

## **SERVICemate SAAS TERMS**

These current consolidated SaaS Terms were published on 27th April 2021.

### **1. Definitions and interpretation**

- 1.1 The definitions and rules of interpretation set out in Addendum 1 shall apply to our Agreement.
- 1.2 In our Agreement:
  - 1.2.1 each Order Form entered into by the Customer shall form a separate agreement, incorporating these SaaS Terms together with the Data Protection Addendum and the Policies (our Agreement);
  - 1.2.2 in the event of any conflict in respect of the provisions of our Agreement and/or the documents referred to in it the following order of priority shall prevail (in descending order of priority):
    - 1.2.2.1 the Order Form;
    - 1.2.2.2 the Data Protection Addendum;
    - 1.2.2.3 the Policies;
    - 1.2.2.4 the SaaS Terms; and
    - 1.2.2.5 the Documentation; and
  - 1.2.3 subject to the order of priority between documents in clause 1.2.2, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 1.3 Any obligation of SMUK under our Agreement to comply or ensure compliance by any person or SERVICemate with any law shall be limited to compliance only with laws within the United Kingdom as generally applicable to businesses and to providers of software as a service solutions. Such obligations shall not be construed to create any obligation on SMUK (or anyone acting on its behalf) or any part of SERVICemate to comply with any laws or regulations which apply solely to specific commercial or other activities or which apply solely to a specific commercial or non-commercial sector (or part thereof).

### **2. Rights of use and customer responsibilities**

- 2.1 Upon Order Acceptance and subject to the terms of our Agreement, SMUK grants the Customer a non-exclusive, non-transferable, personal right to:

- 2.1.1 use SERVICEmate during Service Hours; and
  - 2.1.2 copy and use the Documentation as strictly necessary for its use by Authorised Users of SERVICEmate, within the United Kingdom during the Service Term for the Permitted Purpose.
- 2.2 The Customer acknowledges that use of SERVICEmate is at all times subject to the Customer's compliance with our Agreement and the requirements identified in our Agreement (including all minimum system requirements).
- 2.3 The Customer acknowledges that SERVICEmate does not include:
- 2.3.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of SERVICEmate); or
  - 2.3.2 dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data).
- 2.4 The Customer shall (and shall ensure all Authorised Users shall) at all times comply with all applicable laws relating to the use or receipt of SERVICEmate, including laws relating to privacy, data protection and use of systems and communications.
- 2.5 The Customer shall indemnify, keep indemnified and hold harmless SMUK from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Customer's breach of our Agreement. This clause 2.5 shall survive termination or expiry of our Agreement.

### **3. Authorised Users**

- 3.1 The Customer shall ensure that only Authorised Users use SERVICEmate and that such use is at all times in accordance with our Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to SERVICEmate, the employees or contractors of the Customer.
- 3.2 The Customer shall:
- 3.2.1 be liable for the acts and omissions of the Authorised Users as if they were its own;

- 3.2.2 only provide Authorised Users with access to SERVICEmate via the access method provided by SMUK and shall not provide access to (or permit access by) anyone other than an Authorised User; and
- 3.2.3 procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on the Customer under our Agreement.
- 3.3 The Customer warrants and represents that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party (or with other individuals except those with administration rights at the Customer's organisation as necessary for use of the SERVICEmate) their password or access details for SERVICEmate.
- 3.4 The Customer shall (and shall ensure all Authorised Users shall) at all times comply with the Acceptable Use Policy and all other provisions of our Agreement.
- 3.5 The Customer shall comply (and shall ensure all Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to SERVICEmate, the Customer Data and the Documentation (or any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, SERVICEmate, the Customer Data or the Documentation (or any part) to, or access or use SERVICEmate, the Customer Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under the laws of the United Kingdom, without first obtaining such licence or other approval. Without prejudice to SMUK's obligations under the Data Protection Addendum, the Customer shall be solely responsible for ensuring its access, importation and use of SERVICEmate, the Customer Data and Documentation in or into any part of a country outside the United Kingdom or elsewhere complies with all export and other laws.
- 3.6 The Customer is entitled to remove one individual as an Authorised User and replace them with another individual in accordance with the terms of our Agreement, but Authorised User accounts cannot be shared or used by more than one individual at the same time
- 3.7 Clauses 3.2 to 3.5 (inclusive) shall survive termination or expiry of our Agreement.

#### **4. Changes to services and terms**

- 4.1 SMUK may at its absolute discretion make, and notify the Customer of, updated versions of the documents referred to in clause 1.2.2 or other documents referred to in any part of our Agreement (excluding in each case the Order Form) from time to time by notifying the Customer of such update by e-mail (together with a copy of

the update or a link to a copy of the update) or by any other means which SMUK elects (Update Notification). SMUK will comply with its related obligations in the Data Protection Addendum.

- 4.2 The document(s) subject to such Update Notification shall replace the preceding version of the same document(s) for the purposes of our Agreement from the date 10 Business Days' after an Update Notification of such revised document(s) (the Update) (or at such later date as SMUK may specify).
- 4.3 In the event that the Customer reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate our Agreement provided it exercises such right prior to such Update taking effect pursuant to clause 4.2 on not less than 5 Business Days prior written notice and notifies SMUK at the time of exercising such right of the negative impact which has caused it to exercise this right. In the event of such termination the Customer shall receive a refund of any pre-paid Fees.
- 4.4 The Customer acknowledges that SMUK shall be entitled to modify the features and functionality of SERVICEmate, for example, to reflect changes in the Customer's needs and/or SMUK's business priorities, security updates or any legal or regulatory changes. SMUK may, without limitation to the generality of this clause 4.4, establish new limits on SERVICEmate (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with SERVICEmate, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by Update to the relevant impacted contractual documents. SMUK will comply with its related obligations in the Data Protection Addendum.

## **5. Devices & mobile & tablet devices**

- 5.1 While SMUK strive to make SERVICEmate available on many platforms, we cannot guarantee that SERVICEmate is compatible with any of the Customer's Devices. If the Customer uses SERVICEmate, the Customer's standard data rates will apply, and the rules of the app store from which the Customer downloads any mobile or tablet applications provided as part of SERVICEmate (each a Mobile App) will also apply.
- 5.2 SMUK may make updates to the Mobile App available to the Customer from time to time. This may include upgrades, modifications, bug fixes, patches and other error corrections and/or new features (Releases). Certain portions of the Mobile App may not properly operate if the Customer and each Authorised User does not install all Releases. The Customers acknowledges and agrees that the

SERVICEmate may not work properly if the Customer and each Authorised User does not allow and install such Releases.

