

OutWatch Terms and Conditions

Last updated: 1 August 2023

Welcome to OutWatch! We're excited to have you here, but before you start using the OutWatch Services, you must review and agree to the terms and conditions that govern access to and use of the Services (collectively the "**Agreement**").

In the Agreement, when we say **Customer, you, or your**, we mean the individual, sole proprietorship, or entity specified as being the customer in the OutWatch Subscription Order; and when we say **OutWatch, we, our or us**, we mean the OutWatch entity with which you contract to and to which you pay fees to as specified in your Subscription Order.

Terms and Conditions

The Parties hereby agree as follows:

1. Definitions and interpretation

- 1.1 "**Acceptance**" is as defined in clause 2.2 of the Agreement.
- 1.2 "**Account**" means an account registered with OutWatch for the use of the Services.
- 1.3 "**Affiliate**" means, in respect of a Party, any entity which directly or indirectly controls, is controlled by, or is under common control with that Party. For purposes of the preceding sentence, "control" means direct or indirect beneficial ownership or control of more than fifty per cent (50%) of the voting interests of the subject entity.
- 1.4 "**Agreement**" means this agreement, including the documents set out in clause 2.1.
- 1.5 "**Aggregated Data**" shall be as defined in clause 5.4.
- 1.6 "**Applicable Data Protection Law**" shall mean the EU General Data Protection Regulation (Regulation 2016/679) ("GDPR"), and its national implementations in the European Economic Area (the "EEA"), Switzerland and the United Kingdom (the "UK") (including the UK version of the GDPR once in force); and all other laws, standards, guidelines, policies and regulations of any jurisdiction to the extent applicable to activities under this Agreement and that relate to the collection, use, protection, or Processing of Personal Data, including, in the US, both federal and state Laws, such as state data breach notification and security laws, the California Consumer Privacy Act, and their implementing regulations; as each of the foregoing may be amended from time to time.
- 1.7 "**Authorised User**" means any individual authorised by the Customer to access the Services on behalf of the Customer.
- 1.8 "**Beta Features**" is as defined in clause 3.8.

- 1.9 “**Billing Cycle**” takes the meaning as it is given in the Subscription Order.
- 1.10 “**Claim**” is as defined in clause 9.1.
- 1.11 “**Confidential Information**” is as defined in clause 7.1.
- 1.12 “**Customer Data**” means the electronic data or information submitted by Customer or Authorised Users to the Services, which may include Personal Data.
- 1.13 “**Disclosing Party**” is as defined in clause 7.1.
- 1.14 “**Documentation**” means OutWatch’s electronic user guide for the Services available at <https://help.outwatch.io> which may be updated by OutWatch from time to time.
- 1.15 “**Feedback**” is as defined in clause 5.2.
- 1.16 “**Fees**” is as defined in clause 6.1.
- 1.17 “**Initial Term**” means the time period designated as the “Initial Term” in the Subscription Order.
- 1.18 “**Intellectual Property Rights**” means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyright, trade marks, trade secrets, know-how, patents, registered and unregistered design rights, rights in inventions, and other proprietary rights issued, honoured or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.
- 1.19 “**Law**” means any local, state, federal, national and/or foreign law or laws, treaties, and/or regulations applicable to a respective Party.
- 1.20 “**Liability**” (of a party) means any liability of that party (whether arising under contract, tort (including negligence), indemnity statute or in any other way) under or in connection with this Agreement.
- 1.21 “**Malicious Code**” means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.
- 1.22 “**Material Breach**” means a breach (including an anticipatory breach) which is serious in the widest sense of having a serious effect on the benefit which the party alleging the Material Breach would otherwise derive from a substantial portion of this Agreement over the Term of this Agreement. In deciding whether any breach is material, no regard will be given to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 1.23 “**OutWatch**” means the entity designated as OutWatch in the Subscription Order.
- 1.24 “**OutWatch Entities**” means OutWatch and its officers, directors, employees, consultants, agents, affiliates, shareholders, partners, successors, and permitted assignees.
- 1.25 “**OutWatch Platform**” means the software and applications through which the Product Offerings are provided and associated data.
- 1.26 “**Payment Notice**” is as defined in clause 6.2.

- 1.27 **“Personal Data”** any data or information from which a specific individual may be identified, contacted or located or that qualifies as “personal” or “private” information under Applicable Data Protection Law.
- 1.28 **“Process”** means any operation or set of operations performed on data or information, whether or not automated, such as collection, recording, structuring, storage, adaptation or alteration, retrieval, consultation, use, handling, disclosure by transmission, dissemination or otherwise making available, alignment or combination, transfer, restriction, erasure or destruction.
- 1.29 **“Product Offerings”** means the product offerings offered to Customers under the Agreement. The current Product Offerings are set out in Schedule A. Schedule A may be updated or added to by OutWatch at any time at OutWatch’s discretion.
- 1.30 **“Prohibited Act”** means:
- (i) the offering, promising or giving of a financial or other advantage to another person (whether directly or through a third party) with the intention to induce that person to improperly perform a relevant function or activity or to reward that person for the improper performance of such a function or activity or while knowing or believing that the acceptance of the advantage would constitute the improper performance of such a function or activity;
 - (ii) the requesting, agreeing to receive or acceptance of a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by that person or another person), or improperly performing a relevant function or activity in anticipation of receiving or accepting a financial or other advantage;
 - (iii) the offering, promising or giving of a financial or other advantage to another person (whether directly or through a third party) who is a foreign public official with the intention to influence the performance of that foreign public official’s functions (whether in the exercise or in omitting to exercise those functions) or otherwise to use the foreign public official’s position in order to obtain or retain business or an advantage in the conduct of business; and
 - (iv) without limiting the foregoing, any act that is in breach of applicable Law, including those relating to anti-bribery and anti-corruption (including the UK Bribery Act 2010 and US Foreign & Corrupt Practices Act as they may be amended).

