

## **AUTOGENAI TERMS AND CONDITIONS (applicable to Order Forms signed on or after 1 December 2022)**

These Terms and Conditions, together with its Schedules (the “**Terms**”) are made and entered into on the Effective Date by and between AutogenAI Ltd (d/b/a AutogenAI), a company incorporated in England and Wales with company number 13907128 having its registered offices at Office 7, 35-37 Ludgate Hill, London, England, EC4M 7JN (“**AutogenAI**”) and the entity signing the Order Form which references these Terms (“**Customer**”). These Terms along with the Order Form constitute the agreement between the parties (collectively referred to as the “**Agreement**”).

### **1 Definitions**

- 1.1 Capitalised terms not otherwise set out in these Terms shall have the meaning set out in the attached Schedule 1 (Definitions).

### **2 Services**

- 2.1 AutogenAI will provide to Customer the applicable Services purchased by Customer as set out in the relevant Order Form.
- 2.2 Subject to payment of the applicable Fees, the restrictions set out in this clause 2 and the terms and conditions of these Terms and the applicable Order Form, AutogenAI hereby grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable right during the Term to use the Services and the applicable AutogenAI Technology.
- 2.3 Customer’s use of the Services will be subject to the Usage Policy. The Usage Policy forms part of this Agreement.

### **3 Fees and Payment Terms**

- 3.1 Customer shall pay to AutogenAI the Fees set forth in the applicable Order Form in accordance with this clause 3.
- 3.2 AutogenAI will invoice Customer for the applicable Fees in accordance with the payment schedule and payment instructions set out in the Order Form.
- 3.3 All amounts and Fees stated or referred to in the Agreement are non-refundable and are exclusive of all Taxes. Customer shall be solely responsible for, and paying all applicable Taxes relating to the Agreement, and the use or access to the Services and Support Services.
- 3.4 Customer shall pay invoices in full and without deduction by electronic money transfer to the account details provided in each invoice, in the currency specified in the Order Form or invoice, by the date specified on each invoice .
- 3.5 If AutogenAI has not received payment for any invoices which are not the subject of a bonafide dispute by the due dates and without prejudice to any other rights and remedies of AutogenAI, AutogenAI may:
- 3.5.1 without liability to Customer, disable Customer's password, account and access to all or part of the Services and AutogenAI Technology and/or suspend the provision of Support Services and AutogenAI shall be under no obligation to provide any or all of the Services and/or Support Services while the invoice(s) concerned remain unpaid; and
- 3.5.2 charge interest which shall accrue on such overdue amounts at the higher of (i) an annual rate equal to 4% or (ii) the maximum interest rate allowed under applicable law.
- 3.6 On each annual anniversary of the Effective Date, AutogenAI shall review the Licence Fees, taking into account factors such as but not limited to, costs and market conditions. AutogenAI shall notify Customer of any changes to the Licence Fees not less than sixty (60) days' prior to the Fee increase.

## 4 **Warranty**

- 4.1 AutogenAI warrants that the Services will be provided with reasonable skill and care.
- 4.2 The warranty provided in clause 4.1 shall not apply to the extent of any non-conformance which is caused by:
- 4.2.1 Customer's implementation or use of the Services contrary to AutogenAI's instructions or otherwise in breach of the Agreement;
  - 4.2.2 modification or alteration of the Services by any party other than AutogenAI or AutogenAI's duly authorised contractors or agents; or
  - 4.2.3 inaccurate or out of date information provided by an Authorised User.
- 4.3 If the Services do not conform with the warranty provided in clause 4.1, AutogenAI will, at its expense, use commercially reasonable efforts to correct any such non-conformance within a reasonable period of time. This clause sets out the Customer's sole and exclusive remedy and AutogenAI's entire liability for breach of clause 4.1.
- 4.4 Notwithstanding the foregoing, AutogenAI:
- 4.4.1 does not warrant that Customer's use of the Services will be uninterrupted or error-free;
  - 4.4.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from Customer's access to and use of the Services and/or third-party applications or the transfer of data over communications networks and facilities, including the Internet, and Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
  - 4.4.3 is not responsible for any Virus which was not detected by AutogenAI using reasonable current commercial methods of detection or transmitted through any third-party services;
  - 4.4.4 nor its suppliers or third-party service providers or software vendors, shall have any liability whatsoever for the accuracy, completeness, or timeliness of Content, or for any decision made or action taken by Customer, any Authorised User, or any third party in reliance upon any Content.
- 4.5 Except as expressly provided for in this clause 4, AutogenAI (and its Associated Companies and suppliers) to the extent permitted by applicable law, disclaims all other warranties, express, implied or statutory, including without limitation warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a particular purpose or use, and satisfactory quality, and non-infringement.
- 4.6 The Agreement shall not prevent AutogenAI from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

