

GENERAL TERMS AND CONDITIONS

01.01.2020

This Agreement is made between **New-IT B.V.**, a private company with limited liability incorporated under Dutch law, with registered office at Noordbeemster and principal place of business at Jisperweg 2, (1463ND) Noordbeemster, registered with the Trade Register of the Dutch Chamber of Commerce under number 37125140 ("**Ratecard**"), and Customer.

The Agreement governs Customer's licensing and use of the Services. By executing an Order Form that references this Agreement or by using our Services, Customer agrees to the terms of this Agreement as of the Effective Date.

Any deviation from this Agreement should only be valid if and agreed upon by and between the Parties in writing.

WHEREAS:

- a. Ratecard is a Cloud Feedback Platform as a Service (FPaaS) to collect candidate, customer and employee feedback and offers solutions to companies and businesses for the sending and receiving of electronic feedback.
- b. Customer wishes to use Ratecard's feedback solutions in its business operation.
- c. Ratecard wishes to provide Cloud Communications Service to Customer and Customer wishes to use and pay for Cloud Feedback Service in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and representations contained herein, the Parties agree to the following:

1. Definitions

- 1.1. "**Affiliate**" means, in relation to either Party, any legal person which is Controlled by, Controls or is under common Control with, such person. Control meaning with respect to the relevant person, (i) the direct or indirect ownership or control of more than 50% of the (a) ownership interests or (b) voting power at the general meeting or a similar body, of that person, or (ii) the right or ability to appoint or remove such number of the members of the board or a similar body of that person with decisive voting power in such body.
- 1.2. "**Agreement**" means the General Terms and Conditions and any exhibits, annexes, and addenda hereto.
- 1.3. "**API**" means application programming interface.
- 1.4. "**Applications**" means software-based tools that provide a visual interface designed to operate and utilize the Platform.
- 1.5. "**Channels**" means the services that allow point-to-point information exchanges between Customer and the end-users of the Messages such as SMS and E-mail.
- 1.6. "**Claim**" means a third-party claim, demand, suit or proceeding.
- 1.7. "**Commercial Launch Date**" means the date specified in the Order Form or in the Dashboard as of which Ratecard shall start charging Customer for the Services.
- 1.8. "**Confidential Information**" means information maintained in confidence by a Party, information which is marked as such, or information whether written or oral that by its nature would be understood, by a reasonable person under the circumstances, to be confidential information of a party. For the avoidance of doubt, the specific content of this Agreement, details of the Platform, supporting documentation, the Cloud Feedback Platform as a Service, any data or information transmitted by Customer through the Platform or used by Customer for or in connection with the Cloud Feedback Service and the results of any performance tests will be regarded as Confidential Information.
- 1.9. "**Cloud Feedback Service**" or "**Services**" means all services and subscriptions provided by Ratecard to Customer, including, without limitation, the Managed Services, the Platform, the Dashboard, the Software, the API, the Solutions and the Channels (generally referred to, unless the context requires otherwise or is differently defined in the Order Form or in the Dashboard).
- 1.10. "**Customer**" means any company, business or any other entity acting in the exercise of a profession or business to which Ratecard provides Services and which is named as such in the Order Form or in the Dashboard.
- 1.11. "**DPA**" means the Data Processing Annex which forms part of this Agreement. In case of conflict or inconsistencies between the data protection related provisions of the Agreement and the DPA, the DPA will prevail.
- 1.12. "**Data Protection Legislation**" means all relevant requirements of the applicable data protection legislation, including without limitation, the General Data Protection Regulation (EU) 2016/679 and the California Consumer Privacy Act 2018. For the avoidance of doubt, CCPA references shall only apply to California Consumers.
- 1.13. "**Dashboard**" means Ratecard's customer portal available on the Site.
- 1.14. "**Effective Date**" means when (i) both Parties execute an Order Form, (ii) when Customer registers an account on the Dashboard, or (iii) when Customer starts using the Services
- 1.15. "**End-user**" means the private individual who ultimately receives the communications sent by Customer or its Affiliates via the Services.
- 1.16. "**Fees**" means the prices paid by Customer for the access and use of the Cloud Feedback Service.
- 1.17. "**Guidelines**" means the terms outlined in the Order Form or in the Dashboard.
- 1.18. "**Inappropriate Content**" means collectively any content that (i) is unsolicited, including without limitation, "junk mail", "bulk email", spam or other unsolicited material; or (ii) qualifies as spam under any applicable laws and regulations; or (iii) potentially causes the introduction of harmful computer programs or code in the Platform or End-User's devices; or (iv) violates any legal, regulatory, self-regulatory, governmental, statutory or telecommunication network operator's requirements or codes of practice, or Third-Party Application Terms; or (v) is unlawful, pornographic, abusive, racist, obscene, offensive, threatening, harassing, defamatory, discriminatory, misleading or inaccurate; or (vi) is harmful or malicious content, including but not limited to hate speech, and any other material that Ratecard reasonably believes degrades, intimidates, encourages violence against, or foments prejudicial action against anyone based on gender, race,

