

Last Updated 6th June 2019

Operata Pty Ltd (“Operata”, “we”, “us”, or “our”) provides a Software as a Service (SaaS) that enables customers to continuously collect quality data from calls, then uses machine learning to diagnose issues and assist agents to improve the contact centre environment. (the “**Service**”).

A “**Customer**” is an entity with whom Operata has an agreement to provide the Service.

This Operata Terms of Service (the “Agreement”) is an agreement between the Customer and Operata, together the “Parties” and each, a “Party”, and is entered the date the Customer signs up for an Operata account (the “Effective Date”).

Once registered for an Operata account, you acknowledge your understanding of these terms and enter the Agreement on behalf of Customer.

Please make sure you have the necessary authority to enter into the Agreement on behalf of Customer before proceeding.

By using any element of the Operata Platform (including the website), Customer acknowledges that Customer has read, accepts and agrees to be bound by and comply with the terms and conditions set out in this agreement, as amended from time to time in accordance with [section 16\(j\)](#).

If Customer does not accept and agree to be bound by this agreement, Customer will immediately cease any further use of the Operata Platform, including the use of any part thereof. Customer represents and warrants to Operata that Customer has the capacity to enter into this legally binding agreement. If Customer is using the Operata Platform on behalf of another person,

Customer hereby represents and warrants to Operata that customer has the authority to bind such person to this agreement.

1. Definitions

- a. "Administrator Accounts" as defined in section 9.
- b. "Administrative User" means an individual who is an employee or contractor of Customer and that Customer wishes to have access to and use of the Operata Platform.
- c. "Business" means either the Customer or Customer’s Client, as the case may be.
- d. "Integrated Product" means any of the following: (i) Customer Application, (ii) Custom-Integrated Business Applications, and (iii) Pre-Integrated Third Party Business Applications.

- e. "Customer Account" as defined in section 8.
- f. "Customer Application" means any software application or web site developed by Customer using or integrating with the Operata APIs under the license terms of this Agreement.
- g. "Customer's Client" means any clients of the Customer.
- h. "Customer Data" means any data, information, content, records, and files that Customer (or any of its Administrative Users or Customers Clients) loads, receives through, transmits to or enters into the Operata Platform, and any data, information, content, records and files that the Operata Platform obtains from Customer's servers or systems or from third parties on Customer's behalf, including any and all intellectual property rights in any of the foregoing.
- i. "Custom-Integrated Business Applications" means any business software applications used by Customer to interoperate with the Operata Platform through the Operata API, where such software has been integrated with the Operata API by Customer, but which software, for greater certainty, excludes Pre-Integrated Third Party Business Applications and Customer Application(s).
- j. "Messaging Channels" means either (i) web, iOS, Android or other messaging channel enabled by a Operata API, (ii) SMS or email that is integrated with the Operata Platform, or (iii) a Third Party Messaging Platform that is integrated with the Operata Platform.
- k. "Modifications" means modifications, improvements, customizations, updates, enhancements, aggregations, compilations, derivative works, translations, adaptations, and results from processing (including analyses, reports, databases, datasets, recommendations, and visual representations) in any form or medium, and "Modify" has a corresponding meaning.
- l. "Personal Data" means any information relating to an identified or identifiable natural person any information relating to an identified or identifiable natural person ("Data Subject")
- m. "Services" means the Operata Platforms that enable customers to continuously collect quality data from calls, then uses machine learning to diagnose issues and assist agents to improve the contact centre environment, as more particularly described on the Operata Website.
- n. "Operata API" means the application programming interface, sample source code, tools, webhooks, instructions, documentation, other materials, and any Modifications thereto, made available by Operata to Customer to assist Customer in developing its Customer Application that interoperates with the Operata Platform.
- o. "Operata Message" means any communication sent or received between a Participant and an Integrated Product using any component of the Operata Platform.

