

## CAPDESK CUSTOMER TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS (“**CAPDESK CUSTOMER TERMS AND CONDITIONS**”) TOGETHER WITH THE ORDER FORM **OR** ANY ORDER MADE THROUGH THE SITE’S ORDERING LANDING PAGE (INCLUDING ANY ORDERS OR RENEWALS MADE VIA EMAIL AS AGREED IN WRITING BY THE PARTIES) (“**ORDER**”) CONSTITUTE A LEGAL AGREEMENT WHICH CONTAINS THE ENTIRE AGREEMENT BETWEEN THE CUSTOMER DETAILED IN THE ORDER (“**CUSTOMER**” OR “**YOU**”) AND CAPDESK APS (“**CAPDESK**” OR “**WE**”) (TOGETHER THE “**AGREEMENT**”). BY USING ALL OR ANY PORTION OF THE SERVICES, YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU. IF YOU DO NOT AGREE THEN YOU SHOULD NOT USE ANY PART OF THE SERVICES. CAPDESK AND CUSTOMER HEREBY AGREE AS FOLLOWS:

### 1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of more than 50% of the voting equity shares or other equivalent voting interests of an entity.

“**Agreement**” means this agreement between Capdesk and the Customer comprising the Order, these Capdesk Customer Terms and Conditions, and the Data Processor Agreement.

“**Assisted Onboarding**” means the assisted onboarding services provided by Capdesk to the Customer to enable the Customer to access and use the Services.

“**Assisted Onboarding Fee**” means the assisted onboarding fee set out in the Order payable by the Customer to Capdesk to enable the Customer to access and use the Services.

“**Assisted Onboarding Period**” means the period of time required by Capdesk to implement the Assisted Onboarding, which unless specified otherwise in the relevant Order shall be three (3) months from the Effective Date.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England.

“**Confidential Information**” means (without limitation) all confidential information (however recorded or preserved) disclosed by one party or its employees, officers, representatives or advisers (together “**Representatives**”) to the other party and the other party’s Representatives, including the terms and conditions of this Agreement, the business, affairs, customers, clients, suppliers, plans, intentions, market opportunities, operations, processes, product information, services, know-how, technical information or trade secrets of the disclosing party.

“**Customer Content**” means any content, data, text, documents, and general files, audio, video or images uploaded, shared, transferred or otherwise communicated electronically by the Customer to the Services, whether directly or indirectly via any third party application. Customer Content does not include any Derived Data.

“**Customer End Users**” means those individuals authorised by the Customer to directly or indirectly that: (i) access or use Customer Content via the Services; or (ii) otherwise access or use the Services on the behalf of the Customer through the Customer’s account, pursuant to this Agreement.

**“Data Processor Agreement”** means the data processor agreement located at [www.capdesk.com/dpa](http://www.capdesk.com/dpa), as it may be updated by Capdesk from time to time which is incorporated into this Agreement by reference.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time including the General Data Protection Regulation ((EU) 2016/679) which apply to the processing of personal data pursuant to this Agreement as further detailed in the Data Processor Agreement.

**“Derived Data”** means any data which is derived from the Customer’s or the Customer End User’s use of the Services or the processing of Customer Content, which shall include: (i) any data which is processed and stored as mathematical constructs; (ii) statistical or aggregated data; and (iii) any other analytical and marketing data such as number and duration of user sessions and page visits, and technical reports on the performance of the Services. Derived Data shall not include personal data, except where such personal data has been anonymised.

**“Documentation”** means those printed or online instructions, manuals, screens and diagrams distributed or otherwise provided by Capdesk from time to time that pertain to the Software or use of the Services.

**“Effective Date”** means the effective date of this Agreement as set out in the Order and if not specified shall be the date on which the Customer subscribes to the Services in the Order.

**“Fees”** means the Subscription Fees and if applicable, the Assisted Onboarding Fee, and any other additional fees as agreed by the parties, as set out in the Order or in writing as agreed by the parties.

