

Terms of Service - Version v6

1. Information about Ometria

The Ometria Service is provided by Ometria Ltd (“Ometria”), a company incorporated and registered in England and Wales under company number 08372083 whose registered office is at 3.01, The Tea Building, 56 Shoreditch High Street, London E1 6JJ. Ometria’s VAT number is 159146786.

2. Interpretation

2.1 In the Terms of Service, save where the context requires otherwise, the following words and expressions have the following meaning:

2.1.1 “Account” means the Client’s account(s) on the Ometria Service;

2.1.2 “Additional Messaging Fee” means the fee, as set out in the Order Form, payable by the Client in respect of additional Digital Messages purchased pursuant to clause 11.2;

2.1.3 “Additional Messaging Limit” means the number of Digital Messages as set out in the Order Form;

2.1.4 “Agreement” means the agreement between the Client and Ometria comprising the Order Form, the Acceptable Use Policy, and the Terms of Service for the provision of the Ometria Service and, if applicable, the Integration Services and/or the Consultancy Services;

2.1.5 “Applicable Laws” means the laws of any member of the European Union or by the laws of the European Union to which Ometria is subject;

2.1.6 “API” means Ometria’s application process interface permitting the Client to upload Client Data to the Ometria Service;

2.1.7 “Automated Messaging” means the sending of an automated Digital Message to a Subscribed Contact in response to the actions of a Subscribed Contact as permitted by the functionality of the Ometria Service. “Automated Messages” shall be construed accordingly;

2.1.8 “Billing Period” means the period set out in the Order Form;

2.1.9 “Client” means the person identified in the Order Form;

2.1.10 “Client Data” means the content and data transferred to any Ometria Equipment as a result of the Code or the API;

2.1.11 “Client’s Service” means the web or app based service operated by the Client;

2.1.12 “Code” means the HTML or JavaScript or other source code provided by Ometria to the Client for incorporation into the Client’s web pages or mobile applications;

2.1.13 “Commencement Date” means the date from which the Client will receive the Ometria Service, and if applicable the Integration Services, as set out in the Order Form;

2.1.14 “Confidential Information” means information which is identified as confidential or proprietary by either party or by the nature of which is clearly confidential or proprietary;

2.1.15 “Consultancy Services” means the consultancy services to be provided by Ometria in relation to the Client’s business as specified in the Order Form or as agreed between the parties in writing from time to time;

2.1.16 “Data Email Address” means dpo@ometria.com.

2.1.17 “Data Processing Fee” means the data processing fee payable by the Client as set out in the Order Form or determined in accordance with clause 11.4;

2.1.18 “Data Protection Legislation” means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national

implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

2.1.19 "Digital Message" means an outbound digital message sent to a Subscribed Contract by the Client using the Ometria Service;

2.1.20 "Extended Term" means the period of time set out in the Order Form that the Agreement will automatically extend for following the end of the Initial Term or any Extended Term;

2.1.21 "Fair Use Limit" means the number of Automated Messages equivalent to ten (10) times the number of Subscribed Contacts on the Commencement Date

2.1.22 "Initial Message Limit" means the number of Digital Messages purchased by the Client as set out in the Order Form;

2.1.23 "Fees" means the amounts set out in the Order Form in respect of the Licence Fee, Initial Messaging Fee, Data Processing Fee, Additional Messaging Fee and/or such amount that is payable pursuant to this Agreement or that the parties may agree in writing from time to time, for the provision of the Ometria Service and, if applicable, the Integration Services and the Consultancy Services;

2.1.24 "Initial Messaging Fee" means the fee, as set out in the Order Form, payable by the Client to Ometria in consideration for sending Digital Messages in excess of the Fair Use Limit but within the Initial Message Limit;

2.1.25 "Initial Message Limit" means the number of additional Digital Messages purchased by the Client in excess of the Fair Use Limit, as set out in the Order Form;

2.1.26 "Initial Term" means the initial term of the Agreement as set out in the Order Form;

2.1.27 "Integration Services" means the services described in the Order Form relating to the integration of the Ometria Service with the Client's web pages or mobile application;

2.1.28 "Licence Fee" means the licence fee, as set out in the Order Form, payable by the Client;

2.1.29 "Mass Messaging" means the sending of the same Digital Message by the Client at the same time to all of its Subscribed Contacts or to significant subset of its Subscribed Contacts. "Mass Messages" shall be construed accordingly;

2.1.30 "Ometria's Equipment" means hardware whether owned or leased by Ometria that hosts the Ometria Service;