- p. “Operata Platform” means the software, hardware, and systems used by Operata to host and make the Services available for Customer’s use, including the Website, and any Modifications thereto.
- q. "Operata Property" is as defined in section 5.
- r. “Operata Service” means: (i) the Operata Platform; (ii) the Operata API;(iii) any Modifications to the preceding.
- s. “Operata Website” means any websites used by Operata to provide, or provide information on, the Operata Service, including the website located at www.Operata.com

2. Operata Platform

Provisioning of the Operata Platform. Subject to Customer's compliance with the terms and conditions of this Agreement, Operata will make the Operata Platform available to Customer on the terms and conditions set out in this Agreement, provided that:

(i) Customer has read and accepted and is in compliance with its obligations under the applicable terms.

(ii) has taken all steps as necessary to enable interoperability between the Operata Platform and all applicable Third Party Platforms, Third Party Business Applications, and Custom-Integrated Business Applications, including acquiring the necessary approvals and API keys, whether directly or via Customer's Clients, to access these messaging channels as a business.

3. License to Operata API

Subject to Customer's compliance with the terms and conditions of this Agreement, Operata grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable right and license during the Term to use the Operata API solely

(i) to enable the Customer Application to interoperate with the Operata Platform or

(ii) for developing or enabling Custom-Integrated Business Applications that will only be used by Customer to interoperate with the Operata Platform in accordance with the terms of this Agreement and any other policies and guidelines published by Operata from time to time.

4. Trademark License

During the Term, Customer hereby grants to Operata a worldwide, non-exclusive, non-transferable and non-sub-licensable (other than affiliates) royalty-free licence to use Customer's trademarks and logos made available to Operata by Customer as part of this Agreement, solely in connection with the marketing, advertising, and promotion of the Operata Platform, including listing the Customer and the Customer Application on the Operata Website; and only in accordance with Customer's reasonable trademark usage guidelines, as updated by Customer from time to time. Customer may require Operata to cease using Customer's trademarks and logos if, in the reasonable opinion of Customer, the continued display of Customer's trademarks and logos would cause a materially adverse effect on Customer's image and the goodwill associated therewith.

5. Reservation of Rights

Operata expressly reserves all rights, title, and interest in, and Customer will not acquire any right, title or interest in:

(i) the Operata Platform (or any part thereof) and any other materials or content provided by Operata under this Agreement, including any and all Modifications to any of the foregoing; and

(ii) all intellectual property rights in any of the foregoing (clauses (i) and (ii) are collectively, the “Operata Property”), in each case, subject to the license rights expressly granted under Section 2. All right, title and interest in the Operata Property will remain with Operata (or Operata’s third party suppliers, as applicable). For greater certainty, the Operata Property is licensed and not “sold” to Customer.

Customer shall retain all rights and interest to any modifications, extensions, or derivative works of the Operata Platform that Customer develops or has developed on its behalf (such modifications, extensions or derivative works, the “Customer Derivative Works”). The foregoing does not prevent Operata from exploiting any Customer Derivative Works, including any independently developed future developments, modifications, adaptations, changes, derivative works or new works, even if the foregoing is similar or functionally identical to the Customer Derivative Works. Accordingly, Customer will not assert, whether directly or indirectly, any of its intellectual property rights in or to the Customer Derivative Works against Operata or any customers or clients of Operata.

6. Operata’s Right to Use Customer Data

Customer acknowledges and agrees that Operata may store, use, reproduce, Modify, and transfer to its subcontractors, Customer Data, including Personal Data, solely in connection with delivering the Services under this Agreement. Customer further acknowledges and agrees that Operata may store, use, reproduce, Modify, and transfer data that is not related to an identified or identifiable natural person, including aggregated or de-identified data, without limitation, for its internal business purposes, including but not limited to such purposes as analytics, quality assurance, product and service improvement, and new product and service development. Customer agrees to cause any Administrative User or Customers Client to agree to the same terms as this Section 6

7. Privacy

Customer understands that Personal Data, including of Administrative Users or Customer’s Client, will be treated in accordance with Operata’s privacy policy (the “Privacy Policy”). Furthermore, Operata agrees to observe the privacy and data protection requirements outlined in Operata’s Service Data Privacy Statement (the “Service Data Privacy Statement”) when processing data on behalf of Customer during provision of the Service. The Privacy Policy, including the Service Data Privacy Statement, is hereby incorporated by reference and forms part of this Agreement.

