

## CARTER TERMS OF SERVICE

### 1. Introduction

1.1 We, **Carter Labs Ltd**, are a company incorporated under the laws of England and Wales with company number 14227823 and with a registered office at 20-22 Wenlock Road, London, NI 7GU (referring to ourselves as “**Carter**”, “**we**”, “**us**” and “**our**” in these Terms).

1.2 We offer an online platform (the “**Platform**”) that enables access to the Carter service. The Carter service enables you to create and configure conversational AI-powered digital personalities to integrate into your products, services and/or other projects (the “**Service**”).

1.3 The Order Form, these Terms and our Privacy and Cookies Policy apply to your access to and use of our Platform and enjoyment of the Service. Where there is any inconsistency between the provisions of these Terms or the Order Form, then the terms of the Order Form shall prevail.

1.4 We may up-date these Terms from time to time for legal or regulatory reasons or to allow the proper operation of the Service. Any key changes will be notified to you via the email address provided by you when you sign-up to the Platform. Any minor changes will, however, only be notified to you via an announcement on the Platform. The changes will apply to the use of the Service after we have given notice and you have the ability to terminate these Terms in accordance with its terms if you disagree with any change to them.

### 2. Definitions and Interpretation:

2.1 **Definitions:** Any capitalised terms used in these Terms shall have the meaning set out in the Order Form unless otherwise defined in these Terms. In these Terms the following definitions and rules of interpretation shall apply:

(a) “**Authorised User**” means each individual user to whom an account administrator gives access to the Platform to utilise the Service and who has agreed and signed up to these Terms which may be employees, contractors or other authorised users as indicated in the Order Form;

(b) “**Effective Date**” means the date on which your account administrator accepts these Terms and creates an account to use the Service;

(c) “**Intellectual Property**” or “**IP**” means patent rights (whether in inventions or processes), design rights, copyright, trade mark rights (including the right to use domain names and social media handles and any goodwill and reputation in any mark), rights in confidential information (including know-how and trade secrets), and any and all other intellectual property rights and sui generis rights (whether now subsisting or in the future created) both in the United Kingdom and all other countries of the world for the full period for which those rights subsist (including any and all extensions and renewals and all vested, future and contingent rights and rights under licences) and all applications for the foregoing;

(d) “**Order Form**” means Carter’s order form that is made available either: (a) in paper form and appended to these Terms; or (b) in on-line form to be viewed and completed via the Platform;

(e) “**Output Data**” has the meaning set out in Clause 7;

(f) “**Subscription Term**” has the meaning set out in Clause 8;

(g) **“Terms”** means these Carter Terms of Service;

(h) **“Update”** means a hotfix, patch or minor version update to the Software;

(i) **“Upgrade”** means a major version upgrade of the Software;

(j) **“User Data”** means any content, data, information or material that you input into the Service, including any content, data, information or material that is inputted by any end users of yours when using the Service (for example those persons using the Service in any product or service of yours) including any and all conversation data; and

(k) **“you”** means, unless otherwise indicated, each individual user granted access to the Platform and the Service under these Terms including any account administrator and each individual Authorised User.

**2.2: Interpretation:** Words denoting the singular include the plural and vice versa and words of any one gender include reference to both genders. References to a “person” include natural persons, corporations, companies, firms, associations and organisations. References to “including” and “include” shall be construed as illustrative and deemed to mean respectively “including without limitation” and “include without limitation”. References in these Terms to any statute, statutory provision or regulation includes a reference to: (a) that statute, statutory provision or regulations as from time to time amended, extended, re-enacted or consolidated whether before or after the date of these Terms; and (b) all statutory instruments or orders made pursuant to it.

### **3. Grant of Access and Licence**

3.1 All users are required to create an account. Account creation will take place directly if you are an account administrator, or via an invite link sent to you by your account administrator(s) following their own account set-up for the entity on whose behalf you are permitted to use the Platform and receive the Service.

3.2 Subject to creating an account in accordance with Clause 3.1 above, you are hereby granted a non-exclusive and non-transferable right to access and use the Platform to receive the Service to the extent the Service has been selected and, where applicable, paid for pursuant to the Order Form (whether by you in your capacity as an administrator or by your administrator if you are simply a read-only user of our Service). Your right to access and use the Platform to receive the Service is solely for the internal business purposes of the entity on whose behalf you are authorised to use the Service, in all cases subject to these Terms, in particular any usage limits placed on you.

