BAYADYNAMICS

Baya Studios Privacy Policy

Date / September 2022
Doc No / BAYA-BS-OP-LE-001-A

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By using our website, you hereby consent to our disclaimer and agree to its terms.

Last Modified: September 17, 2019

Copyright

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Last Modified: September 17, 2019

Privacy Policy

We have a legal duty to protect the privacy of all personal and business data obtained from you while you are using this website. This privacy policy explains what information we may collect from you and the purposes for which it will be used. By using this website you give your agreement to the data practices described in this policy.

This website only collects personal and business data from you with your permission, for example if you register or fill in a form. No personal or business data is collected from you without you knowing about it.

Some web usage and technical information is collected by this website to help us improve our service to you, but this does not contain any personal data.

CHANGES TO THIS POLICY

We may make changes to this privacy policy at any time. Changes will be posted here and are effective immediately. Regularly reviewing this page ensures that you are always aware of what information we collect, how we use it and under what circumstances, if any, we will share it with other parties.

1. **Who manages this website?**

   BayaStudios.com is managed by Baya Dynamics Ltd.

2. **What information do we collect and how do we use it?**

   Depending on which services you use on this website, you may be asked to provide information, or we may collect information from you as explained below.

2.1 Information that you provide to us

We collect and process data that you provide for specific purposes. You will be asked to provide information about yourself when you use certain site facilities, in order to complete your request or transaction. This may include personal information such as your name, email addresses, mailing address and telephone number. We use this data to provide you with the information, products or services that you request from us and to communicate with you.

We only retain this information where required to do so by law; for the length of time needed to provide the service or information you have requested (including any retention period specified by law or by government policy), or for the length of time that you choose to store information or permit us to contact you if you have registered with our website.

If you are a registered user, we may use your details to offer personalised or local services, to notify you of changes to our service, to ask your opinions and to help us to improve our services.

2.2 Website usage information

As well as the information that you provide to us as set out above, we receive and store a range of website usage information whenever you use this website. We use this to:

A) assess the effectiveness of marketing campaigns

B) develop and deliver services and information that better meet your needs

C) inform you of events, services and products which we believe to be relevant to you, where you have consented to be contacted for such purposes

Web usage information is collected by our web server and from other sources including search engines, internet service providers, page tagging techniques including JavaScript, and cookies. We use IP addresses to analyse trends, track users' movement, and gather broad demographic information for aggregate use. IP addresses are not linked to personally identifiable information.

The type of website usage information that we collect during your visits to our site includes, for example the date and time, pages viewed or searched for, publications ordered, guides printed, tools used, subscriptions and referrals made, some truncated postcode or telephone area code information entered on forms (this is not traceable back to you) and other information relating to your browsing activity on our website. Where you are a registered user of our website and have signed in, we may collect web usage information to enable us to build a demographic profile. We may also use web usage information to create statistical data regarding the use of our website. We may then use or disclose that statistical data to others for marketing and strategic development purposes, but no individuals will be identified in such statistical data.

2.3 Cookies

Cookies are small files that are often created when you visit a website, and which are stored in the cookie directory of your computer. A cookie often includes an anonymous unique identifier. Cookies do not damage your computer. Each website can send its own cookie to your browser if your browser's preferences allow it, but to protect your privacy your browser only permits a website to access the cookies it has already sent to you, not the cookies sent to you by other sites. You do not have to accept cookies. You can decide if you want to accept cookies by changing the settings on your browser to accept all cookies, reject all cookies, or notify you when a cookie is set. Switching off cookies will still allow you to view the majority of content on our site, although it may restrict your use of our interactive tools, and of some services available through linked sites.

There are two types of cookie. Persistent cookies remain on your computer for a specified time. We use persistent cookies to:

A) identify that a registered user has returned

B) collect information on website usage as described above.

Session-specific cookies are deleted when you leave the website. We use session-specific cookies to:

A) hold the information given while using an interactive tool on the website

B) hold your details when you are signed into the site

C) hold your search criteria while you are carrying out a search of the website

D) collect information on website usage as described above

3. Information sharing and disclosure

We will only disclose your information to others where there is a lawful basis to do so. We will not disclose your information except where:

3.1 this is necessary to provide or complete a relevant service to you (see examples at section 2 above)

3.2 this is necessary for the purposes set out in this privacy policy

3.3 this is required by applicable laws or court orders (for example to prevent or detect crime)

3.4 you give us permission to do so

We will not sell, rent or disclose your information to any third parties other than those set out in this privacy policy without your consent. We do not transfer your personal information outside of the European Economic Area.