In the definition of Prohibited Act, a “person” includes an individual, partnership, entity, body corporate or other recognised commercial organisation; and a “relevant function or activity” shall mean a function or activity if it is of a public nature, or is connected with a business, or is performed in the course of a person’s employment, or is performed on behalf of a body of persons (whether corporate or unincorporated) and if the person performing the function or activity is expected to perform it in good faith, or impartially, or is in a position of trust by virtue of performing it (failure of any one of the above conditions being improper performance of that function or activity) regardless of where in the world such function or activity is performed or should be performed.

- 1.31 **“Receiving Party”** is as defined in clause 7.1.
- 1.32 **“Renewal Notice Period”** is the Renewal Notice Period designated in the Subscription Order.
- 1.33 **“Renewal Term”** means the time period designated as the “Renewal Term” in the Subscription Order.
- 1.34 **“Sales Invoice”** means the invoice charged to the Customer for the Services.
- 1.35 **“Screen Face”** means a single contiguous digital billboard or display that renders a complete, single piece of content. A Screen Face may also include one substantially smaller display solely used for branding purposes such as a logo box.
- 1.36 **“Security Incident”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Data or Personal Data of the Customer transmitted, stored or otherwise processed by or on behalf of OutWatch.
- 1.37 **“Services”** means the Product Offerings subscribed for by the Customer in the Subscription Order in accordance with clause 3.1, the OutWatch Platform, and associated support services and documentation.
- 1.38 **“Schedules”** means Schedule A, Schedule B and Schedule C.
- 1.39 **“Software”** is as defined in clause 3.3.
- 1.40 **“Start Date”** means the date designated as the “Start Date” in the Subscription Order.
- 1.41 **“Subscription Order”** means the Subscription Order entered into by the Customer and OutWatch.
- 1.42 **“Term”** means the Initial Term and any Renewal Term.
- 1.43 **“Third Party Service Provider”** means a third party service provider of the Customer and who also subscribe to at least one Product Offering.

2. Agreement

- 2.1 The Agreement between the Customer and OutWatch consists of all the following:
- (i) these Terms and Conditions <https://www.outwatch.io/legal/terms>;
 - (ii) the Subscription Order;
 - (iii) Schedule A: information on Product Offerings <https://www.outwatch.io/legal/product>;
 - (iv) Schedule B: the OutWatch Privacy Policy <https://www.outwatch.io/legal/privacy>; and
 - (v) Schedule C: the Service Level Terms <https://www.outwatch.io/legal/service>.

- 2.2 By entering into a Subscription Order or by accessing or using the Services or any individual Product Offering (each, an “**Acceptance**”) the Customer is agreeing, and hereby agrees, to all of the terms and conditions in the Agreement. The Customer agrees that continued access to or use of the Services means that the Customer is contractually bound by all of the terms and conditions of the Agreement.

3. **OutWatch Services**

- 3.1 Scope of Services. OutWatch offers a number of individual Product Offerings as set out in Schedule A. The Customer may subscribe to any individual, combination of, or all of, the Product Offerings provided by OutWatch. The Product Offerings included in the Services for a Customer are those Services Offerings subscribed for by the Customer in the Subscription Order.
- 3.2 Service License. OutWatch hereby grants Customer and its Authorised Users a non-exclusive, non-transferable, non-sublicensable right to access and use the Services, solely for the internal business purposes of Customer and its Affiliates and solely during the Term, subject to this Agreement (including the payment of Fees in accordance with clause 6).
- 3.3 Software License. Subject to the Terms and Conditions of this Agreement, to the extent the Services contains a downloadable software component (“**Software**”), OutWatch hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right and license, during the Term, for each Authorised User to install the Software on device(s) controlled by the Authorised User and to operate the Software in accordance with the Documentation and restrictions set forth in this Agreement.
- 3.4 Third Party Service Provider Access. The Customer may provide access to the Customer’s account on the OutWatch Platform to a Third Party Service Provider.
- 3.5 Support. OutWatch will use commercially reasonable efforts to:
- (i) meet the service levels as set forth in Schedule C; and
 - (ii) provide basic support to the Customer during OutWatch’s standard business hours,
- in accordance with OutWatch’s support policies (as modified by OutWatch from time to time).
- 3.6 Compliance with Law. Each Party will comply with all applicable Laws, including Applicable Data Protection Laws, while exercising its rights and performing its obligations under this Agreement.
- 3.7 Changes to the Service. Subject to clause 10.1(iii), OutWatch may from time to time make changes to the functionality of any individual Product Offering, for example to make improvements to the Services or to address a security threat and may create additional Product Offerings. OutWatch shall notify the Customer of material changes through the Documentation.
- 3.8 Future Functionality. The Customer agrees that its subscriptions are not contingent on the delivery of any future functionality or features, or dependent on any oral or written

public comments made by OutWatch regarding future functionality or features. OutWatch may, at its own discretion, provide access to the Customer to Product Offering features while they are in the development and testing phase (the “**Beta Features**”). This Agreement shall apply to any use of the Services including Beta Features, even if the Beta Features are being provided free of charge or on a trial basis. OutWatch disclaims any and all liability and obligations in relation to Beta Features including without limitation:

- (i) under the indemnities in clause 9.1;
- (ii) under the warranties in clause 10.1; and
- (iii) the support obligations in clause 3.5.

