

Last Updated 09 August 2023

END USER LICENSE AGREEMENT AND TERMS OF SERVICE

This End User License Agreement and Terms of Services ("**Agreement**"), effective as of 1st March 2023 (the "**Effective Date**") is made between the Customer accepting these Terms of Service ("**Customer**"), and Operata Pty Ltd, an Australian proprietary limited company, with a place of business at 3/162 Collins Street, Melbourne, Victoria, 3000, Australia ("**Operata**").

01. Background

- a. Operata provides a Software as a Service (SaaS) for Contact Center as a Service environments (CCaaS). Operata continually monitors the end-to-end environment and can provide assurance measurement, simulating customer calls to measure performance. This data is correlated into quality insights, to understand service quality norms to better understand issues, automate actions and speed problem resolution (the "Service" or "Services").
- b. Operata and the Customer (each a "party" and collectively "the parties") agree to be bound to these Terms of Service (the "Agreement") effective from the Effective Date.

02. Definitions

Capitalized terms used in the Agreement shall have the meanings ascribed to them below in Section 21, in an SOW, or in the context in which they are defined. All defined terms include both the plural and the singular.

03. Interpretation

- a. The captions in the Agreement are for reference purposes only and are to be given no effect in the construction or interpretation of the Agreement. Any reference in the Agreement to an Article, Section, Schedule, or Attachment is to that Article or Section of, or that Schedule or Attachment to, the Agreement, unless otherwise specified. Any reference to a particular Section number (e.g., "Section 4.1"), shall be deemed a reference to all Sections that bear sub-numbers to the number of the referenced Section (e.g., a reference to Section 4.1 includes reference to Sections 4.1.1, and 4.1.2, etc.). As used in the Agreement, unless the context indicates otherwise:
 - i. the words "hereof," "herein," or "hereunder," or other words of similar import, refer to the entire Agreement and not any separate portion hereof;
 - ii. pronouns of the masculine, feminine, or neuter gender shall be deemed to include the other genders; and
 - iii. the word "including" and its derivatives (such as "include" and "includes") shall be interpreted as if it were followed by the phrase "without limitation." The parties agree that any inconsistency or ambiguity in the Agreement shall not be construed against the drafter. Unless expressly stated otherwise in a particular context, all references to "days" in the Agreement shall mean calendar days, and all reference to time shall mean Melbourne, Australia time..

04. License to Operata Property

- a. Subject to Customer's compliance with this Agreement, Operata grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to Customer's related bodies corporate), irrevocable license during the Term to use the Operata Property solely in connection with the operation of the Operata Platform for the purposes of:
 - i. obtaining the benefit of the Services via the Operata Platform;
 - ii. enabling interoperability of the Customer Application and the Operata Platform; and
 - iii. developing or enabling Customer Applications that will be used exclusively 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.

- b. Customer must not:
 - i. use the Licensed Software for any purpose or in any manner other than as set out in this clause 4 or any related Documentation unless otherwise approved by Operata;
 - ii. knowingly use the Licensed Software in any way that could damage the reputation of the Licensor or the goodwill or other rights associated with the Licensed Software;
 - iii. knowingly permit any third party to use the Licensed Software other than as set out in this clause 4 or any related Documentation unless otherwise approved by Operata;
 - iv. knowingly permit any person to link or integrate to any part of the Licensed Software without the Licensor's written consent, not to be unreasonably withheld;
 - v. reproduce, make error corrections to or otherwise modify or adapt the Licensed Software or the Documentation or create any derivative works based upon the Licensed Software or the Documentation;
 - vi. de-compile, disassemble or otherwise reverse engineer the Licensed Software or permit any third party to do so;
 - vii. modify or remove any copyright or proprietary notices on the Licensed Software or the Documentation; or
 - viii. deploy Operata services to a subset of Customer Agents, Discrete Operata Groups, or Customer Agents for a defined period of time within the contract term, except by prior agreement with Operata only.

05. Publicity and use of Trademarks

- a. During the Term, Operata may use Customer's trademarks and logos made available to Operata by Customer, 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. Operata will take all commercially reasonable steps to comply with any reasonable trademark usage guidelines provided by Customer.
- b. Customer may revoke the license granted under this clause 5 with 7 days' notice if:
 - i. this Agreement terminates under clause 18(e); or
 - ii. in the reasonable opinion of Customer, the continued display of Customer's trademarks and logos on the Operata Website would cause a materially adverse effect on Customer's business and the goodwill associated therewith.
- c. A party must not make, or authorize or cause to be made, any public announcement relating to the negotiations between the parties or the subject matter of this Agreement unless:
 - i. it has the prior written consent of the other party; or
 - ii. it is required to do so by Applicable Laws

06. Customer Obligations

- a. Deploy Operata services to all Customer Agents within a reasonable period of time, once any limiting compliance and testing requirements have been met.
- b. Customer must ensure that any Integrated Products it uses in connection with the Services are capable of interoperation with the Operata Platform and must take all steps necessary to enable and maintain such interoperability throughout the Term, including by acquiring any necessary approvals or API keys to enable such interoperation and undertaking any other reasonable measures required by Operata to provide Customer with the Services.

07. Operata Property

- a. All right, title and interest in the Operata Property will remain with Operata (or Operata's third party

suppliers, as applicable). Operata expressly reserves all right, title, and interest in, and, subject to the limited license granted in Section 4, Customer will not acquire any right, title or interest in the Operata Property and any other materials or content provided by Operata under this Agreement, including any and all Modifications thereto.