4. Linking to other websites

This privacy policy applies only to our website. We are not responsible for privacy practices within any other websites. You should always be aware of this when you leave this website and we encourage you to read the privacy statement on any other website that you visit.

5. Security

We use leading technologies and security measures to safeguard your information and keep strict security standards to prevent any unauthorised access to it. We use industry standard SSL encryption software when processing sensitive information such as usernames and passwords.

6. Your access to your information

You have a right to request a copy of any personal information that we hold about you. You will be asked for appropriate identification when you request copies of personal information.

Last Modified: September 17, 2019

Terms of Service

SaaS refers to the making available of software-based services (collecting, processing, manipulating, transmitting and storing data) to customers by means of a software application or applications hosted remotely by or on behalf of the service provider. SaaS takes a very wide variety of forms.

This agreement is designed for B2B SaaS.

It includes a range of provisions, including: (i) licensing terms for any client application that is needed to access the hosted service; (ii) a detailed change control procedure; (iii) confidentiality provisions protecting the vendor (i.e. not just the customer); (iv) provision for the development of customisations for a particular customer, which may be licensed to that customer or may be incorporated into the main platform; and (v) contract management procedures.

The Provider operates the Platform and provides the Support Services, and the Customer wishes to be granted access to the Platform and to receive the Support Services, on the terms of this Agreement.

AGREEMENT

A) Definitions and interpretation

In this Agreement:

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means this software as a service agreement (including the Schedules) and any amendments to it from time to time;

"Application" means the software application supplied by the Provider to the Customer (called trove HOTEL base 1.0) for the purpose of enabling the Customer to access and use the Platform;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 London time on a Business Day;

"CCN" means a Change control notice issued in accordance with Clause 11, which may be in the form specified in Schedule 5;

"CCN Consideration Period" means the period of 10 Business Days following the receipt of a CCN sent by the other party;

"Change" means any change to the terms of this Agreement;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to this Agreement (as set out in Schedule 3);

"Confidential Information" means the Customer Confidential Information and the Provider Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and "Controlled" will be construed accordingly);

"Customer Confidential Information" means;

A) any information disclosed (whether disclosed in writing, orally or otherwise) by the Customer to the Provider during the Term that is marked as "confidential", described as "confidential" or should have been understood by the Provider at the time of disclosure to be confidential;

B) the financial terms and conditions of this Agreement;

C) the Customer Materials;

"Customer Indemnity Event" has the meaning given to it in Clause 13.1;

"Customer Materials" all works and materials;

A) uploaded to, stored on, processed using or transmitted via the Platform or Application by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and

B) otherwise provided by the Customer to the Provider in connection with this Agreement;

"Customer Representatives" means the person or persons identified as such in Schedule 1;

"Customisations" means customisations to the Platform that the Provider and Customer agree the Provider will produce on behalf of the Customer;

"Defect" means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Platform, but excluding any defect, error or bug caused by or arising as a result of:

A) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors; or

B) an incompatibility between the Platform and any other system, application, program or software not specified as compatible in Schedule 1;

"Documentation" means the documentation produced by the Provider and made available on the Platform to the Customer specifying how the Platform Application should be used;

"Effective Date" means the date of execution of this Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means the period specified as such in Schedule 1;

"Permitted Purpose" means for hotel asset information referencing and reporting on and for the vessels specified in Schedule 3;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Platform" means the software platform known as powered by Baya Dynamics that is owned and operated by the Provider, and that will be made available to the Customer as a service via the internet under this Agreement;

"Provider Confidential Information" means:

A) any information disclosed (whether disclosed in writing, orally or otherwise) by the Provider to the Customer during the Term that is marked as "confidential", described as "confidential" or should have been understood by the Customer at the time of disclosure to be confidential;

B) the financial terms and conditions of this Agreement;

"Provider Representatives" means the person or persons identified as such in Schedule 1;

"Representatives" means the Customer Representatives and the Provider Representatives;

"Schedule" means a schedule attached to this Agreement;

"Services" means all the services provided or to be provided by the Provider to the Customer under this Agreement, including the Support Services;

"Support Services" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with Schedule 2;

"Term" means the term of this Agreement; and

"Upgrades" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

1.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

A) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

B) any subordinate legislation made under that statute or statutory provision.

1.2 The Clause headings do not affect the interpretation of this Agreement.

1.3 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement.

2 Term

2.1 This Agreement will come into force on the Effective Date and will continue in force for 12 months, upon which it will terminate automatically, unless terminated earlier in accordance with Clause 17.