2.1.31 "Ometria Service" means the Code, the API, the Mass Messaging and Automated Messaging services, and any analytics, marketing analytics and metrics software product Ometria makes available as a service through the Website;

2.1.32 "Order Form" means the order form signed (whether electronically or otherwise) which amongst other things, identifies the Client and sets out the Fees, if applicable;

2.1.33 "Subscribed Contact" means a contact of the Client who has given their permission for the Client to send them marketing email communications, and whose details have been uploaded to the Ometria Service;;

2.1.34 "Terms of Service" means these terms and conditions of service as amended from time to time;

2.1.35 "Term" means the period of time made up of the Trial Period (if any) and the Initial Term plus any Extended Term;

2.1.36 "Third Party Sites" has the meaning ascribed to it in clause 6.10;

2.1.37 "Trial" means a trial of the Ometria Service for the Trial Period;

2.1.38 "Trial Period" means the period specified in the Order Form;

2.1.39 "Twelve Month Active Customer" means any customer of the Client who has placed an order in the twelve (12) months prior to the commencement date of each Billing Period via any of the Client's websites, apps or retail stores that make, or will make, use of the Ometria Service;

2.1.40 "User" means any person authorised by the Client to access the Ometria Service on behalf of the Client;

2.1.41 "Virus" means 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 re-arranging, 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; and

2.1.42 "Website" means www.ometria.com.

3. Trial

3.1 Ometria offers a free Trial of the Ometria Service during the Trial Period. If a Trial Period has been agreed in the Order Form, the Trial will start on the Commencement Date and will continue for the Trial Period. Following expiry of the Trial Period, the Agreement will automatically terminate unless otherwise agreed by the Client and Ometria as set out in writing or the Order Form.

3.2 If the Client is accessing the Ometria Service on a Trial, Ometria may terminate the Agreement with 14 days' notice.

4. Duration

4.1 The Agreement shall start on the Commencement Date in the Order Form and continue for the Term.

4.2 The Initial Term of the Agreement shall automatically extend for the Extended Term at the end of the Initial Term and at the end of each Extended Term, unless either party gives written notice to the other, no later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate the Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

5. Access to the Ometria Service

5.1 Ometria grants the Client a non-exclusive, non-transferable, personal and non-sub-licensable licence to permit Users to use the Ometria Service and the Ometria Service features for the purposes of sending Digital Messages and monitoring, analysing and using content available to the Client on the Ometria Service to optimize its business activities, interact with its Subscribed Contacts and managing the Client's Account.

5.2 Where indicated in the Order Form, Ometria will provide the Integration Services and/or Consultancy Services to the Client.

5.3 The Client must treat any username and password to access the Ometria Service or the Client's Account as Confidential Information, and it must not disclose it to any third party (other than to Users).

5.4 In relation to Users, the Client shall ensure that the Client shall procure that each User keeps secure and confidential any username and password provided for the User's use of the Ometria Service and shall not disclose such user name and password to any third party including persons within the Client's organisation, company or business.

5.5 Ometria may disable any username or password, at any time and at Ometria's sole discretion, if a User or the Client has failed to comply with any of the provisions of the Agreement.

5.6 The Client is responsible for maintaining the confidentiality of login details for its Account and any activities that occur under its Account including the activities of Users. Whenever applicable, Ometria encourages the Client to use "strong" passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with its Account. If the Client has any concerns about the login details for its Account or thinks they have been misused, please contact Ometria at info@ometria.com. The Client must immediately notify Ometria if the Client becomes aware that the login details of any User is lost, stolen or otherwise compromised.

5.7 If the Client exceeds the Fair Use Limit, Ometria may charge the Client a fee in accordance with clause 11.

5.8 The Client shall not exceed the Initial Message Limit or, as applicable, the Additional Messaging Limit. If the Client exceeds such limits, Ometria may charge the Client a fee in accordance with clause 11.

5.9 The Client is responsible for making all arrangements necessary for Users to have access to the Ometria Service. The Client is also responsible for ensuring that all Users are aware of the terms of the Agreement, and that they comply with them.

5.10 The Client must prevent any unauthorised access to, or use of, the Ometria Service and, in the event of any such unauthorised access or use, promptly notify Ometria.

5.11 The Client recognises that Ometria is always innovating and finding ways to improve the Ometria Service with new features and services. Therefore, the Client agrees that the Ometria Service may change from time to time and no warranty, representation or other commitment is given in relation to the continuity of any functionality of the Ometria Service.