3.3 Unless otherwise stated in an Order Form, the right of access and licence granted to you to access and use the Platform and benefit from the Service will start on the Effective Date and continue unless and until terminated in accordance with Clause 8 below. Any and all termination dates will be calculated as from the Effective Date and not, in the case of any individual Authorised Users, your own start-date.

3.4 Where you are an account administrator, you shall procure that all Authorised Users are made aware of and comply with these Terms, and in particular these Terms relating to access to our Platform and Service in this Clause 3. You acknowledge and agree that you are then solely responsible for each of the Authorised User’s use of our Platform and Service and shall be liable to Carter for any damage or loss Carter suffers as a result of any Authorised User’s breach of these Terms.

3.5 Once your account is created you will be provided with login details to access and use the Platform and receive the Service. You can use these details to access the Platform. Where you are an account administrator, you will need to provide the details of any Authorised Users, including their first and last name and contact email, together with their permission level in connection with the Service, so that they can be given access to the Platform. These details shall be provided by you in the Order Form.

3.6 In relation to our Platform you shall not:

- (a) license, sub-license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available in any way to any part of the Platform or its content;
- (b) deploy within our Platform any spider, robot, web crawler or other automated query program;
- (c) re-use and/or aggregate any content or material available via the Platform, in the provision of a commercial service;
- (d) introduce data (including any User Data) that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (e) introduce User Data or otherwise use the Platform or Service in any way that Carter deems to constitute or encourage conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world;
- (f) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form the Platform, except as may be allowed by any applicable law;
- (g) attempt to obtain, or assist others in obtaining, access to or taking content from our Platform, other than as provided under this Clause 3.

3.7 In relation to our Platform you acknowledge that:

- (a) you must complete our registration procedure, including agreeing to these Terms;
- (b) you shall keep passwords issued to you secure;
- (c) if you discover that our Platform is being accessed and used by third parties who are not Authorised Users or have not entered into an agreement with us permitting them to use the Service you agree to inform us immediately;
- (d) we may audit the use of the Service regarding the name and password for each Authorised User. Such audit may be conducted no more than once per month, at our expense, and shall be exercised on five business days' prior notice, in a manner so as to not substantially interfere with normal conduct of your business. If such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to our other rights, you shall promptly disable such passwords and shall not issue any new passwords to such individuals; and
- (e) we may remove or edit any User Data at any time for any reason.

3.8 You acknowledge and agree that the Service is provided online via the Platform and, accordingly, while we shall use our reasonable endeavours to ensure that access to the Service is available at all

times and that the Service operates to an appropriate standard, continuous access cannot be guaranteed. However, we shall use our reasonable endeavours to ensure that any steps taken by us to maintain or upgrade the Service are taken at times that ensure minimum disruption to you. Carter may also, without notice, at its sole discretion, modify the features, availability, operation and/or look and feel of the Platform at any time.

3.9 The Service will be provided by us using all reasonable care and skill but other than as expressly stated in the Order Form, time shall not be of the essence in relation to Service availability.

3.10 You acknowledge that full freedom from errors and incompleteness is impossible to achieve with respect to computer software and the operation of the Service. If you become aware that the operation of the Service, including the Platform contains any error, or is incomplete, you shall promptly notify us upon becoming aware of such error or incompleteness. You undertake to refrain from taking any advantage whatsoever, either knowingly or otherwise, of that error or incompleteness. Carter reserves the right to recover any such advantage that you do gain from such error or incompleteness, as well as all associated costs, damages and expenses in making such recovery.

3.11 Where the Platform contains links to any third party websites, platforms and/or other materials you acknowledge and agree that you access these links at your own risk. Carter has no control over the content of those websites and accepts no responsibility for them or for any loss or damage that may arise from your use of them.

3.12 The licence granted under these Terms includes the right to deploy and use all Updates to the Service that Carter elects to incorporate into and make part of the Service and for which Carter does not charge an additional fee above and beyond the Subscription Fee. It does not, however, include any Upgrades, including any bespoke developments that you may request, for which Carter reserves the right to charge additional fees.