2.2 The Customer may inform the Provider of their intention to use the Platform for an additional period of 12 months, on a revolving basis, subject to a renewal notice being given by the Customer to the Provider at least 30 days prior to the end of 12 months, and subject to payment being received before the expiration of the current term. The renewal is subject to this agreement, and as amended from time to time.

3 The Platform

3.1 The Provider will make available the Platform to the Customer by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account as soon as practicable following the Effective Date.

3.2 Subject to the limitations set out in Clause 3.3 and the prohibitions set out in Clause 3.4, the Provider hereby grants to the Customer a non-exclusive licence to use the Platform for the Permitted Purpose via the Application in accordance with the Documentation during the Term.

3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:
   A) the Platform may only be used by the named users identified in Schedule 1, providing that the Customer may change, add or remove a designated named user in accordance with the procedure set out therein;
   B) the Platform must not be used at any point in time by more than the number of concurrent users specified in Schedule 1, providing that the Customer may add or remove concurrent user licences in accordance with the procedure set out therein;
   C) the Platform may only be used by the employees of the Customer and:
      i)   where the Customer is a company, the Customer's officers;
      ii)   where the Customer is a partnership, the Customer's partners; and
      iii)   where the Customer is a limited liability partnership, the Customer's members;
   D) the Customer must comply at all times with the terms of the acceptable use policy set out in Schedule 4, and must ensure that all users of the Platform agree to and comply with the terms of that acceptable use policy;

3.4 Except to the extent mandated by applicable law or expressly permitted in this Agreement, the licence granted by the Provider to the Customer under this Clause 3 is subject to the following prohibitions:

A) the Customer must not sub-license its right to access and use the Platform or allow any unauthorised person to access or use the Platform;

B) the Customer must not frame or otherwise re-publish or re-distribute the Platform;

C) the Customer must not alter or adapt or edit the Platform save as expressly permitted by the Documentation;

3.5 For the avoidance of doubt, the Customer has no right to access the object code or source code of the Platform, either during or after the Term.

3.6 All Intellectual Property Rights in the Platform shall, as between the parties, be the exclusive property of the Provider.

3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person will or could access the Platform using the Customer's account.

3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.

3.9 The Customer must not use the Platform:
   A) in any way that is unlawful, illegal, fraudulent or harmful; or
   B) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4   The Application

4.1 The Provider will as soon as practicable following the Effective Date make available for download by the Customer a copy of the Application.

4.2 The use of the Application shall be subject to the following licensing terms:
   A) the Customer may only use the Application for the Customer's business purposes;
   B) the Customer may download, install and use the Application on any computer owned and operated by the Customer anywhere in the world strictly in accordance with the Documentation;
   C) the Customer must not:
      i. copy or reproduce Application or any part of the Application other than in accordance with the licence granted in this Clause 4;
      ii. sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or re-publish the Application or any part of the Application
      iii. modify, alter, adapt, translate or edit, or create derivative works of, the Application or any part of the Application;
      iv. reverse engineer, decompile, disassemble the Application or any part of the Application (except as mandated by applicable law)
      v. use the Application other than in accordance with the Documentation; or
      vi. circumvent or remove or attempt to circumvent or remove the technological measures applied to the Application for the purposes of preventing unauthorised use.

4.3 All Intellectual Property Rights in the Application shall, as between the parties, be the exclusive property of the Provider.

4.4 The Customer shall be responsible for the security of the Customer's copies of the Application, and will use all reasonable endeavours to ensure that access to the Application is restricted to persons authorised to use it.

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5   Support Services and Upgrades

5.1 During the Term the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 2.

5.2 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.

6   Customisations

6.1 From time to time the Provider and the Customer may agree that the Provider will customise the Platform and/or the Application in accordance with a specification agreed in writing between the parties using the Change control procedure set out in Clause 11.

6.2 From the date when a Customisation is first made available to the Customer, the Customisation shall form part of the Platform or Application where appropriate under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 3 (or Clause 4)

6.3 The Customer acknowledges that the Provider may make any Customisation available to its other Customers following the making available of that Customisation to the Customer.

6.4 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider.

6.5 The Customer will provide the Provider with:
   A) such access to the Customer's computer systems and such other co-operation as is required by the Provider (acting reasonably) to enable the performance by the Provider of its obligations under this Clause 6;
   B) all information and documents required by the Provider (acting reasonably) in connection with the performance by the Provider of its obligations under this Clause 6; and
   C) any legal, accountancy or taxation advice reasonably required to ensure the compliance of the Customisations with applicable laws, regulations and standards.