5.12 The Client shall indemnify and defend Ometria, its agents and contractors from and against any and all losses, damages, claims, liabilities or expenses (including reasonable lawyer's fees) arising out of a claim brought by a third party relating to the Client's use of the Ometria Service (except to the extent caused by Ometria's negligence) including:

5.12.1 the sending of Digital Messages (including to the Client's Subscribed Contacts) by Ometria, the Client or any other client of Ometria in breach of applicable law, this Agreement or without the explicit permission of the recipient;

5.12.2 the failure of, or non-availability affecting, the Ometria Service caused by the Client or any User.

5.13 Ometria has the right to disable any Account, if in its sole opinion the Client or a User has failed to comply with any of the provisions of the Agreement.

6. Client's Obligations

6.1 Ometria permits the Client to download the Code (including any updates to the Code that Ometria may make available from time to time) from the Website for the sole purpose of permitting the Client to integrate the Client's Service with the Ometria Service.

6.2 The Client shall insert the Code into the Client's Service in accordance with the reasonable directions given by Ometria from time to time.

6.3 The Client shall update the Code inserted into the Client's Service promptly upon receiving notice from Ometria to do the same.

6.4 Notwithstanding clause 6.2 and clause 6.3, unless Ometria provides Integration Services, the Code is provided on an "AS IS" basis and the Client assumes sole responsibility for installation and integration of the Code with the Client's Service including but not limited to the Client's hardware, software, websites and apps.

6.5 Ometria permits the Client to use the API (including updates to the API that Ometria may make available from time to time) for the sole purpose of permitting the Client to transfer Client Data to Ometria.

6.6 The Client shall use the API in accordance with the reasonable directions given by Ometria from time to time.

6.7 The Client must use the most current version of the API after any previous version has been upgraded, following notice from Ometria to do so.

6.8 Ometria may monitor the Client's use of the Ometria Service to ensure quality, improve the Ometria Service, and verify the Client's compliance with the Agreement.

6.9 The Client:

6.9.1 must comply with all applicable laws and regulations with respect to its use of the Ometria Service and its activities under the Agreement;

6.9.2 must comply with the Ometria Acceptable Use Policy as made available and updated from time to time (currently available at <http://www.ometria.com/acceptable-use-policy>);

6.9.3 must use the Ometria Service in accordance with the terms of the Agreement and shall be responsible for any actions and omissions in connection with the use of the Ometria Service by any Users;

6.9.4 must obtain and shall maintain all necessary licences, consents, and permissions necessary for Ometria to perform its obligations to the Client under the terms of the Agreement;

6.9.5 must ensure that its network and systems, including its internet browser used complies with the relevant specifications provided by Ometria from time to time;

6.9.6 is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems in order to access and use the Ometria Service; and

6.9.7 must not (a) access, store, distribute or transmit any Virus through the Ometria Service (b) use the Ometria Service to access, store, distribute or transmit any material that is unlawful, harmful, threatening, defamatory, inflammatory, violent, obscene, infringing, harassing or racially or ethnically offensive; (c) use the Ometria Service in a manner that is illegal or causes damage or injury to any person or property; (d) use any automated system, including without limitation "robots," "spiders," "offline readers," to access the Ometria Service in a manner that sends more request messages to the Ometria Service than a human can reasonably produce in the same period of time by using a conventional online web browser; (e) attempt to

interfere with or compromise the Ometria Service integrity or security. Ometria reserves the right, without liability or prejudice to its other rights under the Agreement, to disable the Client's Account for breaches of the provisions of this clause 6.9.7.

6.10 The Ometria Service may contain links to, or call the servers of, third party websites or services that are not under Ometria's control, solely at the direction of and/or as a convenience to the Client ("Third Party Sites"). As such, Ometria is not responsible for, and makes no express or implied warranties with regard to, the information, content or other material, products or services that are contained on or are accessible through, or the policies regarding use and privacy of, Third Party Sites. Access to and use of Third Party Sites, including the information, content, material, products, and services on such websites or available through such websites, is solely at the Client's risk. If the Client accesses any Third Party Sites, the Client does so at its own risk.

7. Important note on intellectual property rights

7.1 Ometria is the owner of or the licensee of all intellectual property rights in the Ometria Service. These works are protected by copyright and other laws and treaties around the world. All such rights are reserved.