08. Data Privacy

- a. Operata will only collect Customer Data as agreed with the Customer pursuant to the terms of this Agreement.
- b. Operata must comply with the Operata Privacy Policy in processing any personal Information in the Customer Data.
- c. With respect to Customer Data in the control or possession of Operata, except as required by any Applicable Laws or this Agreement (including as permitted by clause 8(d) of this Agreement), Operata and Operata Personnel must not:
 - i. store, use, reproduce, Modify or disclose the Customer Data for any purpose other than directly in relation to the performance of its obligations and delivering the Services under this Agreement;
 - ii. sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Customer Data (except as required by Customer);
 - iii. make any Customer Data available to a third party other than to a third party previously approved by Customer in writing.
- d. Operata may collect, use, reproduce, Modify, and analyze Customer Data that is De-identified Information (i.e., not related to an identified or identifiable natural person), and aggregated Customer Data, solely for the following business purposes:
 - i. data analytics;
 - ii. performance baseline measurement and comparison;
 - iii. quality assurance;
 - iv. product and service improvement;
 - v. new product and service development;
 - vi. customer and the associated CCaaS provider performance notifications;
 - vii. support CCaaS providers for the purpose of issue investigation and service improvement;
 - viii. inform best practice and other knowledge articles within the platform, including to highlight performance trends;provided that any transfer of Customer Data to a third party must at all times comply with clause 8(c)(iii).
- e. Customer represents and warrants that the Customer Data will only contain Personal Data in respect of which Customer has obtained all necessary consents required under Applicable Laws to enable Customer to legally provide such Personal Data to Operata and its authorized third party service providers to the extent Customer is required under Applicable Laws to obtain any such consents and that Customer otherwise has full legal authority to disclose the Customer Data to Operata to enable Operata to provide the Services.
- f. Immediately on termination or expiration of this Agreement or on request by Customer at any time, Operata must return the Customer Data to Customer via the provision to Customer of an application programming interface that facilitates the recovery by Customer of all such Customer Data. If and when directed to do so, such return of the Customer Data may require deletion of Customer Data from Operata's Systems. Operata agrees to provide written confirmation to

Customer upon deletion of the Customer Data.

09. Use Restrictions

- a. When Customer completes the sign-up process, Operata will issue one or more user admin level access accounts for the Platform (the “**Accounts**”) to the Customer that provides Customers with the:
 - i. Capability to create accounts for use by Platform Users.
 - ii. Capability to whitelist numbers able to be dialed by the Operata Platform and the costs thereof when exceeding any allowances as detailed in the SOW.
- b. Customer will use commercially reasonable efforts to:
 - i. ensure that Platform Users only use the Operata Platform through their Account.
 - ii. Ensure that Customer’s Accounts are not used for fraudulent, willful misconduct or illegal purposes.
 - iii. not share the Accounts with any other person and will not allow Platform Users to share their Account with any other person.
 - iv. promptly notify Operata of any actual or reasonably suspected unauthorized use of the Operata Platform.
- c. Operata may suspend or deactivate any Accounts if it reasonably believes that the Account has been used in violation of this Agreement.
- d. Customer acknowledges and agrees that it is responsible for the activities, charges and communications of the Customer Platform Users while using the Operata Platform and the compliance by the Customer Platform Users with this Agreement. Without limiting the generality of any of the foregoing, Customer will not, and will not knowingly permit any other person, including any Platform Users to:
 - i. use or cause Operata or any third party to use the Operata Platform to send, upload, collect, transmit, store, use, disclose or process any Customer Data:
 - (a) that contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;
 - (b) that Customer or the applicable Platform User does not have the lawful right to send, upload, collect, transmit, store, use, disclose, process, copy, transmit, distribute and display;
 - (c) that is false, intentionally misleading, or impersonates any other person;
 - (d) 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;
 - (e) that is harmful to minors in any way or targeted at persons under the age of 16;
 - (f) 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
 - (g) that encourages any conduct that may violate any Applicable Laws or would give rise to civil or criminal liability;
 - ii. disable, overly burden, impair, or otherwise interfere with servers or networks connected to the Operata Platform (e.g., a denial of service attack);
 - iii. attempt to gain unauthorized access to the Operata Platform;
 - iv. use any data mining, robots, or similar data gathering or extraction methods, or copy;
 - v. 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;
- vi. use the Operata Platform for the purpose of building a similar or competitive product or service; or
- vii. use the Operata Platform other than as permitted by this Agreement unless otherwise approved by Operata.

10. Support Services

- a. Operata shall provide Customer with the Support Services detailed in Schedule 1

11. Fees and Payment

- a. The following terms apply to the payment of the Operata Fees under the Agreement:
 - i. Customer will pay to Operata the fees set out in the applicable SOW during the Term in accordance with the payment terms set out therein.
 - ii. Operata will invoice the minimum monthly Operata Fees, monthly in advance, with invoices being issued no later than 5 business days after the start of the month of service
 - iii. Operata will invoice any Operata Fees in excess of the minimum monthly Operata Fees, at the end of the month, with invoices being issued no later than 5 business days after the end of the month of service.
 - iv. Operata will invoice via email with the invoice containing details of the service period and any Customer required Purchase order number.
 - v. Subject to section 12(vi) below, all amounts payable by Customer under this Agreement must be paid in full within 30 days from date of invoice without set-off, deduction or other withholding of any amount which may be due to the Customer. The Fees are inclusive of all costs, expenses and taxes (other than GST). The Customer must pay the Fees in the method agreed between the parties.
 - vi. If Customer in good faith disputes any portion of an Operata invoice or charge, Customer may provide a dispute notice to Operata with reasonable written documentation identifying and substantiating the disputed amount within sixty (60) days from receipt of the applicable invoice or charge. Customers shall pay all undisputed amounts of that invoice in accordance with section 12 (a) above..
 - vii. Operata may suspend the provision of the Support Services if any amount (except for disputed amounts under clause 12(vi) due to be paid by the Customer to Operata under this Agreement is overdue, and Operata has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.
 - viii. Operata may increase the Fees on an annual basis by not more than 2%, but may not increase the Fees within the first 12 months of the Term.
- b. Where the Operata Platform has been contracted for using other methods, then their associated payment terms will apply.