**“Improvements”** means any adaptations, modifications, improvements, enhancements, revisions and anything analogous to the same in relation to the Software or the Services in any form or medium whatsoever.

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Privacy Statement”** means the Privacy Statement located at [www.capdesk.com/privacy](http://www.capdesk.com/privacy), as it may be updated by Capdesk from time to time.

**“Services”** means access to the Software, whether provided to the Customer via the Site, and any other services (business, technical, or other), provided to the Customer by Capdesk.

**“Site”** means [www.capdesk.com](http://www.capdesk.com) or any other website operated by Capdesk through which the Services are delivered to the Customer from time to time.

**“Software”** means Capdesk’s equity management software as a service solution.

**“Subscription Fees”** means the subscription fees set out in the Order payable by the Customer to Capdesk for use of the Services.

**“Term”** means the term of this Agreement as specified in the Order and if not specified shall commence on the Effective Date and continue for an initial term of 12 months (**“Initial Term”**) unless terminated earlier in accordance with this Agreement. The Initial Term shall automatically renew for successive periods of 12 months (each a **“Renewal Term”**), unless either party provides written notice of non-renewal to the other party at least thirty (30) days before the end of the Initial Term or the then current Renewal Term (as applicable). The Initial Term and the Renewal Term(s) together constitute the Term.

**“Terms of Use”** means the Terms of Use policy located at [www.capdesk.com/terms](http://www.capdesk.com/terms), as it may be updated by us from time to time.

**“Uptime Percentage”** means 100 % minus the proportion of Services downtime in any given calendar month divided by total uptime in a month. Downtime shall mean when the Services are unavailable for any reason, as indicated by the Software user interface being inaccessible for any Customer End User interaction and the Software server returning http statuses of 503.

**“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, network, data or the user experience, including worms, Trojan horses, viruses and other similar things or devices.

- 1.2 In this Agreement: (i) clause, schedule and paragraph headings shall not affect the interpretation of this Agreement; (ii) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; (iii) a reference to writing or written includes e-mail; (iv) any words following the terms including, include, in particular for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Scope and Access to the Services**

- 2.1 Subject to the Customer paying the Fees in accordance with this Agreement, Capdesk hereby grants to the Customer a non-exclusive, non-transferable, non-sub licensable right for the Customer and the Customer End Users to access and use the Services during the Term in accordance with this Agreement and solely for the benefit of the Customer’s internal business operations.
- 2.2 The Customer shall not access, store, distribute or transmit any Viruses or any material during the course of its use of the Services that is unlawful, harmful, infringing, offensive, discriminatory, or which facilitates illegal activity or depicts sexually explicit images or causes damage or injury to any person or property. Capdesk reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer’s or Customer End User’s access to the Service and remove any Customer Content or other material that breaches the provisions of this clause 2.2.
- 2.3 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, and except to the extent expressly permitted under this Agreement, the Customer shall not, and shall not attempt to, copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software or Services in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or Services.
- 2.4 The Customer shall not, and shall not attempt to: (i) access all or any part of the Services in order to build a product or service which competes with the Services; (ii) make the Services available to any

third party except to authorised Customer End Users; or (iii) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2. Your username and password and any other security information generated by the Services (such as invitation tokens) are for your internal use only, and you will not disclose them to any unauthorised third party.

- 2.5 The Customer shall and shall procure that each Customer End User comply with the Terms of Use and shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and the Services and, in the event of any such unauthorised access or use, promptly notify Capdesk. The Customer shall and shall procure that each Customer End User keep secure all usernames and passwords for use of the Services and each Customer End User shall keep all such Customer account credentials confidential. Customer shall be solely responsible for all activities that occur whilst the Customer account details are being used. If you become aware of, or believe there has been, any breach of security in respect of any of your information stored on the Site, such as the theft or unauthorised use of such Customer account credentials, you will notify Capdesk immediately.
- 2.6 Unless specified otherwise in the Order, the rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any Affiliate. If the Customer is permitted to make the Services available to its Affiliates in the relevant Order, Customer shall: (i) be responsible for the Fees and all acts and omissions of its Affiliates (and their users); (ii) be liable for ensuring that its Affiliates (and their users) comply with the terms of this Agreement; and (iii) ensure that any rights or remedies arising in connection with this Agreement will be actionable against Capdesk solely by Customer and not by any Affiliate except that Customer will be entitled to treat losses of its Affiliates as if they are losses of Customer. Any limitations or exclusions of liability contained herein shall be deemed to apply to the Customer and its Affiliates in aggregate.