7.2 The Client will not, when using the Ometria Service to:

7.2.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Ometria Service in any form or media or by any means;

7.2.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Ometria Service;

7.2.3. access all or any part of the Ometria Service in order to build a product or service which competes with the Ometria Service or use or attempt to use the Ometria Service to directly compete with Ometria; or

7.2.4 erase or remove any proprietary or intellectual property notice contained in the Ometria Service.

7.3 The Client grants Ometria a licence to access, download and use the Client Data for the purpose of analysing the Client Data in accordance with the Ometria Service functionality, displaying the results of such analysis to Users, developing, testing, improving and altering the functionality of the Ometria Service and producing anonymised or anonymised and aggregated statistical reports and research. Otherwise, Ometria claims no rights in the Client Data. The Client represents and warrants to Ometria that none of the Client Data violates the Agreement and that the Client has the necessary right, title, interest and consent necessary to allow Ometria to use the Client Data in accordance with this Agreement. The Client shall maintain a backup of Client Data and Ometria shall not be responsible or liable for the deletion, correction, alteration, destruction, damage, loss, disclosure or failure to store any Client Data.

8. Marketing Collaboration

Subject to the written consent of the Client, Ometria may use the Client's name, logo and related get-up, trade dress or trademarks, and any email marketing templates that are used in emails sent through the Ometria Service, in any of Ometria's publicity or marketing materials (whether in printed or electronic form) for the purpose of highlighting that the Client uses the

Ometria Service and alongside any testimonials that the Client may give or has agreed to give. The Client agrees to grant Ometria such rights of use as are necessary to use such name, logo, related get-up, trade dress or trademarks, email templates and testimonial for the purpose of this clause 8.

9. Data Protection

9.1 Ometria does not claim ownership in the Client Data.

9.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and Ometria is the Data Processor. Appendix I describes the scope, nature and purpose of the processing by Ometria, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation as Personal Data) and categories of Data Subject.

9.3 The Client will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to Ometria.

9.4 Ometria shall, in relation to any Personal Data processed in connection with the performance by Ometria of its obligations under this Agreement process that Personal Data only as document in this Agreement or on the documented instructions of the Client unless Ometria is required by Applicable Laws to process Personal Data.

9.4.1 For the purposes of this clause 9.4, the following is deemed an instruction by the Customer to process Personal Data:

9.4.1.1 Processing in accordance with this Agreement and applicable Order Form(s);

9.4.1.2 Processing initiated by the Client or Users in using the Ometria Services; and

9.4.1.3 Processing to comply with documented instructions provided by the client in accordance with clause 9.4.2.

9.4.2 The client shall communicate Processing instructions via Ometria's Data Email Address.

9.4.3 To the extent that Ometria cannot comply with the Client's instructions without incurring material additional costs, Ometria shall:

9.4.3.1 immediately inform the Client, giving details of the problem; and

9.4.3.2 cease all processing of the affected data (other than securely storing those data) until revised instructions are received;

9.4.4 Any changes to the pricing structure or commercial relationship between the parties by virtue of a change in written instructions as envisaged by clause 9.4 shall be negotiated in good faith between the parties.

9.4.5 Where Ometria is relying on Applicable Laws as the basis for processing Personal Data, Ometria shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Ometria from so notifying the Client.

9.4.6 Where Ometria reasonably considers that an instruction of the Client infringes Data Protection Legislation or other Union or Member State data protection provisions, it shall immediately inform the Client of its opinion and cease processing the Personal Data based on that instruction (other than securely storing those data). Ometria shall not be obliged to seek legal advice in opining on the Client's instruction, but where it does, Ometria shall act reasonably and the Client shall meet the costs of such advice on an indemnity basis, provided such legal costs are reasonably and properly incurred.

9.5 . Ometria shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

9.6 Ometria shall ensure that its personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

9.7 Ometria, shall assist the Client in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators. Ometria may charge the Client for its assistance under this clause, which shall be calculated in accordance with Ometria's standard daily fees as amended from time to time.

9.8 Ometria shall notify the Client without undue delay on becoming aware of a Personal Data breach.

9.8.1 Ometria shall make such notice by phone call, in-person meeting, an announcement on the Ometria Service platform or by email detailing, where known, the type of breach, the extent of the breach and any measures Ometria has taken to mitigate the breach.

9.8.2 Any notice under this clause 9.8 by Ometria or a response to a Personal Data breach shall not be construed as an admission of fault or liability by Ometria.

9.9 At the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement as soon as reasonably practicable and within a maximum period of 180 days, unless required by Applicable Law or as Ometria may deem necessary to prosecute or defend any legal claim (in which case Ometria may retain Client Data for a reasonable period of time pending resolution of such obligation or issue).