- age, ethnicity, nationality, religion, sexual orientation, disability, geographic location or other discrimination reason; or infringes the intellectual property rights of any person or entity; or (vi) is illegal in any other way.
- 1.19. **"Integrations"** means the interoperable and coordinated use of the Services within Third-Party Applications.
 - 1.20. **"Licensed Material"** means the Platform, the API, all Software and related documentation provided by Ratecard.
 - 1.21. **"Managed Services"** means support-based services that provide onboarding and support of the Customer as they utilize the Platform, such as the Support Plan.
 - 1.22. **"Message"** or **"Messages"** means a set of systematized, textual, numerical, graphical or phonetical characters transmitted between Customer and an End-User over the Channels
 - 1.23. **"Ratecard Library"** means the developers' resources concerning the use of the Cloud Feedback Service available on the Site.
 - 1.24. **"Network Adds-on"** means additional telecom network services.
 - 1.25. **"Order Form"** means the document as referred to in clause 17.2 of the Agreement.
 - 1.26. **"Party"** or **"Parties"** means Ratecard and Customer individually or together.
 - 1.27. **"Platform"** means the Cloud Feedback Platform of Ratecard.
 - 1.28. **"Site"** means Ratecard's web domains, including the pricing and all other webpages thereof, available at www.ratecard.io and <https://developers.ratecard.io/>.
 - 1.29. **"SLA"** means the Service Level Agreement available on the Site.
 - 1.30. **"Solution"** means the prepackaged and preconfigured components of the Platform designed to execute a predefined process and produce a specific result which uses the Platform and enables Customer to communicate with its clients by means of the Channels.
 - 1.31. **"Subscription"** means the plan Customer elects for access to and/or use of the Services.
 - 1.32. **"Subscription Fee(s)"** means the monthly or yearly recurring fees Customer is charged for the Subscription. Customer may upgrade its Subscription at any time. For downgrading the following conditions apply (a) Customer may change the Subscription upon thirty (30) days' notice in writing to Ratecard; (b) Customer may not request to downgrade to a lower-tier Subscription within 12 (12) months from the date of the signed Order Form. In the event Customer decides to upgrade its Subscription, the relevant Subscription Fee of the higher-tier Subscription shall apply pro-rata for the remainder of the term of the Services. Any changes to the Subscription Fee shall be applicable as of the date of the date of renewal of the Services.
 - 1.33. **"Support Plan"** means the support services provided by Ratecard to Customer in accordance with the Guidelines. The following conditions apply: (a) Customer may change the Support Plan upon thirty (30) days' notice in writing to Ratecard; (b) Customer may not request to downgrade to a lower level of the Support Plan within six (6) months from the date of the upgrade request, where applicable by Customer; and (c) Customer may request to upgrade to a higher level of the Support Plan at any time.
 - 1.34. **"Taxes"** means any and all applicable local, federal and state taxes, fees, charges, telecommunications provider surcharges, withholding taxes or other similar taxes, including, but not limited to, VAT, GST, sales tax and/or use tax.
 - 1.35. **"Third-Party Applications"** means third-party web-based or offline software applications, operating systems, platforms and networks that interoperate with the Cloud Feedback Service.
 - 1.36. **"Third-Party Applications Terms"** means the terms and conditions, and/or usage policies which directly or indirectly apply to use of the Third-Party Applications by Customer.
 - 1.37. **"Transactional Fee(s)"** means the fees for the use of the Services.
 - 1.38. **"Trial Period"** means the period agreed by the Parties for the Customer to use the Services in accordance with clause 15 of the Agreement.
- ## 2. Fees
- 2.1. Customer agrees to pay the Fees as set forth on the Site's pricing page, as may be updated from time to time, or as agreed otherwise in the Dashboard or the Order Form.
 - 2.2. Unless otherwise stated, all Fees excludes any applicable Taxes, including any related interest and/or penalties, and other government duties, as well as any other costs, such as transaction costs or bank transfer fees. In the event that Taxes are (or will be) applicable to the Services set out in this Agreement, such Taxes shall be added to the Fees. Customer shall be responsible for and pay all Taxes as well as any other costs imposed on or with respect to the Services that are subject to this Agreement. If Customer is exempt from VAT or GST, or if VAT or GST should be accounted for under a reverse charge mechanism or similar procedure, it is the responsibility of Customer to provide a valid VAT or GST registration number. If for any reason the local taxing authorities determine that Customer is not exempt from any such Taxes and imposed such Taxes to Ratecard, Customer agrees to promptly pay Ratecard such Taxes, including any applicable interest or penalties imposed by the local tax authorities.
 - 2.3. If Customer is required by law to withhold or pay Taxes, levies and/or fees of any nature, Customer shall withhold or pay such Taxes, levies and/or fees and shall timely pay the full amount(s) to the relevant governmental authority in accordance with applicable law. Ratecard shall not be responsible for such Taxes, levies and/or fees. Additionally, the Fees payable by Customer to Ratecard shall be increased as necessary so that, net of such payments, Customer will pay to Ratecard such additional amounts as are necessary to ensure recipient of the full amount which Ratecard would have received before the withholding or paying of Taxes.
- ## 3. Provision of Services
- 3.1. The Cloud Feedback Service shall be provided subject to the terms of this Agreement and according to the terms as specified in the Order Form, the Dashboard, and/or the Site.
 - 3.2. The Services are designed and aimed to serve companies and businesses and are not suitable for personal or household use by private individuals.
 - 3.3. **SLA.** The Services shall be performed in accordance with the SLA. Customer shall have the right to claim service credits in accordance with the SLA if Ratecard does not meet the relevant uptime.
 - 3.4. **Use of Third-Party Applications.** The Cloud Feedback Service may enable Customer to use, link, integrate, or otherwise use Third-Party Applications. By using such Third-

Party Application with the Cloud Feedback Service, Customer agrees to comply with the applicable Third-Party Applications Terms and where necessary authorises Ratecard to accept such Third-Party Applications Terms on Customer's behalf. For the avoidance of doubt, Customer warrants to comply with any applicable Third-Party Application Terms, and Ratecard will have no liability in connection therewith.