6.6 The Customer will be responsible for procuring any third party co-operation reasonably required by the Provider to enable the Provider to fulfil its obligations under this Clause

7   Management

7.1 The Customer will ensure that all instructions in relation to this Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

   A) may treat all such instructions as the fully authorised instructions of the Customer; and
   B) will not comply with any other instructions in relation to this Agreement without first obtaining the consent of a Customer Representative.

7.1 The parties will hold contract management meetings by telephone and via the internet:

   A) regularly during the Term; and

   B) at the reasonable request of either party.

7.2 A party requesting a contract management meeting to be held will give to the other party at least 5 Business Days' notice of the meeting.

7.3 Wherever necessary to enable the efficient conduct of business, the Customer will be represented at a contract management meeting by at least one Customer Representative and the Provider will be represented at a contract management meeting by at least one Provider Representative.

8   Customer Materials

8.1 The Customer grants to the Provider during the Term a non-exclusive licence to store, copy and otherwise use the Customer Materials on the Platform for the purposes of operating the Platform, providing the Services, fulfiling its other obligations under this Agreement, and exercising its rights under this Agreement.

8.2 Subject to Clause 8.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.

8.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of this Agreement, will not:
   A) breach any laws, statutes, regulations or legally-binding codes;
   B) infringe any person's Intellectual Property Rights or other legal rights; or
   C) give rise to any cause of action against the Provider or the Customer or any third party,
   D) in each case in any jurisdiction and under any applicable law.

8.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 8, the Provider may:
   A) delete or amend the relevant Customer Materials; and/or
   B) suspend any or all of the Services and/or the Customer's access to the Platform while it investigates the matter.

8.5 Any breach by the Customer of this Clause 8 will be deemed to be a material breach of this Agreement for the purposes of Clause 17.

9   Intentionally Left Blank

10   Charges

10.1 The Provider will issue invoices for the Charges to the Customer in accordance with the provisions of Schedule 3.

10.2 The Customer will pay the Charges to the Provider within 30 days of the date of issue of an invoice issued in accordance with Clause 10.1.

10.3 All Charges stated in or in relation to this Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT will be payable by the Customer to the Provider in addition to the principal amounts and be responsible for any other taxes or duties arising in connection with the provision of the Service.

10.4 Charges must be paid by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).

10.5 If the Customer does not pay any amount properly due to the Provider under or in connection with this Agreement, the Provider may:

A) charge the Customer interest on the overdue amount at the rate of 8% per year above the Bank of England base rate of from time to time (which interest will accrue daily and be compounded quarterly); or

B) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

10.6 The Provider may vary the Charges payable under Paragraphs 2, 3 and 4 of Schedule 3 on and from any anniversary of the Effective Date by giving to the Customer not less than 30 days' written notice of the variation.

10.7 The Provider may suspend access to the Platform and the provision of the Services if any amounts due to be paid by the Customer to the Provider under this Agreement are overdue.

11   Change Control

11.1   The provisions of this Clause 11 apply to all Changes requested by a party.

11.2   Either party may request a Change at any time.

11.3   When requesting a Change, the requesting party will notify the other party and provide a CCN (which may be in the form specified in Schedule 5). The CCN will set out (as a minimum):
    A) details of the impact on the Services;
    B) details of any additional resources expected to be required as a result of the Change; and
    C) details of any variation to the Charges consequent upon the Change.

11.4   The other party will consider any proposed Change within the CCN Consideration Period.

11.5   Either party may:
    A) accept or reject a CCN issued by the other party;
    B) request further information concerning any aspect of a CCN issued by the other party; and/or
    C) request amendments to a CCN issued by the other party.

11.6 Following agreement of a CCN, each party will confirm its agreement to the CCN by:
    A) signing a copy of the CCN and sending the signed CCN to the other party; or
    B) otherwise sending its written acceptance of the CCN to the other party.

11.7 Until a CCN recording a proposed Change has been signed or agreed in writing by each party, the proposed Change will not take effect.

12   Warranties

12.1 The Customer warrants to the Provider that it has the legal right and authority to enter into and perform its obligations under this Agreement.

12.2 The Provider warrants to the Customer:
    A) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
    B) that it will perform its obligations under this Agreement with reasonable care and skill;
    C) that the Platform will perform substantially in accordance with the Documentation (subject to any Upgrades and Customisations);

D) that the Platform will be hosted in accordance with the requirements set out in Schedule 1, and will be available to the Customer in accordance with the uptime commitments given in Schedule 2;

12.3 The Customer acknowledges that:

A) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;

B) the Provider does not warrant or represent that the Platform will be compatible with any application, program or software (other than the Application) not specifically identified as compatible in Schedule 1; and

C) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under this Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person

12.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in the terms of this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement.

