

## OVERNET DATA TERMS AND CONDITIONS

These terms and conditions ("**Terms**") shall apply to the provision of any Overnet Data service (the "Service"), which is provided by Overnet Data ("**Overnet Data**") to you ("**The Customer**") or any named third party ("**authorised third party**") to whom Overnet Data agrees to provide the service on your behalf (acting on a sub-contractor basis). It is the Customer's responsibility to bring these Terms to the attention of any authorised third party. Any references in these Terms to "The Customer" or "you" shall be construed as to mean "The Customer and/or any authorised third party (as applicable)", unless inconsistent with the context. In these Terms, each of the Customer and Overnet Data shall be a "**Party**" and together they shall be "**the Parties**".

These Terms include any variation and/or updates to these Terms by Overnet Data and any additional guidelines or rules posted on Overnet Data's website ("**the Website**") from time to time, if any ("**Updated Terms**"). You can review the most current version of the Updated Terms at any time at <http://www.overnetdata.com/legal/>.

This is a legally binding agreement, and you should read the Terms carefully. If you find yourself unable to agree to them, then you must not use the Service.

### 1. BASIS OF AGREEMENT

- 1.1 The contract between the Customer and Overnet Data for the supply of the Service ("**the Contract**") shall be in accordance with these Terms.
- 1.2 These Terms shall be read in conjunction with the following (which shall be incorporated into the Contract):
  - 1.2.1 the separate Data Processing Agreement entered into between the Parties, which shall govern the processing of any personal data by Overnet Data on behalf of the Customer (or any authorised third party, as applicable) in connection with the Service; and
  - 1.2.2 the End User Licence Agreement ("**EULA**") which applies to the Service.
- 1.3 The Customer's order constitutes an offer by the Customer to purchase the Service (or, in the case of a "**Free Trial**" (as defined below), to accept the Service on a Free Trial basis) in accordance with these Terms.
- 1.4 The Customer's order shall only be deemed to be accepted on the earlier of: (i) Overnet Data issuing its confirmation of The Customer's order; or (ii) Overnet Data providing you with access to the Service, at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 1.5 The Contract shall continue from the Commencement Date until the end of such period as is agreed between the parties in advance ("**Fixed Term**"), unless terminated earlier in accordance with these Terms.
- 1.6 Overnet Data agrees to provide the Service in accordance with these Terms and the Specification in all material respects. **Specification** means the agreed Service as provided by Overnet Data to The Customer, or as set out on the Website or Overnet Data's brochure, which may be updated by Overnet Data from time to time if necessary to comply with any applicable laws or regulatory requirements, or where the change does not materially affect the nature or quality of the Service, Overnet Data shall notify The Customer in any such event.
- 1.7 Overnet Data shall use all reasonable endeavours to meet any performance dates specified in the Specification or otherwise agreed by the Parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Service.

### 2. INTELLECTUAL PROPERTY

- 2.1 Overnet Data grants to the Customer a non-exclusive, royalty-free licence to receive and use the Service in its business during the term of the Contract on the terms set out in the EULA. The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause.
- 2.2 The Service makes use of Overnet Data and third party software. Nothing in these Terms should be taken as conferring any licence or right to use any software without the prior written approval of the owner or its licensors except as required for the provision of the Service. Ownership of Overnet Data

and third party software shall remain with Overnet Data and/or the relevant third party owner at all times.

- 2.3 The Service makes use of open source software. Source code will be made available for such software on request, in accordance with the terms of such software.

### 3. CONTENT

- 3.1 The copyright and database right (and all other intellectual property rights) in the Service (or any other material created or prepared by Overnet Data, whether or not provided to The Customer, in performing the Service) shall belong to Overnet Data.
- 3.2 The Customer retains copyright and any other rights they already hold over all information, data, text, software, music, sound, photographs, graphics, video, messages, or any other materials whatsoever (collectively, "**Content**") that is uploaded, posted, emailed or otherwise held or transmitted by the Service or which the Customer generates using the Service. The Customer grants Overnet Data a non-exclusive, royalty-free, non-transferable licence to copy and modify any Content for the term of the Contract for the purpose of providing the Service to the Customer. The Customer shall be responsible for keeping a back-up copy of all Content and Overnet Data shall have no liability for the loss or corruption of any Content.
- 3.3 All Content stored on the Service is the responsibility of The Customer. This means that The Customer, and not Overnet Data, is entirely responsible for all Content that is uploaded, posted, emailed or otherwise held or transmitted by the Service or which the Customer generates using the Service. The Customer warrants and confirms that it has the right to use such Content for such purposes and such use of the Content shall not infringe any intellectual property rights or any other rights of any third party or be illegal or objectionable in any other respect.
- 3.4 The Customer shall indemnify Overnet Data against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interests, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Overnet Data arising out of or in connection with any claim made against Overnet Data for actual or alleged infringement of a third party's intellectual property rights or any other claim arising out of any Content supplied to Overnet Data or generated by The Customer within or outside the scope of these Terms.