12. Confidentiality

- a. **Disclosures and Use.** Recipient hereby agrees that it will not, without the prior written consent of the Discloser:
 - i. disclose Confidential Information of the Discloser to any person or entity, except to its Representatives having a reasonable “need to know” in connection with the Agreement, provided that each Representative must be informed of the Recipient’s obligations under this Section 12.1 and provided further that Representatives who or that are not employed by the Recipient or its affiliates must have entered into written agreements or be under a

- professional duty to protect such Confidential Information under terms that are no less protective of such Confidential Information than this Agreement;
 - ii. use Confidential Information of the Discloser except to exercise its rights or perform its obligations under this Agreement; or
 - iii. alter or remove from any Confidential Information of the Discloser any proprietary markings.
 - b. **Legally Compelled Disclosures.** Notwithstanding Section 12(a), Recipient may disclose Discloser's Confidential Information 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 reasonably cooperates with the Discloser, at the Discloser's expense, in Discloser's efforts to seek an appropriate protective order.
 - c. **Duty of Care.** The Recipient will use the same degree of care and protection with respect to the Discloser's Confidential Information that it uses with respect to its own confidential information of a like kind, but in all events at least a reasonable degree of care.
 - d. **Duty to Notify and Mitigate.** The Recipient shall promptly notify the Discloser of any unauthorized use or disclosure of the Discloser's Confidential Information, whether known or suspected, and shall use all reasonable efforts to mitigate any harm that may be caused by such unauthorized use or disclosure and reasonably cooperate with the Discloser in any efforts by the Discloser to mitigate any harm that may be caused by such unauthorized use or disclosure.
 - e. **Ownership.** Each party is and shall remain the sole and exclusive owner of its Confidential Information, including any copies or derivatives thereof. Except for the use and disclosure rights expressly granted herein, no express or implied license is granted to the Recipient in respect of the Discloser's Confidential Information.
 - f. **Destruction.** Promptly following the Discloser's request, the Recipient shall destroy (and shall cause its Representatives to destroy) all or that portion of the Discloser's Confidential Information identified in such request (including any copies thereof, and any other materials that embody the Discloser's Confidential Information, including analyses, compilations, studies, or other documents prepared by or on behalf of the Recipient), and shall confirm such destruction in writing. Notwithstanding the foregoing, the Recipient may retain copies of the Discloser's Confidential Information (a) as part of the archival records (including backup systems) maintained by the Recipient in the ordinary course of business, but only to the extent, and only as long as, required by the Recipient's records retention policies; or (b) to the extent, and only as long as, required by Applicable Laws.
 - g. **Termination of Pre-Effective Data Non-Disclosure Agreement.** If the parties executed a confidentiality or non-disclosure agreement prior to the Effective Date, (a) such agreement shall terminate effective as of the Effective Date, and (b) from and after the Effective Date, all confidential information disclosed thereunder shall be governed by the terms of this Agreement.

13. Representations and Warranties

- a. General. Operata represents and warrants that:
 - i. it is an organization duly formed, validly existing, and in good standing under the Applicable Laws of the jurisdiction in which it is organized, and it is in good standing in each other jurisdiction where the failure to be in good standing would have a material adverse effect on its business or its ability to perform its duties, responsibilities and obligations under the Agreement (including each SOW);
 - ii. the Agreement and each SOW have been duly authorized, executed, and delivered by Operata and constitute a valid, binding, and legally enforceable agreement; and
 - iii. the execution and delivery of the Agreement and each SOW, and the performance of the

covenants and agreements therein contained, are not limited or restricted by, and do not violate, any arrangement, obligation, contract, agreement or instrument to which Operata is either bound or subject.