### **3. Customer Content & Derived Data – Security & Privacy**

- 3.1 The Customer shall own all right, title and interest in and to all the Customer Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Content.
- 3.2 Capdesk may track and analyse the Customer's and any Customer End User's use of the Services for the purposes of security and to help Capdesk improve the Services and the Software.
- 3.3 Capdesk may use the Customer Content to provide the Services and to improve the performance and functionality of the Software, including for developing Improvements, updates, upgrades, modifications, and derivative works thereof. Capdesk shall own all rights, title and interest in and to all of the Derived Data. Any personal data contained in your Customer Content or generated by the Software shall be processed by Capdesk in accordance with the Data Processing Agreement, which is in addition to, and does not relieve, remove, or replace, each of the parties' obligations or rights under the Data Protection Legislation.
- 3.4 Capdesk may identify complementary services provided by its partners and relevant third parties, which would benefit Customer and may notify the Customer of such services. With the Customer's permission, Capdesk shall share the contact data of the Customer with such third parties, as further explained in the Privacy Statement.
- 3.5 Capdesk will use all reasonable endeavours to implement appropriate technical and organizational security measures to secure your Customer Content against any accidental loss, theft, or unauthorized access or disclosure, including encryption and regular backups as further detailed in the Data Processing Agreement.

- 3.6 The Customer hereby indemnifies Capdesk from and against all losses, damages, liabilities and claims, arising from or in relation to any third party claims that the processing and use of the Customer Content in accordance with this Agreement infringes or misappropriates any third party rights or breaches Data Protection Legislation.

#### **4. Capdesk's Obligations**

- 4.1 Capdesk shall: (i) provide the Services and Assisted Onboarding (if applicable) to the Customer on and subject to the terms and conditions of this Agreement; and (ii) make the Services available and provide the levels of support in accordance with the Documentation and clause 4.4.

- 4.2 The Services are continually under review and their features and functionality may change throughout your Term and Capdesk may modify or discontinue any of the Services (in whole or in part) at any time. We will use all reasonable endeavours to give you thirty (30) days' written notice of any substantial change to or substantial discontinuation of, whether temporary or permanent, the Services. If you do not wish to continue using the Services as a result of the substantial change to or substantial discontinuation of the Services as notified to you, you may terminate this Agreement on thirty (30) days' written notice to Capdesk and you shall be entitled to a pro-rated refund of any unearned, pre-paid Fees in respect of the Services as at the date of termination. This termination right is your sole and exclusive remedy if you do not wish to continue using the Services after a substantial change to or substantial discontinuation of the Services. If you continue to use the Services, you will be deemed to have accepted any such substantial change to or substantial discontinuation of the Services.

- 4.3 Capdesk shall not be liable for any failure of the Services to comply with the features and functionality specified in the Documentation, which is caused by use of the Services contrary to Capdesk's instructions, or modification or alteration of the Services by any party other than Capdesk or Capdesk's duly authorised contractors or agents. If the Services do not conform with the features and functionality specified in the Documentation, Capdesk will in its sole discretion correct any such non-conformance, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any non-conformance. Notwithstanding the foregoing: (i) the Customer acknowledges and agrees that the Services will evolve over time and that functionality may be added and removed from time to time in accordance with clause 4.2; (ii) Capdesk does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and (iii) Capdesk is not responsible for any delays, delivery failures, or any other loss or damage resulting from third parties or third party applications or the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 4.4 Subject to the terms and conditions of this Agreement, Capdesk shall use all reasonable endeavours to provide reasonable levels of support on Business Days during normal business hours (which for the purposes of this Agreement shall be 0900 – 1700 GMT) ("**Support Hours**") and make the Services available in accordance with the Uptime Percentage, as more fully set out in our Service Commitments, see <https://www.capdesk.com/service-commitments>. Customer may contact Capdesk's support desk and Capdesk shall use reasonable endeavours to respond to Customer in a timely manner within the Support Hours.