5.3 If the Customer or any Authorised User download the Mobile App from a third-party app store (the App Provider), the Customer acknowledges and agrees that:

5.3.1 the SaaS Terms are an agreement between SMUK and the Customer, and not with the App Provider. As between SMUK and the App Provider, SMUK are solely responsible for the Mobile App;

5.3.2 the App Provider has no obligation to provide any maintenance and support services with respect to the Mobile App;

5.3.3 the App Provider is not responsible for addressing any claims the Customer has relating to the Mobile App or the Customer's possession and use of the Mobile App;

5.3.4 if a third party claims the Mobile App infringes another party's intellectual property rights, as between the App Provider and SMUK, SMUK will be responsible for the investigation, defence, settlement and discharge of any such claim to the extent required by the SaaS Terms;

5.3.5 the App Provider and its subsidiaries are third-party beneficiaries of the SaaS Terms as it relates to the Customer's license to the Mobile App. Upon your acceptance of the SaaS Terms, the App Provider will have the right (and will be deemed to have accepted the right) to enforce the SaaS Terms as related to your license of the Mobile App against you as a third-party beneficiary; and

5.3.6 the Customer must also comply with all applicable third-party terms of service when using the Mobile App.

## **6. Fees**

6.1 The Fees shall be paid by the Customer at the rates and in the manner described in the Pricing Terms.

6.2 The Customer shall pay for all Fees monthly in advance. However if the Customer purchases:

6.2.1 additional features (such as additional SMS credits) part way through a month, then the Customer shall pay the Fees for those additional features at the point of purchase (unless SMUK agrees payment for those additional Fees can be made by the Customer as part of the Fees for the following month or, if our Agreement terminates before the payment by

- the Customer of those next monthly Fees, the Customer shall pay the Fees for those additional features to SMUK on demand); and/or
- 6.2.2 additional Authorised User accounts part way through a month, then the Customer shall pay the Fees for those additional User Authorised Users accounts at the point of purchase on a pro-rated basis for the remainder of the relevant month (unless SMUK agrees payment for those additional Fees can be made by the Customer as part of the Fees for the following month or, if our Agreement terminates before the payment by the Customer of those next monthly Fees, the Customer shall pay the Fees for those additional Authorised User accounts to SMUK on demand).
- 6.3 Fees payable to SMUK under our Agreement shall be paid to SMUK by the payment methods made available by SMUK from time to time.
- 6.4 The Fees are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.
- 6.5 SMUK shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of Barclays plc from time to time in force (or if the base rate of Barclays plc is less than zero percent, then at a rate of four percentage points a year), calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- 6.6 SMUK shall be entitled to increase the Fees at any time by notice to the Customer provided that SMUK shall not be entitled to increase the Fees on less than four weeks prior notice.
- 6.7 To the extent our Agreement terminates or expires (other than due to termination by the Customer under clauses 4.3 or 17.1) the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any month during which SERVICEmate cease to be provided.

## **7. Warranties**

- 7.1 Subject to the remainder of this clause 7, SMUK warrants that:
- 7.1.1 SERVICEmate shall operate materially in accordance with the Documentation when used in accordance with our Agreement under normal use and normal circumstances during the Service Term; and
- 7.1.2 it will provide SERVICEmate with reasonable care and skill.

- 7.2 The Customer acknowledges that clause 7.1 does not apply to Trial Services. Without prejudice to SMUK's obligations under our Agreement in respect of Protected Data, Trial Services are provided 'as is' and without warranty to the maximum extent permitted by law.
- 7.3 SERVICEmate may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that SMUK shall have no liability for any such delays, interruptions, errors or other problems.
- 7.4 If there is a breach of any warranty in clause 7.1 SMUK shall at its option: use reasonable endeavours to repair or replace the impacted part of SERVICEmate within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service) refund the Fees for the impacted part of SERVICEmate which were otherwise payable for the period during which SMUK was in breach of any such warranty (provided such period is at least 7 consecutive days). To the maximum extent permitted by law, this clause 7.4 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 7.1.
- 7.5 The warranties in clause 7.1 are subject to the limitations set out in clause 14 and shall not apply to the extent that any error in SERVICEmate arises as a result of:
- 7.5.1 incorrect operation or use of SERVICEmate by the Customer or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
  - 7.5.2 use of any of SERVICEmate other than for the purposes for which it is intended;
  - 7.5.3 use of SERVICEmate with other software or services or on equipment with which it is incompatible (unless SMUK recommended or required the use of that other software or service or equipment in writing);
  - 7.5.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
  - 7.5.5 any modification of SERVICEmate (other than that undertaken by SMUK or at its direction); or
  - 7.5.6 any breach of our Agreement by the Customer (or by any Authorised User).
- 7.6 While SMUK will make SERVICEmate available to the Customer using reasonable skill and care, the Customer acknowledges and agrees that the availability of any

communications component(s) of SERVICEmate, the Customer's ability to access and/or use any communications component(s) of SERVICEmate and the transmission of SMS/text, messages and/or other forms of communication may depend upon factors outside SMUK's control, including (but not limited to):

- 7.6.1 factors affecting the operation of any communications component(s) of SERVICEmate being successfully conducted and/or preventing SMS/texts, messages and/or other forms of communication (as applicable) being transmitted from such, by way of example, geographical or topographical shortcomings in the network of any network operator, network capacity, physical obstructions or atmospheric conditions; or
- 7.6.2 factors preventing the receipt of SMS/texts, messages and/or other forms of communication (as applicable) such as, by way of example, the terms and conditions of the a service provider.

7.7 The Customer hereby acknowledges and agrees that SMUK cannot, therefore, guarantee:

- 7.7.1 that any communications component(s) of SERVICEmate will be available to the Customer at all times or free from faults or interruptions;
- 7.7.2 the receipt by any intended recipient of any message and/or other form of communication sent using any relevant communications component(s) of SERVICEmate (as applicable); or
- 7.7.3 the retrieval by any intended recipient of any message and/or other form of communication using any relevant communications component(s) of SERVICEmate (as applicable).

7.8 SMUK may make Non-SMUK Features available for the Customer's use in connection with SERVICEmate. The Customer agrees that:

- 7.8.1 SMUK has no responsibility for the use or consequences of use of any Non-SMUK Features;
- 7.8.2 the Customer's use of any Non-SMUK Features shall be governed by the applicable terms between the Customer and the owner or licensor of the relevant Non-SMUK Features (which SMUK will make available to the Customer on request). Those terms cover, without limitation, Non-SMUK Features relating to payment processing services made available through SERVICEmate. Payments from the Customer's customers are



processed through a third party e-commerce platform and payment processing service made available by Stripe.com and subject to its terms and conditions available at <https://stripe.com/ssa>;

- 7.8.3 the Customer is solely responsible for compliance with all applicable third party terms which may govern the use of such Non-SMUK Features; and
  - 7.8.4 the continued availability, compatibility with SERVICEmate and performance of the Non-SMUK Features is outside the control of SMUK and SMUK has no responsibility for any unavailability of or degradation in SERVICEmate to the extent resulting from the availability, incompatibility or performance of any of the Non-SMUK Features.
- 7.9 The Customer acknowledges that no liability or obligation is accepted by SMUK (howsoever arising whether under contract, tort, in negligence or otherwise):
- 7.9.1 that SERVICEmate shall meet the Customer's individual needs, whether or not such needs have been communicated to SMUK;
  - 7.9.2 that the operation of SERVICEmate shall not be subject to minor errors or defects; or
  - 7.9.3 that SERVICEmate shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible in by SMUK in writing.
- 7.10 Other than as set out in this clause 7, and subject to clause 14.6, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

## **8. Intellectual property**

- 8.1 All Intellectual Property Rights in and to SERVICEmate (including in all Mobile Apps, Applications, Documentation and all SMUK Provided Features) belong to and shall remain vested in SMUK or the relevant third party owner. To the extent that the Customer, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Mobile Apps, Applications, Documentation, SMUK Provided Features or any other part of SERVICEmate, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property

Rights) to SMUK or such third party as SMUK may elect. The Customer shall execute all such documents and do such things as SMUK may consider necessary to give effect to this clause 8.1.