3.13 The rights granted under this Clause 3 are granted to you only for the purposes of your business as carried on at the address given in the Order Form. They shall not be considered granted to any of your other offices, business divisions, subsidiaries, group or holding companies.

#### **4. Your Further Obligations**

4.1 You are responsible for complying with all applicable laws and regulations in connection with your use of the Service, including those laws and regulations related to data protection, and the use and processing of personal data. Where Carter is acting as a data processor, you agree to Carter's Data Processing Terms appended to these Terms.

4.2 You shall: (a) notify us immediately of any unauthorised use of any password or account or any other known or suspected breach of security; (b) use reasonable efforts to stop immediately any such unauthorised use or breach that is known or suspected by you; and (c) promptly provide any and all information that Carter may reasonably request from you from time to time.

#### **5. Our Responsibilities**

5.1 Carter shall make all reasonable efforts to make the Service available, except for where:

(a) planned downtime is scheduled for system repair or maintenance. Carter shall provide you with a link to a designated page on its Platform which shall notify you of such planned downtime and provide the ability for you to, if you choose, sign-up to receive emails from us notifying you of such planned downtime. Where downtime is planned, Carter will give you at least 10 days' notice in advance of a planned system outage;

(b) unscheduled maintenance in the case of actual or anticipated emergency takes place, such as a security incident or a known or suspected personal data breach; or

(c) unavailability for reasons outside Carter's reasonable and expected control occurs.

5.2 Carter shall, to the extent required for the provision of the Service under these Terms:

(a) perform the Service substantially in accordance with these Terms and with reasonable care and skill;

(b) comply with all applicable laws, and

(c) maintain any licences and consents that are needed to provide the Service.

5.4 Carter shall make all reasonable efforts to promptly correct any material non-conformance of the Service. You are responsible for ensuring that the Service meets your specific business requirements and is suitable for your desired purpose. Carter does not provide any warranties or guarantees that the Service will lead to any particular results and/or outcomes for you.

5.5 Carter, in its discretion, may modify the Service if it does not materially reduce the functionality of the Service, and may provide alternative features so long as they have materially the same or improved benefits as previous features.

## **6. Fees, Payment Terms and Refunds**

6.1 The Service is offered to you on a tiered basis. The first tier is offered to you for free, subject to you adhering to the usage limits applicable to that tier. Each subsequent tier is then offered to you for a set monthly fee ("**Subscription Fee**"), based on your usage requirements, namely API calls. When you first create an account we will ask you a variety of questions to determine the tier that we consider is most suitable to you. We will then monitor your usage and, if in any given month your usage exceeds the requirements for your current tier, we will notify you and inform you that, with effect from the next month, a Subscription Fee or the next tier Subscription Fee will be charged to you (as applicable) and the reasons behind such change. You are solely responsible for monitoring your usage requirements and acknowledge and agree that we may charge and/or change (as applicable) the Subscription Fee depending on such usage. If you do not wish to continue using the Service upon receiving such notification then you may terminate your access and use of the Service in accordance with Clause 8 below.

6.2 We may also, from time to time, introduce new features that require payment of additional fees for that feature ("**Feature Fees**"). We will notify you of such features as and when and if they become available and, if you select to use such feature, it shall be deemed to be part of the Service hereunder for so long as you continue to pay the associated Feature Fees for the same.

6.3 You shall pay any Subscription Fee and/or Feature Fees (as applicable) (collectively the “**Fees**”) within 30 days of receiving Carter’s invoice for sums payable. If any Fees are due, your right to use the Service or applicable part of the Service shall not commence until we receive full payment of the applicable Fees and any other charges specified to you in writing (including email) from time to time.

6.4 Any Fees are exclusive of value added, sales, use or withholding, or equivalent taxes in any jurisdiction (“**Taxes**”), which if payable, will be additionally payable by you at the corresponding rate. You shall be responsible for, and will not withhold or deduct, any applicable Taxes payable on such fees.

6.5 We reserve the right to suspend or terminate your access to the Service if any Fees due to us from you is in arrears. We need not, unless we deem it unreasonable to do so, provide you with advance notice in such circumstances. Interest may be accrued on any unpaid amount on a daily basis at an annual rate of 4% over the then current base lending rate of Carter’s bankers in the United Kingdom.