3.9 Modification to this Agreement. OutWatch reserves the right to change these Terms and Conditions and the Schedules at any time. Please check the OutWatch site for the current Terms and Conditions and Schedules. All changes to the Terms and Conditions and Schedules, whether or not materially modifying the Customer’s rights or obligations, are effective upon the Customer’s Acceptance of the Agreement, and continued access to or use of the Services following any modifications constitutes the Customer’s Acceptance to the modified Agreement. Without limiting the fact that material and other modifications to the Agreement become effective upon Acceptance, OutWatch may elect to require the Customer’s affirmative consent or agreement to material changes. Except as expressly permitted in this clause 3.9, this Agreement may be amended only by a written agreement signed by authorised representatives of the Parties to this Agreement. Disputes arising under this Agreement will be resolved in accordance with the version of this Agreement that was in effect at the time the dispute arose. Previous versions of this Agreement are available at by request from OutWatch.

4. Accounts and Customer's Responsibilities

4.1 Account Registration. Customer may access, and enable access of the Services for use by each Authorised User, solely for the internal business purposes of the Customer and its Affiliates. In order to use the Services, the Customer must complete the registration process with OutWatch and create an Account. When the Customer registers for an account, the Customer may be required to provide OutWatch with some information about themselves and their employees, such as their name, email address, or other contact information. The Customer agrees that the information provided to OutWatch is accurate and that they will keep it accurate and up-to-date at all times. To create an Account, the Customer will be required to follow the prompts directed to the Customer by email.

4.2 Customer Responsibilities. By using the Services, the Customer is solely responsible and liable for:

- (i) the acts and omissions of all Authorised Users relating to this Agreement;
- (ii) all activities that occur under your subscription;
- (iii) ensuring that all Authorised Users’ use of the Services are in compliance with this Agreement;

- (iv) maintaining the confidentiality of your accounts and passwords;
- (v) preventing unauthorised access to, or use of, your Account and the Services, and notifying OutWatch promptly if you become aware of any such unauthorised access or use; and
- (vi) the accuracy, quality and legality of all Customer Data, including without limitation providing all relevant notices to individuals, companies, and other entities and obtaining all relevant consents as required by applicable Laws, complying with individuals' requests under applicable privacy laws in respect of such Customer Data, and deleting Customer Data when it is no longer needed in connection with the Services.

4.3 Customer Use Restrictions. By using the Services, you agree that:

- (i) you will not allow use of the Services for the benefit of any third parties for which you do not have a commercial arrangement relating to the Services;
- (ii) you will not use the Services in a way that unreasonably degrades the performance of the Services for OutWatch or any of OutWatch's users. If your use is unreasonable, then without prejudice to OutWatch's other rights, you may be notified by OutWatch and asked to comply with use of the Services that OutWatch considers reasonable;
- (iii) each Authorised User shall keep a secure password, initially issued to it by OutWatch, for use of the Services and Documentation. Such password shall be changed no less frequently than every six months and each Authorised User shall keep their password confidential;
- (iv) if any password has been provided to any individual who is not an Authorised User, then without prejudice to OutWatch's other rights, OutWatch may promptly disable such passwords and OutWatch has the right to refuse issuance of a new password to any such individual; and
- (v) you will maintain a written and up-to-date list of current Authorised Users and provide such list to OutWatch within 5 business days of OutWatch's written request at any time.

4.4 Customer Prohibited Conduct. By using the Services, you agree not to:

- (i) use the Services for any illegal purpose or in violation of any Laws;
- (ii) send or store infringing, obscene, threatening, or otherwise unlawful or tortious material or Malicious Code, including material that violates privacy rights;
- (iii) harass, threaten, demean, embarrass, or otherwise harm any other user of the Services;
- (iv) violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third-party Intellectual Property Rights;
- (v) interfere with security-related features of the Services, including by: (a) disabling or circumventing features that prevent or limit use or copying of

any content; or (b) reverse engineering or otherwise attempting to discover the source code of any portion of the Services except to the extent that the activity is expressly permitted by applicable law;

- (vi) interfere with the operation of the Services or any user's enjoyment of the Services, including by: (a) uploading or otherwise disseminating any virus, adware, spyware, worm, or other Malicious Code; (b) making any unsolicited offer or advertisement to another user of the Services; (c) collecting personal information about another user or third party without consent; or (d) interfering with or disrupting any network, equipment, or server connected to or used to provide the Services;
- (vii) sell, resell, license, sublicense, distribute, or otherwise transfer, make available, rent or lease any Services, or include any Services in a service bureau or outsourcing offering;
- (viii) attempt to gain unauthorised access to the Service in whole or in part or to its related systems or networks in a manner not set forth in the Documentation;
- (ix) interfere with or disrupt the integrity or performance of the Services in whole or in part, or of third-party data contained therein;
- (x) permit direct or indirect access to or use of the Services in whole or in part in a way that circumvents the contractual usage limits;
- (xi) copy the Services or any part, feature, function or user interface thereof or use the Services to access or use any of OutWatch's Intellectual Property Rights except as permitted under this Agreement or the Documentation, or remove any property notices or labels from the Services or Documentation;
- (xii) access the Services in whole or in part in order to build a competitive product or service or to benchmark with a product or service not developed or provided by OutWatch, or in any way modify, translate, or create derivative works based on the Services;
- (xiii) frame or mirror any part of the Services, other than framing on Customer's own intranet or otherwise for its own internal business purposes as permitted in the Documentation;
- (xiv) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms in whole or in part relevant to the Services or Documentation or data related to the Services (except to the extent such restriction is prohibited by law);
- (xv) perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other Services account without permission, or falsifying your age or date of birth; or
- (xvi) attempt to do any of the acts described in this clause 4.4 or assist or permit any person in engaging in any of the acts described in this clause 4.4.