9.10 Ometria shall maintain all necessary information to demonstrate its compliance with Article 28 of the GDPR and, at the cost of the Client, make available such information available to the Client.

9.11 Ometria shall allow for annual audits by the Client or the Client's designated auditor, the scope of which shall be limited to off-site checks of Ometria's policies and procedures and an on-site review of the procedures in practice by conducting interviews of Ometria's staff that work on processing the Personal Data transferred by the Client and processed by Ometria. Ometria may charge the Client for its assistance under this clause, which shall be calculated in accordance with Ometria's standard daily fees as amended from time to time.

9.11.1 The Client must send any requests to conduct audits to the Data Email Address.

9.11.2 Ometria and the Client shall agree in advance (a) dates and times of the audit (b) personnel conducting the audit.

9.11.3 If in the opinion of Ometria, it reasonably considers the auditor not to be suitably qualified, independent or acting for a competitor of Ometria or manifestly unsuitable, the Client shall appoint a different auditor or undertake the audit itself.

9.11.4 No audit shall commence without the Client first entering into a non-disclosure agreement with Ometria, on Ometria's terms, which shall, if applicable, contain direct covenants to be entered into by the Client's designated auditor.

9.12 By entering into this Agreement, the Client instructs Ometria to transfer Personal Data to its current third party sub-processors, including third parties providing hosting, infrastructure, maintenance and other services to Ometria as required in order to provide the Ometria Service (whether within or outside the EEA) as described in Appendix II. Before adding or replacing sub-processors to its portfolio of sub-processors, Ometria shall give the Client at least 21 days' notice in advance of any intended change (Change Date).

9.12.1 If the Client objects to the intended addition or replacement of sub-processor, the Client shall notify Ometria at least 14 days' notice before the Change Date. Ometria shall not implement the change and cease all processing of the Client's data (other than securely storing those data) from the Change Date.

9.12.2 Provided that at least 14 days' notice has been given by the Client as required by clause 9.12.1, the Client may terminate this Agreement.

9.13 When engaging sub-processors to process Person Data, Ometria shall not enter into contracts that do not impose data protection obligations set out in Article 28(3) of the GDPR on such sub-processors, as those imposed on Ometria under this clause 9.

9.13.1 If the sub-processor is based outside the EEA any such contract may, where applicable, include Standard Contractual Clauses or be regulated and reference the U.S. – EU Privacy Shield or another legally recognised transfer method.

9.13.2 Ometria shall remain liable for all obligations subcontracted to, and all acts and omissions, of the sub-processor.

9.14 Ometria shall use reasonable endeavours to permit the Client to download any Personal Data from the Ometria Service for a period of 15 days after the expiry or termination (howsoever caused) of the Agreement.

9.15 If written notice has not been received under clause 9.9 or 15 days have passed as envisaged by clause 9.14, the Client agrees that Ometria may delete any Client Data at any time on or after the effective date of termination or expiry of the Agreement without liability to the Client.

9.16 The Client shall provide Ometria with such information as it requires for it to comply with Article 30 of the GDPR and shall make such information available to the supervisory authorities.

9.17 The Client warrants to Ometria that it will collect and Process the Personal Data in compliance with all applicable data protection laws, enactments, orders, standards and other similar instruments, and that it has obtained all necessary permissions from the Data Subjects to whom the Personal Data relates to allow Ometria to lawfully store, transfer and Process the Personal Data in the course of providing the Ometria Service. Ometria will not assess whether the Client has lawful grounds to process Personal Data using the Ometria Service.

9.18 The Client agrees to indemnify and keep indemnified and defend at its own expense Ometria against all costs, claims, damages and expenses incurred by Ometria or for which

Ometria may become liable due to any failure by the Client or the Users to comply with clause 9.17.

9.19 The Client acknowledges that Ometria is reliant on the Client for direction as to the extent to which Ometria is entitled to use and Process the Personal Data. Consequently, Ometria will not be liable for any claim brought by a Data Subject arising from any action or omission by Ometria to the extent that such act or omission resulted from the Client's instructions or Client's use of the Ometria Service.

9.20 For the purposes of this clause 9, the terms "Personal Data", "Data Processor", "Data Controller", "Data Subject", "Processing" and "Process" shall have the same meaning as set out in the Data Protection Legislation.

10. Confidential Information

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these terms and conditions. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available for use for any purpose other than as needed to perform the terms of the Agreement.