6.6 Any Fees and other charges are non-cancellable and non-refundable (except in the event these Terms are terminated by you due to a material breach of Carter).

## **7. Intellectual Property**

7.1 We (and our licensors, where applicable) own all right, title and interest, including all related Intellectual Property, in our Service, including the Platform (and, for example, all copyright and database rights that subsist therein in all the elements making up the Platform including its underlying engine, tools, dashboard, algorithms, databases and/or other software elements of which it is comprised).

7.2 You (and your licensors, where applicable) own all right, title and interest, including all related Intellectual Property, in any and all Intellectual Property that exists prior to you entering into these Terms including, for example, the Intellectual Property subsisting in any game title, game characters and other related game materials together with any User Data.

7.3 You acknowledge and agree that we require a licence to the User Data in order to perform the Service. You hereby grant to us a perpetual, worldwide, royalty free, fully paid up, irrevocable, sublicensable and transferrable licence to use the User Data for any and all purposes required in connection with us providing the Service, including to improve and modify the Service, and you further acknowledge and agree that such right shall include the right for us to reproduce, publish, translate, adapt, edit, modify, distribute, display, aggregate, create derivative works of and/or otherwise exploit the User Data in any way that we see fit in order to fulfil the foregoing purpose. The foregoing licence is hereby granted by you on a sole basis i.e., such that the User Data can only be used by Carter and by you and not by any other third party.

7.4 Any and all data generated by your use of the Platform and/or Service (“**Output Data**”), shall be owned by Carter. You hereby assign, absolutely, with full title guarantee, by way of present and future assignment, all Intellectual Property in such data to Carter. Carter hereby grants to you, during the Subscription Term, a non-exclusive, royalty free, personal (i.e., non-transferrable and non-sublicensable) licence to use the Output Data solely for your own internal business purposes (and specifically not for use with any other third party) subject to any usage limits.

7.5 Other than the right to access and use the Service as licensed to you pursuant to Clause 3, and the Output Data as licensed to you pursuant to this Clause 7, you acquire no right to use or any right, title or interest in the Platform and/or the Service and have no right to any Intellectual Property in it.

7.6 Carter shall have a non-exclusive, royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual licence to use or incorporate into the Platform and Service any suggestions, enhancement requests, recommendations or other feedback provided by you in relation to the Services.

## **8. Term and Termination**

8.1. The Subscription Term shall commence on the Effective Date and shall continue on a month by month basis, unless terminated by either party on no less than 30 days' prior written notice to the other or otherwise in accordance with these Terms.

8.2 Carter may, in its sole discretion and on written notice to you, at any time suspend and/or terminate your use of the Service if you breach or otherwise fail to comply with these Terms.

8.3 Carter may, in its sole discretion and on written notice to you, at any time terminate your use of the Service if you fail to pay any amount due under these Terms and remain in default not less than 7 days after being notified in writing to make such payment.

8.4 You may also on written notice to Carter terminate these Terms in accordance with Clause 6.1.

8.5 Either of us may terminate these Terms with immediate effect if the other party (a) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986); (b) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (c) applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (d) is subject to an application is made to court, or an order is made, for the appointment of an administrator; or a notice of intention to appoint an administrator is given or an administrator is appointed, over the party; (e) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or (f) has a receiver appointed over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party; or (g) any event analogous to the events described in this Clause 8.5 shall occur in any jurisdiction in which the other party is incorporated or resident or carries on business.

8.6 On termination of these Terms:

(a) your rights to access and use the Platform and your right to receive the Service shall initially be suspended for a period of 30 days, to allow you a "sunset period" in which to inform your end users of the termination of the Service and re-activate your subscription during this period if you wish;

(b) following the sunset period above, your rights to access and use the Platform and your right to receive the Service shall cease and your account shall be terminated;

(c) without prejudice to Carter's obligation to retain certain personal data to meet its legal and regulatory compliance obligations and Clause 8.6(c) below, Carter shall delete all personal data, including any and all data relating to Authorised Users and User Data within 180 days of the termination of these Terms, unless otherwise requested by you to delete sooner after termination;

(d) Carter shall be entitled to indefinitely retain any and all data collected by it under these Terms and its Privacy and Cookies Policy, but only to the extent that it anonymises such data, with such anonymous data being used in order to further improve the Service;

(e) any rights that have accrued to either of us at the date of termination will remain enforceable after termination.

