

Vista Cloud Agreement

Standard Terms

Effective from 16 June 2026 - 5 October 2026

These Standard Terms, the Key Terms, the Data Processing Terms (available here: <https://www.vista.co/vista-data-processing-terms>), and any Order Forms or Statements of Work contain the terms and conditions under which Vista will make the Services available to Client (collectively, the **Agreement**). Client agrees to be bound by the Agreement by either executing the Key Terms or otherwise accessing any of the Services.

1. Definitions and Interpretation

1.1 Definitions: In the Agreement, unless otherwise specified or the context otherwise requires:

Affiliate means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise, and any Person owning, directly or indirectly, 50% or more of the voting securities of, or economic interests in, a second Person will be deemed to control that second Person.

Box Office Reporting Services means (i) the box office reporting services described at www.numero.co that enable Client to provide its daily gross box office data to Vista's Numero service; and (ii) electronic box office returns and hold over data services described at www.maccs.com via the MaccsBox file based platform, that enable Client to provide weekly box office receipt data. Each of the Numero and MaccsBox services enable provision of data on a per film and per cinema basis, and such data may be accessed by studios and distributors of cinematic films that use the applicable service.

Business Day means a day other than a Saturday, Sunday or public holiday in the Governing Law territory.

Campaign means an automated, one-off or journey-based marketing campaign distributed via a variety of Client-adopted channels.

Channel Terms means the terms of use for a Channel relating to the performance of the Channel's targeted advertising services for the benefit or at the direction of Client.

Channel means any social and digital sales channel made available to Client via the Movio Cinema EQ Service, excluding Client's SMS, email, or mobile push notifications.

Client Data means any data input by, or on behalf of, Client into the SaaS Service, including any Personal Data Processed by Vista on behalf of Client under the Agreement that forms part of such data.

Client IP means any: (a) Client trademarks, logos, or other branding provided to Vista in connection with the Agreement; (b) Client Data; and (c) content, materials, and deliverables (including works that are derived or adapted from such materials) that were created, owned or licensed by Client and either provided to Vista in connection with the Agreement, or included in the Services by, or on behalf of, Client.

Cloud Service Providers means: (a) Microsoft Azure; (b) Amazon Web Services; and/or (c) any other reputable cloud service provider appointed by Vista to provide services in respect of the Services that has been notified to and consented to by Client in writing from time to time (such consent not to be unreasonably withheld or delayed).

Confidential Information means the existence and content of the Agreement, and any information disclosed by a Disclosing Party (or its Representatives) to the Receiving Party (or its Representatives) under the Agreement that a reasonable person would understand to be confidential or proprietary to the Disclosing Party. It excludes information that is public, already known, lawfully received from a third party, or independently developed without any breach of the Agreement and without use of or reference to the Disclosing Party's Confidential Information.

Critical Threat means an imminent threat to (i) the security or integrity of any Client Data, the Generated Data, or the data of any other Vista client; or (ii) the availability of the SaaS Service to Client or any other Vista client.

Data Analysis means performing data analysis (including insight, trend, optimisation, benchmarking analysis, and model development and training) on an aggregated and/or anonymous basis.

Data Protection Laws has the meaning given to it in the Data Processing Terms.

Disclosing Party means a Party (or that Party's parent company) that discloses Confidential Information to the Receiving Party under the Agreement.

Dispute means any dispute or difference that arises out of, or in connection with, the Agreement (including any question as to its validity or termination).

Feedback means any suggestions, enhancement requests, recommendations and other feedback provided by Client.

Fees means the fees payable under the Agreement as set out in the Key Terms and any SOW.

Force Majeure Event means any event beyond a Party's reasonable control, including natural disasters, government actions, war, civil unrest, epidemics, strikes, supply shortages, or similar disruptions. It excludes events where the impact could

reasonably have been mitigated or avoided through reasonable precautions, alternative arrangements, or other means by the non-performing Party.

Generated Data means any data that is derived or generated from Client Data as part of providing the SaaS Service, but excludes any formula, calculation or algorithm used to derive or generate that data.