- b. Compliance with Laws. Operata represents, warrants, and guarantees that the Services and every component of them shall fully comply with all Applicable Laws.
- c. Disabling Code. Operata represents, warrants, and guarantees that neither Operata nor any of its Personnel will introduce into the Services or any computer systems or data of Customer or any Customer Affiliate any Disabling Code. If Operata Personnel are the source of any Disabling Code, if and to the extent requested by Customer and at no cost to Customer, Operata shall restore and/or reconstruct (or bear the cost of restoring and/or reconstructing) any and all data and programming lost by Customer or any Customer Affiliate as a result of Disabling Code.
- d. Intellectual Property. Operata represents, warrants, and guarantees that the Operata Property and Customer's receipt of the Service, including any Operata pre-existing works or Operata Confidential Information included therein, and the exercise by Customer of its rights hereunder with respect to such items, will not infringe upon, violate, or misappropriate any Intellectual Property Rights or other interest or right of any third party.
- e. Consents, Permits and Licenses. Operata represents, warrants, and guarantees that it and its subcontractors have obtained, and will at all times up through and including the termination date maintain, all applicable consents, permits, and/or licenses necessary to perform the Services and Operata's other duties, responsibilities, and obligations under the Agreement.
- f. Additional Service Warranties. Operata represents, warrants, and guarantees that it will use all reasonable endeavors to ensure that the Services will not:
 - i. reduce or impair any security systems or controls in any computer systems or data of Customer so as to increase the possibility of unauthorized access to or use of such system; or
 - ii. cause any error, fault or deterioration in any computer systems or data of Customer; or
 - iii. cause any interruption to the business of Customer.
- g. Warranty Disclaimers. 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 strictly on an "as is" basis. Operata will not be liable or responsible in any way for any losses or damage of any kind incurred as a result of the use of or reliance on any material contained on the service. Operata makes no representation or warranty that the availability of the service will be uninterrupted, or that the service will be error free or that all errors will be corrected.
- h. Third Party Services. The Operata Service contains links to and integrations with applications and services ("Third Party Services"), and you acknowledge that Operata has no responsibility for the content or availability of such Third Party Services, and that Operata does not endorse such Third Party Services (or any products or other services associated therewith). Access to any Third Party Services linked to the Service is at your own risk, and Operata is not responsible for the accuracy or reliability of any information, data, opinions, advice or statements made on such Third Party Services. Your use of such Third Party Services will be subject to the terms applicable to each such Third Party Services.

13. Service Inclusions & Exclusions

- a. Service Inclusions: Where the the Operata Platform charges provide included Agent Minutes and Assurance minutes the following conditions apply:
 - i. All Customer endpoints must have the Operata software installed to collect data.
 - ii. Included Assurance minutes are to PSTN numbers in the following locations only;
 - a. United States

- b. Australia
 - c. United Kingdom
 - d. France
 - e. Ireland
 - f. Italy
 - g. Sweden
 - h. Spain
 - i. Israel
 - j. Norway
 - k. China
 - l. Switzerland
 - m. NewZealand
 - n. Hong Kong
 - o. Korea, Republic of
 - p. Singapore
 - q. Japan
- b. If there is a requirement to dial numbers in other locations then the number included call minutes and overage charges will change.
 - c. Service Exclusions, AWS Services, some Operata features require specific AWS Services to be operated from a Customer's AWS instance, any costs associated with these services and any others residing within a Customer's AWS account is the sole responsibility of the Customer.

14. Limitation of Liabilities and Indemnification

- a. **Cap on Damages.** Except as set out in Section 14(b), in no event shall either party be liable to the other party pursuant to this Agreement for more than the fees paid or payable by Customer to Operata in the twelve (12) months prior to the date of such claim, regardless of the cause and whether arising in contract, tort (including negligence) or otherwise.
- b. **Exclusions.** The terms of Sections 14(a) and 14(d) shall not apply to:
 - i. Operata's obligations under Sections 15(a) and 15(b) of this Agreement (or a breach of such obligations);
 - ii. Operata's breach of Sections 12(a) or 12(b) of this Agreement;
 - iii. Operata's breach of Section 8 of this Agreement; and
 - iv. Operata's gross negligence, willful misconduct, or fraud.
- c. The existence of one or more claims under this Agreement will not increase this maximum liability amount.
- d. **Disclaimer of Consequential Damages.** To the extent permitted by applicable law, in no event will either party be liable to the other party for any:
 - i. special, exemplary, punitive, indirect, incidental or consequential damages;
 - ii. lost savings, profit, or goodwill;
 - iii. business interruption; or
 - iv. any costs for the procurement of substitute products or services;regardless of the cause of action or the theory of liability, whether in contract, tort (including negligence) or otherwise and even if notified in advance of the possibility of such damages.

15. Indemnification

- a. **Indemnification.** Operata shall defend Customer and Customer Affiliates, and their respective

directors, officers, employees, representatives, agents, successors, and assigns (individually, a “Customer Indemnitee” and collectively, the “Customer Indemnitees”) against any claim, suit, action, or proceeding asserted by a third party (each, a “Third-Party Claim”), and will indemnify and hold harmless the Customer Indemnitees from and against all Losses, in each case to the extent they arise out of or relate to:

- i. any negligent or more culpable acts or omissions of Operata, or Operata Personnel;
- ii. Operata’s breach of the Agreement;
- iii. any failure of Operata, its Affiliates, or subcontractors to pay wages, salaries, fringe benefits, or other forms of compensation to employees including, without limitation, contributions to any employee benefit, medical, or savings plan, or payroll taxes with respect to such employees including, without limitation, the withholding of all federal, state, and local income taxes, FICA, unemployment taxes, and any other payroll taxes; or
- iv. any violation of the Intellectual Property Rights of a third party. To the extent of the indemnification provided hereunder, Operata expressly waives its immunity under Applicable Laws with respect to industrial insurance and injuries or death suffered by Operata Personnel.

b. **Indemnification Procedures.** Any Customer Indemnitee seeking defense and indemnification under Section 15(a) shall promptly notify Operata in writing of the Third-Party Claim. Once Operata assumes control of the defense of the Third-Party Claim (and provided Operata continues to diligently defend the Third-Party Claim), Operata will have the right to control the defense and settlement of the Third-Party Claim; provided, however, that:

- i. the Customer Indemnitees will have the right, but not the obligation, to be represented by counsel of their own selection and expense; and
- ii. without the Customer Indemnitees’ prior written consent, any settlement of the Third-Party Claim shall not adversely affect the Customer Indemnitees’ rights hereunder or impose any obligations on the Customer Indemnitees. The Customer Indemnitees shall reasonably cooperate with Operata and its legal representatives in the investigation and defense of any Third-Party Claim.