- 4.5 OutWatch's Rights. OutWatch shall not be liable for any loss or damage resulting from your failure to comply with this clause 4. OutWatch is entitled to immediately upon notice, suspend provision of the Services where OutWatch reasonably believes that the Customer, their Affiliates, its Authorised Users and/or its Partners fail to comply with this clause 4 or threaten the security, integrity or availability of the Services including in a way which may impact any other users of the Services (including OutWatch's other customers). OutWatch shall not be liable for any breach of this Agreement which is caused by the suspension of provision of the Services. The Customer shall remain liable for all fees due under this Agreement during the period of any suspension. Following resolution by the Customer of the issues that gave rise to the suspension, OutWatch shall as soon as reasonably practicable reinstate provision of the Services. If you believe that your account is no longer secure, then you must immediately notify us at support@outwatch.io.

5. Proprietary Rights and Customer Data

- 5.1 Reservation of Rights. The Customer acknowledges and agrees that this Agreement does not transfer to the Customer any Intellectual Property Rights in the Software and Services. OutWatch and its licensors own all right, title and interest in and to the Software and Services (and any Intellectual Property Rights therein), and other OutWatch Intellectual Property Rights. Subject to the limited rights expressly granted in accordance with this Agreement, OutWatch reserves all rights, title and interest in and to the Software and Services including all related Intellectual Property Rights.
- 5.2 Feedback. If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Services ("**Feedback**"), then you hereby grant OutWatch an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Services and create other products and services.
- 5.3 Customer Data. As between OutWatch and the Customer, the Customer shall own all right, title and interest in and to all Customer Data. To the extent that Customer Data is Personal Data that is subject to Applicable Data Protection Law and is processed on behalf of the Customer, Schedule B shall apply to OutWatch's use of such Customer Data. For OutWatch's own business purposes, including to perform the Services, improve, develop and protect OutWatch's services, create new services and compliance with the law, Customer hereby grants to OutWatch and its affiliates a worldwide, irrevocable, perpetual, royalty-free license to use all data made available to OutWatch by or on behalf of Customer, including Customer Data, where such use complies with Schedule B.
- 5.4 Aggregated Data. OutWatch owns the aggregated and statistical data derived from the operation of the Services and the Customer Data, including, without limitation, the number of records in the Services, the number and types of transactions, configurations, and reports processed in the Services and the performance results for the Services (the "**Aggregated Data**"). Nothing in this Agreement shall be construed as prohibiting OutWatch from creating and utilising the Aggregated Data for OutWatch's own purposes, such as operating or improving OutWatch's Services, developing new services and offerings and identifying business trends, provided that OutWatch's use of Aggregated Data will not include any Personal Data.

5.5 Security.

- (i) OutWatch will implement appropriate technical and organisational measures to ensure a level of security appropriate to the Customer Data.
- (ii) Customer acknowledges that OutWatch's security measures are appropriate in relation to the risks associated with the Customer Data and will notify OutWatch prior to any intended use of the Services by the Customer or Authorised Users for which OutWatch's security measures may not be appropriate.
- (iii) If OutWatch becomes aware of a confirmed Security Incident, OutWatch shall inform Customer without undue delay. If such notification is delayed, it will be accompanied by reasons for the delay. OutWatch shall further take such reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and shall keep Customer informed of all material developments in connection with the Security Incident. OutWatch will be responsible for undertaking notifications and communications with data protection regulators, if required to do so under Applicable Data Protection Law.

6. Fees and Taxes

6.1 Service Fees. For each Product Offering, OutWatch charges a fee per Screen Face subscribed to a Product Offering as set out in the Subscription Order (the "**Fees**"). A Customer may subscribe a Screen Face to multiple Product Offerings, incurring multiple Fees per Screen-Face. Fees will be invoiced to Customer and Fees shall be due in accordance with the terms set out in the Subscription Order and Sales Invoice issued by OutWatch. Fees are charged in advance for all Screen-Faces subscribed to a Product Offering on commencement of the Billing Cycle and Fees will also be charged in arrears for all Screen-Faces that first became subscribed to a Product Offering during the previous Billing Cycle. All Fees are non-refundable. For the avoidance of doubt where multiple Screen Faces are used in combination such as in stacks, (one Screen Face on top of another), back-to-back (one Screen Face on the back of another Screen Face), side-by-side (one Screen Face beside another Screen Face), the total number of individual Screen Faces used in the combination will be utilised of the purposes of calculating the Fees.