- 3.5. **Changes to the Services.** Ratecard reserves the unilateral right to change the features and functions of its Platform, the Software, the Connectivity Services and the Cloud Feedback Service in general, provided that such changes do not adversely affect the use of the Cloud Feedback Service by Customer. Any such changes shall be made in accordance with the SLA.

4. Pricing and Payment Terms

- 4.1. **Paid Services.** For the avoidance of doubt, Ratecard shall start charging Customer the Fees for the Cloud Feedback Service as per the Order Form Start Date or, as of when Customer starts using the Cloud Feedback Services.
- 4.2. **Overdue Fees.** Ratecard may charge interest as per the maximum amount permitted by law if the Fees are not paid within the term specified in the Order Form, the Dashboard, and/or on the Site. If Customer is more than thirty (30) days overdue on its payment obligations, this constitutes a material breach of this Agreement.
- 4.3. **Monthly Credit Limit.** If applicable, Customer shall adhere to any monthly credit limit. If Customer does not reach the monthly credit limit amount by the end of a calendar month, Ratecard will invoice Customer at the end of such corresponding calendar month for its usage of the Services. If Customer reaches the monthly credit limit before the end of the corresponding calendar month, Ratecard will invoice Customer and such an invoice shall be due and payable immediately.
- 4.4. **Suspension of Service.** Ratecard may suspend the provision of the Cloud Feedback Service with immediate effect if Customer fails to comply with any applicable payment obligations and if Customer exceeds the monthly credit limit as specified in the Order Form, the Dashboard, and/or on the Site.
- 4.5. **Fees changes.** Unless differently specified in the Order Form, the Dashboard, and/or the Site, Ratecard may change the Fees for the Services anytime. Any changes of the Fees will be published on the website of www.ratecard.io/pricing.
- 4.6. **Currency.** The currency of this Agreement shall be defined in the Order Form, the Dashboard, and/or the Site. If any payments are being made in a different currency other than EUR, the payment shall be calculated according to the official exchange rate as listed on www.oanda.com stated on the day when such payment is made.
- 4.7. **Invoice Disputes.** Customer shall raise any dispute or other claim regarding an invoice, including any billing discrepancy, or other notice issued by Ratecard under this Agreement within fifteen (15) days after the date of such invoice or notice, in writing to Ratecard. If Customer fails to raise any dispute or claim, Customer no longer has any right under this Agreement to bring any dispute or claim regarding such invoice or notice. Customer understands and agrees that any billing disputes have to be made specific as to the relevant Service and the price charged for such Service. Any such

dispute does not waive, delay or uphold any payment obligations of Customer (other than for disputed amounts).

5. Term and Termination

- 5.1. **Term.** This Agreement commences on the Effective Date and shall continue as long as Customer uses the Cloud Feedback Services and to the extent applicable, not later until all Services entered into under this Agreement have expired or have been terminated. Except as may otherwise be expressly specified in an Order Form, in the Dashboard or on the Site, the Services will automatically renew for additional successive periods of equal duration to the initial term unless either Party gives the other notice of non-renewal at least thirty (90) days before the end of the Term.
- 5.2. **Termination by both Parties.** In addition to clause 5.1, either Party may suspend or terminate this Agreement with immediate effect, without being liable to pay any compensation or reimbursement, by notifying the other Party if any of the following events occurs and each of these events will be deemed to be a cause attributable to such other Party:
- 5.2.1. the other Party has ceased to exist or has been dissolved; or
- 5.2.2. the other Party has stopped doing business; or
- 5.2.3. the other Party files for bankruptcy, suspension of payments or similar protection from creditors;
- or
- 5.2.4. the other Party has been declared bankrupt or has been granted suspension of payments, on a temporary basis or otherwise; or
- 5.2.5. the other Party commits a material breach of its obligations under this Agreement which is not remedied within fourteen (14) days of written notice from the non-breaching party requesting the breach to be remedied.
- 5.3. **Unilateral Termination by Ratecard.** Ratecard may terminate this Agreement or the provision of certain Services to Customer with immediate effect by notifying Customer if Ratecard reasonably considers that Customer's use of the Cloud Feedback Service is contrary to applicable laws and/or regulations or public order and morality, or breaches the terms and conditions of this Agreement or of other agreements with third parties which are involved in the provision of Services, as well as in case of misrepresentation by the Customer in regards to clause 11.3 of this Agreement.
- 5.4. **Effect of Termination.** Upon termination of this Agreement for any reason:
- 5.4.1. any accrued rights or liabilities or payments due or the coming into force or continuing in force of any provision of this Agreement which is expressly or by implication intended to survive after termination will not be affected. Without limitation, clauses 5,6,7,10,16 and those provisions necessary for interpretation or enforcement of this Agreement, survive termination or expiry and continue to apply indefinitely;
- 5.4.2. all Licensed Material granted under this Agreement shall immediately terminate;