#### **5. Customer's Obligations**

- 5.1 The Customer shall provide Capdesk with all necessary co-operation in relation to this Agreement and all necessary access to information as may be required by Capdesk to fulfil its obligations under this Agreement, including granting Capdesk full and unrestricted access to Customer's account in order to provide support or fix any errors. The Customer shall carry out all of its responsibilities in this Agreement in a timely and efficient manner.
- 5.2 The Services may enable Customer End Users to share Customer Content or invite third-party users to use and access the Services. Such third-party users may access, view, download, and share Customer Content, or receive Customer Content via email (such emails may be sent on Customer's behalf, provided that any such emails sent on the Customer's behalf are sent solely as required for the Services to properly function in accordance with the Documentation). Customer understands and agrees that: (i) it is solely Customer's, and its Customer End Users', choice to share Customer Content, and consents to the Services sending any emails on its behalf; (ii) Capdesk cannot control third parties with whom Customer or Customer End Users have shared Customer Content; and (iii) Customer and/or its Customer End Users are solely responsible for their sharing of any Customer Content through the Services (including without limitation, where the Services send emails on the Customer's behalf in accordance with this clause 5.2).
- 5.3 The Customer shall ensure that all Customer End Users use the Services strictly in accordance with the terms and conditions of this Agreement and the Terms of Use and the Customer shall be responsible for any Customer End User's breach of the same.
- 5.4 The Customer shall ensure that its network and systems comply with the relevant specifications provided by Capdesk from time to time necessary for the operation of the Services, and shall be solely responsible for procuring and maintaining all network connections and telecommunications links from its systems to Capdesk's data centres. Notwithstanding clause 9.7, we encourage you to secure, protect and backup your Customer Content, and regularly archive copies of your Customer Content in a suitably secure location.
- 5.5 By using the Services, you acknowledge that you are not located in a jurisdiction where use of the Services and the publication and sharing of any materials via the Services is in any way illegal or restricted by applicable law. If you are located in such a jurisdiction, Capdesk will not provide you with access to the Services and you should immediately discontinue your use of the Services.
- 5.6 Documents generated by the Services may be executed by electronic signature. You agree that any such agreements or other documents executed by you, via electronic signature, are enforceable like any written negotiated agreement signed by you. You and the relevant third party are responsible for the content and execution process in respect of such documents.

## **6. Subscription Fees and Payment**

- 6.1 The Customer shall pay the Fees set out in the Order in accordance with this clause 6.
- 6.2 The Customer shall provide one or more authorised payment methods which the Customer authorises Capdesk to charge the Fees for the Services as set out in the Order for the Term including without limitation, if applicable, the payment of the Assisted Onboarding Fee on the Effective Date, in accordance with this clause 6. Such charges shall be made in advance, in accordance with the intervals specified in the relevant payment schedule or in the Order. If the Order specifies that payment will be by a method other than a credit card, Capdesk will invoice the Customer in advance and otherwise in accordance with the intervals specified in the Order. Unless otherwise stated in the Order, the Customer shall pay each invoice within fourteen (14) days after the date of such invoice.

The Customer is responsible for providing complete and accurate billing and contact information to Capdesk and notifying Capdesk of any changes to such information.