6.2 Billing Information. Customer shall provide OutWatch with complete and accurate billing and contact information including a valid email address for receipt of Sales Invoices. Customer should provide OutWatch with a confirmation notice for each payment ("**Payment Notice**"). All Payment Notices and Sales Invoice inquiries can be directed to OutWatch's Billing Department at accounts@outwatch.io.

6.3 Overdue Payments. If Customer fails to timely make any payment of Fees, OutWatch may, in its sole discretion, take any or all of the following actions:

- (i) restrict or suspend Customer's access to the Services until all past-due payments are made;
- (ii) terminate this Agreement in accordance with clause 8.2; or

- (iii) accelerate the payment of Fees such that all unpaid Fees shall be immediately payable.

OutWatch shall have the right to charge interest at the rate of 1.5% per month (or, if less, the highest rate permitted by law) on any late payments. Restriction or suspension of Customer's online access to the Services during period of non-payment shall have no effect on the Term of this Agreement nor on Customer's obligation to pay all Fees due.

- 6.4 Taxes. Customer is responsible for any applicable taxes, including, without limitation, any sales, use, levies, duties, or any value added or similar taxes payable with respect to Customer's use of the Services and assessable by any local, state, provincial, federal, or foreign jurisdiction. Unless expressly specified otherwise in the Subscription Order, all fees, rates, and estimates exclude sales taxes. If OutWatch believes any such tax applies to Customer's use of the Services and OutWatch has a duty to collect and remit such tax, the same may be set forth on a Sales Invoice to the Customer unless Customer provides OutWatch with a valid tax exemption certificate, direct pay permit, or multi-state use certificate, and shall be paid by Customer immediately or as provided in such Sales Invoice. Customer shall indemnify, defend, and hold harmless OutWatch and its Affiliates against any and all actual or threatened claims, actions, or proceedings of any taxing authority arising from or related to the failure to pay taxes owed by Customer, except to the extent that any such claims, action, or proceeding is directly caused by a failure of OutWatch to remit amounts collected for such purpose from Customer. OutWatch is solely responsible for taxes based upon OutWatch's net income, assets, payroll, property, and employees.

7. Confidentiality

- 7.1 Confidential Information. Each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business which:
- (i) if disclosed in writing or other tangible form or medium, is marked "confidential" or "proprietary";
 - (ii) if disclosed orally or in other intangible form or medium, is identified as confidential or proprietary when disclosed and summarized and marked "confidential" or "proprietary" in writing delivered by the Disclosing Party to the Receiving Party within thirty (30) days after disclosure; or
 - (iii) due to the nature of its subject matter or the circumstances surrounding its disclosure, should reasonably be understood to be confidential or proprietary,

(hereinafter referred to as "**Confidential Information**" of the Disclosing Party). Confidential Information includes:

- (iv) any software utilised by OutWatch in the provision of the Services and its respective source code;
- (v) Customer Data;
- (vi) each party's business or technical information, including but not limited to the Documentation, training materials, any information relating to software

plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing Customers as “confidential” or “proprietary” or that the receiving party knows or should reasonably know is confidential or proprietary; and

- (vii) the terms, conditions, pricing and/or any discounts relating to this Agreement (but not its existence or parties).

7.2 Exceptions. Confidential Information will not, however, include any information which:

- (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party;
- (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party;
- (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party’s files and records immediately prior to the time of disclosure;
- (iv) is obtained by the Receiving Party from a third party without a breach of such third party’s obligations of confidentiality; or
- (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the Receiving Party’s possession.

7.3 Compelled Disclosure. A disclosure by the Receiving Party of Confidential Information of the Disclosing Party to the extent required by law shall not be considered a breach of this Agreement, provided the Receiving Party so compelled, promptly provides the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

7.4 Non-Use and Non-Disclosure. The Receiving Party shall not use or disclose any Confidential Information of the Disclosing Party except as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement except with the Disclosing Party’s prior written consent. Each party agrees to protect the Confidential Information of the other Party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care. Notwithstanding anything to the contrary, this clause 7 shall not be construed to limit any Processing of Data and Personal Data in the manner contemplated in the OutWatch Privacy Policy or other terms of this Agreement outside of this clause 7.

8. Term and Termination

8.1 Term. This Agreement commences on the Start Date and shall continue for the Initial Term. Then, unless otherwise terminated pursuant to clause 8.2 below, this Agreement shall automatically renew for a first Renewal Term or a subsequent Renewal Term

following the expiration of the Initial Term or then current Renewal Term. If either Party does not wish to automatically renew the Agreement after the Initial Term or a Renewal Term, it must provide written notice to the other Party within the Renewal Notice Period.

- 8.2 Termination. OutWatch may terminate this Agreement in the event the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default no less than 30 days after being notified in writing to make such payment.

Either Party may also terminate this Agreement:

- (i) in accordance with clause 8.1 at the end of the Initial Term or any subsequent Renewal Term;
- (ii) upon thirty (30) days prior written notice to the other Party of a Material Breach by the other Party if such breach remains uncured at the expiration of such notice period; or
- (iii) immediately upon written notice in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

- 8.3 Effect of Termination. Termination for any reason shall not relieve the Customer of the obligation to pay any Fees accrued or due and payable to OutWatch prior to the effective date of termination, and termination for any reason other than for uncured Material Breach by OutWatch shall not relieve the Customer of the obligation to pay all future amounts due. In the event the Agreement is terminated for any reason, access to Customer's Account will simultaneously be terminated. Upon any expiration or termination of this Agreement, the Customer shall, as of the date of such termination:

- (i) immediately cease accessing and otherwise utilising the Services, except as permitted under clause 8.4;
- (ii) delete all Software and OutWatch applications installed on any Authorised User device; and
- (iii) return and make no further use of any Documentation and other items (including all copies) belonging to OutWatch.