13 Indemnities

13.1 the Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid upon legal advice in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 8.3

14 Limitations and exclusions of liability

14.1 Nothing in the Agreement will:

A) limit or exclude the liability of a party for death or personal injury resulting from negligence;

B) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

C) limit any liability of a party in any way that is not permitted under applicable law; or

D) exclude any liability of a party that may not be excluded under applicable law.

14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in the Agreement:

A) are subject to Clause 14.1;

B) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

C) will not limit or exclude the liability of the parties under the express indemnities set out the Agreement.

14.3 Neither party will be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

14.4 Neither party will be liable for any loss of business, contracts or commercial opportunities.

14.5 Neither party will be liable for any loss of or damage to goodwill or reputation.

14.6 Neither party will be liable in respect of any loss or corruption of any data, database or software.

14.7 Neither party will be liable in respect of any special, indirect or consequential loss or damage.

14.8   Neither party will be liable for any losses arising out of a Force Majeure Event.

14.9   Neither party's liability in relation to any event or series of related events will exceed the total amount paid and payable by the Customer to the Provider under the Agreement during the 12-month period immediately preceding the event or events giving rise to the claim.

14.10   Neither party's aggregate liability under the Agreement and any collateral contracts will not exceed the total amount paid and payable by the Customer to the Provider under the Agreement.

15   Data Protection

15.1   The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

15.2   The Provider warrants that:
   A) It will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Provider on behalf of the Customer; and
   B) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer.

16   Confidentiality and publicity

16.1 The Provider will:
   A)   keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 16;
   B)   protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and
   C)   without prejudice to the generality of Clause 16.1(b), deploy and maintain the security systems and technologies detailed in Schedule 1 in relation to the Customer Confidential Information held on the Platform.

16.2   The Customer will:

   A)   keep confidential and not disclose the Provider Confidential Information to any person save as expressly permitted by this Clause 16;
   B)   protect the Provider Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.3   Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

16.4   The obligations set out in this Clause 16 shall not apply to:
   A)   Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
   B)   Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer, and Provider Confidential Information that is in possession of the Customer prior to disclosure by the Provider;

C) Customer Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or

D) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.

16.5   Neither party will make any public disclosure relating to this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

17 Termination

17.1   Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

A) commits any material breach of any term of this Agreement, and:
   i) the breach is not remediable; or
   ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
B) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).

17.2   Either party may terminate this Agreement immediately by giving written notice to the other party if:

A) the other party:
   i) is dissolved;
   ii) ceases to conduct all (or substantially all) of its business;
   iii) is or becomes unable to pay its debts as they fall due;
   iv) is or becomes insolvent or is declared insolvent; or
   v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
B) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party
C) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
D) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

17.3   Either party may terminate this Agreement by giving at least 30 days' written notice of termination to the other party, expiring at any time after the end of the Minimum Term.

17.4   If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate this Agreement by giving at least 90 days' written notice of termination to the Customer.

17.5   The Provider may terminate this Agreement by giving written notice of termination to the Customer in the event that the parties cannot reasonably agree on any Change request made in accordance with Clause 11.

17.6   The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date.

18   Effects of Termination

18.1   Upon termination of this Agreement, all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 4.4, 10.5, 13, 14, 16.1 to 16.4, 18 and 21.

18.2   Termination of this Agreement will not affect either party's accrued liabilities and rights as at the date of termination.

18.3   Subject to Clause 18.5, within 30 days following the termination of the Agreement, the Provider will:

A)   irrevocably delete from the Platform all Customer Confidential Information; and

B)   irrevocably delete from its other computer systems all Customer Confidential Information and return to the Customer or dispose of as the Customer may instruct all documents and materials containing Customer Confidential Information.

18.4 Subject to Clause 18.5, within 30 days following the termination of this Agreement, the Customer will:

A)   return to the Provider or dispose of as the Provider may instruct all documents and materials containing Provider Confidential Information; and

B)   irrevocably delete from its computer systems all Provider Confidential Information.

18.5   A party may retain any document (including any electronic document) containing the Confidential Information of the other party after the termination of this Agreement if:

A)   that party is obliged to retain such document by any law or regulation or other rule enforceable against that party; or

B)   the document in question is a letter, fax, email, order confirmation, invoice, receipt or similar document addressed to the party retaining the document.