- 6.3 Fees for the Services may be collected via a payment processor as notified to the Customer from time to time. Capdesk may suspend the Customer's access to the Services if any payment is not successfully settled due to expiration, insufficient funds or otherwise. For some payment methods, the issuer may charge certain fees, such as foreign transaction fees or other fees relating to the processing of the payment method, which shall be due and payable by the Customer. The Customer may be required to accept the terms and conditions of the issuer of the payment method or the third party payment processor to make the relevant payment as set out in the Order.
- 6.4 Subject to clause 6.5, If Capdesk has not received payment by the due date, and without prejudice to any other rights and remedies of Capdesk, Capdesk may, without liability, disable the Customer's and all Customer End Users' passwords, accounts and access to all or part of the Services until the invoice(s) concerned are paid in full. Interest shall accrue on a daily basis on any overdue amounts at an annual rate equal to 2.5% above the Bank of England's base rate, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.5 If you believe that we have charged you in error, you must contact us within thirty (30) days of such charge or invoice pursuant to the conditions for giving notice in clause 14.5. No refunds will be given for any charges or invoices more than sixty (60) days old.
- 6.6 Fees are payable in the currency detailed in the Order, and are non-cancellable and non-refundable. Fees are stated exclusive of value added tax or relevant sales tax, which shall be added to Capdesk's invoice(s) at the appropriate rate. All amounts due under this Agreement shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by applicable law).
- 6.7 Capdesk shall be entitled to increase the Fees at the start of each Renewal Term upon forty five (45) days' prior written notice to the Customer.

## **7. Compliance with Laws and Regulations**

- 7.1 The Customer shall comply with all applicable laws and regulations in the exercise of its rights and the performance of its obligations pursuant to this Agreement.

## **8. Intellectual Property Rights**

- 8.1 As between the parties, all Intellectual Property Rights in and to the Software, the Derived Data, the Services and Documentation shall belong to, and remain vested in, Capdesk or where applicable any relevant licensor, at all times. The Customer shall retain all right, title and interest to its pre-existing Intellectual Property Rights.
- 8.2 Without prejudice to clause 8.1 or to the provisions of clause 2 above, to the extent that the Customer's, or any Customer End User's use of the Services results in Improvements, whether through the Customer's feedback or by any other means, then notwithstanding any rights or remedies of Capdesk under clause 2 above, any and all Intellectual Property Rights in and to such Improvements shall immediately vest in and be owned by Capdesk. Any Customer feedback shall be free from any confidentiality restrictions that might otherwise be imposed upon Capdesk pursuant to clause 12 of this Agreement.

8.3 Capdesk shall defend the Customer against any third party claims that the use of the Software in accordance with this Agreement infringes any third party Intellectual Property Right and shall indemnify the Customer for and against any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (i) Capdesk is given prompt notice of such claim; (ii) the Customer provides reasonable co-operation to Capdesk in the defence and settlement of such claim, at Capdesk's expense; (iii) Capdesk is given sole authority to defend or settle the claim; and (iv) the Customer makes no admission of liability or fault itself or on behalf of Capdesk.

8.4 In the defence or settlement of any claim pursuant to clause 8.3 above, Capdesk may at its sole option and expense either:

8.4.1 procure for the Customer the right to continue using the Software in the manner contemplated by this Agreement;

8.4.2 replace or modify the Software so that it becomes non-infringing; or

8.4.3 terminate this Agreement forthwith by notice in writing and without further liability to the Customer.

8.5 Capdesk shall not in any circumstances have any liability (including in respect of the indemnity provided under clause 8.3) if the alleged infringement is based on: (i) modification of the Software by anyone other than Capdesk; or (ii) the Customer's or any Customer End User's use of the Software otherwise than in accordance with this Agreement or in a manner contrary to the instructions given to the Customer by Capdesk in connection therewith; or (iii) the Customer's or any Customer End User's use of the Software after notice of the alleged or actual infringement from Capdesk or any appropriate authority; or (iv) use or combination of the Software with any other software or hardware, in circumstances where, but for such combination, no infringement would have occurred.

8.6 The Customer hereby indemnifies Capdesk against all or any costs, claims, damages or expenses incurred by Capdesk in respect of: (i) any third party claims relating to the Customer's or any Customer End User's use of the Software of the Services or otherwise than in accordance with this Agreement; or (ii) any alleged infringement of any third party Intellectual Property Right in respect of the Customer Content.