8. Customer Accounts; Use Restrictions

1. **Customer Accounts.** Upon Customer's request, Operata will issue one or more administrator accounts (the "Administrator Accounts") to Customer that provides Customers with the capability to create accounts for use by individuals who are an employee or contractor of Customer and that Customer wishes to have access to and use of the Operata Platform (each, an "Administrative User"). Customer will ensure that Administrative Users only use the Operata Platform through their Customer Account. Customer will not share the Administrator Accounts with any other person and will not allow Administrative Users to share their Customer Account with any other person. Customer will promptly notify Operata of any actual or suspected unauthorized use of the Operata Platform. Operata reserves the right to suspend, deactivate, or replace any Customer Account or Administrator Accounts if it determines that the Customer Account or Administrator Account, as applicable, may have been used for an unauthorized purpose.
2. **Use Restrictions.** Customer acknowledges and agrees that it is responsible for the activities and communications of all Administrative Users on the Operata Platform, and the compliance by all Administrative Users or Customers Clients with this Agreement and any guidelines and policies published by Operata from time to time. Without limiting the generality of any of the foregoing, Customer will not, and will not permit any other person (including any Administrative Users or Customers Clients to:
 - a. use the Operata Platform to send, upload, collect, transmit, store, use, disclose or process, or ask Operata to obtain from third parties or perform any of the above with respect to, any Customer Data:
 - i. that contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;
 - ii. that Customer or the applicable Administrative User or Customer's Client Participant does not have the lawful right to send, upload, collect, transmit, store, use, disclose, process, copy, transmit, distribute and display;
 - iii. that is false, intentionally misleading, or impersonates any other person;
 - iv. that is bullying, harassing, abusive, threatening, vulgar, obscene, or offensive, or that contains pornography, nudity, or graphic or gratuitous violence, or that promotes violence, racism, discrimination, bigotry, hatred, or physical harm of any kind against any group or individual;
 - v. that is harmful to minors in any way or targeted at persons under the age of 16;
 - vi. that violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity); or

- vii. that encourages any conduct that may violate any applicable laws or would give rise to civil or criminal liability;
- b. disable, overly burden, impair, or otherwise interfere with servers or networks connected to the Operata Platform (e.g., a denial of service attack);
- c. attempt to gain unauthorized access to the Operata Platform;
- d. use any data mining, robots, or similar data gathering or extraction methods, or copy, Modify, reverse engineer, reverse assemble, disassemble, or decompile the Operata Platform or any part thereof or otherwise attempt to discover any source code, except as expressly provided for in this Agreement;
- e. use the Operata Platform for the purpose of building a similar or competitive product or service; or
- f. use the Operata Platform other than as permitted by this Agreement;

9. Fair use Policy

The Operata Platform is intended enable customers to continuously collect quality data from calls, then uses machine learning to diagnose issues and assist agents to improve the contact centre environment. If such usage of the Operata Platform exceeds any reasonable expectations of use, it shall be deemed a violation of the terms of this Agreement and the Customer will immediately terminate the applicable Business rights and access to the Operata Platform or pay excess usage fees as defined by Operata.

10. Call and Email Support

Customer will generally have access to Operata's technical support from 8:00 to 17:30 AEST on weekdays (other than holidays observed by Operata) using the Operata support phone line and through [email support](#).

Details of support are described in the Operata Support Agreement.

11. Fees and Payment

- a. **Fees.** Customer will pay to Operata the applicable fees described on the Operata Website or quotation (the "Fees") during the Term in accordance with the payment terms set out herein.
 - i. Operata shall charge and invoice Customer the applicable Fees, in advance, on the Effective Date and on every monthly anniversary thereafter;