- 5.4.3. outstanding and undisputed payment obligations will become immediately due and payable;
- 5.4.4. Customer shall immediately cease all use of the Cloud Feedback Service;
- 5.4.5. Ratecard will reasonably cooperate to the extent required with Customer and its service providers in the migration of the Cloud Feedback Service to a successor service provider selected by Customer, except in the event the Agreement's termination is caused by Customer's breach of this Agreement;
- 5.4.6. Ratecard reserves the right to charge any remaining committed Fees despite the termination.

6. Customer Obligations

- 6.1. Customer shall pay for the Cloud Feedback Service in accordance with the terms set out in the Order For, the Dashboard, and/or on the Site.
- 6.2. Customer acknowledges and understands that Ratecard:
 - 6.2.1. is only a conduit for the transmission of information sent by Customer, and Ratecard neither initiates the transmission of information, selects the receivers of the transmission, nor selects or modifies the information contained in the transmission;
 - 6.2.2. when using the Cloud Feedback Service, Customer is responsible for determining whether the Cloud Feedback Service is suitable for Customer to use in light of applicable laws and regulations, and Ratecard is not liable if the Cloud Feedback Service does not comply with such laws and regulations.
- 6.3. Customer may not use the Cloud Feedback Service or permit it to be used to:
 - 6.3.1. transmit Inappropriate Content;
 - 6.3.2. interfere with or disrupt the integrity or performance of the Cloud Feedback Service in whatever way; and
 - 6.3.3. access the Cloud Feedback Service in order to build a competitive product or service that may compete with Ratecard's Services.
- 6.4. Customer is solely and fully responsible for:
 - 6.4.1. the content of the communications sent by Customer or by a third-party on behalf of Customer and shall ensure on-going compliance with the applicable laws and regulations. Customer shall implement adequate measures to prevent the Cloud Feedback Service being used directly or indirectly for illegitimate purposes, or in violation of this Agreement or applicable laws and regulations, or Third-Party Applications Terms; and
 - 6.4.2. procuring and maintaining its network connections and telecommunications links from its systems to Ratecard, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunication links or caused by the internet.
- 6.5. Customer shall, at its own expense, take all security measures necessary to:
 - 6.5.1. prevent any unauthorized and/or third-party access to Customer's passwords, accounts or keys to the Platform and/or the Dashboard;
 - 6.5.2. prevent overuse of the Cloud Feedback Service such as Denial-of-Service attacks by implementing rate limiting where applicable;
 - 6.5.3. prevent spam and fraudulent traffic by implementing blacklists, content filters and other suitable controls; and
 - 6.5.4. ensure timely detection of and response to security incidents, by implementing security monitoring tooling and having security incident response plans and procedures in place.
- 6.6. Customer shall conduct regular vulnerability assessments and penetration testing to ensure its implementation of the Cloud Feedback Service is secure.
- 6.7. Customer shall inform Ratecard by sending an email to support@ratecard.io within twenty- four (24) hours of becoming aware of any breach or security incident involving the Cloud Feedback Service.
- 6.8. Customer shall provide promptly all information reasonably requested by Ratecard:
 - 6.8.1. to confirm Customer's compliance with its obligations under this Agreement, the applicable laws and regulations; or
 - 6.8.2. in response to any request made by any legal, regulatory, self-regulatory, governmental authority, supplier, or operator of a telecommunication network or system.
- 6.9. Customer may not use the Cloud Feedback Services to perform or/and resell services substantially similar to the Cloud Feedback Services without the express prior written consent of Ratecard.
- 6.10. Customer shall (i) comply with all applicable international trade laws, including without limitation, (a) economic or financial sanctions, requirements or trade embargoes imposed, administered or enforced from time to time by U.S. Governmental Authorities (including, but not limited to, the Office of Foreign Assets Control ("OFAC"), the U.S. Department of State and the U.S. Department of Commerce), the United Nations Security Council, the European Union, Her Majesty's Treasury or any other relevant Governmental Authority and (b) the export controls laws and regulations of the United States of America and the European Union (collectively, (a) and (b), "International Trade Laws"), and shall obtain all export licenses and/or governmental approvals, whenever necessary. Customer guarantees and ensures that (i) neither it or its directors, officers, affiliates, employees or agents is named on or owned or controlled by any person or entity named on, any list of designated persons or entities of the United States of America and the European Union, or any other applicable jurisdictions under International Trade Laws or otherwise the target of International Trade Laws (a "Sanctions Target") (ii) it is not located, organized or resident in any jurisdiction subject to comprehensive sanctions under International Trade Laws, and (iii) it will not (a) permit any end-user or any other person or entity to access or use the Cloud Feedback Service if the end-user is a Sanctions Target or (b) permit end-users or any other persons or entities to access or use

the Cloud Feedback Service in violation of any International Trade Laws or in a manner that could cause Ratecard or any of its directors, officers, affiliates, employees or agents to be in violation of International Trade Laws.