8.7 This Clause 8 sets forth the Customer's sole remedies and Capdesk's sole liability and obligation for any actual, threatened or alleged claims that the Software and/or Services infringes, misappropriates or otherwise violates any third party Intellectual Property Rights.

## **9. Term and Termination**

9.1 This Agreement shall commence as of the Effective Date and, unless terminated sooner as provided herein, shall continue for the Term. This Agreement will terminate automatically if the Customer fails to comply with any of the limitations or other requirements described herein.

9.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

9.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment;

9.2.2 if the other party commits a material breach of any term of this Agreement, which breach is



irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days after being notified in writing to do so; or

9.2.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction, or it ceases or threatens to cease to carry on business.

- 9.3 The Customer may terminate this Agreement: (i) in accordance with clause 4.2; (ii) in accordance with clause 14.6; or (iii) with immediate effect by giving written notice to Capdesk during the Assisted Onboarding Period, in each case it shall be entitled to a pro-rated refund of any unearned, pre-paid Fees in respect of the Services as at the date of termination.
- 9.4 Capdesk may terminate this Agreement at any time in whole or in part without cause by giving a minimum of three (3) months' written notice to the Customer, and provided that such notice does not expire during the course of the Initial Term or then current Renewal Term, and only upon expiry of the Initial Term or then current Renewal Term.
- 9.5 Without prejudice to any other rights or remedies to which Capdesk may be entitled under this Agreement, if Capdesk knows or has reasonable grounds to suspect that the Customer is acting in breach of its obligations under this Agreement (including failure to pay Fees), Capdesk may notify the Customer in writing accordingly and may immediately suspend the Customer's and all Customer End Users' access to the Services until such breach can be remedied or until Capdesk is satisfied, acting reasonably, that its suspicions are unfounded.
- 9.6 On termination of this Agreement for any reason: (i) all licences granted under this Agreement shall immediately terminate; each party shall return and make no further use of any Confidential Information, equipment, property and other items (and all copies of them) belonging to the other party; and (ii) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 9.7 At all times during the Term, Customer shall have the ability to access, extract, and delete Customer Content. Capdesk will retain Customer Content stored in the Services for thirty (30) days after expiration or termination of Customer's subscription so that Capdesk may may extract Customer Content at the Customer's request. Capdesk may charge for any assistance required by Customer to extract Customer Content at its then current daily rates for data extraction. After said 30-day period ends, Capdesk will disable Customer's account and delete all Customer Content and personal data (within thirty (30) days), save to the extent that Capdesk is required by any applicable law to retain some or all of such Customer Content. In such event, Capdesk shall extend the protections of the Agreement to such retained Customer Content and limit any further processing of such Customer Content only to those limited purposes for which, and only for so long as, such retention is required by applicable law. Nothing contained herein shall require Capdesk to alter, modify, delete, or destroy backup tapes or other media created in the ordinary course of business for purposes of disaster recovery and business continuity, so long as such tapes or other media are kept solely for such purposes and are overwritten, recycled, or otherwise remediated in the ordinary course of business. Capdesk has no liability for the deletion of Customer Content or personal data as described in this clause.