## **9. Data Protection**

Carter shall process your personal data in accordance with its Privacy and Cookies Policy and (where it is a data processor) in accordance with the terms of its Data Processing Agreement as appended to these Terms.

## **10. Liability**

10.1 Your access and use of the Platform and the Service is entirely at your own risk. You remain responsible for any decision that you make in using the Platform. You further acknowledge and agree that Carter shall not be responsible for your own end user's use and interaction with the Service. For example, if such end user interacts with the Service in an illegal, unethical, immoral and/or profane manner, Carter shall not be responsible for the Output Data that the Service generates as a result of such interaction. It is your responsibility to regulate the actions of your own end users and Carter shall not be liable for any loss or damage suffered by you (including any regulatory fines and/or legal fees) as a result of such end user behaviour.

10.2 You acknowledge and agree that Carter is not obliged to monitor or moderate any User Data submitted to its Service. Where it does monitor or moderate such User Data it shall indicate how this is performed and who should be contacted in relation to any User Data that is of concern to you.

10.3 The express terms of these Terms are in place of all warranties, representations, conditions, terms, undertakings and obligations which but for these Terms would be implied or incorporated into these Terms, or any collateral agreement, by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

10.4 Nothing in these Terms shall operate to exclude or limit liability for: (a) death or personal injury caused by the negligence of either party, their servants, agents, employees or sub-contractors; (b) any breach or contravention of the terms implied by Section 2 Supply of Goods and Services Act 1982; or (c) fraudulent misrepresentation.

10.5 Subject to the express provisions of these Terms, we do not make any representation or warranty as to the reliability, timeliness, quality, suitability, availability, accuracy or completeness of the Service, including the Platform. Neither we nor our licensors represent or warrant that: (a) the use of the Service, including the Platform, will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data; (b) the quality of the Service, including the Platform, will meet your requirements or expectations; (c) the server(s) that



make the Platform available are free of viruses or other harmful components. The Service, including the Platform, is provided to you strictly on an "as is" basis; (d) any stored data will be accurate or reliable; or (e) any errors or defects will be corrected.

10.6 To the extent permitted by law, we exclude liability for: (i) loss of income or revenue; (ii) loss of profits or contracts; loss of anticipated savings; and, (iii) indirect or consequential loss or damage incurred by you in connection with the Service, including the Platform.

10.7 Subject to Clause 10.4, our maximum aggregate liability arising out of or in connection with these Terms or any collateral agreement, whether in contract or tort (including in each case negligence) or otherwise shall in no circumstances exceed the total Subscription Fees you have paid to us in the 12 month period prior to the event in question giving rise to the claim.

## **11. Privacy and Cookies Policy**

11.1 We are committed to protecting your privacy. Carter's Privacy and Cookies Policy explains how we treat your personal data and protect your privacy when you use our Service. By using our Service, you agree that Carter can use such data in accordance with our Privacy and Cookies Policy.

11.2 Please see our Privacy and Cookies Policy [\(\[INSERT LINK\]\)](#) for more information.

## **12. General**

### **12.1 Confidentiality:**

(a) For the purposes of these Terms, 'Confidential Information' means these Terms and all information obtained by one party from the other pursuant to these Terms and its performance which is marked, or ought reasonably to be regarded as confidential including Carter's trade secrets, financial, technical and marketing information, software, specifications, intellectual property, ideas, technology, processes, knowledge and know-how, details of clients/customers, vendors, prices, discounts, margins and current trading performance and future business strategy.

(b) Except as provided by Clauses 12.1(c), 12.1(d) and 12.1(e), each party shall at all times during the continuance of these Terms and for 5 years after its expiry or earlier termination: (i) use its best endeavours to keep all Confidential Information confidential and not disclose any Confidential Information to any other person; and (ii) not use any Confidential Information for any purpose other than to comply with its obligations or exercise its rights under these Terms.