16. Term

- a. The term of this Agreement shall commence upon the Effective Date and, unless earlier terminated in accordance with the terms set forth herein, will continue in full force and effect for a twelve (12)-month period (the “Initial Term”).
- b. At the end of the Initial Term, the term of this Agreement will automatically renew for additional periods equal to the Term (a “Renewal Term”) unless either party gives the other party written notice of its intent not to renew at least ninety (90) days prior to the end of the Initial Term or then-current Renewal Term, as applicable. Collectively, the Initial Term, any Renewal Terms, and the length of any Termination Assistance Period, is referred to herein as the “Term.” Each SOW shall commence on its effective date and, unless earlier terminated in accordance with the terms set forth in the Agreement, shall continue in full force and effect for the term specified therein. For the avoidance of doubt, the term of an SOW shall include the length of any Termination Assistance Period that is applicable to such SOW.

17. Insurance.

- a. As all Operata staff are based in Australia and New Zealand workers’ compensation insurance covering liability to the Personnel is provided by mandatory state insurance (WorkCover in Australia) and is uncapped.
- b. Operata maintains the following Information Technology Liability insurance with a major insurance company outside the USA and North America.

- i. third party public and product liability insurance covering liability to any third party for death or bodily injury (including illness) and loss of or damage to property arising out of anything done or omitted to be done by Operata for AU\$20,000,000 per incident and in aggregate; and
- ii. professional indemnity insurance for up to AU\$5,000,000 per incident and AU\$10,000,000 in the aggregate
- iii. Cyber insurance cover globally that provides AU\$2,000,000 of cover for Cyber event response costs including IT forensics, virus extractions, customer notification costs;
 - a. Loss including third-party litigation, regulatory investigations, fines and penalties;
 - b. Contingent Business Interruption, including supplier outage and system failure;
 - c. Criminal Financial Losses including Cyber Theft, Telephone Phreaking, Cryptojacking and Identity-Based Theft;
 - d. Socially Engineered Theft.
- c. Within the USA and North America the following insurance cover is provided:
 - i. Cyber insurance cover globally that provides AU\$2,000,000 of cover for:
 - a. Cyber event response costs including IT forensics, virus extractions, customer notification costs;
 - b. Loss including third-party litigation, regulatory investigations, fines and penalties;
 - c. Contingent Business Interruption, including supplier outage and system failure;
 - d. Criminal Financial Losses including Cyber Theft, Telephone Phreaking, Cryptojacking and Identity-Based Theft;
 - e. Socially Engineered Theft.

18. Termination

- a. **Termination For Convenience.** Customers may elect to terminate this Agreement at the end of the then-current Term by providing notice at least thirty (30) days before the end of the Term.
- b. **No Refunds.** Customer will not be entitled to any refunds or credit of any Fees, pro rata or otherwise, if it elects to terminate this Agreement prior to the end of the Term pursuant to the provisions of section 18 (a).
- c. **Early Termination and Termination for Cause by Operata.** If Operata terminates the Agreement for Customer's uncured material breach pursuant to the provisions of Section 18(d), then in addition to other amounts you may owe Operata, you must promptly pay any unpaid Fees for the remainder of the Term.
- d. **Termination for Cause.** A Party may terminate this Agreement for cause:
 - i. 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
 - ii. 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.
- e. **Termination for Cause by Customer.** If Customer terminates the Agreement for material breach by Operata, then it will not be required to pay Fees for the remainder of the Term and Operata will promptly refund Customer any prepaid Fees covering the remainder of the Term.
- f. **Fees for Services Rendered prior to Termination.** In no event will termination relieve the Customer of its obligation to pay any Fees payable to Operata for Services rendered prior to termination.
- g. **Termination Assistance.** Upon termination of an SOW for any reason (including, for the avoidance of doubt, expiration of the term of an SOW), if and to the extent requested by Customer, Operata shall:
 - i. continue to provide the Services; and
 - ii. provide to Customer and/or its designee(s) the reasonable termination assistance

requested by Customer to facilitate the timely and orderly transfer of the terminated services (and other Operata duties, responsibilities, and obligations, as applicable) to Customer and/or its designee(s) (collectively, the "Termination Assistance Services"). The Termination Assistance Services shall be provided during the applicable termination notice period and thereafter for as long as requested by Customer, provided that, unless otherwise agreed by the parties, such period shall not exceed six (6) months (each, a "Termination Assistance Period"). Operata shall perform all Termination Assistance Services at the rates then in effect under the Agreement, including the applicable SOW(s).

19. Survival

- a. 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: clauses 7, 8, 9, 12, 13, 20 and 22.

20. Modern Slavery

- a. In this clause 21, the term "Modern Slavery" has the same meaning as in the Modern Slavery Act 2018 (Cth).
- b. Operata represents and warrants that:
 - i. as at the date of this Agreement, Operata does not engage in any activity, practice or conduct that constitutes Modern Slavery;
 - ii. Operata has within the past 12 months conducted due diligence on its operations and suppliers to assess whether there is any risk that Operata is causing or contributing to Modern Slavery within its supply chains;
 - iii. where Operata has identified any one or more risks that Operata may be causing or contributing to Modern Slavery within its supply chains, Operata has taken reasonable actions to address such risks so that Operata is reasonably satisfied that as at the date of this Agreement, there are no forms of Modern Slavery occurring within its supply chains.
- c. Operata undertakes to provide Customer with an updated written certification of the above matters at Clause 21(b) at least once every 12 months commencing from the start date of this Agreement (or upon reasonable request by Customer).
- d. In the event that Operata becomes aware of any forms of Modern Slavery occurring within its operations or supply chain, Operata must notify Customer of the same within 5 Business Days of becoming aware of the occurrence.