## **10. Exclusion of Warranties**

- 10.1 Except as expressly and specifically provided in this Agreement, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and the Software, the Services and any information provided by or on behalf of Capdesk are provided to the Customer on an "as is" basis. No such information obtained by Customer or Customer End Users from use of the Services shall constitute financial advice or shall be construed as an endorsement or criticism of any company or other entity.
- 10.2 The Customer and its Customer End Users acknowledge that the Services are intended for informational purposes only. You acknowledge: (i) that Capdesk expressly disclaims all liability in relation to financial advice, in accordance with this clause 10 and clause 11.2; (ii) any such information or material contained in the Services is not to be construed as a recommendation; or an offer to buy or sell; or the solicitation of an offer to buy or sell any security, financial product, or instrument. Investments made in unlisted companies give rise to substantial risk and are not suitable for all investors, and you should not enter into any transactions unless you have fully understood all such risks and have independently determined that such transactions are appropriate for you. You should not construe any of the information or material contained in the Services as business, financial, investment, hedging, trading, legal, regulatory, tax, or accounting advice. Capdesk takes no responsibility for any Customer act or omission, which you make directly or indirectly as a result of the information you obtained through the Services. The Customer shall use the information it obtains through its use of the Services to inform any investment decisions solely at its own risk. The Customer expressly acknowledges that Capdesk is not providing any financial or investment-related advice or services under this Agreement.
- 10.3 The Customer acknowledges that in respect of any third party data provided by third parties, Capdesk: (i) is not able to verify the accuracy, reliability, quality or completeness of such third party data; and (ii) is not responsible for and shall have no liability whatsoever in respect of any results or information generated or implied by the Customer through its use of the Services where such results or information uses, incorporates, is based on, or otherwise pertains to such third party data.

## **11. Limitation of Liability**

- 11.1 This clause 11 sets out the entire financial liability of Capdesk to the Customer arising under or in connection with this Agreement, in respect of any use made by the Customer or its Customer End Users of the Services; and in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for results or information obtained by Customer End Users from the use of the Services, and for conclusions drawn from such use. Capdesk shall have no liability for any damage caused by errors or omissions in any information or any actions taken by Capdesk at the Customer's direction. No other party is entitled to rely on the information or materials contained in the Services for any purpose whatsoever, and Capdesk disclaims any responsibility to any such third party who has had communicated to him or her the information or advice provided by or on behalf of Capdesk to the Customer.
- 11.3 Nothing in this Agreement excludes either party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or for any liabilities that cannot be excluded under applicable law.

- 11.4 Subject to clause 11.3 Capdesk shall not be liable for any consequential, indirect, special, incidental, punitive or exemplary damages, whether foreseeable or unforeseeable, loss of profit, loss of business, loss of goodwill, loss of or corruption of data, loss caused or contributed to by any employee, agent, contractor or representative of the Customer, loss caused as a result of the Services being unavailable as a result of planned downtime for the Services as notified to the Customer, loss arising from any failure of the Customer's infrastructure and/or utilities, loss caused as a result of the Services being unavailable caused by a Force Majeure Event, loss caused by the failure or delay of any third party application or service or network, however arising under this Agreement.
- 11.5 Capdesk's entire, aggregate liability in contract, tort (including negligence) arising out of or relating to this Agreement shall be limited to the greater of: (i) the total Subscription Fees paid during the twelve (12) months immediately preceding the date on which the claim arose; or (ii) two hundred thousand pounds (£200,000).

## **12. Confidential Information**

- 12.1 Each party may have access to Confidential Information of the other party under this Agreement. A party's Confidential Information shall not include information that: (i) is or becomes publicly known through no act or omission of the receiving party; or (ii) was in the other party's lawful possession prior to the disclosure; or (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other party's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement, except either party may disclose the other party's Confidential Information to its Representatives, strictly on a 'need to know basis' and solely to the extent necessary to comply with the terms of this Agreement.
- 12.3 Each party agrees to 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 this Agreement.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5 Unless otherwise agreed between the parties, you agree that we shall be entitled to publicise that you are a Customer on our Site, including use of your current logo or otherwise provided that such publicity does not imply any wider trading association or relationship between the parties.
- 12.6 This clause 12 shall survive termination of this Agreement for any reason.

## **13. Audit**

- 13.1 Capdesk will, not more than one time per calendar year, permit the Customer to conduct an audit to ensure Capdesk is in compliance with this Agreement. Such an audit will be conducted by an

independent, accredited third-party audit firm, during regular business hours, with reasonable advance notice to Capdesk (not less than thirty (30) days), and subject to reasonable confidentiality and security procedures. Neither Customer nor the auditor shall have access to any data from Capdesk's other customers or to Capdesk's systems or facilities not involved in the Services. Customer is responsible for all costs and fees related to such audit, including all reasonable costs and fees for any and all time Capdesk expends for any such audit, in addition to the rates for services performed by Capdesk. If the audit report generated as a result of Customer's audit includes any finding of material non-compliance, Customer shall share such audit report with Capdesk and Capdesk shall promptly cure any material non-compliance.