- ii. Subject to section 11(d) below, payment obligations hereunder are not subject to any set-off or withholding rights whatsoever, any and all of which are hereby expressly waived by Customer.
- b. **Disputed Invoices or Charges.** If Customer in good faith disputes any portion of a Operata invoice or charge, Customer may provide a dispute notice to Operata with written documentation identifying and substantiating the disputed amount within fifteen (15) days from receipt of the applicable invoice or charge, and if applicable, at the time it pays the undisputed portion of such invoice, withhold payment of such disputed portion. If Customer does not report or does not provide such substantiating documentation within that period, the Customer shall be deemed to have waived its right to dispute any and all portions of that invoice. For greater certainty, Customer shall pay all undisputed amounts of that invoice in accordance with section 11 (a) above.
- c. **Late Payment.** Except for bona fide disputed amounts, any failure to make a payment of any Fees or taxes in strict conformity with the requirements of this section 11 entitle Operata to suspend, in whole or in part, access to Services, until such payment is received. Additionally, Operata shall assess and Customer shall pay a charge, compounded monthly, of the lesser of
 - i. 1.5% per month (19.56% per year) or
 - ii. the highest amount allowed by law on all past due amounts (except amounts disputed pursuant to section (c) above).

Furthermore, upon any such failure all outstanding amounts shall become due and payable without further delay.

- d. **Certain Taxes.** The Fees set out in this Agreement do not include applicable taxes, duties, withholdings, tariffs, levies, customs, capital or income taxes or other governmental charges or expenses, including but not limited to value added tax, sales tax, consumption tax and similar taxes or duties as well as any current or future municipal, state, federal or provincial taxes, and Customer will pay, indemnify and hold harmless Operata from same, other than taxes based on the net income or profits of Operata.

12. Confidential Information

- a. **Definitions.** For purposes of this Agreement, a Party receiving Confidential Information (as defined below) will be the “Recipient” and the Party disclosing such information will be the “Discloser” and “Confidential Information” means any and all information of Discloser disclosed by Discloser to Recipient or otherwise coming into the possession of Recipient during the Term that is marked as “confidential” or that a reasonable person would understand to be confidential; provided that Discloser’s Confidential Information does not include, except with respect to Personal Information:
 - a. information already known or independently developed by Recipient outside the scope of this relationship by personnel not having access to any Discloser’s Confidential Information;

- b. information that is publicly available through no wrongful act of Recipient; or
 - c. information received by Recipient from a third party who was free to disclose it without confidentiality obligations. Notwithstanding the foregoing terms and conditions of this Agreement
 - d. and all Operata Property (including any part thereof), whether marked as “confidential” or not, will be Operata’s Confidential Information will not be Customer’s Confidential Information.
- b. **Confidentiality Covenant.** Recipient hereby agrees that during the Term and at all times thereafter it will not:
- a. disclose such Confidential Information of the Discloser to any person, except to its own personnel or affiliates having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writing;
 - b. use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or
 - c. alter or remove from any Confidential Information of the Discloser any proprietary legend. Recipient will be deemed to have discharged its confidentiality obligations under this Section 11 (Confidential Information) if Recipient uses the same degree of care in safeguarding the Confidential Information of Discloser as it uses in protecting its own confidential information of a similar nature from unauthorized disclosure.
- c. **Exceptions to Confidentiality.** Notwithstanding Section 12(b), Recipient may disclose Discloser’s Confidential Information:
- a. to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order;
 - b. to its employees, accountants, internal and external auditors, legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services related to Operata’s business; or
 - c. in the case of Operata, to potential assignees, acquirers or successors of Operata if and to the extent such persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving the business or assets of Operata.