7. Non-Disclosure of Confidential Information

- 7.1. The receiving Party shall use the disclosing Party's Confidential Information only for the provision or receipt of the Cloud Feedback Service and shall share this information only on a "need-to-know" basis with its employees, Affiliates and other contractors, provided that they are under a legal obligation to keep the Confidential Information confidential.
- 7.2. The receiving Party may disclose Confidential Information in connection with a competent judicial or administrative proceeding to the extent that such disclosure is compelled by law or court, provided that the party required to disclose the Confidential Information, to the extent permitted by law, (a) gives prompt notice to the other party and (b) uses reasonable efforts to minimize such disclosure.
- 7.3. A Party's Confidential Information does not include information that:
 - 7.3.1. is or becomes publicly known other than through unauthorized disclosure;
 - 7.3.2. is lawfully disclosed to the receiving Party by a third-party without restriction on disclosure; or
 - 7.3.3. is independently developed by the receiving Party, which independent development can be shown by written evidence.
- 7.4. Each Party shall hold all Confidential Information relating to or obtained from the other Party confidential in perpetuity.

8. Data Protection

- 8.1. All personal data shared between the Parties shall only be used for the purposes of this Agreement. Each Party shall comply with the Data Protection Legislation.
- 8.2. The Parties acknowledge that Ratecard is a data processor for the purpose of processing personal data on end-users when providing the Cloud Feedback Service to Customer.
- 8.3. Customer shall ensure that it has obtained all required and valid consents under the Data Protection Legislation when required for the processing of personal data by Ratecard for the performance of the Cloud Feedback Service. Customer acknowledges that Ratecard has the right to monitor and intercept any electronic communications sent or received by Customer under the Cloud Feedback Service for the purpose of verifying compliance under this Agreement.
- 8.4. To the extent Ratecard processes personal data on instruction of Customer, Ratecard shall comply with the DPA. Customer confirms that it has read and agrees with the privacy statement of Ratecard, which can be found on the Site.
- 8.5. Ratecard will delete Customer's personal data after the end of the provision of the Services unless differently required by the applicable laws and regulations.

9. Proprietary Rights, Licenses and Trademark

- 9.1. Ratecard hereby grants to Customer a personal, non-exclusive, non-transferable, royalty-free license during the term of this Agreement to use the Licensed Material, which are necessary for Customer to use the Cloud Feedback Service as agreed under this Agreement.

- 9.2. Subject to the limited rights expressly granted hereunder, Ratecard reserves all of its right, title and interest in and to the Cloud Feedback Service and the Licensed Material, including all of its related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 9.3. Customer has the right to access and use the Licensed Material subject to the terms of this Agreement.
- 9.4. Customer will not sell, resell, license, sublicense, distribute, make available, rent or lease any Cloud Feedback Service or Licensed Material, to any third-party. This restriction does not apply to the use of the Services by Customer's Affiliates provided that the Customer remains liable for the actions and omissions of its Affiliates in connection with the Affiliates' use of the Services.
- 9.5. Neither Party shall use the trademarks, logos or trade names of the other Party for any purpose without the prior written consent of the other Party.
- 9.6. Ratecard confirms that it has all the rights in relation to the Licensed Material that are necessary to grant the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10. Liability and Indemnification

- 10.1. **Indemnification by Ratecard.** Ratecard will defend, indemnify and hold Customer harmless from and against any claim and related fees and expenses (including reasonable attorney's fees) made or brought against Customer regarding the Services, as made available by Ratecard under this Agreement to Customer, if the Services infringe any third-party patents, copyrights, trademarks, or other proprietary right under the laws of the Netherlands. If Ratecard receives information about an infringement related to the Cloud Feedback Service, Ratecard may, in its discretion, and at no cost to Customer:
 - 10.1.1. modify the Cloud Feedback Service so that it no longer infringes or misappropriates,
 - 10.1.2. obtain a license for Customer's continued use of that Cloud Feedback Service in accordance with this Agreement, or
 - 10.1.3. terminate Customer's use of that infringing Service upon thirty (30) days' prior written notice.

The above defense and indemnification obligations do not apply to the extent a claim arises from or relates to:

 - 10.1.4. the Customer and End-User data,
 - 10.1.5. the Third-Party Applications,
 - 10.1.6. the Customer's or any user's breach of this Agreement,
 - 10.1.7. any modifications of the Service by or for Customer,
 - 10.1.8. the use of the Cloud Feedback Service in combination with another product or service not provided by Ratecard, or
 - 10.1.9. the failure to timely implement any modifications, upgrades, replacements or enhancements made available by Ratecard to Customer. This clause

provides Ratecard's sole and exclusive liability, and Customer's sole and exclusive remedy, for any third-party claims related to the Service or this Agreement.

- 10.2. **Indemnification by Customer.** Customer shall be fully responsible, shall hold Ratecard fully harmless and shall fully reimburse Ratecard, without limitation, at its first demand, for all and any direct and/or indirect damages, costs, claims, expenses and other liabilities of Ratecard (including, but not limited to, fines, other penalties or damages resulting from any sanctions imposed on Ratecard or claims made against Ratecard, by any End-Users, and/or state authorities, Third-Party Applications and/or any other third parties) resulting from

10.2.1. any allegation that the use of the Cloud Feedback Service by Customer results in any infringement of the rights of any third-party, including End-Users, law or regulation, and/or

10.2.2. Customer's breach of any of its obligations under this Agreement, and/or

10.2.3. any content in particular, any Inappropriate Content transmitted by Customer, any use of Third-Party Applications.