### 4. RESPONSIBILITIES

- 4.1 The Customer will co-operate with Overnet Data during the preparation and performance of the Service and make available such Facilities as Overnet Data reasonably requires. The Customer will not charge Overnet Data for use of the Facilities.
- 4.2 "**Facilities**" means, computer equipment, access to the internet and The Customer computer network, telecommunications system etc, and shall include not only access to such resources but also use of them to the extent required by Overnet Data in order to perform the Service.
- 4.3 The Customer will provide Overnet Data with such information and materials as Overnet Data may reasonably require in order to supply the Service, and ensure that such information is complete and accurate in all material respects.
- 4.4 Overnet Data warrants that it will use reasonable care and skill in performing the Service but gives no warranties as to the suitability of The Customer's hardware or network which may compromise the performance of the Service.
- 4.5 The Customer is responsible for having sufficient, competent technical support personnel available who will co-operate and assist Overnet Data as reasonably required by Overnet Data.
- 4.6 The Customer shall keep materials, equipment, documents and other property of Overnet Data ("**Overnet Data Materials**") at its premises in safe custody at its own risk, maintain the Overnet Data Materials in good condition until returned to Overnet Data, and not dispose of or use the Overnet Data Materials other than in accordance with Overnet Data's written instructions or authorisation.
- 4.7 Overnet Data shall not be required to provide any support services which include the diagnosis and rectification of any fault resulting from The Customer's: (i) mis-use of the Service; (ii) failure to comply with any provision of these Terms; or (iii) failure to report the incident to Overnet Data promptly.
- 4.8 Overnet Data shall not be responsible to the extent that its performance of any of its obligations under these Terms is prevented or delayed by any act or omission by the Customer or failure by the

Customer to perform any relevant obligation under these Terms (Customer Default). In such circumstances, Overnet Data shall have the right, without limiting or affecting any other right or remedy available to it, to suspend performance of the Service until the Customer remedies the Customer Default.

## 5. FEES AND PAYMENT OF FEES

- 5.1 In consideration of Overnet Data providing the Service the Customer shall pay Overnet Data's fees ("**Fees**") in accordance with these Updated Terms.
- 5.2 These Updated Terms shall apply to the new Customers who accept these terms and conditions after 01 October 2022 and shall apply to the existing Customers who already accepted these terms and conditions after 01 January 2023.
- 5.3 The Fees at the Commencement Date are set out in the Specification.
- 5.4 The Fees are calculated based on the number of students who are registered as a student (being "**Enrolled**") with the Customer.
- 5.5 Overnet Data may adjust the Fees on an increasing basis only in the event of a Usage Increase (as defined below) at any time following the Commencement Date ("**Review Date**").
- 5.6 A "**Usage Increase**" means any increase of at least 5% in the number of students at a Review Date over the number of students at the Commencement Date.
- 5.7 The updated Fees shall be deemed to apply with effect from the Review Date on which the adjustment is made.
- 5.8 Except in the case of a Free Trial, the Fees for the Service shall be payable in advance on a non-refundable basis for the period of the Fixed Term following the Free Trial period.
- 5.9 Free Trial means optional first 30 days following the first use of Service by the Customer (which may be extended with Overnet Data's written agreement).
- 5.10 The Customer shall pay each invoice submitted by Overnet Data within 30 days of the date of invoice and in full and in cleared funds to a bank account nominated in writing by Overnet Data. The invoice number and relevant reference numbers shall be quoted by The Customer at the time of making payment. Time for payment shall be of the essence of these Terms.
- 5.11 If the Customer fails to make a payment due to Overnet Data under these Terms by the due date, then, without limiting Overnet Data's other remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.12 All amounts payable are exclusive of VAT, which will be charged in addition at the rate in force at the time The Customer is required to make payment.