19   Notices

19.1   Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by recorded signed-for post, or sent by fax or email, for the attention of the relevant person, and to the relevant address or fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Provider

Baya Dynamics Ltd

Octagon Point, 5 Cheapside, London, EC2V 6AA

United Kingdom

Attention: Chris Finch, Founder & CEO

Email: chris.finch@bayadynamics.com

19.2   A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
A)   where the notice is delivered personally, at the time of delivery;
B)   where the notice is sent by recorded signed-for post, 48 hours after posting; and where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

20 Force Majeure Event

20.1   Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under this Agreement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

20.2   A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement, will:
A)   forthwith notify the other; and
B)   will inform the other of the period for which it is estimated that such failure or delay will continue.

20.3   The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

21 General

21.1   No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

21.2   If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

21.3   Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

21.4   This Agreement may not be varied except in accordance with Clause 11 or by a written document signed by or on behalf of each of the parties.

21.5   The Customer hereby agrees that the Provider may freely assign any or all of its contractual rights and/or obligations under this Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement.

21.6   Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of this Agreement.

21.7   Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

21.8   This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

21.9   Subject to Clause 14.1:

A)   this Agreement and the acceptable use policy constitutes the entire agreement between the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and

B)   neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.

21.10   This Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

SCHEDULE 1 - MISCELLANEOUS

1. Minimum Term

The Minimum Term shall be the period of 12 months following the Effective Date.

2. Minimum Technical Requirements

No specialist hardware or software is required. Users only require a computer or device capable of running the Microsoft Internet Explorer 9 with the Microsoft Silverlight 5 plug-in installed. These pieces of software come as standard with Microsoft Windows and are typically updated as part of a regular Microsoft Windows Update. If these are not preinstalled on the host device they are free to download. Although not officially supported it is also possible to use other web browsers which support Silverlight.

An internet connection is required to use the Application. A minimum connection speed of 0.75 Mbps will allow the user an entry level experience. If there is an upgraded version of the Application available at the beginning of a session or an older one has not been cached, then the Application will need to be downloaded (approximately 6Mb). Browsing is no more demanding than visiting a typical website, but file and report download performance will be more dependent on the available bandwidth.

3. Licensing
Named users:
1. *A list of licensed named users will be maintained by the Provider.*
Only when instructed via email, by the Customers Representative will the Providers Representative create, update, lock or delete a licensed user.

4. Representatives
Provider Representatives:
1. *Chris Finch, CEO*
2. *Email: chris.finch@bayadynamics.net*
Provider Representatives:

3. *Name, Position*
4. *Email: name@companyname.com*

SCHEDULE 2 - SERVICE LEVEL AGREEMENT

1. Introduction

1.1 In this Schedule:
"New Functionality" means new functionality that is introduced to the Platform by an Upgrade; and "Protected Functionality" means base functionality that allows a user to browse, download, notify and report.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Support

2.1 The Provider will make available, during Business Hours, telephone and email support facility for the purposes of:
A) assisting the Customer with the configuration of the Platform and the integration of the Platform with the Customer's other systems;
B) assisting the Customer with the proper use of the Platform; and/or
C) determining the causes of errors and fixing errors in the Platform.

2.2 Subject to Paragraph 2.3, the Customer must make all requests for Support Services through the support facility, and all such requests must include at least the following information:

Type of Issue:
Description:
Severity:
Web Browser:
Silverlight Version:
Operating System:
Instructions to Replicate:

2.3 The Provider will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside Business Hours in the case of an emergency.

3 Response and resolution times

3.1 The Provider will:

A) use reasonable endeavours to respond to requests for Support Services made through the helpdesk; and
B) use reasonable endeavours to resolve issues raised by the Customer

3.2 The Provider will determine, acting reasonably, in to which severity category an issue raised through the Support Services falls.

3.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

4 Limits on Support Services

4.1 Where the total person-hours spent by the Provider performing the Support Services under Paragraphs 2 and 3 during any 30 days exceed 8 hours, then

   A)   the Provider will cease to have an obligation to provide those Support Services to the Customer during that period; providing that

   B)   the Provider may agree to provide additional such Support Services to the Customer during that period, but the provision of such services will be subject to payment by the Customer of additional Charges at the Provider's standard day rate from time to time.

4.2 The Provider shall have no obligation under this Agreement to provide Support Services in respect of any fault or error caused by:

   A)   the improper use of the Platform; or

   B)   the use of the Platform otherwise than in accordance with the Documentation; or

   C)   factors outside of the Providers reasonable control.

4.3 Where integration and configuration is a major undertaking and would be limited by Paragraph 4.1, the Provider may agree to provide additional such Support Services to the Customer, but the provision of such services will be subject to payment by the Customer:

   A)   of additional Charges at the Provider's standard day rate from time to time; and/or

   B)   all other Charges that are agreed between the parties in writing from time to time.