- 8.2 The Customer and Authorised Users will be able to store or transmit Customer Data using SERVICEmate and SERVICEmate may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for SMUK (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide SERVICEmate or to exercise or perform SMUK's rights, remedies and obligations under our Agreement.
- 8.3 To the extent Non-SMUK Features are made available to, or used by or on behalf of the Customer or any Authorised User in connection with the use or provision of SERVICEmate, such use of Non-SMUK Features (including all licence terms) shall be exclusively governed by applicable third party terms notified or made available by SMUK or the third party and not by our Agreement. SMUK grants no Intellectual Property Rights or other rights in connection with any Non-SMUK Features.
- 8.4 SMUK may use any feedback and suggestions for improvement relating to SERVICEmate provided by the Customer or any Authorised User without charge or limitation (Feedback). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to SMUK at the time such Feedback is first provided to SMUK.
- 8.5 The Customer hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to SMUK under our Agreement.
- 8.6 Except for the rights expressly granted in our Agreement, the Customer shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in SERVICEmate (or any part including the Mobile Apps, the Applications or Documentation) and no Intellectual Property Rights of either party are transferred or licensed as a result of our Agreement.
- 8.7 This clause 8 shall survive the termination or expiry of our Agreement.

## **9. IP Claims**

- 9.1 Subject to clauses 9.2 and 9.4, SMUK shall defend the Customer from any damages awarded against Customer by a court of competent jurisdiction or agreed upon in settlement by SMUK as a result of or in connection with an IP Claim.

- 9.2 The provisions of clause 9.1 shall not apply unless the Customer:
- 9.2.1 promptly notifies SMUK upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
  - 9.2.2 makes no comment or admission and takes no action that may adversely affect SMUK's ability to defend or settle the IP Claim;
  - 9.2.3 provides all assistance reasonably required by SMUK subject to SMUK paying the Customer's reasonable costs;
  - 9.2.4 gives SMUK sole authority to defend or settle the IP Claim as SMUK considers appropriate; and
  - 9.2.5 uses all commercially reasonable endeavours to mitigate any loss, damage or costs related to the IP Claim.
- 9.3 In the event of any IP Claim, SMUK may, at its option:
- 9.3.1 modify the infringing parts of SERVICEmate so that they cease to be infringing without loss of substantial functionality;
  - 9.3.2 replace infringing parts of SERVICEmate with non-infringing parts;
  - 9.3.3 procure the right for Customer to continue using the infringing parts of SERVICEmate; or
  - 9.3.4 terminate our Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance.
- 9.4 SMUK shall have no liability or obligation under this clause 9 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- 9.4.1 any modification of SERVICEmate (or any part) without SMUK's express written approval;
  - 9.4.2 any Non-SMUK Features;
  - 9.4.3 any Customer Data;
  - 9.4.4 any Trial Services;
  - 9.4.5 any Open Source Software;
  - 9.4.6 any breach of our Agreement by the Customer;
  - 9.4.7 installation or use of SERVICEmate (or any part) otherwise than in accordance with our Agreement and SMUK's written instruction; or

- 9.4.8 any third party software or any other products or services added, embedded, used or accessed through SERVICEmate.
- 9.5 Subject to clause 14.6, the provisions of this clause 9 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.
- 10. Customer Systems and Customer Data**
- 10.1 Customer Data shall at all times remain the property of the Customer or its licensors.
- 10.2 Except to the extent SMUK has direct obligations under data protection laws, the Customer acknowledges that SMUK has no control over any Customer Data hosted as part of the provision of SERVICEmate and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.
- 10.3 If SMUK becomes aware of any allegation that any Customer Data may not comply with the Acceptable Use Policy or any other part of our Agreement SMUK shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from SERVICEmate and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful SMUK shall notify the Customer before taking such action.
- 10.4 Except as otherwise expressly agreed in our Agreement, SMUK shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Service Term. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's businesses. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its and its Authorised User's needs) and extracts it from SERVICEmate prior to the termination or expiry of our Agreement or the cessation or suspension of any of SERVICEmate.
- 10.5 SMUK routinely undertakes regular backups of SERVICEmate (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make SMUK responsible for ensuring the Customer Data does not become inaccessible, damaged or

corrupted. To the maximum extent permitted by applicable law, SMUK shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.

- 10.6 The Customer hereby instructs that SMUK shall within 60 days of the earlier of the end of the provision of SERVICEmate (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to SERVICEmate (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of the United Kingdom (or a part of the United Kingdom) requires SMUK to store such Customer Data. SMUK shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with our Agreement.

## **11. Confidentiality and security of Customer Data**

- 11.1 SMUK shall maintain the confidentiality of the Customer Data and shall not without the prior written consent of the Customer or in accordance with our Agreement, disclose or copy the Customer Data other than as necessary for the performance of SERVICEmate or its express rights and obligations under our Agreement.
- 11.2 SMUK shall implement technical and organisational security measures in accordance with Good Industry Practice.
- 11.3 SMUK:
- 11.3.1 undertakes to disclose the Customer Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of SERVICEmate, and
  - 11.3.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in clause 11.3.1 in respect of the confidentiality and security of the Customer Data as if they were SMUK's own.
- 11.4 The provisions of this clause 11 shall not apply to information which:
- 11.4.1 is or comes into the public domain through no fault of SMUK, its officers, employees, agents or contractors;
  - 11.4.2 is lawfully received by SMUK from a third party free of any obligation of confidence at the time of its disclosure;

- 11.4.3 is independently developed by SMUK (or any of its Affiliates or any person acting on its or their behalf), without access to or use of such Confidential Information; or
- 11.4.4 is required by law, by court or governmental or regulatory order to be disclosed, provided that clauses 11.4.1 to 11.4.3 (inclusive) shall not apply to Protected Data.
- 11.5 This clause 11 shall survive the termination or expiry of our Agreement for a period of one year.
- 11.6 To the extent any Customer Data is Protected Data, SMUK shall ensure that such Customer Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of SMUK's obligations under the Data Protection Addendum. Clauses 11.1 to 11.5 (inclusive) are subject to this clause 11.6.

## **12. SMUK's Confidential Information**

- 12.1 The Customer shall maintain the confidentiality of SMUK's Confidential Information and shall not without the prior written consent of SMUK, disclose, copy or modify SMUK's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under our Agreement.
- 12.2 The Customer undertakes to:
  - 12.2.1 disclose SMUK's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement;
  - 12.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 12; and
  - 12.2.3 be responsible for the acts and omissions of those third parties referred to in this clause 12.2 as if they were the Customer's own acts or omissions.
- 12.3 The Customer shall give notice to SMUK of any unauthorised use, disclosure, theft or loss of SMUK's Confidential Information immediately upon becoming aware of the same.
- 12.4 The provisions of this clause 12 shall not apply to information which:
  - 12.4.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;

- 12.4.2 is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;
- 12.4.3 is independently developed by the Customer, without access to or use of SMUK's Confidential Information; or
- 12.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies SMUK at the earliest opportunity before making any disclosure.