Indemnification Conditions means the following conditions, with which a party must comply in order to be entitled to defence or indemnification under the Agreement by the other party: (i) the Indemnified Party must notify the Indemnifying Party in writing of any claim that might be the subject of indemnification promptly after any executive officer of the Indemnified Party or member of the Indemnified Party's legal department first knows of the claim, provided, however, that no failure to so notify an Indemnifying Party will relieve the Indemnifying Party of its obligations under the Agreement, except to the extent that such failure materially prejudices defence of the claim or to the extent of any damages incurred by the Indemnifying Party as a result of the delay; (ii) the Indemnifying Party must be given primary control over the defence and settlement of the claim (the Indemnified Party may nonetheless participate in the defence at its sole cost and expense); (iii) the Indemnified Party makes no admission of liability (except as required by applicable law) nor enters into any settlement without the Indemnifying Party's prior written agreement (not to be unreasonably withheld); (iv) the Indemnified Party provides such assistance in defence of the proceeding as the Indemnifying Party may reasonably request, at the Indemnifying Party's reasonable expense; and (v) the Indemnified Party uses all commercially reasonable efforts to mitigate its losses.

Indemnified Party means a Party and/or its Representatives or Affiliates, entitled to be indemnified by the Indemnifying Party pursuant to clause 6.6.

Indemnifying Party means the Party indemnifying and holding the Indemnified Party harmless pursuant to clause 6.6.

Infringing Service(s) means where the Services (excluding any Client IP in the Services, or Client's use of the Services) infringe the Intellectual Property Rights of a third party.

Insolvency Event means, in respect of a Party or its parent Affiliate, when it:

- (a) files a petition in bankruptcy, institutes proceedings, or has proceedings instituted against it, seeking relief or reorganization under any laws relating to bankruptcy or insolvency;
- (b) has a court of competent jurisdiction appoint a receiver, liquidator, or trustee over all or substantially all of that Party's property or provide for the liquidation of such Party's property or business affairs;
- (c) is or becomes insolvent or undertakes an act of insolvency, including admitting in writing its inability to pay its debts as they become due;
- (d) makes a general assignment for the benefit of creditors; or
- (e) experiences any event the same as or equivalent to the above in the Territory.

Integration Services means (i) third party access (directly or indirectly) to any of Vista's APIs and/or connectors for the purpose of enabling data to flow between a third party's application and the SaaS Service; and/or (ii) Vista's support services in relation to such third party integration.

Intellectual Property Rights means all rights (including ownership rights, rights or licences to use, rights arising through use, and rights which are the subject of applications to register) in or to any trade name, design, patent, copyright, know-how, process, method, invention, database, circuit layout or other form of intellectual property (whether or not registered), and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of those in any part of the world.

Liabilities means all costs, losses, expenses (including, without limitation, reasonable attorney's fees and costs of defence and appeal), claims, liabilities or damages.

Malware means any software, code, file, program, or device that may impair or adversely affect systems, networks, services, programs or data; degrade user experience; or enable unauthorised or unwanted access, including viruses, worms, trojan horses and similar threats.

Notice of Dispute means a written notice claiming that a Dispute has arisen and which specifies the nature and reasonable details of the Dispute, pursuant to clause 10.1.

Permitted Purpose means Client's own lawful internal business purposes relevant to the SaaS Service provided under this Agreement and relating to the cinema exhibition business or other consumer entertainment business agreed by the Parties.

Permitted User means any third party, advertising agency or Affiliate of Client which has been approved by Vista in writing (such approval not to be unreasonably withheld).

Person means any individual, corporation, partnership, limited partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization or a government or any agency or political subdivision thereof, or any other entity.

Professional Services means any services that the Parties agree that Vista will perform pursuant to a SOW, for a Fee as specified in such SOW, and includes any specifications and deliverables described and provided under such SOW.

Receiving Party means the Party who receives Confidential Information from the Disclosing Party pursuant to the Agreement.

Representatives means, in respect of a Person, that Person's officers, directors, employees, professional advisors, or contractors.

Services means the SaaS Service, the Support Services and any Professional Services provided by Vista to Client as **described** in the Key Terms or a SOW.

Site means a cinema site owned and operated by Client.

SOW means a statement of work (including as amended) entered into between the Parties.

Support Services means second level support services as provided under the applicable Vista support framework.

Support Site means the Vista Support Site located at <https://help.vista.co/> or such other website as Vista notifies in writing to Client.

Term means the Initial Term and any Renewal Term(s).

Third Party Provider means third parties (excluding any Vista Affiliates) who provide data and/or services in connection with the Services, including Cloud Service Providers, data centres, electricity providers, and telecommunications providers.

