

Scope of this document

THIS MASTER SERVICES AGREEMENT v1.1 is made and entered into as of the Effective Date by and between DSMN8 LTD a company registered in England and Wales with company number 10023376 whose registered office is at 29-31 Shoebury Road, Southend on Sea, Essex SS1 3RP and the Customer identified in the SoW.

Capitalized words have the meanings stated in clause 1 (**Definitions**).

In consideration of the mutual covenants and conditions contained in this Agreement and intending to be legally bound as indicated by Customer's submission and DSMN8's acceptance of an SoW, the parties mutually agree as follows.

1. Definitions

1.1 In this Agreement the following expressions shall have the following meanings:

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Agreement: this Master Services Agreement including the SoW, the SLA, DPA and any other document incorporated into this agreement;

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in clause 3.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 7.

Customer: the entity in the SoW to which DSMN8 is providing the Services.

Customer Data: the data or content inputted by the Customer, Authorised Users, or DSMN8 on the Customer's behalf for the purpose of using the Services or facilitating the Customer's and/or Authorised Users' use of the Services.

DPA: the Data Processing Agreement available for review at [this page](#).

GDPR: the General Data Protection Regulations (EU2016/279) and the UK equivalent.

Effective Date: means the date of this Agreement (and if no date is entered on the front page of this document, the date of this Agreement shall be the date on which this Agreement is signed by DSMN8 or the first date on which the Services are provided, whichever is the earlier);

Initial Subscription Term: the initial term of this agreement as set out in the SoW.

Intellectual Property Rights: any current and future intellectual property rights including but not limited to patent rights, rights in inventions, copyrights, rights in computer software, database rights, trade secret rights, rights in know how, confidential information, mask work rights, trademark rights, rights in goodwill and passing off (in each case whether registered or unregistered and including all rights to apply for any of the foregoing) and all other intellectual property or similar or equivalent rights throughout the world;

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Personal Data: any and all data collected, held, processed or used by DSMN8 or any of its employees, agents or contractors in connection with, or pursuant to, this Agreement as is defined in Article 4 UK GDPR;

Renewal Period: the period described in clause 6.3



Services: the services listed in the Statement of Work to be provided by DSMN8 under this Agreement;

SLA: the service level agreement incorporating the service level matrix as set out in Schedule 1;

Service Credit: the sums that should the service levels in the SLA not be met maybe refunded to the Customer pursuant to the SLA.

Social Network Providers: the providers of third party social media networks with which the Services interact, which may include without limitation, LinkedIn, Twitter, Facebook, as set out in the Specification, and/or such other networks as DSMN8 adds from time to time;

Software IP: any Intellectual Property that pertains to the Services whether this is branding, look and feel, source code or know how regarding the Services.

Specification: the specifications of the Services is outlined in the Statement of Work

Statement of Work or SoW: means a Statement of Work signed by Customer and DSMN8 which with this Agreement forms a contract for the provision of Services.

Subscription Fees: the subscription fees payable by the Customer to DSMN8 for the User Subscriptions, as set out in the SoW.

Subscription Term: has the meaning given in clause 6.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions purchased by the Customer pursuant to clause 5.1 which entitle Authorised Users to access and use the Services in accordance with this Agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 In this Agreement (unless otherwise stated) references to:
 - 1.2.1 this Agreement shall be construed as a reference to this agreement as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
 - 1.2.2 a "party" means a party to this Agreement and shall include its personal representatives, assignees and successors in title if and as permitted in accordance with this Agreement;
 - 1.2.3 "writing" or "written" includes any method of reproducing words in a legible and permanent form.
- 1.3 The headings in this Agreement are for guidance only and shall not affect its interpretation.
- 1.4 Any phrase in this Agreement introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.5 All sums in this Agreement are stated exclusive of VAT (unless otherwise specifically stated), which, where applicable, shall be applied in addition to the principal amount at the prevailing rate from time to time.

2. Services

- 2.1 This Master Services Agreement governs the legal relationship of the parties in relation to the Services provided by DSMN8 to the Customer and where appropriate its Affiliates. The Customer and its Affiliates shall be entitled from time to time to request in writing the provision of any or all of the Services from DSMN8. Where DSMN8 agrees to provide such Services the parties shall agree the same in a Statement of Work which, once executed, forms a separate contract between its signatories.