## 5 **Intellectual Property Rights**

- 5.1 Customer acknowledges and agrees that AutogenAI and its licensors and suppliers own all Intellectual Property Rights in the AutogenAI Technology, Services, and AutogenAI Data, but excluding Customer Data & Content. Except as expressly stated herein, the Agreement does not grant Customer any Intellectual Property Rights or any other rights or licenses in respect of the AutogenAI Technology, Services, or AutogenAI Data.
- 5.2 Customer owns all Intellectual Property Rights in the Customer Data and Content.

## 6 **Term and Termination**

- 6.1 The Agreement shall commence on the Effective Date and remain in place until terminated as provided by this clause 6 by either party. Up until the first anniversary of the Effective Date, either party may terminate the Agreement with not less than one month's notice. After the first anniversary of the Effective Date, either party may terminate the Agreement with not less than six months' notice. Where a Minimum Term is specified in the Order Form, the Customer can not terminate the Agreement before the end of that Minimum Term.
- 6.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other at any time with immediate effect upon written notice if the other party:
- 6.2.1 is in material breach of any of its obligations under the Agreement and/or an Order Form and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days following notice of the breach; or
- 6.2.2 voluntarily files a petition under bankruptcy or insolvency law; shall have a receiver or administrative receiver appointed over it or any of its assets; or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business; or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 6.3 On termination or expiration of the Agreement for any reason:
- 6.3.1 Customer's rights of use granted under the Agreement shall immediately terminate and Customer shall immediately cease the use of the Services subscribed to under the Agreement, the AutogenAI Technology, and the Support Services;
- 6.3.2 Customer shall promptly pay all monies due or to become due under the Agreement; and
- 6.3.3 the parties shall comply with their respective obligations set out in clause 8.4.

## 7 Limitation of Liability

- 7.1 The exclusions in this clause 7 shall apply to the fullest extent permissible at law but neither party excludes liability for (i) death or personal injury caused by its negligence or that of its officers, employees, contractors or agents; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded by law.
- 7.2 Except with respect to amounts owed by Customer to AutogenAI hereunder and subject to clause 7.1, AutogenAI's liability for or in respect of any loss or damage suffered by Customer (whether due to breach of contract, tort (including negligence) or otherwise) under or in connection with the Agreement shall be limited to £250,000.
- 7.3 To the maximum extent permitted by applicable law, in no event will either party be liable to the other for special, consequential, incidental or other indirect damages, or for loss of profits, anticipated savings, business opportunity, goodwill, or loss of revenue, loss of use or loss of software, loss of use or loss of data (including corruption of data), or costs of procurement of substitute goods or services arising of the Agreement, howsoever caused and under any theory of liability (including contract, tort, negligence or otherwise) even if the other party has been advised of the possibility of such damages. The parties acknowledge that the amounts payable hereunder are based in part on these limitations and further agree that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. AutogenAI accepts no liability for failure to maintain any level of availability of the Services.
- 7.4 In addition to the other exclusions set out in this clause 7, AutogenAI has no liability:
- 7.4.1 for any third party products or services accessed and/or used by Customer through the Services;