10.3 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 the Agreement.

10.4 Each party shall take a back-up of its own Confidential Information and shall not be responsible to the other for any loss, destruction, alteration or disclosure of Confidential Information.

11. Price and Payment

11.1 The Client will pay the Fees as set out in, and in accordance with, the Order Form.

11.2 In event that the Client exceeds the Fair Use Limit (without having purchased additional Digital Messages) or exceeds the Additional Messaging Limit, the Client shall pay Ometria the Additional Message Fee for the purchase of additional Digital Messages as such number of Digital Messages is nominated by the Client.

11.3 In the event that Client fails to purchase any additional Digital Messages (or fails to nominate the number it wants to purchase) following exceeding the Fair Use Limit or Additional Messaging Limit or any other limits agreed by the parties, Ometria shall charge the Client a fee based on the Additional Message Fee for the actual or expected usage or sending of Digital Messages by the Client.

11.4 In the event that the number of Twelve Month Active Customers at the commencement date of a Billing Period is greater than the number of Twelve Month Active Customers at the commencement date of the previous Billing Period, Ometria may increase the Data Processing Fee payable in respect of that Billing Period by the percentage by which the number of Twelve Month Active Customers has increased.

11.5 Unless alternative payment is agreed in the Order Form, the Client will provide to Ometria valid, up-to-date and complete credit or debit card details and it hereby authorises Ometria to bill such credit or debit card for the Fees in accordance with the Order Form.

11.6 If Ometria has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies available to Ometria:

11.6.1 Ometria may, without liability to the Client, suspend or temporarily disable all or part of its access to the Ometria Service and Ometria shall be under no obligation to provide any access to the Ometria Service, or continue to provide the Consultancy Services, while the invoice(s) concerned remain unpaid;

11.6.2 interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank PLC at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment; and

11.6.3 the Client shall reimburse Ometria for all reasonable costs and expenses (including reasonable attorneys' fees) incurred by Ometria in collecting any overdue amounts.

11.7 All amounts and Fees stated or referred to in the Agreement:

11.7.1 are payable in the currency specified in the Order Form or otherwise stipulated by Ometria; and

11.7.2 are exclusive of value added tax ("VAT") unless otherwise expressly stated which shall be paid at the same time as payment of the Fees. Ometria shall send the Client a VAT invoice if Ometria is requested to do so.

11.8 Subject to clause 11.4, unless otherwise agreed in writing, Ometria may increase the Fees upon 30 days' notice in writing to the Client, such increase to take effect from the commencement date of the Extended Term following the expiry of the notice. If the Client is unhappy with the increase, the Client may terminate the Agreement with Ometria by providing a minimum of 30 days' notice, such notice not to expire until the end of the Term. During the notice period the Fees will not increase.

12. Availability and Support

12.1 Where the Client has paid for access to the Ometria Service, Ometria will use commercially reasonable endeavours to make the Ometria Service available with an uptime rate of 99%, except for:

12.1.1 planned maintenance for which 24 hours' notice will be given; or

12.1.2 unscheduled maintenance during normal business hours (UK time) or otherwise, for which Ometria will use reasonable endeavours to give the Client advance notice.

12.2 Where the Client has paid for access to the Ometria Service, Ometria will, as part of the Ometria Service, use reasonable endeavours to provide a level of support that is appropriate to the nature of any issues requiring support during normal business hours (UK time). Support for Clients using the Ometria Service for free will be provided entirely at Ometria's option and discretion. The Client shall provide all support reasonably required by Ometria to perform its

obligations under this clause 12, including providing reasonably detailed descriptions of issues and updates on the performance of the Service.

12.3 The Client acknowledges that the Ometria Service requires access to Client Data and any other data sources, whether controlled by the Client or a third party, that the Client may elect to use with the Ometria Service. The Client agrees that Ometria is not responsible for the non-availability of or interruption to the Ometria Service caused by any non-availability of any such data source.

12.4 The Client will allow Ometria to manage all DNS elements associated with the sending of domains via DNS subdomain delegation.

13. Suspension and Termination

13.1 If the Client fails to pay any sum due to Ometria and such sum remains outstanding for a further fourteen (14) days following notice requiring such sum to be paid, Ometria may terminate the Agreement immediately by notice and without any liability for Ometria to the Client.