- 2.2 DSMN8 shall, during the Subscription Term, provide the Services to the Customer in accordance with the Service Level Agreement.
- 2.3 DSMN8 must, during the Subscription Term, have a valid ISO-27001 standard certificate.
- 2.4 Encrypted SSL/TLS communication must be used between the service provider's resources and the users' workstations.
- 2.5 The physical location of data storage, during the Subscription Term, must be in the European Union or the United Kingdom.
- 2.6 Integration with MS ENTRA ID (SSO) used by the client must be implemented for user access management.
- 2.7 If there is any conflict between the terms of the main body of this Agreement and those contained in any Statement of Work, SLA or DPA or document referred to, the terms of the main body of this Agreement shall prevail to the extent of that conflict. The DPA shall override the SLA.

3. **Authorised Users**

- 3.1 DSMN8 hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
 - 3.2.1 it shall pay for the number of Authorised Users that it authorises to access and use the Services from time to time;
 - 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
 - 3.2.3 each Authorised User shall keep a secure password for his use of the Services, the Customer will ensure that the passwords shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential;
 - 3.2.4 DSMN8 may audit the Services from time-to-time in order to establish the name and password of each Authorised User. If such audits reveal that the Customer has underpaid Subscription Fees to DSMN8, then without prejudice to DSMN8's other rights, the Customer shall pay to DSMN8 within 10 Business Days of the date of the relevant audit an amount equal to such underpayment as calculated in accordance with DSMN8's standard prices in force and the number of Authorised Users shall be adjusted accordingly.
- 3.3 The Customer shall not access, store, distribute or transmit any Viruses or any material during the course of its use of the Services that:
 - 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.3.2 facilitates illegal activity;
 - 3.3.3 depicts sexually explicit images;
 - 3.3.4 promotes unlawful violence;
 - 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 3.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;
- 3.4 DSMN8 reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.4 The Customer shall not:
 - 3.4.1 except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software IP (as applicable) in any form or media or by any means; or
 - 3.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software IP; or
 - 3.4.3 access all or any part of the Services in order to build a product or service which competes with the Services; or
 - 3.4.4 use the Services to provide services to third parties; or
 - 3.4.5 subject to clause 15, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or



- 3.4.6 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this .
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify DSMN8.
- 3.6 The rights provided under this clause are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.

4. **Third Party Providers**

- 4.1 The Customer acknowledges that DSMN8 has no contractual relationship with the Social Network Providers other than through their published APIs. The Customer acknowledges that use of the Services requires Authorised Users to maintain accounts with one or more Social Network Providers.
- 4.2 The Customer acknowledges that the Services may enable or assist it and the Authorised Users to access content and accounts hosted by the Social Network Providers and the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. DSMN8 makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Social Network Provider account or third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party.
- 4.3 Any contract entered into and any transaction completed via any Social Network Provider account or third-party website is between the Customer and the relevant third party, and not DSMN8. DSMN8 recommends that the Customer refers to the website terms and conditions and privacy policy of the Social Network Provider or other third party provider prior to using their service or website. DSMN8 does not endorse or approve any Social Network Provider or third-party website nor the content of any Social Network Provider or third-party website made available via the Services.

5. **Fees & Payment**

- 5.1 The Customer shall pay the Subscription Fees to DSMN8 for the User Subscriptions in accordance with this clause 5.
- 5.2 The Customer shall on the Effective Date provide to DSMN8 valid purchase order information acceptable to DSMN8 and any other relevant valid, up-to-date and complete contact and billing details
- 5.3 If DSMN8 has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of DSMN8:
 - 5.3.1 DSMN8 may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and DSMN8 shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 5.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 2% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 5.4 All amounts and fees stated or referred to in this agreement:
 - 5.4.1 shall be payable in currency specified in the SOW;
 - 5.4.2 are non-cancellable and non-refundable;
 - 5.4.3 are exclusive of value added tax, which shall be added to DSMN8's invoice(s) at the appropriate rate.
- 5.5 The Services are provided on a fair use basis and if, at any time whilst using the Services, the Customer exceeds such usage, DSMN8 reserves the right to charge the Customer, and the Customer shall pay, DSMN8's then current fees for such excess use.
- 5.6 The Customer shall be fully responsible for and indemnify DSMN8 against any liability, assessment or claim for personal or other taxation whatsoever arising from or made in connection with use of or performance of the Services by Authorised Users.