- 10.3. **Indemnification Procedures.** The indemnifying party's obligations are conditioned upon the indemnified party (i) giving the indemnifying party prompt written notice of the claim to the extent possible, and (ii) granting full control of the defense and settlement to the indemnifying party (provided however, the indemnified party may participate with counsel of its choosing at its own expense).

- 10.4. **Exclusion of Liability.** Ratecard shall in no way or manner be held responsible or liable to Customer, its contractual partners or End-Users for:

10.4.1. faults, errors or delays in the delivery, transmission, re-transmission or reception of, or parts thereof, the Services if this is not covered under the SLA;

10.4.2. for any content, in particular, any Inappropriate Content transmitted by Customer.

- 10.5. **Limitation of Liability**

10.5.1. Ratecard's cumulative liability to customer for all claims arising from or relating to the Agreement or the Cloud Feedback Service, whether in contract, tort, or relating to otherwise, will not exceed the total amount of all Fees paid to Ratecard in accordance with the Agreement and all orders hereunder during the six (6) months immediately prior to the date upon which any such liability arises. Customer acknowledges and agrees that the allocation of the risks under this Agreement is the essential purpose of this clause and that the Fees would be substantially higher if Ratecard were to assume any further liability other than as set forth in this Agreement.

10.5.2. Except if explicitly provided otherwise in this Agreement, no Party is ever liable (whether in contract, tort – including negligence – or otherwise) for indirect damages, consequential damages, loss of revenue, business, anticipated savings or profits, damages resulting from third-party claims or loss of data.

11. Warranties

11.1. Ratecard makes no warranties, whether express, implied or statutory with respect to the Cloud Communications Services, the Platform or the Services and Ratecard expressly disclaims any implied warranties to merchantability, merchantable quality or fitness for a particular purpose.

11.2. Ratecard expressly does not guarantee that the Cloud Feedback Services will be uninterrupted or error free, are received properly and/or on time by the end-user. Customer acknowledges in this respect that Ratecard only operates as a conduit for the transmission of electronic communications.

11.3. By using our Services, Customer represents and warrants that it is a company and/or business and has the power to enter into this Agreement. In case of any misrepresentation by Customer in regard to the aforementioned confirmation, Ratecard reserves the right to immediately withdraw from this Agreement, without being liable for any damages or costs related to such withdrawal.

11.4. Customer represents and warrants that it has full knowledge of and fully complies with all local requirements applicable to the use of the Cloud Communications Services in the jurisdictions where it operates.

11.5. The Customer guarantees and warrants that it has and will maintain all necessary licenses, consents and permissions necessary for the use of the Cloud Feedback Service.

12. Force Majeure

12.1. Except for the payment of Fees, each Party will be excused from any failure or delay caused by or the result of causes beyond its reasonable control in the event (i) it could not have been avoided or corrected through (a) the exercise of reasonable diligence, including, but not limited to, acts of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, labor strikes not involving either party's employees, general failure of telecommunication or digital transmission links, general failure of the Internet, failure of Third-Party Applications, failure of any third-party operating systems, platforms, applications or networks not under reasonable control of Ratecard, or (b) other similar occurrence; in addition, the Parties will be excused from future performance under this Agreement, if (ii) any Party becomes the subject or target of economic or financial sanctions or restrictive measures administered or enforced by competent governmental authorities, or (iii) the performance of any aspect of this Agreement would require a Party to this Agreement to engage in a transaction with a person that is or is owned fifty percent (50%) or more in the aggregate by any person that is the target of economic or financial sanctions or restrictive measures administered or enforced by competent governmental authorities or is otherwise subject to restrictive measures.

13. Injunctive Relief

13.1. Both Parties acknowledge that any unauthorized use of the Cloud Feedback Service or breach of confidentiality or intellectual property provisions herein may cause irreparable harm to the other Party, the extent of which would be difficult to ascertain. Accordingly, both Parties

agree that, in addition to any other remedies to which a Party may be legally entitled to, either Party will have the right to seek injunctive relief in the event of such a breach.

14. Early Access and Beta products.

14.1. Ratecard may look for Customers to help test new services or new features. If Ratecard wishes for Customer to test early release or beta features/services, Ratecard will request whether Customer would like to test such early release or beta features/services in writing. Early access and beta products are made available on an “as is,” and “as available” basis and, to the extent permitted under applicable law, without any warranties, indemnities, or contractual commitments of any kind.

15. Trial Period.

15.1. The rights and obligations set out in the Agreement apply to the use of the Services in the Trial Period. Customer is entitled to terminate the Agreement before the Trial Period expires free of charge. Failure to terminate the Agreement before the end of the Trial Period, as per the terms and conditions indicated in the Dashboard, the Order Form, or on the Site will result in the applicable Fees to apply for the period agreed on the Site, Dashboard, or Order Form.

16. Dispute Resolution and Governing Law

16.1. **Governing Law.** This Agreement and any dispute or claim arising out of or in connection with this Agreement, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of The Netherlands.