(c) Any Confidential Information may be disclosed by either party to any governmental or other authority or regulatory body or any of its employees, officers or agents to such extent only as is necessary for the purposes contemplated by these Terms, or as is required by law and subject in each case to the relevant party using its best endeavours to ensure that the person to whom the Confidential Information is disclosed keeps this confidential and does not use it except for the purposes for which the disclosure is made.

(d) Any Confidential Information may be used by either party for any purpose, or disclosed by either party to any other person, to the extent only that: (i) it is at the date hereof, or hereafter becomes, public knowledge through no fault of the disclosing party (provided that in doing so the disclosing party shall not disclose any Confidential Information which is not public knowledge); or (ii) it is or

becomes available to the disclosing party otherwise than pursuant to these Terms and free from any restrictions as to its use or disclosure.

(e) Carter may use your name and logo for promotional and marketing purposes.

**12.2 Dealing with Rights and Obligations:** Carter may at any time assign, transfer, charge or otherwise deal in any way with its obligations and the benefit of all or any of its rights under these Terms. Carter may sub-contract any of its obligations hereunder to any third party. You shall not at any time assign, transfer, charge or otherwise deal in any way with your obligations or the benefit of all or any of your rights under these Terms unless the recipient of such rights is:

(a) your parent or subsidiary;

(b) an acquirer of all or substantially all of your assets; or

(c) a successor by merger, provided that prior written notification is given within 30 days of such assignment or transfer coming into effect.

**12.3 Events Beyond our Control:** Carter shall not be liable to you for any breach of these Terms or any failure to provide or delay in providing the Service resulting from any event or circumstance beyond our reasonable control including acts of God; war; riot; civil commotion; fire; flood; adverse weather; terrorist action; nuclear, chemical or biological contamination; governmental order, rule or regulation; failure of telecommunications that provide connectivity to the Platform from a public or private network such as the Internet; and default of suppliers or sub-contractors.

**12.4 Entire Agreement and Variations:** These Terms constitutes the entire understanding and constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous agreement between the parties as to such subject matter. These Terms may not be altered, amended or modified except in writing signed by duly authorised representatives of each of us.

**12.5 Unenforceability:** If any provision in these Terms is, in whole or in part, held by a court or other authority of competent jurisdiction to be illegal, invalid or unenforceable under any enactment or rule of law then that provision or part thereof shall to that extent be deemed not to form part of these Terms and the enforceability and validity of the remainder of these Terms shall not be affected.

**12.6 Notices:** All notices given under or in connection with these Terms shall be in writing and shall be sent to the address of the recipient set out in these Terms or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally by hand (including by commercial courier) or by first class pre-paid letter or by e-mail, and shall be deemed to have been served, if by hand, when delivered; if by first class post, 48 hours after posting; and if by e-mail, when successfully despatched in full.

**12.7 Third Party Rights:** These Terms is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and it is not intended to benefit, or be enforceable by, anyone else.

**12.8 Independent Contractors:** The relationship of the parties is that of independent contractors and these Terms does not constitute either party the agent of the other, or create a partnership, joint venture or similar relationship between the parties, and neither party shall have the power to bind the other or to create a liability against the other in any way.

**12.9 Governing law and Jurisdiction:** These Terms (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to them or their formation) shall be governed by and interpreted in accordance with English law and, for these purposes, the parties irrevocably submit to the exclusive jurisdiction of English courts.

## **ANNEX DATA PROCESSING TERMS**

### **DEFINITIONS**

**Applicable Laws:** means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which Carter is subject.

**Applicable Data Protection Laws:** means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Carter is subject, which relates to the protection of personal data.

**Carter Personal Data:** any personal data which Carter processes in connection with these Terms in the capacity of a controller.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).

**Purpose:** the purposes for which the User Personal Data is processed, as set out in paragraph 1.8(a).

**User Personal Data:** any personal data which Carter processes in connection with these Terms, in the capacity of a processor on your behalf.