6. **Term and Termination**

- 6.1 This Master Services Agreement shall commence on the Effective Date and shall continue for the Initial Subscription Term, unless terminated earlier in accordance with its terms.
- 6.2 DSMN8 will provide the Services from January 1, 2025, and the Service delivery period will last for 12 (twelve) months from the effective date of the Agreement. The maximum term of



the Agreement is 14 (fourteen) months, which includes the 12 (twelve) month Service delivery period and an additional 2 (two) months for the final settlement between the Parties for the properly provided Services and any applied penalties. The Agreement will not be automatically extended beyond this period.

- 6.3 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:
 - 6.3.1 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 30 days after being notified in writing to make such payment;
 - 6.3.2 the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 6.3.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 6.3.4 with immediate effect if the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any jurisdiction;
 - 6.3.5 with immediate effect if the other party ceases, or threatens to cease, to carry on all or a substantial part of its business;
 - 6.3.6 with immediate effect by giving written notice to the other party if either party infringes any Intellectual Property Right of the other party.
- 6.4 On termination (or expiry) of this Master Services Agreement, howsoever arising, each Statement of Work shall terminate.
- 6.5 On termination of this Agreement for any reason:
 - 6.5.1 the licences to use the Services granted under this Agreement shall immediately terminate;
 - 6.5.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
 - 6.5.3 DSMN8 may destroy or otherwise dispose of any of the Customer Data in its possession unless DSMN8 receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. DSMN8 shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by DSMN8 in returning or disposing of Customer Data; and
 - 6.5.4 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 the agreement which existed at or before the date of termination shall not be affected or prejudiced.

7. Confidential Information

- 7.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
 - 7.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 7.1.2 was in the other party's lawful possession before the disclosure;
 - 7.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 7.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 7.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 7.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.



- 7.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 7.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 7.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute DSMN8's Confidential Information.
- 7.6 DSMN8 acknowledges that the Customer Data is the Confidential Information of the Customer.
- 7.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 7.8 The above provisions of this clause 7 shall survive termination of this agreement, however arising.
- 8. Proprietary Rights**
- 8.1 The Customer acknowledges and agrees that DSMN8 and/or its licensors own all Intellectual Property Rights in the Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 8.2 DSMN8 confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 8.3 The Customer and the Authorised Users shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 9. Data Protection**
- 9.1 DSMN8 shall, in providing the Services, comply with its privacy policy relating to the privacy and security of the Personal Data pertaining to the Authorised Users available at www.dsmn8.com/privacy or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by DSMN8 in its sole discretion.
- 9.2 The Customer has had sight of the internal policies and procedures that DSM8 has adopted which will *inter alia* include Customer Data.
- 9.3 If DSMN8 processes any Personal Data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and DSMN8 shall be a data processor and in any such case the DPA shall govern the processing of the Personal Data: Any breach of the DPA and the applicable remedies are as set out in this Agreement and not the DPA.
- 9.4 The requirements of the GDPR apply to the contract and its execution.
- 10. Warranties**
- 10.1 DSMN8 undertakes that the Services will be performed substantially in accordance with specification shared by DSMN8 with the Customer in writing prior to the Effective Date and with reasonable skill and care and will comply with all applicable statutory, regulatory and legal requirements and will be free from material defects.
- 10.2 The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to DSMN8's instructions, or modification or alteration of the Services by any party other than DSMN8 or DSMN8's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, DSMN8 will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, 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 breach of the undertaking set out in clause 10.1. Notwithstanding the foregoing, DSMN8:



- 10.2.1 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
- 10.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.3 This agreement shall not prevent DSMN8 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.
- 10.4 DSMN8 warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

11. Indemnity

- 11.1 Provided that the loss is not caused by DSMN8's negligence the Customer shall defend, indemnify and hold harmless DSMN8 against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
 - 11.1.1 the Customer is given prompt notice of any such claim;
 - 11.1.2 DSMN8 provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 11.1.3 the Customer is given sole authority to defend or settle the claim.
- 11.2 DSMN8 shall defend the Customer, its officers, directors and employees against any claim that the Services and or Software IP infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 11.2.1 DSMN8 is given prompt notice of any such claim;
 - 11.2.2 the Customer provides reasonable co-operation to DSMN8 in the defence and settlement of such claim, at DSMN8's expense; and
 - 11.2.3 DSMN8 is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, DSMN8 may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 5 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall DSMN8, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 11.4.1 a modification of the Services by anyone other than DSMN8; or
 - 11.4.2 the Customer's use of the Services in a manner contrary to the instructions given to the Customer by DSMN8; or
 - 11.4.3 the Customer's use of the Services after notice of the alleged or actual infringement from DSMN8 or any appropriate authority.
- 11.4.4 The foregoing and clause 12.3 states the Customer's sole and exclusive rights and remedies, and obligations and liability, for infringement of any Intellectual Property Rights or right of confidentiality.