12.5 This clause 12 shall survive the termination or expiry of our Agreement.

### **13. Relief**

To the maximum extent permitted by law, SMUK shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

### **14. How far we are responsible**

14.1 The extent of SMUK's liability under or in connection with our Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 14.

14.2 Subject to clauses 14.3 and 14.6, SMUK's aggregate liability howsoever arising under or in connection with our Agreement shall not exceed:

14.2.1 where the first incident giving rise to any claim under our Agreement arises in the 12 month period following Order Acceptance, an amount equal to the Fees for SERVICEmate paid to SMUK by the Customer from Order Acceptance; or

14.2.2 where the first incident giving rise to any claim under our Agreement arises after the first anniversary of Order Acceptance, an amount equal to the Fees for SERVICEmate paid to SMUK by the Customer in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement.

14.3 Subject to clause 14.6, SMUK's aggregate liability in respect of each individual Trial Service shall not exceed the equivalent of three months' Fees had the Customer paid for the use of SERVICEmate at SMUK's rates in force at Order Acceptance in respect of its cheapest commercially available subscription then in force.

- 14.4 Subject to clause 14.6, SMUK shall not be liable for consequential, indirect or special losses.
- 14.5 Subject to clause 14.6, SMUK shall not be liable for any of the following (whether direct or indirect): loss of profit; destruction, loss of use or corruption of data; loss or corruption of software or systems; loss or damage to equipment; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); and/or harm to reputation or loss of goodwill.
- 14.6 Notwithstanding any other provision of our Agreement, SMUK's liability shall not be limited in any way in respect of the following:
- 14.6.1 death or personal injury caused by negligence;
  - 14.6.2 fraud or fraudulent misrepresentation; or
  - 14.6.3 any other losses which cannot be excluded or limited by applicable law.
- 14.7 This clause 14 shall survive the termination or expiry of our Agreement.

## **15. Suspension**

- 15.1 SMUK may suspend access to SERVICEmate (or any part) to the Customer and/or all or some of the Authorised Users if:
- 15.1.1 SMUK suspects that there has been any misuse of SERVICEmate or breach of our Agreement;
  - 15.1.2 the Customer fails to pay any sums due to SMUK by the due date for payment; or
  - 15.1.3 required by law, by court or governmental or regulatory order.
- 15.2 Where the reason for the suspension is suspected misuse of SERVICEmate or breach of our Agreement, without prejudice to its rights under clause 16, SMUK may take steps to investigate the issue and may restore or continue to suspend access at its discretion.
- 15.3 In relation to suspensions under clause 15.1.2, access to SERVICEmate will be restored after SMUK receives payment in full and cleared funds.
- 15.4 Fees shall remain payable during any period of suspension notwithstanding that the Customer or some or all of the Authorised Users may not have access to SERVICEmate.

## **16. Service term & renewals**



16.1 Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue:

16.1.1 where SMUK have agreed to provide Trial Services, for a fixed period of 14 days (unless and a different period is agreed between SMUK and the Customer in writing) and the Trial Period shall not renew; and

16.1.2 save as provided in clause 16.1.1, for one month (the Initial Term) whereupon it shall either continue in accordance with the provisions of clause 16.2 or terminate in accordance with the provisions of clause 16.3, in each case, the Service Term.

16.2 On the expiry of the Initial Term, our Agreement shall automatically continue for further consecutive periods of one month (each, a Further Term), unless either party has given the other party notice in accordance with clause 16.3, or unless our Agreement is terminated earlier in accordance with its other terms.

16.3 Our Agreement shall terminate at the end of the Initial Term or at the end of the then Further Term if:

16.3.1 in the case of the Customer, the Customer gives SMUK written notice or otherwise logs in to its SERVICEmate account and gives SMUK notice using the method provided in the account that it does not wish to renew the Service Term at the end of the Initial Term or at the end of the then Further Term;

16.3.2 in the case of SMUK, SMUK gives the Customer notice (which may be provided in writing (including via email) or in the Customer's SERVICEmate account) that SMUK will terminate the Service Term at the end of the Initial Term or at the end of the then Further Term.

## **17. Ending our agreement when someone is at fault**

17.1 Either party may terminate our Agreement immediately at any time by giving notice in writing to the other party if:

17.1.1 the other party commits a material breach of our Agreement and such breach is not remediable;

17.1.2 the other party commits a material breach of our Agreement which is not remedied within 10 Business Days of receiving written notice of such breach; or

- 17.1.3 the other party has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within 2 days after the other party has received notification that the payment is overdue.
- 17.2 SMUK may terminate or suspend the provision of Trial Services at any time with or without notice.
- 17.3 Any breach by the Customer of the Acceptable Use Policy or of clauses 3 or 8 shall be deemed a material breach of our Agreement which is not remediable.

## **18. Consequences of termination**

- 18.1 Immediately on termination or expiry of our Agreement (for any reason), the rights granted by SMUK under our Agreement shall terminate and the Customer shall (and shall procure that each Authorised User shall):
  - 18.1.1 stop using SERVICEmate; and
  - 18.1.2 destroy and delete or, if requested by SMUK, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them).
- 18.2 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

## **19. Notices**

- 19.1 Any notice given by a party under our Agreement shall be:
  - 19.1.1 in writing and in English;
  - 19.1.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 19.1.3 sent to the relevant party at the address set out in clause 19.3.
- 19.2 Notices may be given, and are deemed received:
  - 19.2.1 by hand: on receipt of a signature at the time of delivery;
  - 19.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting; and

19.2.3 by email: on receipt of a delivery email from the correct address.

19.3 Notices shall be sent to:

19.3.1 in the case of those to SMUK, to Servicemate (UK) at: 12 The Office Campus, Paragon Business Park, Wakefield, West Yorkshire, England, WF1 2UY, [legal@servicemate.app](mailto:legal@servicemate.app); and

19.3.2 in the case of those to the Customer, to any email or physical address or contact details notified on the Order Form (as updated from time to time pursuant to clause 19.4).

19.4 Any change to the contact details of a party as set out in clause 19.3 shall be notified to the other party in accordance with clause 19.1 and shall be effective:

19.4.1 on the date specified in the notice as being the date of such change; or

19.4.2 if no date is so specified, five Business Days after the notice is deemed to be received.

19.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **20. Other General Terms**

20.1 Our Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral. Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement. Nothing in our Agreement shall limit or exclude any liability for fraud.

20.2 No variation of our Agreement shall be valid or effective unless it is :

20.2.1 an Update made in accordance with our Agreement; or

20.2.2 made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.