- 8.4 Retrieval of Customer Data. Upon request by the Customer made within 30 days after expiration or termination of this Agreement, OutWatch will make all Customer Data available to Customer through the Services as a .csv file (or in such other format as is agreed between the Parties), solely for the purpose of Customer retrieving Customer Data, for a period of up to 30 days after such request is received by OutWatch. After such period for retrieval of Customer Data, within 60 days after Customer's written request, OutWatch will delete the Customer Data; provided, however, that OutWatch will not be required to remove copies of the Customer Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, and provided further that in all cases OutWatch will continue to protect the Customer Data in accordance with this Agreement. The foregoing deletion obligation will be subject to any retention obligations imposed on OutWatch by applicable Laws.

8.5 Survival. clauses 1,4.2, 4.3, 4.4, 5.1, 5.2, 5.3, 5.4, 6, 7, 8.3, 8.4, and 9 through 13 survive expiration or termination of this Agreement.

9. Indemnification

9.1 Indemnification by OutWatch. OutWatch shall defend, indemnify and hold the Customer harmless against any loss, damage or costs (including reasonable legal fees) in connection with any claim, demand, suit, or proceeding (“**Claim**”) made or brought against the Customer by a third party alleging that the use of the Services as contemplated in this Agreement infringes any Intellectual Property Right of such third party. OutWatch will have the exclusive right to defend any such Claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such Claim, action or allegation, except with the prior written consent of OutWatch. This indemnity is subject to the Customer:

- (i) giving prompt written notice to OutWatch of any such Claim, action or allegation of infringement;
- (ii) giving OutWatch the assistance, authority and information as OutWatch may reasonably require to settle or oppose such Claim; and
- (iii) not admitting any liability or agree to any settlement or compromise of an indemnified Claim without the prior written consent of OutWatch.

9.2 Exceptions to Indemnification. OutWatch will not be responsible for any settlement it does not approve in writing. The foregoing indemnity obligation does not apply with respect to:

- (i) portions or components of the Services that are not supplied by OutWatch or are modified after delivery from OutWatch;
- (ii) portions or components of the Services that are modified by the Customer or an Authorised User in conflict with the Customer’s obligations or as a result of any prohibited activity as set forth in this Agreement;
- (iii) portions or components of the Services made in whole or in part in accordance with Customer specifications;
- (iv) use of the Services in combination with any other product or service not developed or provided by OutWatch or combined with other products, processes, data or materials where the alleged infringement relates to such combination;
- (v) a claim relating to the Customer Data, such as a claim the Customer Data infringes third party rights;
- (vi) where the Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or
- (vii) where the Customer’s use of the Services is inconsistent with the Documentation or is not strictly in accordance with this Agreement.

9.3 At OutWatch's Option. If the Services are held by a court of competent jurisdiction, or are believed by OutWatch, to infringe the Intellectual Property Rights of any third party, OutWatch may, at its option and expense:

- (i) replace or modify the Services to be non-infringing, provided that such modification or replacement contains substantially similar features and functionality;
- (ii) obtain for Customer a license to continue using the Services; or
- (iii) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a prorated refund of any prepaid, unused fees for the Services.

9.4 Exclusive Remedy. Clauses 9.1 and 9.3 state the entire liability of OutWatch, and the exclusive remedy of Customer, with respect to any actual or alleged infringement of any Intellectual Property Rights by OutWatch or the Services or any part thereof.

9.5 Indemnification by Customer. To the fullest extent permitted by law, subject to OutWatch obligations in clause 9.1, you are responsible for your use of the Services, and you will defend and indemnify OutWatch and its officers, directors, employees, consultants, agents, affiliates, shareholders, partners, successors, and permitted assigns (together, the "**OutWatch Entities**") from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or connected with:

- (i) your use of the Services not in conformity with the Agreement;
- (ii) an actual or alleged breach of third party rights by the Customer Data;
- (iii) your breach of this Agreement or any applicable law or regulation;
- (iv) your violation of any third party right, including any Intellectual Property Right or publicity, confidentiality, other property, or privacy right; or
- (v) any dispute or issue between you and any third party.

9.6 OutWatch reserves the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defence of those Claims.

10. Warranties and Disclaimers

10.1 OutWatch Warranties. OutWatch represents, warrants, and covenants that:

- (i) it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, will comply with all applicable Laws related to data privacy, international communications and the transmission of technical data or Personal Data;
- (ii) in entering into this Agreement, it has not committed any Prohibited Act;

- (iii) the functionality of the Services will not be materially decreased when viewed in the aggregate;
- (iv) the Services will be made available during the Term in a professional, competent manner in accordance with this Agreement and the Documentation; and
- (v) it shall correct the non-conforming Services at no additional charge to Customer, or in the event OutWatch is unable to correct such deficiencies after good-faith efforts, OutWatch shall refund Customer amounts paid that are attributable to the defective part of the Services from the date OutWatch received such notice. Notwithstanding the foregoing, OutWatch is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the transfer of data from external devices that OutWatch communicates with, and Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

To receive warranty remedies, Customer must promptly report deficiencies in writing to OutWatch at support@outwatch.io, but in any case, no later than 10 days of the date the deficiency is first identified by Customer.