**UK GDPR:** has the meaning given to it in the Data Protection Act 2018.

### **I. DATA PROTECTION**

- I.1 For the purposes of this paragraph I, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.
- I.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This paragraph I is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- I.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
  - (a) Carter shall act as controller in respect of the personal data and processing activities set out in Part I of Appendix I to this Annex; and

- (b) Carter shall process the personal data set out in Part 2 of Appendix 1 to this Annex, as a processor on your behalf in respect of the processing activities set out in Part 2 of Appendix 1 to this Annex.
- I.4 Should the determination in paragraph 1.3 change, then each party shall work together in good faith to make any changes which are necessary to this paragraph 1 or the related Appendix.
- I.5 By entering into these Terms, you consent to (and shall procure all required consents, from your Authorised Users, end users, personnel, representatives and/or agents, in respect of) all actions taken by Carter in connection with the processing of Carter Personal Data, provided these are in compliance with the then-current version of Carter's Privacy and Cookies Policy (as referenced in the above Terms). In the event of any inconsistency or conflict between the terms of such policy and this Annex, the policy shall take precedence.
- I.6 Without prejudice to the generality of paragraph 1.2, you shall ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Carter Personal Data and User Personal Data to Carter and lawful collection of the same by Carter during the Subscription Term for the purposes of these Terms.
- I.7 In relation to the User Personal Data, Appendix 2 of sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- I.8 Without prejudice to the generality of paragraph 1.2 Carter shall, in relation to User Personal Data:
- (a) process that User Personal Data only on your documented instructions in accordance with these Terms, unless Carter is required by Applicable Laws to otherwise process that User Personal Data. Where Carter is relying on Applicable Laws as the basis for processing User Personal Data, Carter shall notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Carter from so notifying you on important grounds of public interest. Carter shall inform you if, in its opinion, your instructions infringe Applicable Data Protection Laws;
  - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of User Personal Data and against accidental loss or destruction of, or damage to, User Personal Data, which are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that any personnel engaged and authorised by Carter to process User Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist you insofar as this is possible (taking into account the nature of the processing and the information available to Carter), and at your cost and written request, in responding to any request from a data subject and in ensuring your compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify you without undue delay on becoming aware of a personal data breach involving the User Personal Data;
- (f) at your written direction, delete or return User Personal Data and copies thereof to you upon expiry or termination of these Terms unless Carter is required by Applicable Law to continue to process that User Personal Data. For the purposes of this paragraph 1.8(f) User Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this paragraph 1.8.

1.9 You hereby provide your prior, general authorisation for Carter to:

- (a) appoint processors to process the User Personal Data, provided that Carter:
  - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on it under this paragraph 1;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Carter; and
  - (iii) shall inform you of any intended changes concerning the addition or replacement of the processors (such notice being by way of an update to its Privacy and Cookies Policy), thereby giving you the opportunity to object to such changes provided that if you object to the changes and cannot demonstrate, to Carter's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, you shall indemnify Carter for any losses, damages, costs (including legal fees) and expenses suffered by Carter in accommodating the objection.
- (b) transfer User Personal Data outside of the UK as required for the purpose of Carter fulfilling its obligations under these Terms, provided that Carter shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, you shall promptly comply with any reasonable request of Carter, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

1.10 Either party may, at any time on not less than 30 days' notice, revise this Annex by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an

applicable certification scheme or code of conduct (“**Amended Terms**”). Such Amended Terms shall apply when replaced by attachment to these Terms, but only in respect of such matters which are within the scope of the Amended Terms.

## **Appendix 1: Role of the Parties**

- *Part 1: Where Carter acts as a controller:* As set out in Table 1 of paragraph 2 of its Privacy and Cookies Policy.
- *Part 2: Where Carter acts as a processor:* As set out in Table 2 of paragraph 2 of its Privacy and Cookies Policy.

## **Appendix 2: Particulars of the processing**

1. *Particulars of processing:*
  - 1.1 *Scope and Nature:* For the purposes of Carter fulfilling its obligations under these Terms.
  - 1.2 *Purpose of processing:* For the purposes of Carter fulfilling its obligations under these Terms.
  - 1.3 *Duration of the processing:* For the Subscription Term.
2. *Types of Personal Data:* As set out in Carter’s Privacy and Cookies Policy.
3. *Categories of Data Subject:* Clients of Carter, Authorised Users (as defined in the Terms), and any end users of any clients of Carter including e.g., end users utilising the Service in a client’s product and/or service.