16.2. **Venue.** Each Party irrevocably agrees that the competent courts of Amsterdam will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement (including non-contractual disputes or claims).

17. Miscellaneous

17.1. **Notices.** The Parties shall give any communication or notice in writing and such notice or communication shall be sent by e-mail to the designated addresses of the relevant Party as mentioned in Order Form or in the Dashboard or, provided that email will not be sufficient delivery shall be by hand, sent by registered mail or courier. A notice shall be deemed to have been given upon on the first business day after sending by email. Customer will be deemed to have received any email sent to any such email address, upon Ratecard sending of the email, whether or not Customer actually receives the email.

17.2. **Entire Agreement.** This Agreement, as amended from time to time in accordance with this Agreement, represents the entire Agreement between the Parties in relation to the subject matter hereof and supersedes all prior agreements and understandings whether oral or written with respect to the subject matter hereof. The following annexes may be executed by the Parties:

- Order Form
- Data Protection Annex (DPA)

17.3. **No Partnership.** Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency between any of the Parties hereto and none of them shall have any authority to bind the others in any way.

17.4. **Waiver.** No failure to exercise nor any delay in exercising any right, power or remedy by a Party will operate as a waiver. A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that or any other right, power or remedy. A waiver will not be valid or binding on the Party granting that waiver unless made in writing.

17.5. **Severability.** If any provision or any part of this Agreement is or becomes in any way non-binding, the Parties will remain bound to the remaining part. The Parties shall replace the invalid or non-binding part by provisions which are valid and binding and the effects of which given the contents and purpose of this Agreement, are, to the greatest extent possible, similar to that of the invalid or non-binding part.

17.6. **Changes and Modifications.** Ratecard reserves the right to unilaterally change or modify any of the terms and conditions contained in this Agreement. Ratecard will make reasonable efforts to notify Customer of such changes, which may include posting an announcement on the website, in-application notices, or via email. Customer’s continued use of the Service following Ratecard’s posting or notice of the change(s) will constitute Customer’s acceptance of such change(s).

17.7. **Assignment.** Customer acknowledges that Ratecard will be entitled to assign the entirety of its rights and obligations under this Agreement:

- within its group of companies to any Affiliate; or
- to a third-party which acquires all or substantially all of the assignor’s assets entailed in the performance of the Cloud Feedback Service; Any assignment of the rights and obligations under this Agreement of Customer shall be effective only with the prior written consent of Ratecard.

17.8. **Hierarchy of Documents.** If there is a conflict between any of the provisions of this General Terms and Conditions and the provisions agreed in an Order Form or in the Dashboard, the provisions in the Order Form or those contained in the Dashboard shall prevail.

17.9. **Definitions and Headings.** Capitalized terms defined in this Agreement shall have the same meaning in all Schedules hereto, save where the context requires otherwise.

Data Processing Annex (DPA)

1. This Data Processing Annex applies to all processing of personal data on End-Users that Customer provides to Ratecard through the Services.
2. Terms such as “personal data”, “processing”, “data controller”, “data processor”, “personal data breach” etc. shall have the meaning assigned to them under the applicable data protection legislation, such as the Regulation (EU) 2016/679 (General Data Protection Regulation), except for the definition of sub-processor which explicitly excludes telecom carriers and other telecom service providers which are deemed necessary for the operation of the Services, yet, due to the fact that such parties are acting as a mere conduit or as an independent data controller, do not fall under the definition of data processor as stated in the Data Protection Legislation. Additionally, the definitions of: “controller” includes “Business”; “processor” includes “Service Provider”; “data