5 Upgrades

5.1   The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may, subject to Paragraph 5.2, result in changes the appearance and/or functionality of the Platform.

5.2   No Upgrade shall disable, delete or significantly impair the Protected Functionality.

5.3   The Provider will give to the Customer reasonable prior written notice of the application of any significant Upgrade to the Platform. Such notice shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.

5.4   The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:

   A) the Upgrade introduces New Functionality to the Platform;

   B) that New Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;

   C) access to or use of the New Functionality is chargeable to the customers of the Provider using the Platform generally; and

   D) any decision by the Customer not to pay the Charges for the New Functionality will not prejudice the Customer's access to and use of the rest of the Platform.

6 Uptime commitment

6.1 The Provider shall use reasonable endeavours to ensure that the Platform is available 99.9% of the time during each month cycle, subject to Paragraph 8.

6.2 Platform uptime shall be calculated using the following methodology: SLA calculations will be based on an average over a monthly cycle, with 5-minute time intervals. A 5-minute interval is marked as

unavailable if all the customer's attempts to establish a connection to the Platform fail or take longer than 30 seconds to succeed, or if all basic valid read and write operations (as described in the Documentation) fail after connection is established. Failures caused by the software, hardware or network at the site used by the Customer to connect to the Platform are not included.

6.3 The Provider shall arrange for the monitoring of the availability of the Platform, and shall send an availability report to the Customer promptly following the Customer's request.

7 Back-up and restoration

7.1 Subject to Paragraph 7.2, the Provider will:

A) make back-ups of the Customer Materials stored on the Platform on a hourly basis, and will retain such back-ups for at least 14 days; and

B) at least once every day, the Provider will arrange for the off-site storage of a current back-up of the Customer Materials stored on the Platform (which will be over-written on the following off-site back-up date).

7.2 The Provider will not make back-ups of in application activity such as; notifications, generated reports, passwords and configurations.

7.3 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use reasonable endeavours promptly to restore the Customer Materials from the most recent available back-up copy.

7.4 The Customer is responsible via the Application for downloading and/or running reports as a method of gathering their data within 30 days following the termination of the Agreement.

8 Scheduled maintenance

8.1 The Provider may suspend access to the Platform in order to carry out scheduled maintenance and such suspension to be for not more than 12 hours in each calendar month.

8.2 The Provider must give to the Customer at least 5 days' written notice of scheduled maintenance, including full details of the expected Platform downtime.

8.3 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this Paragraph 8 shall not be counted as downtime for the purposes of Paragraph 6.

SCHEDULE 3 - CHARGES

A) Introduction

1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

1.2 The Charges under the Agreement will consist of the following elements:
A) access Charges, in respect of access to and use of the Platform; and
B) other Charges.

1.3 All rates are net, in Great British Pounds and exclude VAT and other sales taxes.

2   Access Charges

2.1   The Charges in respect of access are to be calculated by reference to a guest stateroom rate, the following rates shall apply at the date of this Agreement:

Baya Dynamics v1.0, price as agreed per guestroom

2.2   The Charges in respect of Access shall be paid in advance of the Effective Date and each subsequent Term. Refunds will not be provided, except where required by law.

3   Intentionally Left Blank

4   Other Charges

4.1   In addition to the Charges detailed in Paragraph 2 above, the Provider will invoice in respect of, and the Customer shall pay to the Provider:

A)   Charges payable under Paragraphs 4 and 5 of Schedule 2; and
B)   all other Charges that are agreed between the parties in writing from time to time.

4.2   Where other Charges are to be calculated by reference to a hourly or daily rate, the following rates shall apply as at the date of this Agreement:

Standard Professional Service Rate (data or technical), as agreed, per person per day

4.3   The following reasonable actual expenses incurred during the term may be passed on by the Provider to the Customer at cost plus 10%, including, but not limited to: travel, accommodation, subsistence, reprographics, communication and delivery charges.

Air transportation shall be business class on all flights for the principals. All others when appropriate shall travel economy class.

Significant expenses, including, but not limited to, those for travel, must be submitted in writing in advance to the Customer for written approval.

SCHEDULE 4 - ACCEPTABLE USE POLICY

1.   **This Policy**
This Acceptable Use Policy (the "Policy") sets out the rules governing the use of our web services available via bayadynamics.com (the "Service") and any content that you may submit to the Service ("Content").

By using the Service, you agree to the rules set out in this Policy.

2.   **General restrictions**
You must not use the Service in any way that causes, or may cause, damage to the Service or impairment of the availability or accessibility of the Service, or any of the areas of, or services on, the Service.