Vista IP means (i) the Services, excluding any Client IP contained within the Services; (ii) the Professional Services, including any deliverables or specifications specified in or provided under each SOW, or arising out of work performed by Vista under each SOW, and any inventions, ideas or original works of authorship in whole or in part conceived or made by Vista which arise from or result from the work performed by Vista for Client under each SOW, whether or not fixed in a tangible medium of expression, but excluding any Client IP contained within the Professional Services; and (iii) Feedback in accordance with clause 5.6.

1.2 **Interpretation:** In the Agreement, unless the context otherwise requires, or specifically stated otherwise:

- (a) a capitalised term not defined in these Standard Terms has the meaning given to that term in the Key Terms, the Data Processing Terms or a SOW (as applicable);
- (b) headings are to be ignored in construing the Agreement;
- (c) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (d) references to "including", "includes" or similar words will be read to include a reference to "without limitation";
- (e) references to individuals include companies and other corporations, and vice versa;
- (f) a right or power may be exercised from time to time and at any time;
- (g) each Schedule, or other attachment, forms part of the Agreement; and
- (h) reference to a clause, subclause, Schedule, or a Party is a reference to that clause, subclause, Schedule, or a Party in the Agreement.

1.3 In the event, and to the extent of, any conflict or inconsistency between the provisions of any of the following documents, the relevant provision of the document listed first will prevail provided that any specific term in any of the following documents will prevail in respect to the subject matter of that term over any general term in another document:

- (a) the Key Terms;
- (b) the Standard Terms
- (c) the Data Processing Terms; and
- (d) a SOW.

1.4 This Agreement has been agreed by the Parties in English. In the event any translation of this Agreement is prepared in any other language, the provisions of the English version will prevail.

2. Access to the Services

2.1 In consideration for Client paying Vista the Fees, and complying with its obligations under the Agreement, Vista will:

- (a) provide Client with access to the SaaS Service for the Term, solely for the Permitted Purpose as contemplated by the Agreement; and
- (b) provide the Services to Client on the terms and conditions set out in the Agreement, exercising the level of skill, care and diligence which would reasonably be expected of an experienced and professional provider of services similar to the Services.

2.2 Client will, and will ensure that its Representatives:

- (a) Use the Services solely for the Permitted Purpose, and do not do, or attempt to do, any of the following: (i) copy, modify, reverse engineer or create derivative works of any part of the SaaS Service, except as required by law or permitted under the Agreement; (ii) sell, rent, sublicense or otherwise make the SaaS Service available to unauthorised third parties; (iii) use the Services in any way that may impair its functionality, or breach applicable laws or third-party rights; or (iv) infringe the Vista IP.

