

1.6. "Service" or "Services" means the planning, scheduling, measurement and optimization services as supplied by Us to You under these terms and conditions and as set out in the relevant Order.

1.7. "Service Description" means the description of the architecture, feature and function of the Services.

1.8. "Service Due Date" means the date on which Your Services will be available and will be Charged.

1.9. "Standard Support" means the level of support which is included at no additional cost in the Subscription Charges as described in section 12.1

1.10. "Term" means the period that We are to provide the Service, and You are to pay for the Service as specified in the Order Form and any subsequent renewals thereof.

1.11. "We" or "Us" means adserve Plc, registered in the UK with company number 10922283

1.12. "You" means the customer to whom We provide the Service in accordance with these terms and conditions.

### 2. THE SERVICE

2.1. These terms and conditions contain general terms relating to the provision by Us to You of the Services and should be read in conjunction with the information included on the Our Order Form completed by You ("Order").

2.2. Each Order will form a separate contract ("Contract") between You and Us on the terms contained in the Order and in these terms and conditions. Each Contract will be separately terminable by either party in accordance with sections 2.3 and 11.

2.3. We reserve the right to cancel or suspend the Service with reasonable notice if We believe the Service is being used by You in breach of these terms and conditions or if You notify Us that someone has gained unauthorised access to the Service.

2.4. We have the right to terminate any Contract upon written notice to You in the event of a breach of these terms and conditions that remains uncured 30 days after we give you notice of such breach. For the avoidance of doubt, failure to pay the charges due under this Contract will constitute a breach.

2.5. You agree that We shall not be liable to provide the Service unless and until an Order has been accepted by Us in relation to the Service.

2.6. You agree that We operate a fair use policy which We may update from time to time.

### 3. THE OBLIGATIONS YOU HAVE TO US

3.1. You shall ensure that You do not use the Service for unlawful purposes, including (but not limited to) the transmission of material that is defamatory, or which infringes on the intellectual property rights of any third party.

3.2. You will be provided with passwords for accessing or using the Service and You must treat such passwords as confidential and must not reveal them to any third party. You are responsible for all activities that occur under the passwords that You have. You shall ensure that the passwords that You have are changed regularly.

### 4. CHARGES AND PAYMENTS

4.1. In each case the Order will set out all appropriate charges for the Service, applicable from the "Service Due Date" which will be billed annually in advance unless otherwise specified in your Order.

4.2. We reserve the right to revise the Charges from time to time.

4.3. If any invoice becomes overdue, We reserve the right to charge interest at 3% above the base rate of

the Bank of England and suspend the Service if such invoice remains overdue for four weeks.

## **5. PROPRIETARY PROTECTION**

5.1. The intellectual property rights and/or other proprietary rights in the information (including hard copy and electronic, human-readable and otherwise) used or created by Us in providing the Service will be owned by Us or the licensors We have.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1. Each party warrants to the other that it has the full and sufficient right and authority to enter into these terms and conditions and to grant the rights and licences granted herein.

6.2. We warrant that the Services will be provided with reasonable care and skill.

6.3. You agree that We do not warrant or enter into any other term to the effect that any software will be entirely free from defects or that its operation will be entirely error free.

6.4. Apart from the terms set out in this section 6, no conditions, warranties or other terms apply to the Service or to anything else supplied under these terms and conditions. In particular, the terms implied by sections 3 to 5 of the supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these terms and conditions.

## **7. LIMITATION OF LIABILITY**

7.1. Other than set out in section 7.4, neither party shall be liable (whether for breach of contract, tort (including without limitation negligence), or for any other reason) arising out of or in connection with these terms and conditions for any: (i) loss of profits, sales and/or revenue; (ii) goodwill and/or reputation; (iii) loss or waste of management or staff time; and/or (v) indirect, consequential or special loss.

7.2. We shall not be liable for any failure in the Service which arises because of any circumstances which we cannot reasonably be expected to control.

7.3. Subject to section 7.1 and 7.4, the total aggregate liability We have to You under each Contract and in relation to anything which We may have done or not done in connection with the Contract concerned (and whether the liability arises because of breach of Contract, negligence or for any other reason) in respect of any Contract shall be limited to 100% of all amounts payable by You under the Contract concerned in the relevant Contract Year.

7.4. Neither party's liability: (i) for death or personal injury caused by its negligence; (ii) for fraudulent

misrepresentation or for any other fraudulent act or omission; and/or (iii) for any other liability which may not lawfully be excluded or limited, is excluded or limited by these terms and conditions, even if any other term of these terms and conditions would otherwise suggest that this might be the case.

## **8. DATA PROTECTION**

8.1. To the extent that We process any Personal Data (as defined in the 2018 General Data Protection Regulation) in connection with the Service, We will only process to the extent necessary to provide the Service, comply with instructions You give to Us and keep it secure in accordance with the 2018 General Data Protection Legislation.