13.2 Ometria may terminate the Agreement with 30 days' notice in writing.

13.3 Ometria may terminate the Agreement by notice with immediate effect, or such notice as Ometria may elect to give, if the Client:

13.3.1 is in breach of applicable law;

13.3.2 infringes Ometria's intellectual property rights in the Ometria Service; or

13.3.3 breaches the Acceptable Use Policy referred to in clause 6.9.2.

13.4 Without prejudice to any other rights and remedies available to Ometria, Ometria may immediately suspend the Client's Account in whole or in part, and any User accounts, without prior written notice if the Client is in material or persistent breach of any terms of the Agreement, or if, in Ometria's reasonable determination, the Client is suspected of being in material breach of any terms of the Agreement. For the purposes of this clause 13.4, the parties acknowledge that any breach of the Acceptable Use Policy referred to in clause 6.9.2 will be a material breach of the Agreement.

13.5 Either party may terminate the Agreement immediately at any time on written notice to the other if the other:

13.5.1 is in material or persistent breach of any of the terms of the Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within (i) 30 days, where the breaching party is Ometria, or (ii) five (5) business days (meaning a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business) where the breaching party is the Client, after receiving written notice requiring it to remedy that breach; or

13.5.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

13.6 On termination of the Agreement for any reason all licences granted under the Agreement shall immediately terminate and the Client's right to access and use the Ometria Service will end.

13.7 If this Agreement is terminated by operation of clause 9.12.2, 13.1, 13.3, 13.5, the Client remains liable for any Fees for the remainder of the Term not paid by the Client on termination.

13.8 The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14. Limited Warranty

14.1 Ometria undertakes to make the Ometria Service available as specified in clause 12.1 and will provide the Integration Services and the Consultancy Services (if any are to be provided) with reasonable skill and care. Ometria's sole obligation to the Client, and the Client's sole and exclusive remedy with respect to any failure by Ometria to provide the Ometria Service, and the Integration Services and the Consultancy Services (if any are to be provided), in accordance with clause 12.1 is for Ometria to take commercially reasonable efforts to repair or re-perform the affected Service. Otherwise, the Ometria Service and the Integration Services and the Consultancy Services (if any are to be provided) are provided on an "AS IS" basis and Ometria gives no representations, warranties, conditions or other terms of any kind in respect of the such services, whether express or implied, including, but not limited to, warranties of satisfactory quality, merchantability fitness for a particular purpose or non-infringement. If the Client makes any changes or modifications to the Ometria Service, the warranties given by Ometria in this Agreement will be null and void.

14.2 Except as expressly and specifically provided for in the Agreement:

14.2.1 the Client assumes sole responsibility for (i) installation and integration of the Ometria Service with its IT systems including but not limited to the Client's hardware, software, websites and apps; and (ii) any results obtained from the use of the Ometria Service and for any conclusions drawn or taken from such use and it relies on the results obtained from the Ometria Service at its own risk;

14.2.2 all representations, warranties, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement;

14.2.3 Ometria will not be responsible for any interruptions, delays, failures or non-availability affecting the Ometria Service or the performance of the Ometria Service which are caused by third parties (including other clients of Ometria, Third Party Sites and third services connected to the Ometria Service at the direction of the Client), changes to the Ometria Service made by or on behalf of the Client, or by errors or bugs in software, hardware or the Internet on which Ometria relies to provide the Ometria Service and the Client acknowledges that Ometria does not control such third parties or third party service services and that such errors and bugs are inherent in the use of such software, hardware and the Internet; and

14.2.4 Ometria will not be liable (except to the extent caused by Ometria's negligence) for the sending of Digital Messages (including to the Client's Subscribed Contacts) by Ometria, the Client or any other client of Ometria.

15. Ometria's Liability

15.1 Subject to clause 15.2, Ometria will not be liable for losses that result from Ometria's failure to comply with the Agreement, tort or otherwise in conditions that fall into the following categories: loss of income or revenue; loss of business; loss of profits; loss of anticipated savings; loss of goodwill; loss of or damage to data; waste of management or office time; or any indirect, consequential or special damages, costs or expenses.

15.2 Nothing in this Agreement excludes or limits Ometria's liability for death or personal injury caused by Ometria's negligence or for fraud or fraudulent misrepresentation.

15.3 Ometria's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement shall in all circumstances be limited to the Fees paid by the Client in the 6 months prior to the event giving rise to the claim or, in the case of an event in the Trial Period giving rise to a claim, £1.