21. General Provisions

- a. **Notice.**
 - i. Notices sent to either Party will be deemed to be effective:
 - a. immediately upon delivery in person or by email;
 - b. two days after being sent by courier within Australia to the official contact designated by the relevant Party;
 - c. ten days after being sent by express post within Australia to the official contact designated by the relevant Party; or
 - d. fifteen days after being sent by registered post within Australia to the official contact designated by the relevant Party.
 - ii. Notices must be in writing and sent:
 - a. if to Operata, to the address set out in the applicable Operata Contract or, if Operata has posted new contact information on the Operata Website or otherwise given notice of a

- change of contact information to Customer; to such new contact point; and
- b. if to Customer, to the current postal or email address that Operata has on file with respect 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 and Subcontracting.** Neither party may assign or transfer any part or all of this Agreement or any of its obligations under this Agreement to any third party without the prior written consent of the other party, which will not be unreasonably withheld. Operata may not engage or appoint a subcontractor or agent to provide any of the Services required under this Agreement without the prior written consent of Customer. Operata remains liable for each act and omission of its subcontractors, agents and third parties as though it were an act or omission of Operata.
 - c. **Choice of Law.** This Agreement and any action related thereto will be governed by and construed in accordance with the Applicable Laws of the state of Victoria, without regard to conflicts of law principles. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
 - d. **Jurisdiction.** Each party irrevocably and unconditionally:
 - i. submits to the exclusive jurisdiction of the courts of Victoria; and
 - ii. waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.
 - e. **Rights Cumulative.** Except as otherwise provided in this Agreement, the Parties rights and remedies under this Agreement are cumulative.
 - f. **Force Majeure.** Neither Party will be liable for delays caused by any event or circumstances beyond that party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving that party's employees), Internet failures or delays. To avoid doubt, failures of Operata subcontractors are not Force Majeure events.
 - g. **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.
 - h. **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.
 - i. **Independent Contractors.** The parties are independent contractors and neither Party is an agent or partner of the other. The Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Operata.
 - j. **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.
 - k. **Amendments.** No amendment, supplement, modification, waiver, or termination of this Agreement and, unless otherwise expressly specified in this Agreement and no consent or approval by any Party, will be binding unless executed in writing by both Parties via a change request.

SCHEDULE 1 (Support Services)

Introduction

This Schedule 1 sets out the Support Services provided by Operata under the Agreement

A. Service management

- a. Operata will provide a designated Service Management contact who will be the point of contact for all ongoing Service Management activities.
- b. Operata will organize regular (normally quarterly depending on Customer requirements) Service Management reviews with Partner with the following agenda items:
 - ii. Review of Service Reports for the period;
 - iii. any high severity incidents that have occurred in the previous period;
 - iv. any issues, concerns or suggested improvements the Customer may have regarding the delivery, support or management of the Services, which will be captured in a Service improvement plan with clearly stated objectives, deliverables and timescales;
 - v. any maintenance releases or features for the upcoming period; and
 - vi. Where requested, Customer's usage details for the Services over the last period and a forecast for usage during the next period, for the purpose of capacity planning.
- c. If the Customer becomes aware of any urgent concerns relating to the Operata Platform or Support Services, which the Customer reasonably believes require immediate attention, the Customer must advise their nominated Operata customer success manager as soon as possible.
- d. Where appropriate, actions will be agreed to address the concerns which will be tracked to completion as part of the Service management review process.

B. Support Services

- a. Customer must raise a request for Support Services to Operata as soon as practical upon becoming aware of reasonable grounds to suspect that the Operata Platform, or Customer's access thereto, is not operating in accordance with this Agreement.
- b. Support Services are accessed via:
 - i. URL: Link to a form to capture data (<https://operata.com/support>)
 - ii. Web chat (within the application): Directed to form (<https://operata.com/support>)
- c. The Customer must ensure that all requests for Support Services that it may make from time to time are made through the above contact points and Operata will not be obligated to respond to any Support Services requests made by any other means.

C. Response and resolution

- a. Upon receipt of a Support Services request under clause 1 of this Schedule, Operata and Customer will determine which Severity Level is applicable to the underlying issue.
- b. Operata will use reasonable endeavors to provide an initial response to the Support Services requests promptly and in any event within the corresponding timeframe set out below:
 - i. **Operata incident Classification.** for availability related incidents Operata uses the following severity classification:

Sever	Underlying Issue	Initial Response Timeframe	Restoration Target
Critical	Inability to collect any Customer data	2 Business Hours	6 Business Hours
Serious	No access to the Operata platform or collected data	4 Business Hours	12 Business Hours
Moderate	Non-critical data or functionality issue	8 Business Hours	24 Business Hours
Minor	Any impairment of the Software not falling into the above categories; and any cosmetic issue affecting the Software	16 Business Hours	160 Business Hours

- c. The initial response will set out the anticipated timeframe for resolution of the issue raised in the Support Service Requests. To the extent commercially practical, Operata will use reasonable endeavors to provide a Final Resolution to the underlying issue promptly in proportion to the applicable severity level.
- d. If the Customer becomes aware of any urgent concerns relating to the Operata Platform or Support Services, which the Customer reasonably believes require immediate attention, the Customer must advise its designated Operata customer success manager as soon as possible.
- e. The customer success manager will be assigned as part of service onboarding.