10.2 Customer Warranties. Customer represents, warrants, and covenants that:

- (i) it has the authority to enter into this Agreement;
- (ii) it has conducted its own due diligence into the Services to ensure that the functionality provided by the Services meets Customer's requirements;
- (iii) it will not, in connection with this Agreement, including its use of or access to the Services, engage in, encourage, or permit prohibited conduct described in clause 4 or any conduct that violates or would violate any Laws, rule, or regulation, or any right of any third party;
- (iv) it will comply with all applicable Laws related to data privacy, international communications and the transmission of technical data or Personal Data;
- (v) in entering into this Agreement, it has not committed any Prohibited Act; and
- (vi) any and all Customer Data is accurate and complete in all respects and does not infringe the Intellectual Property Rights of any third party.

10.3 Disclaimer Of Warranty. The limitations, exclusions and disclaimers in this clause 10 apply to the fullest extent permitted by law. OutWatch does not disclaim any warranty or other right that OutWatch is prohibited from disclaiming under applicable law. The Services and all content available through the Services is provided “as is” and on an “as available” basis. Except as expressly provided for in this Agreement, OutWatch disclaims all warranties of any kind, whether express or implied, relating to the Services and all content available through the Services, including:

- (i) any implied warranty of merchantability, fitness for a particular purpose, title, quiet enjoyment, or non-infringement; and

- (ii) any warranty arising out of course of dealing, usage, or trade.

OutWatch does not warrant that the Services or any portion of the Services, or any content offered through the Services, will be uninterrupted, secure, or free of errors, viruses, or other harmful components, and OutWatch does not warrant that any of those issues will be corrected. Customer acknowledges it is the Customer's obligation to comply with all laws, rules and regulations applicable to use of the OutWatch Services.

- 10.4 No advice or information, whether oral or written, obtained by Customer from the Services or OutWatch Entities or any materials or content available through the Services will create any warranty regarding any of the OutWatch Entities or the Services that is not expressly stated in this agreement. We are not responsible for any damage that may result from the Services and Customer's dealing with any other Services user. Customer understands and agrees that use of any portion of the Services is at Customer's own discretion, and that we are not responsible for any damage to Customer property (including any Customer computer system or mobile device used in connection with the service) or any loss of data (including Customer Data).

11. Liability

- 11.1 To the fullest extent permitted by law, in no event will the OutWatch Entities or Customer be liable to the other party for any indirect, incidental, special, consequential, reliance or punitive damages (including damages for loss of profits, goodwill, or any other intangible loss) arising out of or relating to the Customer's access to or use of, or Customer's inability to access or use, the Services or Software or content on the Services, as well as any loss or damage of data (including Customer Data) and information, whether arising in contract, tort or otherwise, even if a party has been advised of the possibility of such loss or damage, whether based on warranty, contract, tort (including negligence), statute, or any other legal theory, and whether or not any OutWatch Entity has been informed of the possibility of damage.
- 11.2 To the fullest extent permitted by law and except with respect to the Customer's payment obligations, the aggregate liability of the OutWatch Entities or Customer to the other party for all claims arising out of or relating to the use of or any inability to use any portion of the Services or otherwise under this Agreement, whether in contract, tort, or otherwise, is limited to the Fees Customer has paid to OutWatch for access to and use of the Services in respect of the applicable or impacted Screen Faces in the 12 months prior to the event or circumstance giving rise to the claim.
- 11.3 Each provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is intended to and does allocate the risks between the parties under this agreement. This allocation is an essential element of the basis of the bargain between the parties. Each of these provisions is severable and independent of all other provisions of this Agreement. The limitations in this clause 11 will apply even if any limited remedy fails of its essential purpose.
- 11.4 Nothing in this Agreement will exclude, limit or restrict either party's liability for:
- (i) death or personal injury resulting from the negligence of that party or its officers, agents, employees or sub-contractors;
 - (ii) fraud or fraudulent misrepresentation; or

- (iii) any other matter in respect of which liability cannot by applicable law be limited.

12. Dispute Resolution, Governing Law and Jurisdiction

- 12.1 Negotiation. If there is a dispute between the Parties arising out of or otherwise relating to this Agreement, the Parties agree to promptly meet in good faith to try to resolve such dispute. If such dispute is not resolved by the Parties within 30 days following the date on which either Party provided written notice of such dispute to the other Party, the dispute shall be escalated to the senior management of each Party for resolution. If the dispute is not resolved in accordance with such procedures within 90 days following the date on which either Party provided written notice of such dispute to the other Party, this Agreement shall be subject to mediation as set forth in clause 12.2 below.
- 12.2 Mediation. The Parties shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the Parties mutually agree otherwise to a different location, shall be administered by JAMS (jamsadr.com) in a location as determined by the governing law of the contract according to clause 12.3 below. If JAMS does not provide services in that location, the parties will negotiate in good faith to determine a suitable replacement alternative dispute resolution provider. A request for mediation shall be made in writing, delivered to the other Party to the Agreement, and filed with the person or entity administering the mediation. The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation must be made in writing and signed by the Parties to be enforceable as settlement agreements in any court having jurisdiction thereof. If the dispute cannot be resolved through mediation, then either Party may refer the dispute for adjudication as set forth according to clause 12.3 below.
- 12.3 Governing Law and Jurisdiction. This Agreement is governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts in respect of any proceedings in connection with this Agreement. Each party waives any right it has to object to an action being brought in the courts of New South Wales, Australia including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

13. Miscellaneous

- 13.1 Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes and cancels all previous and contemporaneous written and oral agreements, communications and other understandings relating to the subject matter hereof. In the event of a conflict between the following parts of this Agreement, the first listed prevails:
- (i) Subscription Order;
 - (ii) Terms and Conditions;
 - (iii) the Schedules.