- 7.4.2 where any failure to provide the Services is caused by a network, hardware or software fault in equipment which is not under the control of AutogenAI;
  - 7.4.3 any act or omission of Customer;
  - 7.4.4 any act or omission of an Authorised User;
  - 7.4.5 use of the Services in breach of the Agreement;
  - 7.4.6 any unauthorised access to the Services including a malicious security breach; or
  - 7.4.7 loss or damage caused by Customer's delay or failure to timely provide any required information or co-operation or to fulfil its obligations under the Agreement.
- 7.5 Customer assumes sole responsibility for results obtained from the use of the Services by Customer, and for conclusions drawn from such use. AutogenAI shall have no liability for any damage caused by errors or omissions in any information, data or instructions provided to AutogenAI by Customer in connection with the Services or any actions taken by AutogenAI at Customer's direction.
- 7.6 AutogenAI does not and cannot control the flow of data to or from the network where the Services reside and other portions of the internet including denial of service attacks (an attack which send a flood of incoming messages to the target system forcing the system to shut down, thereby denying service to legitimate users). Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the internet (or portions thereof). AutogenAI cannot guarantee that such events will not occur. Accordingly, AutogenAI, its suppliers and subcontractors, if any, disclaim any and all liability resulting from or related to such events and Customer shall have no claim in respect thereof.
- 7.7 AutogenAI shall have no liability to Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement due to a Force Majeure Event. AutogenAI shall provide Customer with notice of a Force Majeure Event and its expected duration.

## 8 Confidential Information

- 8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- 8.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 8.1.2 was in the other party's lawful possession before the disclosure;
  - 8.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 8.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 8.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 8.2 Each party shall (i) hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement; and (ii) take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 8.3 Customer acknowledges that details of the AutogenAI Technology, Services, Data, and the results of any performance tests of the Services, constitute AutogenAI's Confidential Information.

- 8.4 Subject to clause 8.2 and except where a party is expressly required by law to retain a copy, on termination of the Agreement or when requested to do so in writing by the disclosing party, the receiving party shall promptly:
- 8.4.1 deliver to the disclosing party any documents and other materials in its possession or control that contain any of the Confidential Information;
  - 8.4.2 permanently delete, destroy and erase all electronic copies of the Confidential Information from any computer or data storage system into which the Confidential Information was entered (except where a party is required by Applicable Law to keep copies); and
  - 8.4.3 make no further use of the Confidential Information.
- 8.5 The receiving party, if requested by the disclosing party, shall confirm in writing that the provisions of clause 8.4 have been complied with. The obligations of confidentiality under this clause 8 shall survive any expiration or termination of the Agreement for a period of 2 years from the date of termination, except for any information which is deemed a trade secret of a party in respect of which the obligations of confidentiality shall continue for as long as such information remains a trade secret.

## 9 **General**

- 9.1 The Agreement (including its Schedules) and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English courts.
- 9.2 AutogenAI may change these Terms and Conditions and the other components of the Agreement (except any Order Forms). If AutogenAI makes a material change to the Agreement, AutogenAI will provide the Customer with reasonable notice prior to the change taking effect, either by emailing the email address associated with the Customer's account or by messaging the Customer through the Services. The materially revised Agreement will become effective on the date set forth in AutogenAI's notice, and all other changes will become effective upon posting of the change. If the Customer (or any Authorised User) accesses or uses the Services after the effective date, that use will constitute the Customer's acceptance of any revised terms and conditions.

## SCHEDULE 1 - Definitions

The following definitions apply to the Agreement and its Schedules (including the Order Form(s) attached as Schedules)). Any capitalised terms not otherwise defined in the Agreement or its Schedules have the meanings set out below:

1. **Applicable Laws:** all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Services, including those related to advertising, the Applicable Data Protection Laws, international communications and the transmission of technical or personal data, and all compulsory industry self-regulations;
2. **Applicable Data Protection Laws:** the Data Protection Act 2018 and as amended and the General Data Protection Regulation (EU) 2016/679 (as implemented under English law) or any other applicable similar laws relating to the protection of personal data in other jurisdictions;
3. **Associated Companies:** an entity that is directly or indirectly controlled by, or is under common control with, a party to the Agreement. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty per cent (50%) of the voting power to elect directors of the entity, or (ii) greater than fifty per cent (50%) of the ownership interest in the entity;
4. **Authorised User:** those employees, agents and independent contractors of Customer who are authorised by Customer to access and use the Services;
5. **AutogenAI Application:** means the AutogenAI software application upon which the Content is created;
6. **AutogenAI Data:** any information or data provided by AutogenAI to Customer as part of the Services, any feedback or suggestions on the Services provided by Customer to AutogenAI, and any other data of which AutogenAI is the Controller;
7. **AutogenAI Marks:** the AutogenAI name, logo, and any of the product names associated with the Services, all of which are trademarks of AutogenAI;
8. **AutogenAI Resources:** means the training materials and other resources created by AutogenAI;
9. **AutogenAI Technology:** any technology or software used by AutogenAI to provide the Services, including without limitation, the AutogenAI Resources, the AutogenAI Application and/or any other underlying technology, trade secrets, data, content or information;
10. **Claim Year:** means each successive period of twelve (12) months commencing on the Effective Date of the Agreement;