D. Operata Service availability target

- a. The Operata monthly availability target 99.9%
 - i. Availability measurement is the percentage of time a Critical level service issue has impacted monthly availability, and excludes planned maintenance activities.
 - ii. This is different to the platform availability shown on trust.operata.com
 - iii. Operata Defect classification table will be used for classification by default.
 - iv. Business Day means any weekday other than a public holiday in the Country of Service.
 - v. Business Hours means the hours of 08:00 to 18:00 on a Business Day in the Country of Service.

E. Operata RTO and RPO objectives

- i. Operata has the following RTO and RPO objectives as part of its business continuity and disaster recovery (BCDR) planning
- ii. RTO - Recovery Time Objective is 24-hours
- iii. RPO - Recovery Point Objective is 12-hours

F. Provision of Support Services

- a. The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

G. Limitations on Support Services

- a. Operata shall have no obligation to provide Support Services in respect of any issue caused by:
 - i. any Integrated Product or third party or Customer software used by the Customer in connection with the Operata Platform, including but not limited to the user devices that are not supported by Operata and/or meet the recommendations for the cloud services used by the End User and the browser types and versions that are not supported by Operata and/or the cloud services used by the End User.
 - ii. the improper use of the Software by the Customer; or
 - iii. any alteration to the Software made without Operata's prior written consent.
- b. If Operata provides Support Services at the request of the Customer and Operata, after beginning the provision of those Support Services, reasonably concludes that Operata has no obligation to provide those Support Services by virtue of the exceptions, to the extent Customer wants Operata to perform the excluded Support Services the Customer must pay any additional charges advised by Operata in respect of
 - i. those Support Services; and
 - ii. any subsequent Support Services provided in relation to the issue with the consent of the Customer charged at its standard time-based rates.

21. Definitions

Capitalized terms used in the Agreement shall have the meanings ascribed to them below in this Section 2, in an SOW, or in the context in which they are defined. All defined terms include both the plural and the singular.

- a. **“Affiliate”** means any entity that, now or in the future, directly or indirectly, controls, is controlled by, or is under common control with, the Customer.
- b. **“Assurance Minutes”** means the minutes of calls generated by the Operata platform as part of the assurance performance or assurance Heartbeat services.
- c. **“Agent Minute”** means the duration of each call that Operata collects data for, rounded up to the nearest minute.
- d. **“Business Day”** means any weekday other than a public holiday in the Country of Service.
- e. **“Business Hours”** means the hours of 08:00 to 18:00 on a Business Day in the Country of Service.
- f. **“Confidential Information”** means in respect of information disclosed by one party (**“Discloser”**) to the other party (**“Recipient”**). All materials and information, written or oral, disclosed directly or indirectly to the Recipient through any means of communication (e.g., electronic, paper or other media, orally or through observation). Without limiting the generality of the foregoing, Confidential Information includes:
 - i. nonpublic personal information of customers and;
 - ii. information marked as confidential or proprietary, or with a similar restrictive legend. Notwithstanding any contrary terms in the foregoing, Confidential Information shall not include information that the Recipient can demonstrate;
 - iii. is or becomes generally known to the public through no fault of the Recipient;
 - iv. was in the lawful possession of the Recipient at the time of disclosure to the Recipient, if the Recipient was not then subject to obligations of confidentiality with respect to the information;
 - v. after disclosure to the Recipient, was received by the Recipient from a third party who had lawful right to disclose such information to the Recipient without an obligation to restrict the Recipient's further use or disclosure of such information; or
 - vi. (was independently developed by the Recipient without reference to the Discloser's Confidential Information; provided, however, that none of the foregoing exclusions shall apply to protected health information or any other personally identifiable information protected under Applicable Laws.
- g. **“Control”** means an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- h. **“Customer Agent”** means all employees or contractors of Customer who use contact center services in the scope of the Operata Contract.
- i. **“Customer Application”** means any software application, code or web site used by Customer in integration with the Operata Property under the terms of this Agreement.
- j. **“Customer Data”** means any data, information, content, records and files:
 - i. that Customer or any of its Customer Agents, Platform Users or clients loads, receives through, transmits to or enters into the Operata Platform;
 - ii. that the Operata Platform obtains from Customer's servers or systems or from third parties on Customer's behalf; or