16. Written communications

16.1 Applicable laws may require that some of the information or communications Ometria send to the Client should be in writing. When using the Ometria Service, the Client accepts that communication with Ometria will be mainly electronic. Ometria will contact the Client by e-mail or provide the Client with information by posting notices on the Ometria Service. For contractual purposes, the Client agrees to this electronic means of communication and the Client acknowledges that all contracts, notices, information and other communications that Ometria provides to the Client electronically comply with any legal requirement that such communications be in writing.

17. Notices

All notices given by the Client to Ometria must be given to info@ometria.com. Ometria may give notice to the Client at either the e-mail or postal address the Client provides to Ometria, or any other way Ometria deems appropriate. Notice will be deemed received and properly served immediately when posted on the Ometria Service or 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

18. Transfer of rights and obligations

The Client may not transfer, assign, charge or otherwise deal in the Agreement, or any of the Client's rights or obligations arising under the Agreement, without Ometria's prior written consent.

19. Events outside either party's control

Neither party shall be liable to the other for any delay or non-performance of its obligations under the Agreement arising from any cause beyond its control including, without limitation, any of the following: telecommunications failure, internet failure, act of God, act of a third party unless an approved sub-contractor of Ometria, governmental act, war, fire, flood, explosion or

civil commotion. For the avoidance of doubt, nothing in this clause shall excuse the Client from any payment obligations under the Agreement.

20. Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

21. Severability

If any provision of the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

22. Ometria's right to vary the Terms of Service

22.1 Ometria has the right to revise and amend the Terms of Service from time to time to reflect changes in market conditions affecting Ometria's business.

22.2 The Client will be subject to the Terms of Service in force at the time that it makes use of the Ometria Service, or if Ometria notifies the Client of changes to the Terms of Service and it continues to use the Ometria Service the Client will be subject to those changes.

22.3 Ometria will use reasonable endeavours to notify the Client of any material changes to the Terms of Service by e-mail or by the placement of a notice on the Ometria Service.

23. Third party rights

A person who is not party to the Agreement shall not have any rights under or in connection with it under the Contracts (Rights of Third Parties) Act 1999.

24. No partnership or agency

24.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, nor authorise either party to make or enter into any commitments for or on behalf of the other party.

25. Law and jurisdiction

25.1 The Agreement shall be governed by and construed in accordance with English law and each party hereby submits to:

25.1.1 the exclusive jurisdiction of the English courts, where the Client's registered office is situated in England and Wales.

25.1.2 the non-exclusive jurisdiction of the English courts, whether the Client's registered office is outside of England and Wales.

26. Entire agreement

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

APPENDIX I

Scope, Nature etc of Processing

Subject matter

Ometria's provision of the Ometria Service to the Client.

Duration of the processing

The Term plus the period of expiry from the Term until deletion of all Personal Data by Ometria in accordance with the Terms of Service.

Nature and purpose of the processing

Ometria will Process Personal Data for the purpose of providing the Ometria Services to the Client in accordance with the Terms of Service.

Type of personal data

The Client may submit Personal Data (as part of the Client's Data) using the Code, the extent of which is determined and controlled by the Customer in its sole discretion, which may include, but is not limited to:

- Title
- First and last name
- Contact information (e.g. email, billing address, shipping address, 'phone number(s))
- Gender
- Suffix
- Timezone (e.g. user preference or derived from contact information)
- IP address
- Geolocation of the customer (e.g city, country, timezone)
- Date of birth
- Purchase history including product description and values

Categories of Data Subject

The Client may submit Personal Data (as part of the Client's Data) using the Code, the extent of which is determined and controlled by the Customer in its sole discretion, which may include:

- Prospective customers of the Client who have unequivocally indicated their wish to receive unsolicited marketing emails from the Client
- Customers of the Client who have not objected to receiving unsolicited marketing emails at the point of purchasing goods from the Client
- Customers of the Client who receive transactional emails (including notification of abandoned baskets)

APPENDIX II

Sub-processor	Service	Governing Document	Principal location of processing
Amazon Web Services Inc*	Server hosting and other associated services within the Amazon portfolio of products	AWS GDPR Addendum	EU Data Centres
Google Commerce Limited (Ireland)	Google cloud services including cloud sub/pub	Data Processing and Security Terms v 2.0	EU Data Centres
Kickbox Inc*	Email verification	Privacy and Information Security Addendum	USA Data Centres
Message Systems Inc t/a Sparkpost*	Email delivery	Elite Edition SaaS Agreement	EU Data Centres
Functional Software Inc t/a Sentry*	Error monitoring and debugging.	GDPR Addendum	USA Data Centres

* Registered with EU-US Privacy Shield Framework