20.3 Except as expressly provided in our Agreement, SMUK may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

- 20.4 Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without SMUK's prior written consent.
- 20.5 Each party shall pay all sums that it owes to the other party under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 20.6 The parties are independent and are not partners or principal and agent and our Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.
- 20.7 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected. If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 20.8 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy. A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.
- 20.9 Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of our Agreement (and any documents referred to in it).
- 20.10 A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

- 20.11 Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.
- 20.12 Our Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 20.13 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).

## ADDENDUM 1

### Definitions and interpretation

#### 1 In our Agreement:

**Affiliate:** means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010;

**Applications:** means the software or applications used by or on behalf of SMUK to provide SERVICEmate;

**Authorised Users:** means, in respect of SERVICEmate, the users authorised by the Customer to use SERVICEmate in accordance with the terms of our Agreement;

**Business Day:** means a day other than a Saturday, Sunday or bank or public holiday in England;

**Customer:** means the person or other entity submitting the Order Form;

**Customer Data:** means all data that is provided to SMUK or uploaded or hosted on any part of SERVICEmate by the Customer or by any Authorised User (but excluding Feedback as defined in clause 8.4);

**Customer Systems:** means all software and systems used by or on behalf of the Customer, any of its or their direct or indirect sub-contractors, or any Authorised User in connection with the provision or receipt any of SERVICEmate or that SERVICEmate otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);

**Data Protection Addendum:** means the addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available in Addendum 2;

**Data Protection Losses:** has the meaning given to that term in the Data Protection Addendum;

**Device:** means the computer, laptop, smartphone or tablet computer that the Customer or any Authorised User use to connect to SERVICEmate;

**Documentation:** means the description of SERVICEmate and any relevant instructions as to how to use SERVICEmate made available by SMUK (as Updated from time to time);

**Fees:** means the fees payable by the Customer in consideration of the provision of SERVICEmate as set out in the Pricing Terms;

**Force Majeure:** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including

any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;

**Good Industry Practice:** means the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances;

**Intellectual Property Rights:** means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: whether registered or not; including any applications to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; and wherever existing;

**Materials:** means all services, data, information, content, Intellectual Property Rights, websites, software and other materials provided by or on behalf of SMUK in connection with SERVICEmate, but excluding all Customer Data;

**Mobile App:** has the meaning set out in clause 5.1;

**Non-SMUK Features:** means Materials provided, controlled or owned by or on behalf of a third party the use of which is subject to a separate agreement or licence between the Customer and the relevant third party (including such Non-SMUK Features which may be linked to, interact with or used by SERVICEmate) and all other Materials expressly identified as Non-SMUK Features in our Agreement;

**Open Source Software:** means any software subject to a version of the General Public Licence, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative

([www.opensource.org/docs/osd](http://www.opensource.org/docs/osd)) at the date of our Agreement and any 'free software' as defined by the Free Software Foundation

([www.gnu.org/philosophy/free-sw.html](http://www.gnu.org/philosophy/free-sw.html)) at the date of our Agreement;

**Order Acceptance:** means the date SMUK accepts the Customer's Order Form and provides access to the Customer and its Authorised Users to SERVICEmate;

**Order Form:** means the electric or physical form ordering SERVICEmate entered into by or on behalf of the Customer and SMUK, incorporating our Agreement (and as varied by the parties by agreement in writing or as otherwise set out in our Agreement from time to time);

**Permitted Downtime:** means:

- (a) scheduled maintenance;
- (b) emergency maintenance; or

(c) downtime caused in whole or part by Force Majeure;

**Permitted Purpose:** means use solely for the Customer's internal business operations in connection with field service job management, in each case in accordance with the applicable Documentation and our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law:

- (a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying, adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of SERVICEmate or Documentation;
- (b) permitting any use of SERVICEmate or Documentation in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties or making SERVICEmate or Documentation (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing);
- (c) combining, merging or otherwise permitting SERVICEmate (or any part of it or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Applications, the Mobile Apps or SERVICEmate (or any part),

except as expressly permitted under our Agreement;

**Policies:** means each of the following:

- (a) SMUK's policy on acceptable use of SERVICEmate (as Updated from time to time), which as at Order Acceptance is the latest version available in Addendum 3 (the Acceptable Use Policy); and
- (b) SMUK's privacy policy in relation to SERVICEmate (as Updated from time to time), which as at Order Acceptance is the latest version available at <http://servicemate.app/privacy-policy/> (the Privacy Policy);

**Pricing Terms:** means the details of pricing and fees in respect of each part of SERVICEmate, as initially provided under the Order Form and updated from time to time in accordance with clause 6.6 or, in respect of any part of SERVICEmate for which prices are not expressly agreed, on SMUK's Standard Pricing Terms;

Protected Data: has the meaning given in the Data Protection Addendum;



**Relief Event:** means:

- (a) any breach of our Agreement by the Customer; or
- (b) any Force Majeure;

**SaaS Terms:** means the terms set out in this document (including its Addendums), as Updated from time to time;

**SERVICEmate:** means SMUK's cloud based field service job management services named SERVICEmate, together with any other computing services provided over the internet by or on behalf of SMUK pursuant to our Agreement;

**Service Hours:** means 24 hours a day, seven days a week excluding Permitted Downtime;

**Service Term:** has the meaning given to that term in clause 16.1;

**SMUK:** means Servicemate (UK) Limited (Company no. 11620306);

**SMUK Provided Features:** means all of the Materials provided or made available by or on behalf of SMUK, but excluding all Customer Data and all Non-SMUK Features;

**SMUK's Confidential Information:** means all information (whether in oral, written or electronic form) relating to SMUK's business including information relating to SMUK's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers;

**SMUK's Standard Pricing Terms:** means SMUK's standard pricing terms for each part of SERVICEmate, as amended by SMUK from time to time;

**Trial Service:** means the provision of SERVICEmate on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis);

**Update:** has the meaning given in clause 4.2, and Updated shall be construed accordingly;

**Update Notification:** has the meaning given in clause 4.1; and

**VAT:** means United Kingdom value added tax, any other tax imposed in substitution for it.

## **2 In our Agreement, unless otherwise stated:**

- 2.1 the clause, paragraph, addendum or other headings in our Agreement are included for convenience only and shall have no effect on interpretation;
- 2.2 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 2.3 SMUK and the Customer are together the parties and each a party, and a reference to a party includes that party's successors and permitted assigns;
- 2.4 words in the singular include the plural and vice versa;

- 2.5 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.6 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- 2.7 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 2.8 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

## ADDENDUM 2

### Data Protection Appendix

This current consolidated Data Protection Addendum was published on 27th April 2021.