12. Limitation of Liability

- 12.1 This clause 12 sets out the entire financial liability of DSMN8 (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
 - 12.1.1 arising under or in connection with this agreement;
 - 12.1.2 in respect of any use made by the Customer of the Services or any part of them; and
 - 12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 12.2 Nothing in this Agreement shall be construed as limiting either party's liability for:
 - 12.2.1 death or personal injury caused by that party's negligence;
 - 12.2.2 fraud or fraudulent misrepresentation
- 12.3 Subject to clause 12.2:
 - 12.3.1 Neither party shall be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion



- of goodwill or similar losses, loss of anticipated savings, loss of contract, loss of use, loss or corruption of data or information, in each case whether direct or indirect or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 12.3.2 other than as a result of a breach of Clause 7 (Confidentiality), Clause 8 (Intellectual Property) or Clause 9 (Data Protection) or an Indemnity under Clause 11, each party's total aggregate liability arising out of or in connection with the performance or contemplated performance of this Agreement shall be limited in respect of all claims to an amount equal to the total sums in fact paid by Customer to DSMN8 under this Agreement during the 12 months immediately preceding the date on which the claim arose.
- 12.4 The Customer acknowledges that the use of the Services gives the Customer a platform and a medium to potentially maximise positive publicity and to raise profile. The Customer will select which Social Media Networks to use and DSMN8 cannot guarantee the Customer's use of the Services will lead to additional revenue or a more prominent profile.
- 12.5 To the extent that the Service levels are below what the SLA provides the only remedy will be the Service Credits.
13. **Force majeure**
- 13.1 DSMN8 shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of DSMN8 or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.
14. **Assignment and other dealings**
- 14.1 Neither party shall assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party (such consent shall not be unreasonably withheld or delayed).
15. **Variation**
- 15.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
16. **Waiver**
- 16.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 16.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
17. **Rights and remedies**
- 17.1 The rights and remedies of DSMN8 provided under this agreement are in addition to, and not exclusive of, any of its rights or remedies provided by law.
18. **No partnership or agency**
- 18.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
19. **Severance**
- 19.1 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.

20. Further assurance

20.1 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

21. Entire agreement

21.1 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.

21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or in a Statement of Work.

21.3 Subject to clause 12.2.2, each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

22. Third party rights

22.1 This agreement does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to this agreement.

23. Notices

23.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

24. Governing law & Jurisdiction

24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute.

25. Counterparts

26. 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.

SCHEDULE 1 Service Level Agreement

1. Interpretation

Unless otherwise stated below, terms defined in the main body of the Agreement of which this Schedule forms part, shall have the same meaning in this Schedule:

"Available" means that the DSMN8 site or server is available for use and "Unavailable" and other cognate expressions shall be construed accordingly;



"Core Hours" means the hours between 05.00 a.m. and 11.59 p.m. Greenwich Mean Time (GMT) or British Summer Time (BST) as appropriate each day;

"Emergency Downtime" means Unavailability of the DSMN8 site or server which results from DSMN8 suspending the operations to undertake emergency repairs;

"Excused Reason" shall mean any of the following: (i) an event of force majeure as described in the MSA; (ii) a failure or fault with any equipment belonging to, or used by, Customer or any Customer Retailer including the Customer servers used by any of them; (iii) any act or omission of Customer or any Customer Retailer or any default or delay by Customer or any Customer Retailer; and (iv) any period of Planned Maintenance or Emergency Maintenance.