8.2. Further details of Our privacy policy are published on our website at [adserveplc.com/privacy](https://adserveplc.com/privacy)

8.3. You agree that We may use the name of your organisation and your logo in promotional materials associated with the Service and We agree that We will not disclose to any third party how You are using the service without written permission from You.

## **9. INSTALLING SOFTWARE ON YOUR PREMISES**

9.1. Should the provision of any service require that Our software is installed on Your premises, We agree to provide a copy of this software and, for the appropriate Setup Charge, to oversee its installation on to Your hardware.

9.2. We reserve the right to withhold Standard or Enhanced Support if You have not implemented later releases of the System such that their operational version of it is more than one year behind the current release.

9.3. In order to support any of Our software on your premises, You will provide remote access to the hardware, with access to your hardware being strictly to provide Standard or Enhanced Support.

9.4. You will be responsible for obtaining any necessary licences for operating system and support software such as but not limited to Microsoft Windows Operating Systems and MS SQL Server which are required to operate in conjunction with the System. Support of such ancillary software is not part of the Service to be provided under this Agreement.

9.5. All risks of loss or damage to software, equipment or to the Your premises shall be borne by You at all times. We shall not be liable for any commercial damage of any sort, whether direct, indirect or consequential, resulting from remote access to your hardware.

## **10. AUDIENCE DATA**

10.1. If the use of Audience Data is included within the Service, then You warrant that You are entitled to receive the Audience Data by virtue of being a contributor to that data or by reasons of being a paid-up subscriber. You agree that We may inform Audience Data supplier of Your use of this data. You agree to provide evidence of this entitlement to receive Audience Data to Us on demand. In the event that You receive Audience Data to which You are not entitled, You agree to pay to Audience Data supplier any sums that may be demanded to make good the damage to Audience Data supplier. If the licensed Station is not measured by Audience Data then such data can only be supplied if You are a paid-up subscriber to the Audience Data supplier.

## **11. TERM AND TERMINATION**

11.1. Each Contract shall commence on the date set out in the Order and will comprise the Term specified on the Order. Following the end of the initial Term, each contract shall renew automatically for successive Terms of 12 months.

11.2. Any contract may be cancelled by You by serving a minimum of 12 months' notice.

11.3. Any contract may be cancelled by Us in accordance with Section 2.

11.4. Should You terminate your Contract before the end of any Term, You are obliged to pay the entire Charges remaining for the duration of the Term. These charges will be due within 30 days of the termination.

## **12. SUPPORT AND SERVICE LEVEL AGREEMENT**

12.1. Each Service is provided with Standard Support included at no additional charge. Standard support provides access to Our service desk during normal business so as to provide assistance with both break/fix and how-to support requests. Standard Support entitles you to access a reasonable amount of support time per month. Should You require additional support, then a bespoke support package can be designed for You at an agreed cost.

12.2. Should it be required, You may also purchase Enhanced Support which can provide additional assistance including, but not limited to priority support, an increased number of support requests, service configuration, data-loading and other tasks completed on Our business premises.

12.3. To ensure Your staff are adequately trained to use the Services, We can also provide You with both initial and ongoing training. These training courses are available at the daily rate in place at the time.

12.4. Support requests that You may make related to defects or bugs in the Service will not count against Your monthly support entitlement and will be prioritized according to severity and impact.

## **13. AUDIT**

13.1. We shall allow You and any auditors of or other advisers or an applicable Regulatory Body to access any of Our premises other than Our data centres, Our personnel and relevant records as may be reasonably required in order to: (a) satisfy or fulfil any legal or regulatory obligation or legally enforceable request by any Regulatory Body; or (b) undertake verification that the Services are being provided in accordance with any Contract.

13.2. Subject to Our confidentiality obligations, We shall provide You (and Your auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

## **14. GENERAL**

14.1. You may not sub-licence or assign any of the rights or obligations which You have under these terms and conditions.

14.2. These terms and conditions and any relevant Order sets out all of the terms that have been agreed between You and Us in relation to the subjects covered by it. Subject to section 7.4, no other representations or terms shall apply or form part of any Contract between the parties. You acknowledge that You have not been influenced to enter into these terms and conditions by anything We have said or done or committed to do, except as expressly recorded herein.

14.3. In the event of any provision in these terms and conditions being held to be void, voidable or unenforceable this shall not affect the validity or enforceability of any other section of these terms and conditions or of the remainder of these terms and conditions as a whole.

14.4. No term of these terms and conditions is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to these terms and conditions.

14.5. These terms and conditions shall be governed and construed in accordance with English law. Both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute arising out of or in connection with these terms and conditions, but We are also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce the intellectual property rights that We have.