- 13.2 No Waiver. The failure to exercise or delay in exercising a right or remedy provided to a Party under this Agreement shall not constitute a waiver of that right or remedy, and no waiver by a Party of any breach of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision.
- 13.3 Severability. If any provision of this Agreement is found to be unenforceable or invalid in any jurisdiction, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. Invalidity or unenforceability in one jurisdiction shall not affect validity or enforceability in any other jurisdiction.
- 13.4 Interpretation.
- (i) The headings in this Agreement are for ease of reference and are not to be deemed to be part of this Agreement or to be taken into consideration in the interpretation or construction of this Agreement.
 - (ii) The singular includes the plural and vice versa and another grammatical form of a defined word or expression has a corresponding meaning.
 - (iii) A reference to a clause is to a clause of these Terms and Conditions.
 - (iv) A reference to a document or instrument (however described) includes the document or instrument as novated, altered, supplemented or replaced from time to time and in any form, whether in paper or electronic form.
 - (v) A reference to a Party is to a Party to this Agreement.
- 13.5 Third Parties. No term of this Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a party to the Agreement.
- 13.6 Relationship of the Parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind OutWatch in any respect whatsoever. Any person, entity or party who is not a Party to this Agreement has no right to enforce or to enjoy the benefit of any term of this Agreement.
- 13.7 Publicity. Provided OutWatch obtains the Customer's prior written consent, Customer permits OutWatch to use the Customer's name and logo in press releases, customer lists, marketing materials, financial reports and on its website indicating that Customer is a customer of OutWatch, and Customer agrees that OutWatch may use its name and logo in such a manner. Customer further agrees to work with OutWatch to provide a customer success story within 12 months of using the Services.
- 13.8 Non-Solicitation. During the Term and for 12 months thereafter, Customer will not recruit or employ, either directly or indirectly, a member of OutWatch's staff, except with OutWatch's prior written consent. In the event of Customer's violation of this clause, Customer must immediately pay OutWatch a lump-sum payment equivalent to the hired employee's compensation for one year.
- 13.9 Assignment. Customer may not assign, novate or otherwise transfer any of its rights or obligations in accordance with this Agreement, whether by operation of law or otherwise, without the prior written consent of OutWatch (which will not be

unreasonably withheld). Any attempt by the Customer to assign, novate or otherwise transfer its rights or obligations under this Agreement in breach of this clause 13.9 shall be void and of no effect. OutWatch may assign, novate or transfer all of its rights or obligations under this Agreement without consent to any of its Affiliates and otherwise in connection with a sale or other transfer of all or substantially all of the business or assets of OutWatch to which this Agreement relates, whether by way of sale of stock or assets, operation of the law, or otherwise. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

13.10 Consent to Electronic Communications. By using the Services, you consent to receiving certain electronic communications from us as further described in our Privacy Policy, available at <https://www.outwatch.io/legal/privacy>. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.

13.11 Notices. All notices under this Agreement shall be in writing and by email. Notice shall be deemed to have been given upon the earliest of:

- (i) receipt of electronic communication of receipt by either return email or a read receipt; or
- (ii) 72 hours after sending, if the sender has not received a delivery failure notice.

Notices to OutWatch shall be addressed to accounts@outwatch.io. Notices to the Customer shall be addressed to the party set forth under the applicable Subscription Order. Each Party may modify its recipient of notices by providing notice pursuant to this Agreement.

13.12 Remedies. No remedy provided in this Agreement shall be deemed exclusive of any other remedy that a Party may have at law or in equity unless it is expressly stated herein that such remedy is exclusive. Each Party recognises that the unauthorised disclosure of Confidential Information may cause irreparable harm to the other Party for which monetary damages may be insufficient, and in the event of such disclosure, such other Party shall be entitled to seek an injunction, temporary restraining order, or other provisional remedy as appropriate without being required to post bond or other security. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

13.13 Prevention of Corruption. If a Party or any subcontractor of that Party (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Act, that act shall be considered a Material Breach subject to the termination provisions of clause 8.2. Depending on the circumstances of the breach, such remedy may include, but shall not be limited to one or more of the following:

- (i) the termination of employment (or instruction, if a subcontractor) of the person(s) committing the Prohibited Act;
- (ii) if necessary, procuring the continued performance of the Agreement (in OutWatch's case, the Services) by another person(s); and

- (iii) an undertaking by a sufficiently senior executive (director level or above) to ensure that the Prohibited Act has been fully investigated and remedied, to the reasonable satisfaction of the innocent Party.
- 13.14 *Force Majeure.* Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable in accordance with this Agreement) where the delay or failure results from any cause beyond its reasonable control (a “**Force Majeure Event**”), including, but not limited to, acts of God, labour disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, epidemics, pandemics, acts of terrorism or war, or computer attacks or malicious acts, such as attacks on or through the internet, any internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period equal to the time lost due to any Force Majeure Event.