- (b) Provide reasonable co-operation and access to information as required for Vista to deliver the Services. Vista will not be responsible for failure or delay where Client does not provide such cooperation or access.
 - (c) Maintain account security by: (i) keeping all SaaS Service account credentials secure and confidential; (ii) preventing and not attempting any unauthorised access to, or use of, the SaaS Service; (iii) promptly disabling any compromised accounts and immediately notifying Vista in writing of any unauthorised access or use; (iv) not introducing Malware; and (v) not undermining or attempting to undermine the integrity or security of the SaaS Service or its underlying systems. Vista may suspend access if any event described in this clause 2.2 occur. Client must not allow the use of magnetic-stripe credit card readers in relation to any of the SaaS Services.
 - (d) Maintain Client's network, systems, integrations, Existing Software, and any website or sales channel built by a third party which is integrated with the Vista Services, in accordance with Vista's reasonable written requirements, including: (i) updating them to the most recent, supported version by no later than nine months after the release date of a new version; (ii) ensuring they are free of Malware; (iii) applying all critical security patches promptly upon release; (iv) implementing and maintaining up-to-date antivirus protection; (v) not directly or indirectly permitting integrations or third-party software access without Vista's prior written consent; and (vi) bearing sole responsibility for Client's network connections and telecommunications links to the SaaS Service.
 - (e) Comply with all applicable laws and maintain appropriate technical, physical, and organisational security measures in line with industry best practice.
- 2.3 Client acknowledges and agrees that Vista's provision of the Services to Client is non-exclusive. Nothing in the Agreement prevents Vista from providing the Services or similar services to any other Person.
- 2.4 If Vista, acting reasonably in the circumstances then known to Vista, determines or suspects that: (a) Client or Client's Representatives have breached any of the obligations in clause 2.2; or (b) there is a Critical Threat; Vista may, in its sole discretion and without liability to Client or any other Person, take any action to prevent or resolve the breach and/or Critical Threat. Prior to taking any such action, Vista will immediately attempt to contact Client to prevent or resolve the breach and/or Critical Threat.
- 2.5 A Permitted User may access and use the SaaS Services for Client's Permitted Purpose only, provided that Client remains liable to Vista for the Permitted User's access to and use of the SaaS Services and will be responsible for ensuring that the Permitted User complies with the terms of this Agreement (including Client's confidentiality obligations in clause 8).
- 2.6 **Integrations**
- (a) Client must seek Vista's prior written consent if Client wants Vista (or a Vista Affiliate) to provide or permit the Integration Services. Vista may consent to supply the Integration Services in its sole discretion and subject to additional terms and conditions, which will be agreed between the Parties in a SOW. Vista's consent may be conditional on the third party entering into separate arrangements with Vista (or its relevant Affiliate(s)) on terms acceptable to Vista. Vista (and its Affiliate(s)) will not be liable, to Client or any third party, for any loss arising out of the integration of any third party application with the SaaS Service (including any act or omission of the third party, any adverse impact of such integration on the SaaS Service, and/or any failure by the third party to respond appropriately to error codes issued by the SaaS Service).
 - (b) Where Client uses Movio Cinema EQ, and this use involves a direct integration to Client's account for a Channel:
 - (i) Client agrees that Vista may provide hashed emails, or another unique identifier derived from Client Data, to each relevant Channel as Client's "agent" in order to facilitate a digital Campaign, provided that: (i) Vista will only supply any personal data comprised within such Client Data in encrypted or hashed form via a secure FTP server or transferred via a secure API; and (ii) Client is only authorising Vista, in accordance with this Agreement, to act as Client's agent solely as a contracted data partner uploading the target audience on behalf and at the direction of Client and the Parties acknowledge and agree that otherwise there is no agency-principal relationship between the Parties pursuant to this Agreement.
 - (ii) Client acknowledges and agrees that, in order to activate campaigns on each relevant Channel, Client will be required to have an account with such Channel, including agreeing to: (i) such Channel's Channel Terms; (ii) any fees payable to the Channel; and (iii) any terms or policies required by the Channel for the use of its advertising services; each as may be updated by the Channel from time to time.
 - (iii) Vista has no liability to Client in respect of the Channel Terms, unless caused by an act or omission of Vista which constitutes a breach of the Agreement.
- 2.7 **Box Office Reporting Services:** Numero (Aust) Pty Limited (Numero), and Maccs International B.V. (Maccs) (each a Vista Affiliate) will provide the Box Office Reporting Services to Client at no additional cost. In consideration, Client agrees: (i) to supply to each of the MaccsBox and Numero services; and (ii) to authorise these services to supply to studios and distributors (and, with Client's agreement, to other cinema exhibitors using the Numero service); film, seat and admission meta data.
- 2.8 **MXF Content Delivery Network:** If Client's SaaS Services include MovieXchange CDN, the Subscription Fee in respect of the MovieXchange CDN application only is based on Client using a maximum average of 200 GB of bandwidth per month per Site. Should Client's use exceed this amount (the excess being the **Additional Bandwidth**), Client will pay Vista for the Additional Bandwidth in arrears at US\$100 per TB (pro-rated) (**Overages**). Vista's monitoring and logging infrastructure will be the sole source of truth for determining Overages.

2.9 Horizon

- (a) If Client's SaaS Services include Horizon Custom Dashboard Builder, given the size and complexity of the data available via Horizon Custom Dashboard Builder, it is possible for Client's configuration and/or use of Horizon Custom Dashboard Builder to cause issues for Client's use and/or Vista's delivery of the SaaS Service. By way of example, Client could misconfigure Horizon Custom Dashboard Builder to access a much larger data set than required and/or run a query more frequently than required (**Unexpected Horizon Use**).
- (b) Where Vista becomes aware of Unexpected Horizon Use it may notify Client (email to suffice) and Client agrees to promptly adjust its use and/or configuration of Horizon Custom Dashboard Builder as requested by Vista, so as to remediate the issues identified by Vista. If Client does not do so, Vista will be entitled to limit access to the direct query capabilities of Horizon Custom Dashboard Builder until the Unexpected Horizon Use has been remediated.
- (c) Vista's monitoring and logging infrastructure will be the sole source of truth for determining Unexpected Horizon Use.