11. **Confidential Information:** information of a party concerning its business and/or affairs, including without limitation to information relating to a party's operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents (including for AutogenAI its Software, and Services), data and information which, when provided by a party to the other: a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 days; or c) a reasonable person would understand to be confidential or proprietary at the time of disclosure;
12. **Content:** the content generated by the AutogenAI Application;
13. **Customer Data:** the (i) data and information provided by Customer to AutogenAI and/or imported, inputted, uploaded and/or shared by Customer, Authorised Users or AutogenAI on Customer's behalf, for the purpose of using the Services or facilitating Customer's use of the Services; or (ii) data generated by or for Customer through Customer's use of the Services, but excluding AutogenAI Data;
14. **Effective Date:** the effective date of the Order Form as set out in such Order Form;
15. **Fees:** the fees payable under the Agreement pursuant to the Order Form;
16. **Force Majeure Event:** acts, events, omissions or accidents beyond a party's reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm;
17. **Inappropriate Content:** Content which falls into the following categories (i) unlawful (including breach of Intellectual Property Rights of any other party), harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory on the grounds of race, gender, colour, religious belief, sexual orientation, disability or any other illegal activity; (vi) causes damage or injury to any person or property; or (vii) Content that falls into any of the following categories and any other categories as may be communicated by AutogenAI to the Customer from time to time:
  - Hate: content that expresses, incites, or promotes hate based on identity.
  - Harassment: content that intends to harass, threaten, or bully an individual.
  - Violence: content that promotes or glorifies violence or celebrates the suffering or humiliation of others.
  - Self-harm: content that promotes, encourages, or depicts acts of self-harm, such as suicide, cutting, and eating disorders.
  - Sexual: content meant to arouse sexual excitement, such as the description of sexual activity, or that promotes sexual services (excluding sex education and wellness).
  - Political: content attempting to influence the political process or to be used for campaigning purposes.
  - Spam: unsolicited bulk content.
  - Deception: content that is false or misleading, such as attempting to defraud individuals or spread disinformation.
  - Malware: content that attempts to generate ransomware, keyloggers, viruses, or other software intended to impose some level of harm.
18. **Intellectual Property Rights:** intellectual property rights including without limitation rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;
19. **Minimum Term:** the Minimum Term for Services as specified in the Order Form during which time the Agreement cannot be terminated;

20. **Order Form:** the Order Form executed by both parties which references these Terms and details the Services ordered by Customer and the Fees payable by Customer and any other additional terms in respect of Customer's access to and use of the Services;
21. **Services:** the Services purchased by Customer as set forth in the applicable Order Form and provided in accordance with the Agreement, including access to the applicable AutogenAI Technology for such Services;
22. **Services Commencement Date:** the date the Customer begins to access the Services;
23. **Support Services:** the provision by AutogenAI to Customer of technical advice, basic training and such other assistance and support related to the use of the Services;
24. **Taxes:** any applicable taxes, including without limitation, withholding, sales, use, excise, value added tax and similar taxes but shall not include taxes based on AutogenAI's gross income;
25. **Usage Policy:** AutogenAI's Usage Policy as may be varied from time to time.
26. **Virus:** anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the access to or operation, reliability or user experience of any computer software, hardware or network, telecommunications service, equipment or network or any other service or device, including worms, trojan horses, viruses and other similar things or devices; and