#### **14. General**

14.1 **Insurance.** Each party shall obtain and maintain in force insurance with a reputable insurance company for the duration of the Term of this Agreement, against all risks which would normally be insured against by a reasonably prudent customer or supplier, in the context of this Agreement.

14.2 **Entire agreement.** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.3 **Assignment.** The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of Capdesk. Capdesk may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

14.4 **Force Majeure.** Neither party is responsible for failure to fulfil its obligations herein, except for any payment obligations, due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance herein, if such delay or failure results from events, beyond its reasonable control, including, without limitation, strikes, acts of God, epidemics, pandemics or other outbreak of infectious disease or other public health crisis (and any government response to them, including quarantine or other employee restrictions), war, terrorism, riot, denial of service attacks, or compliance with any law or governmental order ("**Force Majeure Event**"). Dates or times by which each party is required to render performance under this Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes. If the Force Majeure Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of more than thirty (30) days, either party may terminate this Agreement with immediate effect by giving written notice to the other party.

#### **14.5 Notices.**

14.5.1 You can contact Capdesk or you can give Capdesk notice under this Agreement by emailing support@capdesk.com, any such communication (in the absence of a failed delivery receipt) shall take effect at 9.00 am on the next Business Day after transmission.

14.5.2 We may contact you or give you notice under this Agreement by emailing the relevant email address then associated with your Customer account. Any such communication shall take effect at 9.00 am on the next Business Day after transmission. It is your responsibility to notify Capdesk of any changes to your email address associated with your Customer account.

14.5.3 All notices given under this Agreement must be in the English language.

- 14.6 **Variation.** You agree that Capdesk may modify this Agreement at any time in its sole discretion. Changes to this Agreement will be notified to you at least sixty (60) days in advance and/or published on Capdesk’s Site, thereby giving you the opportunity to object to any such change to this Agreement. If you object to any such change, you may terminate this Agreement on written notice to Capdesk, provided you give such notice within thirty (30) days of being informed of the relevant change (“**Change Assessment Period**”). Subject to clause 9, this termination right is your sole and exclusive remedy if you object to any such change to the Agreement. If you continue to use the Services after expiry of the Change Assessment Period, you will be deemed to have accepted all new terms of the Agreement.
- 14.7 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 **Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 14.9 **Relationship.** Each of the parties to this Agreement is an independent contractor and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of agents or of principal/agent or of employer/employee nor are the parties hereby engaging in a joint venture and accordingly neither of the parties shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise, unless expressly permitted by the terms of this Agreement. The parties acknowledge that the arrangements between them are non-exclusive. Nothing contained in this Agreement shall prohibit either of the parties from conducting business activities with other third parties. This Agreement shall not prevent Capdesk from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 14.10 **Third party rights.** A person who is not a party to this Agreement shall not have any rights to enforce any term of this Agreement.
- 14.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 14.12 **Capdesk entity, Governing Law and Jurisdiction.** Unless otherwise specified in the relevant Order, the Capdesk entity entering into this Agreement, the law that will apply in any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement, and the courts that have exclusive jurisdiction over any such dispute or claim, shall be determined in accordance with the table below.

<b><u>If Customer is domiciled (incorporated) in:</u></b>	<b><u>Capdesk entity</u></b>	<b><u>The governing Law is:</u></b>	<b><u>Courts with exclusive jurisdiction:</u></b>
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United Kingdom	Capdesk ApS operating via its UK Establishment, with UK Establishment number: BR021076 and with its registered office at 25 City Rd, Shoreditch, London EC1Y 1AA	The laws of England	The courts of England
Any other country or region	Capdesk ApS, a company registered in Denmark with registration number: 36893621 and its registered address at Nannasgade 28, DK-2200 Copenhagen N. Denmark (" <b>Capdesk ApS</b> ")	The laws of England	The courts of England