#### Definitions

- 1.1 In this Data Protection Addendum defined terms shall have the same meaning, and the same rules of interpretation shall apply as in the remainder of our Agreement. In addition in this Data Protection Addendum the following definitions have the meanings given below:

**Applicable Law:** means the following to the extent forming part of the law of United Kingdom (or a part of the United Kingdom) as applicable and binding on either party or SERVICEmate:

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree; or
- (d) any applicable direction, policy, rule or order made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;

**Controller:** has the meaning given to that term in Data Protection Laws;

**Data Protection Laws:** means as applicable and binding on either party or SERVICEmate:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

**Data Protection Losses:** means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Applicable Law:
  - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;

- (ii) compensation which is ordered by a court or Supervisory Authority to be paid to a Data Subject; and
- (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;

**Data Subject:** has the meaning given to that term in Data Protection Laws;

**Data Subject Request:** means a request made by a Data Subject to exercise any rights of Data Subjects under Chapter III of the GDPR;

**GDPR:** means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);

**International Recipient:** means the organisations, bodies, persons and other recipients to which Transfers of the Protected Data are prohibited under paragraph 7.1 without the Customer's prior written authorisation;

**Lawful Safeguards:** means such legally enforceable mechanism(s) for Transfers of Personal Data as may be permitted under Data Protection Laws from time to time;

**Personal Data:** has the meaning given to that term in Data Protection Laws;

**Personal Data Breach:** means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

**Processing:** has the meaning given to that term in Data Protection Laws (and related terms such as process, processes and processed have corresponding meanings);

**Processing Instructions:** has the meaning given to that term in paragraph 3.1.1;

**Processor:** has the meaning given to that term in Data Protection Laws;

**Protected Data:** means Personal Data in the Customer Data;

**Sub-Processor:** means a Processor engaged by SMUK or by any other Sub-Processor for carrying out processing activities in respect of the Protected Data on behalf of the Customer;

**Supervisory Authority:** means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws; and

**Transfer:** bears the same meaning as the word 'transfer' in Article 44 of the GDPR (and related terms such as Transfers, Transferred and Transferring have corresponding meanings).

## **2. Processor and Controller**

- 2.1 The parties agree that, for the Protected Data, the Customer shall be the Controller and SMUK shall be the Processor. Nothing in our Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 2.2 To the extent the Customer is not sole Controller of any Protected Data it warrants that it has full authority and authorisation of all relevant Controllers to instruct SMUK to process the Protected Data in accordance with our Agreement.
- 2.3 SMUK shall process Protected Data in compliance with:
  - 2.3.1 the obligations of Processors under Data Protection Laws in respect of the performance of its obligations under our Agreement; and
  - 2.3.2 the terms of our Agreement.
- 2.4 The Customer shall ensure that it each Authorised User shall at all times comply with:
  - 2.4.1 all Data Protection Laws in connection with the processing of Protected Data, the use of SERVICEmate (and each part) and the exercise and performance of its respective rights and obligations under our Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
  - 2.4.2 the terms of our Agreement.
- 2.5 The Customer warrants, represents and undertakes, that at all times:
  - 2.5.1 the processing of all Protected Data (if processed in accordance with our Agreement) shall comply in all respects with Data Protection Laws, including in terms of its collection, use and storage
  - 2.5.2 fair processing and all other appropriate notices have been provided to the Data Subjects of the Protected Data (and all necessary consents from such Data Subjects obtained and at all times maintained) to the extent required by Data Protection Laws in connection with all processing activities in respect of the Protected Data which may be undertaken by SMUK and its Sub-Processors in accordance with our Agreement;
  - 2.5.3 the Protected Data is accurate and up to date;
  - 2.5.4 except to the extent resulting from Transfers to International Recipients made by SMUK or any Sub-Processor, the Protected Data is not subject to the laws of any jurisdiction outside of the United Kingdom;

- 2.5.5 it shall establish and maintain adequate security measures to safeguard the Protected Data in its possession or control (including from unauthorised or unlawful destruction, corruption, processing or disclosure) and maintain complete and accurate backups of all Protected Data provided to SMUK (or anyone acting on its behalf) so as to be able to immediately recover and reconstitute such Protected Data in the event of loss, damage or corruption of such Protected Data by SMUK or any other person;
- 2.5.6 all instructions given by it to SMUK in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
- 2.5.7 it has undertaken due diligence in relation to SMUK's processing operations and commitments and it is satisfied (and all times it continues to use SERVICEmate remains satisfied) that:
  - 2.5.7.1 SMUK's processing operations are suitable for the purposes for which the Customer proposes to use SERVICEmate and engage SMUK to process the Protected Data;
  - 2.5.7.2 the technical and organisational measures set out in our Agreement (each as Updated from time to time) shall (if SMUK complies with its obligations under our Agreement) ensure a level of security appropriate to the risk in regards to the Protected Data as required by Data Protection Laws; and
  - 2.5.7.3 SMUK has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.

### **3. Instructions and details of processing**

- 3.1 Insofar as SMUK processes Protected Data on behalf of the Customer, SMUK:
  - 3.1.1 unless required to do otherwise by Applicable Law, shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Customer's documented instructions as set out in our Agreement (including with regard to Transfers of Protected Data to any International Recipient), as Updated from time to time (Processing Instructions);
  - 3.1.2 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless

Applicable Law prohibits such information on important grounds of public interest); and

3.1.3 shall promptly inform the Customer if SMUK becomes aware of a Processing Instruction that, in SMUK's opinion, infringes Data Protection Laws, provided that:

3.1.3.1 this shall be without prejudice to paragraphs 2.4 and 2.5; and

3.1.3.2 to the maximum extent permitted by Applicable Law, SMUK shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Processing Instructions following the Customer's receipt of the information required by this paragraph 3.1.3.

3.2 The Customer shall be responsible for ensuring all Authorised User's read and understand the Privacy Policy (as Updated from time to time).

3.3 The Customer acknowledges and agrees that the execution of any computer command to process (including deletion of) any Protected Data made in the use of any of SERVICEmate by an Authorised User will be a Processing Instruction (other than to the extent such command is not fulfilled due to technical, operational or other reasons). The Customer shall ensure that Authorised Users do not execute any such command unless authorised by the Customer (and by all other relevant Controller(s)) and acknowledges and accepts that if any Protected Data is deleted pursuant to any such command SMUK is under no obligation to seek to restore it.

3.4 The processing of the Protected Data by SMUK under our Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in Annex 1.

#### **4. Technical and organisational measures**

4.1 SMUK shall implement and maintain technical and organisational measures:

4.1.1 in relation to the processing of Protected Data by SMUK, in accordance with Good Industry Practice; and

4.1.2 to assist the Customer insofar as is possible (taking into account the nature of the processing) in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data, in each

case at the Customer's cost on a time and materials basis in accordance with SMUK's standard rates. The parties have agreed that (taking into account the nature of the processing) SMUK's compliance with paragraph 6.1 shall constitute SMUK's sole obligations under this paragraph 4.1.2.