"Non-core Hours" means from the hours between 00.00 a.m. and 04.59 a.m. GMT or BST as appropriate each day;

"Off Peak Times" means at all times other than Peak Times;

"Peak Times" means the hours between 12.00 p.m. and 3.00 p.m. and between 5.00 p.m. and 9.00 p.m. each day;

"Planned Maintenance" means Unavailability to any person due to the need to undertake routine maintenance, any housekeeping procedures or any other maintenance planned by DSMN8;

2. Specification

2.1 DSMN8 shall ensure the Availability of the site or server in accordance with the terms of this Schedule.

2.2 DSMN8 shall ensure that where an alert is raised processes are in place to escalate to DSMN8 support team to fix the problem and to notify Customer.

3. Services Availability

DSMN8 shall ensure that the site or server is Available for use at least 99% of the time (measured on a 24x7 basis) at all times calculated on a monthly basis (save that any period during which the site or server is Unavailable as a result of any Planned Maintenance, Emergency Maintenance or any other Excused Reason shall be discounted when calculating the total availability in any month).

4. Planned Maintenance

4.1 DSMN8 shall be entitled to suspend operations in order to undertake Planned Maintenance. Where DSMN8 intends to undertake Planned Maintenance, then DSMN8 shall provide Customer with as much notice as is reasonably possible and no less than forty-eight (48) hours' notice.

4.2 Implementation of any major production releases such as changes to code development, configuration changes or reset and recovery procedures shall be deemed to be Planned Maintenance.

5. Emergency downtime

5.1 It may be necessary on rare occasions for DSMN8 to suspend the operations in order to undertake emergency repairs. Where DSMN8 has to undertake such action, then DSMN8 shall give as much notice as is reasonably practicable in the circumstances.

5.2 In the event that the Emergency Downtime exceeds 12 hours in aggregate in any one calendar month, the site shall be deemed to be Unavailable for such excess period for the purpose of calculating Availability under this SLA.



6. Back-up and recovery

6.1 DSMN8 shall ensure that all production servers and data relating to the Hosting Services are correctly and successfully backed-up each day.

6.2 DSMN8 shall ensure that online and offline back-ups can be made.

6.3 DSMN8 shall ensure that all back-ups shall be recoverable for a period of 35 calendar days.

6.4 DSMN8 shall ensure that a robust and dynamic disaster recovery / business continuity plan is in place for every hardware or software system.

7. General

Nothing in this SLA shall affect the rights and remedies of either party pursuant to the Agreement.

8. Technical and End User support

8.1 Customer shall be able to contact the DSMN8 helpdesk 24 hours a day 365 days a year on telephone numbers to be advised by DSMN8.

9. Customer Service Credits

9.1 This clause 9 shall apply when the Services are Unavailable due to a cause or reason other than an Excused Reason.

9.2 Where the Services are unavailable (other than for an excused reason), DSMN8 shall address and remedy the cause of the unavailability according to the Target Resolution Periods identified in the table set out in clause 9.5 hereof. Each incident shall be graded by reference to its Severity (as defined by the Severity Definition in the table below). In addition, DSMN8 shall issue Customer with notifications and updates by email in connection with any specific incident according to the timings identified in the table, depending on the Severity Level of the incident.

9.3 If DSMN8 does not resolve an incident causing unavailability of the Services within the applicable Target Resolution Period, Customer will be entitled to a corresponding Customer Services Credit, as set out in the table at paragraph 9.5 hereof. The Customer Services Credit shall be an amount deducted from the invoice for that calendar month and the percentage credit referred to in the table below shall be a percentage of the aggregate Monthly Charges arising under the Agreement.

9.4 In any one calendar month, the maximum Customer Services Credit that can be paid, remitted or credited to Customer by DSMN8 in aggregate is a sum equal to 100% of the Monthly Charges for that calendar month, irrespective of the number of incidents of Unavailability during that period.

9.5 The table:



Severity Level	Severity Definition	Notifications to be sent by DSMN8	Updates to Be Sent By DSMN8	Target Resolution Period	Services Credit (% of Monthly Charges)
Critical	If end users are unable to access the service due to a total server failure.	Within 1 hour of the services becoming unavailable	Every hour	Within 4 hours of services becoming unavailable	100%
Major	If a customer account is partially or completely offline due to a platform failure.	Within 1 hour of the services becoming unavailable	Every 2 hours	Within 4 hours of services becoming unavailable	20%
Minor	Any other problem with the operation or format of the service (Not related to planned maintenance)	Within 2 hours of the service becoming unavailable.	Every 4 hours	Within 8 hours of services becoming unavailable	10%