You must not use the Service:

    A.   in any way that is unlawful, illegal, fraudulent or harmful; or

    B.   in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3. Licence

You grant to us a worldwide, irrevocable, non-exclusive, royalty-free licence to use, reproduce, publish, adapt, translate and distribute your Content on and in relation to the Service in any existing and future media. You also grant to us the right to sub-license these rights, and the right to bring an action for infringement of these rights.

4. Unlawful and illegal material

You must not use the Service to store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case in any jurisdiction and under any applicable law).

Content (and its publication on the Service) must not:

    A.   be libellous or maliciously false;

    B.   be obscene or indecent;

    C.   infringe any copyright, moral rights, database rights, trademark rights, design rights, rights in passing off, or other intellectual property rights;

    D.   infringe any rights of confidence, rights of privacy, or rights under data protection legislation;

    E.   constitute negligent advice or contain any negligent statement;

    F.   constitute an incitement to commit a crime;

    G.   be in contempt of any court, or in breach of any court order;

    H.   be in breach of racial or religious hatred or discrimination legislation;

    I.   be blasphemous;

    J.   be in breach of official secrets legislation; or

    K.   be in breach of any contractual obligation owed to any person.

You must not submit any Content that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

5. Data mining

You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Service without our express written consent.

6. Graphic material

Content must not depict violence in an explicit, graphic or gratuitous manner.

Content must not be pornographic or sexually explicit, or consist of or include explicit, graphic or gratuitous material of a sexual nature.

7. **Harmful software**
   You must not use the Service to promote or distribute any viruses, Trojans, worms, root kits, spyware, adware or any other harmful software, programs, routines, applications or technologies.

   You must not use the Service to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.

8. **Factual accuracy**
   Content must not be untrue, false, inaccurate or misleading.

   Statements of fact contained in the Content must be true; and statements of opinion contained on the Content must be truly held and where possible based upon facts that are true.

9. **Negligent advice**
   Content must not consist of or contain any instructions, advice or other information that may be acted upon and could, if acted upon, cause:
   1. illness, injury or death; or
   2. any other loss or damage.

10. **Marketing and spam**
    You must not without our prior written permission use the Service for any purposes related to marketing, advertising, promotion, or the supply and/or sale of goods and/or services.

    Content must not constitute spam.

    You must not use the Service to transmit or send unsolicited commercial communications.

    You must not use the Service to market, distribute or post chain letters, ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar schemes, programs or materials.

11. **Gambling**
    You must not use the Service for any purpose related to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

12. **Professional advice**
    You must not use the Service to provide any legal, financial, investment, taxation, accountancy, medical or other professional advice or advisory services.

13. **Netiquette**
    Content must be appropriate, civil, tasteful and accord with generally accepted standards of etiquette and behaviour on the internet.

    Content must not be offensive, deceptive, threatening, abusive, harassing, or menacing, hateful, discriminatory or inflammatory.

Content should not cause annoyance, inconvenience or needless anxiety.

Do not flame or conduct flame wars on the Service ("flaming" is the sending hostile messages intended to insult, in particular where the message is directed at a particular person or group of people).

Do not troll on the Service ("trolling" is the practice of deliberately upsetting or offending other users).

You must not flood the Service with Content focusing upon one particular subject or subject area, whether alone or in coordination with other users.

You must not duplicate existing Content on the Service.

You must submit Content to the appropriate part of the Service.

Do not unnecessarily submit textual content in CAPITAL LETTERS.

You should use appropriate and informative titles for all Content.

You must at all times be courteous and polite to other Service users.

14. Hyperlinks
You must not link to any website or web page containing material that would, were it posted on the Service, breach the preceding terms of this Policy above.

15. Breaches of this Policy
We reserve the right to edit or remove any Content in our sole discretion for any reason, without notice or explanation.

Without prejudice to this general right and our other legal rights, if you breach this Policy in any way, or if we reasonably suspect that you have breached this Policy in any way, we may:

- A. delete or edit any of your Content;
- B. send you one or more formal warnings;
- C. temporarily suspend your access to a part or all of the Service; and/or
- D. permanently prohibit you from using a part or all of the Service.

16. Banned users
Where we suspend or prohibit your access to the Service or a part of the Service, you must not take any action to circumvent such suspension or prohibition (including without limitation using a different account).

17. Monitoring
Notwithstanding the provisions of this Policy, we do not actively monitor Content.

18. Report abuse
If you become aware of any material on the Service that contravenes this Policy, please notify us by email.

Last Modified: September 17, 2019