## **5. Using staff and other Processors**

- 5.1 SMUK has the Customer's general authorisation for the engagement (whether directly or via a Sub-Processor) of any Sub-Processors from time to time. SMUK shall issue an Update Notice at least 5 Business Days prior to any intended changes concerning the addition or replacement of a Sub-Processor (whether by the Supplier or any Sub-Processor) (the Objection Period). The Customer shall not unreasonably withhold, condition, delay or object to the appointment of any Sub-Processor. Provided SMUK has complied with its obligations under this Data Protection Addendum it shall be permitted to engage such new or replacement Sub-Processor following the end of the Objection Period if the Customer does not object prior to the end of the Objection Period.
- 5.2 SMUK shall:
- 5.2.1 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, ensure each Sub-Processor is appointed under a written contract containing materially the same obligations as under paragraphs 2 to 12 (inclusive) (including those obligations relating to sufficient guarantees to implement appropriate technical and organisational measures);
  - 5.2.2 ensure each such Sub-Processor complies with all such obligations; and
  - 5.2.3 remain fully liable for all the acts and omissions of each Sub-Processor as if they were its own.
- 5.3 SMUK shall ensure that all natural persons authorised by it (or by any Sub-Processor) to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case SMUK shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

## **6. Assistance with compliance and Data Subject rights**



- 6.1 SMUK shall refer all Data Subject Requests it receives to the Customer without undue delay. The Customer shall pay SMUK for all work, time, costs and expenses incurred by SMUK or any Sub-Processor(s) in connection with such activity, calculated on a time and materials basis at SMUK's rates set out in SMUK's Standard Pricing Terms.
- 6.2 SMUK shall provide such assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to SMUK) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:
- 6.2.1 security of processing;
  - 6.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
  - 6.2.3 prior consultation with a Supervisory Authority regarding high risk processing; and
  - 6.2.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach,

provided the Customer shall pay SMUK for all work, time, costs and expenses incurred SMUK or any Sub-Processor(s) in connection with providing the assistance in this paragraph 6.2, calculated on a time and materials basis at SMUK's rates set out in SMUK's Standard Pricing Terms.

## **7. International data Transfers**

- 7.1 Subject to paragraphs 7.2 and 7.3, SMUK shall not Transfer any Protected Data:
- 7.1.1 from any country to any other country; and/or
  - 7.1.2 to an organisation and/or its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries, without the Customer's prior written authorisation except where required by Applicable Law (in which case the provisions of paragraph 3.1 shall apply).
- 7.2 The Customer hereby authorises SMUK (or any Sub-Processor) to Transfer any Protected Data for the purposes referred to in paragraph 3.4 to any International Recipient(s) in accordance with paragraph 7.1, provided all Transfers of Protected Data by SMUK of Protected Data to an International Recipient shall (to the extent required under Data Protection Laws) be effected by way of Lawful Safeguards and

in accordance with Data Protection Laws and our Agreement. The provisions of our Agreement (including this Data Protection Addendum) shall constitute the Customer's instructions with respect to Transfers in accordance with paragraph 3.1.1.

- 7.3 The Customer acknowledges that due to the nature of cloud services, the Protected Data may be Transferred to other geographical locations in connection with use of SERVICEmate further to access and/or computerised instructions initiated by Authorised Users. The Customer acknowledges that SMUK does not control such processing and the Customer shall ensure that Authorised Users (and all others acting on its behalf) only initiate the Transfer of Protected Data to other geographical locations if Lawful Safeguards are in place and that such Transfer is in compliance with all Applicable Laws.

## **8. Information and audit**

- 8.1 SMUK shall maintain, in accordance with Data Protection Laws binding on SMUK, written records of all categories of processing activities carried out on behalf of the Customer.
- 8.2 On request, SMUK shall provide the Customer (or auditors mandated by the Customer) with a copy of the third party certifications and audits to the extent made generally available to its customers. Such information shall be confidential to SMUK and shall be SMUK's Confidential Information as defined in our Agreement, and shall be treated in accordance with applicable terms.
- 8.3 In the event that the Customer, acting reasonably, deems the information provided in accordance with paragraph 8.2 insufficient to satisfy its obligations under Data Protection Laws, SMUK shall, on request by the Customer make available to the Customer such information as is reasonably necessary to demonstrate SMUK's compliance with its obligations under this Data Protection Addendum and Article 28 of the GDPR, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose provided:
- 8.3.1 such audit, inspection or information request is reasonable, limited to information in SMUK's possession or control and is subject to the Customer giving SMUK reasonable (and in any event at least 60 days') prior notice of such audit, inspection or information request;
- 8.3.2 the parties (each acting reasonably and consent not to be unreasonably withheld or delayed) shall agree the timing, scope and duration of the audit, inspection or information release together with any specific

- policies or other steps with which the Customer or third party auditor shall comply (including to protect the security and confidentiality of other customers, to ensure SMUK is not placed in breach of any other arrangement with any other customer and so as to comply with the remainder of this paragraph 8.3);
- 8.3.3 the Customer shall ensure that any such audit or inspection is undertaken during normal business hours, with minimal disruption to the businesses of SMUK;
- 8.3.4 the duration of any audit or inspection shall be limited to one Business Day;
- 8.3.5 all costs of such audit or inspection or responding to such information request shall be borne by the Customer, and SMUK's costs, expenses, work and time incurred in connection with such audit or inspection shall be reimbursed by the Customer on a time and materials basis in accordance with SMUK's Standard Pricing Terms;
- 8.3.6 the Customer's rights under this paragraph 8.3 may only be exercised once in any consecutive 12 month period, unless otherwise required by a Supervisory Authority or if the Customer (acting reasonably) believes SMUK is in breach of this Data Protection Addendum;
- 8.3.7 the Customer shall promptly (and in any event within one Business Day) report any non-compliance identified by the audit, inspection or release of information to SMUK;
- 8.3.8 the Customer agrees that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits shall be SMUK's Confidential Information as defined in our Agreement, and shall be treated in accordance with applicable terms;
- 8.3.9 the Customer shall ensure that each person acting on its behalf in connection with such audit or inspection (including the personnel of any third party auditor) shall not by any act or omission cause or contribute to any damage, destruction, loss or corruption of or to any systems, equipment or data in the control or possession of SMUK while conducting any such audit or inspection; and
- 8.3.10 this paragraph 8.3 is subject to paragraph 8.4.
- 8.4 The Customer acknowledges and accepts that relevant contractual terms agreed with Sub-Processor(s) may mean that SMUK or Customer may not be able to undertake or facilitate an information request or audit or inspection of any or all

Sub-Processors pursuant to paragraph 8.3 and:

- 8.4.1 the Customer's rights under paragraph 8.3 shall not apply to the extent inconsistent with relevant contractual terms agreed with Sub-Processor(s);
- 8.4.2 to the extent any information request, audit or inspection of any Sub-Processor are permitted in accordance with this paragraph 8.4, equivalent restrictions and obligations on the Customer to those in paragraphs 8.3.1 to 8.3.10 (inclusive) shall apply together with any additional or more extensive restrictions and obligations applicable in the circumstances; and
- 8.4.3 paragraphs 5.2.1 and 8.3 shall be construed accordingly.

## **9. Breach notification**

9.1 In respect of any Personal Data Breach, SMUK shall, without undue delay:

- 9.1.1 notify the Customer of the Personal Data Breach; and
- 9.1.2 provide the Customer with details of the Personal Data Breach.

## **10. Deletion of Protected Data and copies**

Following the end of the provision of SERVICEmate (or any part) relating to the processing of Protected Data SMUK shall dispose of Protected Data in accordance with its obligations under our Agreement. SMUK shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Protected Data undertaken in accordance with our Agreement.