13. Warranty; Disclaimer; Indemnity

- a. **Customer Warranty.** Customer represents and warrants to, and covenants with, Operata that the Customer Data will only contain Personal Data in respect of which Customer has provided all notices and disclosures (including to each Data Subject), obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable Operata to provide the Services, including with respect to the collection, storage, access, use, disclosure and transmission of Personal Data, including by or to Operata and to or from all applicable third parties (including third party providers of any Third Party Messaging Platforms); and
- b. **General Disclaimer.** except as specifically provided in this agreement, the Operata Platform (or any part thereof), and any other products and services provided by Operata to Customer are provided “as is”, “as available”. furthermore, any part of the Operata Platform delivered through the early access program, or under a free labs subscription are excluded from any warranties provided within this agreement.
To the extent permitted by applicable law, Operata hereby disclaims all express, implied, collateral or statutory warranties, representations and conditions, whether written or oral, including any implied warranties of merchantability, merchantable quality, compatibility, title, non-infringement, security, reliability, completeness, quiet enjoyment, accuracy, quality, integration or fitness for a particular purpose or use, or any warranties or conditions arising out of course of dealing or usage of trade. Operata does not warrant that the Operata Platform (or any part thereof) will operate without interruption or be error free, or that all errors can or will be corrected. without limiting the generality of any of the foregoing, Operata expressly disclaims any representation, condition or warranty that any data or information provided to customer in connection with customer’s use of the Operata Platform (or any part thereof) is accurate, or can or should be relied upon by Customer for any purpose whatsoever.
- c. **Indemnity.** Customer will defend, indemnify and hold harmless Operata, its employees, officers, directors, affiliates, agents, contractors, successors, and assigns against any and all third party (including Administrative Users and Customer’s Client) liability (including damages, recoveries, deficiencies, interest, penalties and reasonable legal fees), directly or indirectly arising from or in connection with, or relating to:
 - i. Customer Data;
 - ii. Customer’s breach of any of Customer’s obligations, representations or warranties under this Agreement;
 - iii. use of the Operata Platform (or any part thereof) by Customer, any Administrative User, any Customer’s Client or in combination with any Customer Applications or any third party software, application or service;
 - iv. misrepresentation, criminal behaviour or gross negligence on the part of Customer, any Administrative User or any Customer’s Client; or

- v. any actual or alleged infringement, violation or misappropriation of the rights of any person (including intellectual property or privacy rights) as a result of Customer's, any Administrative User's or any Customer's Clients use of the Operata Platform (or any part thereof) contrary to the terms of this Agreement. Customer will fully cooperate with Operata in the defense of any claim defended by Customer pursuant to its indemnification obligations under this Agreement and will not settle any such claim without the prior written consent of Operata.

14. Limitation of Liabilities

The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

- a. **amount.** in no event will the total aggregate liability of Operata in connection with or under this agreement exceed the amount of fees paid by customer in the prior 12 month period immediately preceding the event giving rise to the claim or AU\$500, whichever is the lesser. for greater certainty, the existence of one or more claims under this agreement will not increase this maximum liability amount. in no event will Operata's third party suppliers have any liability arising out of or in any way connected to this agreement.
- b. **type.** to the maximum extent permitted under applicable law, in no event will Operata be liable to Customer or any user for any:
 - i. special, exemplary, punitive, indirect, incidental or consequential damages,
 - ii. lost savings, profit, data, use, or goodwill;
 - iii. business interruption;
 - iv. any costs for the procurement of substitute products or services;
 - v. personal injury or death; or
 - vi. personal or property damage arising out of or in any way connected to this agreement, regardless of the cause of action or the theory of liability, whether in contract, tort (including negligence, gross negligence, fundamental breach, breach of a fundamental term) or otherwise and even if notified in advance of the possibility of such damages.

15. Term and Termination

- a. **Term.** This Agreement will commence on the Effective Date and continue to be in effect until your subscription has been terminated in accordance with the terms Customer agreed to on the Operata website at time of signup (the "Term"). For greater certainty, if Customer has subscribed to an ongoing subscription, then such subscription will automatically renew at its expiry for the same period of time, at the then-current subscription rate described on the Operata Website or quotation.

- b. **Termination For Convenience.** Either Party may elect to terminate this Agreement and your subscription to the Operata Platform as of the end of your then current Term by providing notice, on or prior to the date thirty (30) days preceding the end of such Term. For clarity, per section 15(a), unless this Agreement and your subscription is so terminated, your subscription will renew for a Term equivalent in length to the then expiring Term.
- c. **Refunds and Termination Charges.** You will not be entitled to any refunds or credit of any Fees, pro rata or otherwise, if you elect to terminate this Agreement prior to the end of your Term. If you terminate this Agreement prior to the end of your Term, or Operata effects such termination pursuant to Section 15(d), in addition to other amounts you may owe Operata, you must immediately pay any then unpaid Fees associated with the remainder of your Term. This amount will not be payable by you in the event you terminate as a result of a material breach of this Agreement by Operata, provided that you provide advance notice of such breach to Operata and afford Operata not less than thirty (30) days to reasonably cure such breach as provided for in section 15(d). Upon termination by either party, your account will be revoked.
- d. **Termination for Cause.** A Party may terminate this Agreement for cause (a) upon thirty (30) days' written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or (b) if 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. If this Agreement is terminated by you in accordance with this section, Operata will, to the extent permitted by applicable law, refund you any prepaid fees covering the remainder of the Term after the effective date of termination. If this Agreement is terminated by Operata in accordance with this section, you will pay any unpaid fees covering the remainder of the Term. In no event will termination relieve you of your obligation to pay any fees payable to Operata for the period prior to the effective date of termination.
- e. **Survival.** The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: Section 5 (Reservation of Rights), Section 6 (Operata's Right to Use Customer Data), Section 10 (Fees), Section 11 (Confidential Information), Section 13 (Warranty; Disclaimer; Indemnity), Section 14 (Limitation of Liabilities), Section 15(e) (Survival), and Section 16 (General Provisions).