- iii. is otherwise accessible to Operata (or any third parties who have access to such Customer Data through Operata) under or in connection with this Agreement, relating to any member of the Customer Affiliate and its business (including its operations, facilities, customers, employees, assets, products, sale and transactions) in whatever form that information may exist and including any and all Intellectual Property rights therein.
- k. **“Customer Network”** means the Customer provided environment used to connect, integrate with and provide access to the Operata Service, including, but not limited to, the customer data network, security systems, desk-top and cloud compute, under the terms of this Agreement. .
- l. **“Documentation”** means any and all proprietary documentation made available to the Customer by Operata for use with the Licensed Software, including any documentation made available online in connection with the Licensed Software.
- m. **“Defect”** means any error, defect, omission, deficiency, non-conformity, fault, failure, malfunction or discrepancy in the Services as compared against the scope of work, any requirement, or any warranty or guarantee (including a performance warranty or guarantee) or any aspect of the Services which is otherwise not in accordance with this Agreement.
- n. **“Disclosure”** means the party that, directly or indirectly (including through its Representatives), has disclosed Confidential Information to the other party or its Representatives
- o. **“Disabling Code”** means a back door, time bomb, logic bomb, trojan horse, worm, drop dead device, virus (as those terms are commonly understood in the IT industry) or any other computer software routine having the effect of:
 - i. permitting access to or use of any computer systems or data of Customer by Operata or by a third person other than as authorized by Customer; or
 - ii. disabling, damaging, corrupting or erasing, or disrupting or impairing the normal operation of, any computer systems or data of Customer or allowing Operata or any third person to do so.
- p. **“De-identified Information”** means information that: (i) cannot reasonably be used to infer information about, or otherwise be linked to, a particular individual; (ii) reasonable measures have been taken to ensure that such information cannot be associated with an individual; and (iii) shall not be re-identified except to attempt to re-identify the information solely for the purpose of determining whether the de-identification processes satisfy the requirements of Applicable Laws.
- q. **“End User”** means an entity that acquires Operata Products under the terms of this Agreement for internal business use and not for further distribution or resale.
- r. **“Good Industry Practice”** means, in relation to any activity, the exercise of that degree of skill, care, diligence, prudence, methods, practices, processes, workmanship and use of materials and equipment that would be reasonably exercised by a skilled and experienced person who:
 - i. is engaged in the carrying out of activities of the same nature and extent as the relevant activity by reference to proper and prudent practices recognised internationally, but as applied to circumstances prevailing in Australia and to the operations contemplated by this Agreement;
 - ii. knows the facts that were known, or should reasonably have been known, to the person performing the activity at that time;
 - iii. complies with all Applicable Laws.
- s. **“Integrated Product”** means any Customer Application and/or Customer Network.
- t. **“Intellectual Property Rights”** means all:
 - i. patents, patent applications, patent disclosures and inventions (whether patentable or not);

- ii. trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names and registrations and applications for the registration thereof, together will all of the goodwill associated therewith;
 - iii. copyrights and copyrightable works (including computer programs and mask works) and registrations and applications thereof;
 - iv. trade secrets;
 - v. waivable or assignable rights of publicity, and waivable or assignable moral rights; and
 - vi. any other intellectual property or proprietary rights.
- u. **“Applicable Laws”** means all laws, statutes, regulations, rules, requirements, administrative codes, ordinances, executive orders, policies, judicial opinions, decrees and other decisions having the effect of law (and any amendments to any of the foregoing), by any federal, state or local government, authority, department or agency in any location.
 - v. **“Licensed Software”** means the Operata Platform, associated software and Documentation owned by Operata and licensed to the Customer under this Agreement
 - w. **“Losses”** means all losses, liabilities, damages, fines, penalties, and costs and expenses (including reasonable attorneys’ fees and costs, and reasonable costs of investigation, litigation, and settlement) actually sustained or incurred by a party, including amounts paid or payable by a party to a third party.
 - x. **“Operata Fees”** means the applicable fees set out in an SOW which Operata shall charge the Customer to use the Operata Platform, including any minimum spend commitments.
 - y. **“Operata Services”** means all services provided by Operata including the Services and the Operata Platform.
 - z. **“Operata Personnel”** means anyone assigned by Operata to perform the Operata Services or any of Operata’s other duties, responsibilities, or obligations under this Agreement, including, without limitation, Operata’s employees, consultants, representatives, and agents, and Operata’s subcontractors and their employees, consultants, representatives, and agents.
 - aa. **“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.
 - bb. **“Recipient”** means the party that, directly or indirectly (including through its Representatives), has received Confidential Information from the other party or its Representatives.
 - cc. **“Representative(s)”** means, in respect of a party, that party and its Affiliates with a need to know, and their respective employees, directors, officers, agents, advisers (including, without limitation, attorneys, accountants, consultants, bankers, and financial advisors), service providers, subcontractors, and contractors.
 - dd. **“SOW”** means a scope of works entered into under and in accordance with the terms of this Agreement.
 - ee. **“Operata Marks”** means the trade marks, service marks or other branding that Operata develops and uses from time to time in connection with identifying the Operata Products.
 - ff. **“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.
 - gg. **“Operata Privacy Policy”** means the privacy policy as updated from time to time located at

operata.com/privacy..

- hh. **“Operata Platform”** means the software, hardware, and systems used by Operata to host and make the Services available for Customer’s use, including the Operata Website and any Modifications thereto.
- ii. **“Operata Property”** means the Documentation, Operata API, Operata Platform, any software supplied or developed by Operata and any Modifications to any of the foregoing.
- jj. **“Operata Website”** means any websites used by Operata to provide, or provide information on, the Services, including the website located at www.Operata.com
- kk. **“Personal Data”** means any information relating to an identified or identifiable natural person that is “personal information,” “personal data,” or analogous variations of such terms under Applicable Laws related to privacy, data security, or protection of information about individuals.
- ll. **“Platform User”** means an individual who is an employee, contractor or client of Customer or any Customer Affiliate and that has access to and use of the Operata Platform.
- mm. **“Representative(s)”** means, in respect of a party, that party and its Affiliates with a need to know, and their respective employees, directors, officers, agents, advisers (including, without limitation, attorneys, accountants, consultants, bankers, and financial advisors), service providers, subcontractors, and contractors.
- nn. **“Term”** means a 12-month period unless otherwise specified in the applicable SOW.