## **11. Compensation and claims**

- 11.1 The Customer shall indemnify and keep indemnified SMUK in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, SMUK and any Sub-Processor arising from or in connection with any:  
non-compliance by the Customer with the Data Protection Laws; processing carried out by the Supplier or any Sub-Processor pursuant to any Processing Instruction that infringes any Data Protection Law; or breach by the Customer of any of its obligations under our Agreement, except to the extent the Supplier is liable under paragraph 11.2.
- 11.2 SMUK shall be liable for Data Protection Losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with our Agreement:

- 11.2.1 only to the extent caused by the processing of Protected Data under our Agreement and directly resulting from SMUK's breach of our Agreement; and
- 11.2.2 in no circumstances to the extent that any Data Protection Losses (or the circumstances giving rise to them) are contributed to or caused by any breach of our Agreement by the Customer (including in accordance with paragraph 3.1.3).
- 11.3 If a party receives a compensation claim from a person relating to processing of Protected Data in connection with our Agreement or SERVICEmate, it shall promptly provide the other party with notice and full details of such claim.
- 11.4 The parties agree that the Customer shall not be entitled to claim back from SMUK any part of any compensation paid by the Customer in respect of such damage to the extent that the Customer is liable to indemnify or otherwise compensate SMUK in accordance with our Agreement.
- 11.5 This paragraph 11 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:
  - 11.5.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and
  - 11.5.2 that it does not affect the liability of either party to any Data Subject.

## **12. Survival**

This Data Protection Addendum (as Updated from time to time) shall survive termination (for any reason) or expiry of our Agreement and continue until no Protected Data remains in the possession or control of SMUK or any Sub-Processor, except that paragraphs 10 to 12 (inclusive) shall continue indefinitely.

## **ANNEX 1**

### Data processing details

Processing of the Protected Data by SMUK under our shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Annex 1 to Addendum 1.

#### **1 Subject-matter of processing:**

Performance of respective rights and obligations under this Agreement and delivery and receipt of SERVICEmate under our Agreement.

#### **2 Duration of the processing:**

Until the earlier of final termination or final expiry of our Agreement, except as otherwise expressly stated in our Agreement.

#### **3 Nature and purpose of the processing:**

Processing in accordance with the rights and obligations of the parties under our Agreement;

Processing as reasonably required to provide SERVICEmate; and/or

Processing as initiated, requested or instructed by Authorised Users or the Customer in connection with their use of SERVICEmate in a manner consistent with this Agreement.

#### **4 Type of Personal Data:**

Names, contact information (email address, postal address and telephone numbers) location data, and contact history relating to the Customer's customers.

#### **5 Categories of Data Subjects:**

The Customer's customers, employees and contractors or other Data Subjects.

## ACCEPTABLE USE POLICY

This current consolidated Acceptable Use Policy was published on 27th April 2021.

### 1. Introduction

1.1 This Acceptable Use Policy (as Updated from time to time) is incorporated into our Agreement pursuant to the SaaS Terms. It governs how the Customer and Authorised Users may access and use SERVICEmate.

1.2 Defined terms in this Acceptable Use Policy shall have the meaning given in the SaaS Terms as applied by our Agreement and the same rules of interpretation apply. In addition, in this Acceptable Use Policy the following definition has the meanings given below:

Virus: means any virus, disabling code (including code intended to limit or prevent any use of any software or system) or other malicious software (including malware, trojan horses, ransomware and spyware).

1.3 The Customer and Authorised Users are only permitted to use and access SERVICEmate for the Permitted Purpose as defined in our Agreement and in accordance with its terms. Use of SERVICEmate (or any part) in any other way, including in contravention of any restriction on use set out in this Acceptable Use Policy, is not permitted. If any person does not agree with the terms of this Acceptable Use Policy, they may not use SERVICEmate.

### 2. Restrictions on use

2.1 As a condition of use of SERVICEmate, the Customer (on its own behalf and on behalf of all Authorised Users) and each Authorised User agrees not to use SERVICEmate nor permit them to be used:

2.1.1 for any purpose that is unlawful under any applicable law or prohibited by this Acceptable Use Policy or our Agreement;

2.1.2 to commit any act of fraud;

2.1.3 to distribute any Virus;

2.1.4 for purposes of promoting unsolicited advertising or sending spam;

2.1.5 to simulate communications from SMUK or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');

2.1.6 in any manner that disrupts the operations, business, equipment, websites or systems of SMUK or any other person or entity (including any denial of service and similar attacks);

- 2.1.7 in any manner that harms or may endanger minors or any other person;
- 2.1.8 to promote any unlawful activity;
- 2.1.9 to represent or suggest that SMUK endorses any other business, product or service unless SMUK has separately agreed to do so in writing;
- 2.1.10 to gain unauthorised access to or use of any computers, data, systems, accounts or networks of any person;
- 2.1.11 in any manner which may impair any other person's use of SERVICEmate or use of any other services provided by SMUK to any other person;
- 2.1.12 to attempt to circumvent any security controls or mechanisms;
- 2.1.13 to attempt to circumvent any password or user authentication methods of any person;
- 2.1.14 in any manner inconsistent with our Agreement or any instructions provided by SMUK from time to time; or
- 2.1.15 in any manner which does not comply with the provisions relating to Intellectual Property Rights contained in our Agreement.

### **3. Customer Data and communication standards**

- 3.1 Any Customer Data or communication made on or using SERVICEmate by any person must conform to appropriate and lawful standards of accuracy, decency and lawfulness, which shall be applied in SMUK's discretion, acting reasonably. In particular, the Customer warrants and undertakes that any Customer Data and each such communication shall at all times be:
  - 3.1.1 submitted lawfully and without infringement of any Intellectual Property Rights of any person;
  - 3.1.2 free of any Virus (at the point of entering any of SERVICEmate or SMUK's systems);
  - 3.1.3 factually accurate;
  - 3.1.4 provided with all necessary consents of all relevant third parties;
  - 3.1.5 not defamatory or likely to give rise to an allegation of defamation;
  - 3.1.6 not obscene, seditious, vulgar, pornographic, sexually explicit, discriminatory or deceptive;
  - 3.1.7 not abusive, threatening, offensive, harassing or invasive of privacy;
  - 3.1.8 free of any content or activity that is, or may reasonably be suspected to be, terrorist in nature;
  - 3.1.9 not racist, sexist or xenophobic;



- 3.1.10 not of a nature that any courts, regulators, law enforcement authorities or other governmental authorities may order be blocked, deleted, suspended or removed;
- 3.1.11 not liable to offend religious sentiments or deeply held beliefs; and
- 3.1.12 unlikely to cause offence, embarrassment or annoyance to any person.

#### **4. Linking and other intellectual property matters**

4.1 As a condition of use of SERVICEmate, the Customer (on its own behalf and on behalf of all Customer Affiliates and Authorised Users) and each Authorised User agrees not to:

- 4.1.1 create a frame or any other browser or border environment around the content of SERVICEmate (or any part);
- 4.1.2 display any of the trade marks or logos used on SERVICEmate without SMUK's permission together with that of the owner of such trade marks or logos; or
- 4.1.3 use SMUK's trade marks, logos or trade names in any manner.