16. General Provisions

- a. **Notices.** Notices sent to either Party will be effective when delivered in person or by email, one day after being sent by overnight courier, or two days after being sent by first class mail postage prepaid to the official contact designated by the Parties and immediately after being received by the other Party's server. Notices must be in writing and sent:
 - a. if to Operata, to the address set out in the introductory paragraph of this Agreement; and

- b. iif to Customer, to the current postal or email address that Operata has on file with respect to Customer. Operata may change its contact information by posting the new contact information on
 - c. the Operata Website or by giving notice thereof to Customer. Customer is solely responsible for keeping its contact information on file with Operata through the Operata Platform current at all times during the Term.
- b. **Assignment.** Customer will not assign this Agreement to any third party without Operata’s prior written consent, which consent will not be unreasonably withheld. Operata may assign this Agreement or any rights under this Agreement to any third party without Customer’s consent in connection with any merger or change of control of Operata or the sale of all or substantially all of Operata’s assets provided that any such successor agrees to fulfill its obligations pursuant to this Agreement. Any assignment in violation of this Section will be void. The terms of this Agreement will be binding upon permitted assignees. This Agreement will inure to the benefit of and be binding upon the Parties, their permitted successors and permitted assignees.
- c. **Choice of Law.** This Agreement and any action related thereto will be governed by and construed in accordance with the substantive laws of the Victoria and the federal laws of Australia applicable therein, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Victoria, Australia and irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- d. **Construction.** Except as otherwise provided in this Agreement, the Parties rights and remedies under this Agreement are cumulative. The term “include” and “including” mean, respectively, “include without limitation” and “including without limitation.” The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms “consent” or “discretion”, when used in respect of Operata in this Agreement means the right of Operata to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to Customer.
- e. **Force Majeure.** Neither Party will be liable for delays caused by any event or circumstances beyond Operata’s reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving Operata employees), Internet service provider failures or delays, or the unavailability or Modification by third parties of third party websites.
- f. **Severable.** Any provision of this Agreement found by a tribunal or a court of competent jurisdiction to be illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.

- g. **Waiver.** A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
- h. **Independent Contractors.** Customer's relationship to Operata is that of an independent contractor, and neither Party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Operata.
- i. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all other communications, whether written or oral.
- j. **Amendments.** Subject to the following sentence, no amendment, supplement, modification, waiver, or termination of this Agreement and, unless otherwise expressly specified in this Agreement, no consent or approval by any Party, will be binding unless executed in writing by the Party or Parties to be bound thereby. Notwithstanding the preceding sentence, Operata may unilaterally amend this agreement, in whole or in part (each, an "amendment"), by:
 - a. giving customer prior notice of such amendment; or
 - b. posting notice of such amendment on the website.

unless otherwise indicated by Operata, any such amendment will become effective as of the date the notice of such amendment is provided to customer or is posted on the website (whichever is the earlier). if customer has prepaid any fees to Operata and provides notice to Operata within 30 days of the effective date of an amendment that customer wishes to exercise its termination for convenience right pursuant to section 15(b) of this agreement, then Operata will refund customer an amount on a pro-rated basis calculated based on the effective date of termination until the end of the prepaid subscription period.

- k. **English Language.** It is the express wish of the Parties that this Agreement and all related documents be drawn up in English.