- subject” includes “Consumer”; “personal data” includes “Personal Information”; in each case as defined under the CCPA.
3. Ratecard and Customer both acknowledge and agree that the exchange of personal data between the Parties does not form part of any monetary or other valuable consideration exchanged between the Parties with respect to the Agreement or this DPA. For the avoidance of doubt, Ratecard does not sell Customer’s personal data or the personal data of end users.
 4. Customer and Ratecard both acknowledge and understand that with respect to the processing of personal data of end-users (‘data subjects’), which Customer exports to Ratecard for the provision of the Services, Ratecard acts as a data processor.
 5. Customer hereby instructs Ratecard to process data subjects’ personal data to the extent required for the performance of the Services under the Agreement.
 6. Ratecard shall, in relation to any personal data which is processed in connection with the Services:
 - 6.1. process personal data only on documented instructions of Customer, unless otherwise required by the laws of any member of the European Union or by the laws of the European Union applicable to Ratecard to process personal data;
 - 6.2. only provide personnel with ‘need to know’ access to the personal data and ensure that all such personnel who have access to or process personal data are under a legal obligation to keep the personal data confidential;
 - 6.3. take appropriate technical and organizational measures to protect the personal data against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the level of risk presented by the processing (and having regard to the nature of the personal data) and to the harm which might result from a personal data breach affecting the personal data;
 - 6.4. provide Customer with any assistance as reasonably requested by Customer in order to allow Customer to comply with obligations of Customer under the Data Protection Legislation, including the notification of personal data breaches, security of processing and assisting Customer with the performance of any relevant data protection impact assessment;
 - 6.5. provide Customer with reasonable assistance in order to allow Customer to comply with its obligations to data subjects who exercise their rights under the Data Protection Legislation. Ratecard will make available technical and organizational measures to allow Customer to fulfil these obligations via the account of Customer. Customer hereby acknowledges and agrees that requests sent by Customer via email are not considered as a valid means to exercise its rights and that any such requests will not be processed by Ratecard. For the avoidance of doubt, Customer as the data controller is responsible for processing any request or complaint from data subjects with respect to the personal data of a data subject;
 - 6.6. at Customer’s choice, delete or return personal data and copies thereof to Customer on termination of Customer’s agreement with Ratecard, unless otherwise required by applicable laws;
 - 6.7. maintain records as required under the Data Protection Legislation of the processing activities carried out under the Agreement and this DPA;
 - 6.8. be prohibited from retaining, using, or disclosing the personal data for any purpose other than as specified in the Agreement, as set out in this DPA, or as otherwise permitted by the Data Protection Legislation, unless Ratecard is required to do so due to a legal obligation, in which case it will act as a data controller;
 - 6.9. not further collect, sell, or use personal data except as necessary for the fulfillment of the Agreement.
 - 6.10. notify Customer as soon as reasonably possible if Ratecard receives a notice or communication from a governmental or regulatory body which relates directly to the processing of personal data, as instructed and provided by Customer, by Ratecard or its (sub-)processors, unless notifying Customer of such notice or communication is prohibited by law.
 7. Customer shall:
 - 7.1. notify Ratecard at least two (2) months before exercising the audit right of Customer under paragraph 2(k) of this DPA;
 - 7.2. ensure that any audit does not unreasonably disrupt the business operations of Ratecard; and,
 - 7.3. bear and pay for all costs of such an audit.
 8. Customer represents and warrants that it has provided notice to the End-User that the personal data is being used or shared in accordance with the terms and conditions envisaged in Section 1798.140(t)(2)(C)(i) of the CCPA. Customer is responsible for compliance with the requirements of the CCPA applicable to it as a data controller.
 9. If Customer acts as a data controller, Customer guarantees that all processing activities are lawful, have a specific purpose, and any required notices and consents or otherwise appropriate legal basis are in place to enable lawful transfer of personal data. If Customer is a data processor (in which case Ratecard will act as a sub-processor, Customer ensures that the relevant data controller guarantees that the conditions listed in this clause are met.
 10. Given the nature of the Services, the use of the Services by Customer and Customer’s End-Users may require the transfer of personal data outside the EEA; when the performance of the Services involves a transfer of personal data to sub-processors outside the EEA, Customer hereby gives Ratecard a mandate for the term of all agreements in place between Customer and Ratecard to enter into EU Model Contract Clauses with sub-processors outside the EEA on behalf of Customer, if no other appropriate transfer mechanisms under the Data Protection Legislation apply.
 11. By means of this clause, Customer gives Ratecard a general written authorization for the engagement of any other third parties as new sub-processors for the processing of personal data, subject to the terms of this DPA. Ratecard will not engage any sub-processor in the processing of personal data under this Agreement without prior informing Customer of any intended change concerning the addition or replacement of other processors, thereby giving Customer the opportunity to object to such changes. Customer may reasonably object to Ratecard’s use of a new sub-processor (where using such a new sub-processor would weaken the protections for Personal Data provided in this DPA) by notifying Ratecard promptly in writing within five (5) business days’ notice period. Such notice shall explain the reasonable grounds for the

objection. Where Customer objects to the new sub-processor, Ratecard shall work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed sub-processor. If Ratecard is unable to make such change available within thirty (30) business days from Ratecard's receipt of Customer's notice, either party may terminate the applicable features of the services which cannot be provided by Ratecard without the use of the proposed sub-processor.

12. Customer specifically agrees to the engagement of the entities listed at Privacy Statement as sub-processors of Ratecard for the processing of personal data. Ratecard shall update the list of sub-processors when a new sub-processor for the processing of personal data is engaged.
13. Ratecard will take all available and appropriate contractual measures to ensure that when a sub-processor is engaged:
 - 13.1. the sub-processor will only process personal data if such processing is necessary for performance of the Services or a part thereof, and comply with the specific instructions stated in the Agreement, and;
 - 13.2. data protection obligations providing similar protection as those in this DPA shall be imposed on the sub-processor by way of a contract or other legal act under EU or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the Data Protection Legislation.
14. Ratecard remains liable to Customer under this DPA for the performance of the data protection obligations of its sub-processor.
15. Ratecard hereby certifies that it understands all its contractual restrictions set out in the CCPA and will comply with them, to the extent applicable.
16. Details of the processing:
 - 16.1. Subject matter and purpose of the processing: provision of the Services of Ratecard to Customer.
 - 16.2. Categories of personal data: information on End-Users that Customer provides to Ratecard through the Services.
 - 16.3. Categories of data subjects: data subjects can include customers of the Customer, employees, suppliers, and any other natural person who is the End-User of Services, from whom Customer provides personal data through the use of the Services.
 - 16.4. Duration of the processing: personal data will be processed for as long as required for the performance of the Services, or as required under applicable law.
17. This Data Processing Annex is governed by the laws of The Netherlands, and the Parties submit to the exclusive jurisdiction of Amsterdam courts for all purposes connected with this DPA, including the enforcement of any award or judgement made under or in connection with it.