## 6. CONFIDENTIALITY

- 6.1 Each Party undertakes that it will not at any time disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by the following paragraph.
- 6.2 Each Party may disclose the other's confidential information:
  - 6.2.1 to its respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out its respective obligations under these Terms. Each Party will ensure that such employees, officers, representatives, subcontractors or advisers comply with this paragraph; and
  - 6.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 6.3 Each Party may only use the other's confidential information for the purpose of fulfilling its respective obligations under these Terms.

## **7. DATA PROTECTION**

- 7.1 The Parties shall enter into the separate 'Data Processing Agreement', which sets out the terms on which Overnet Data processes any personal data on behalf of the Customer (or any authorised third party, as applicable) in connection with the Service.
- 7.2 When The Customer places an order, which is accepted by Overnet Data to use the Service, The Customer consents to such processing and warrants that it has all appropriate consents and notices in place to enable lawful transfer of such personal data for the duration and purposes of the Contract.

## **8. LIMITATION OF LIABILITY**

- 8.1 Neither Party excludes or limits in any way its liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited by law.
- 8.2 Subject to the clause above, Overnet Data shall not be liable to the other Party in contract (including under any indemnity), tort, negligence, breach of statutory duty or otherwise for any: (i) loss of profits or turnover; (ii) loss of business; (iii) loss of goodwill; (iv) loss or corruption of software, data or information; or (v) any indirect or consequential of any nature.
- 8.3 Subject to the clauses above and clause 3.1 of the Data Processing Agreement, Overnet Data's total liability under or in connection with the Contract, whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the Fees paid or payable by The Customer for the Service under these Terms in the 12 month period immediately preceding the event or series of events giving rise to the relevant claim (or, in respect of a Free Trial, an amount which is equivalent to the current Fees payable for the period of the Free Trial).

## **9. TERMINATION**

- 9.1 The Contract shall terminate automatically without notice at the end of the Fixed Term, unless the Customer notifies Overnet Data that it wishes to extend the Contract prior to the expiry of the Fixed Term.
- 9.2 For the avoidance of any doubt, the Customer shall not be entitled to any refund of the Fees in the event that the Customer gives notice to terminate the Contract without cause prior to the end of the Fixed Term.
- 9.3 Overnet Data reserves the right to suspend or terminate these Terms in the event of non-payment of invoices.
- 9.4 Without limiting any of the rights a Party may have, either Party may terminate these Terms, at any time, on written notice to the other Party ('Other Party'). The notice will take effect as specified in the notice:
  - 9.4.1 if the Other Party commits a material breach of any of these Terms (other than non-payment of invoices) and (if such a breach is remediable) fail to remedy that breach within 30 days of being notified in writing to do so; or
  - 9.4.2 if the Other Party takes any step or action in connection with 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 its business.
- 9.5 On termination of these Terms, The Customer shall pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by Overnet Data or the performance of the Service prior to the date of termination.

## **10. GENERAL**

- 10.1 Neither Party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2 These Terms (together with the Data Processing Agreement and the EULA) constitute the entire agreement between The Customer and Overnet Data and govern The Customer's use of the Service.

- 10.3 Each of the Parties acknowledges that, in entering into these Terms, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms, and any conditions, warranties or other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law. Nothing in these Terms excludes liability for fraud.
- 10.4 Except as set out in these Terms, no variation of the Contract shall be effective unless set out in writing and signed by duly authorised representatives of the Parties.
- 10.5 Except as set out in these Terms, the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Overnet Data. No failure or delay by Overnet Data in exercising any right, power or privilege under these Terms shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms are cumulative and not exclusive of any rights and remedies provided by law.
- 10.6 These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.7 The Customer and Overnet Data agree that these Terms will be governed by English law and irrevocably submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under these Terms.
- 10.8 If any provision is determined to be illegal or unenforceable, such provision shall be deemed to have been deleted without affecting the remaining provisions.
- 10.9 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 10.10 Any notice or communication shall be deemed to have been received:
- 10.10.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
  - 10.10.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 10.11 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 10.12 A notice given under the Contract shall not be valid if sent by fax or email.

## **11. CONTACT**

If you have any questions, contact us at [legal@overnetdata.com](mailto:legal@overnetdata.com).