- 2.10 **PCI-DSS:** Vista will make reasonable efforts to provide the Services in a manner consistent with PCI-DSS requirements that apply to Vista, to the extent that Vista determines such requirements are relevant to a particular component of the Services provided under this Agreement.

3. Professional Services

- 3.1 Excluding for termination by Client due to Vista's material breach in accordance with the Agreement, in the event a SOW is terminated, Vista will be entitled to be paid the pro rata portion of the fees earned by Vista under such SOW based on the amount of the Professional Services that have been completed as at the relevant date of termination.
- 3.2 Subject to clause 6.8, Vista's maximum liability arising out of all claims under a SOW will not exceed in aggregate an amount equal to the fees actually paid by Client to Vista for the supply of the Professional Services under the relevant SOW to which the claim relates.

4. Fees and Payment

- 4.1 Client will pay each invoice by 5.00pm on the date that is thirty days after the invoice issue date (or, where that day is not a Business Day, then the first Business Day after that day). If Client fails to pay any invoice by the date it is due, Vista will notify Client in writing and give Client ten days from the date of the notice to pay the relevant invoice. If Client fails to pay the relevant invoice by 5.00pm on the date that is ten days after the date of Vista's notice of late payment (or, where that day is not a Business Day, then the first Business Day after that day) then, without prejudice to any of Vista's other rights and remedies:
- (a) Vista may, without liability to Client, disable or suspend Client's access to all or part of the Services, and will be under no obligation to provide any part of the Services to Client while the invoice(s) concerned remains unpaid; and/or
 - (b) interest will accrue on such due amounts at a rate of 8% per annum calculated on a daily basis from and including the date the invoice is due until the unpaid amount is paid in full.
- 4.2 All amounts stated or referred to in the Agreement are exclusive of all goods and services taxes, value added taxes, sales tax or similar taxes (if any). Applicable taxes, including any such sales taxes, will be stated on Vista's final invoices.
- 4.3 If Client is required by law to deduct or withhold taxes or charges from the amounts due to Vista under the Agreement, Client will ensure that the amount due to Vista is increased so that the payment actually made to Vista equals the amount due to Vista as if no such taxes or charges had been imposed.

5. Intellectual Property Rights

- 5.1 Each Party acknowledges and agrees that any Intellectual Property Rights it owns or licenses from a third party which are created independently of this Agreement (including any enhancements, developments or modifications to such rights), will remain vested in, and remain the property of, that Party or its third party licensors, as applicable.
- 5.2 Client acknowledges and agrees that Vista and/or its licensors own all Intellectual Property Rights in the Vista IP.
- 5.3 Client assigns without reservation or extra charge all Intellectual Property Rights and all other rights which Client may have in the Vista IP to Vista and its Affiliates (as applicable), and will not use, copy, reproduce, adapt, vary or modify the Vista IP or any part of it except as expressly provided in the Agreement. Client will execute all instruments and perform such acts as are necessary to give effect to this clause 5.3 and to permit Vista to fully protect the Vista IP.
- 5.4 Except as expressly stated in the Agreement, the Agreement does not grant Client any rights to, or in, the Vista IP, or any other rights or licences in respect of the Vista IP.
- 5.5 Vista acknowledges and agrees that, subject to this clause 5.5, Vista will not have or make any claim to any interest in, ownership of, or rights to, the Client IP. Client will arrange all consents and approvals necessary for Vista to access and use the Client IP as described in the Agreement. Client grants to Vista a non-exclusive, irrevocable, non-transferable, non-sublicensable, fully paid-up, royalty-free and limited right and license during the Term to use, store, and otherwise process the Client IP solely for the purposes of providing the Services in accordance with the Agreement, including for the purposes set out in clause 7.2.
- 5.6 Client acknowledges and agrees that Vista may use and incorporate in the Services, royalty free and worldwide, any Feedback, and on such use or incorporation into the Services, Vista will own all necessary Intellectual Property Rights in such Feedback to the extent used or incorporated into the Services.

- 5.7 Client grants to Vista a non-exclusive and non-sublicensable license during the Term to display Client's name, logo and other brand features within the SaaS Services, in providing the Services, and in marketing material, solely for the purposes of Vista's marketing (with Client's prior written approval) or fulfilling Vista's obligations to Client under this Agreement, provided that all such use is in accordance with the express terms of this Agreement and the lawful branding guidelines (if any) provided by Client to Vista.

6. Warranties and Liability

- 6.1 Vista warrants that:

- (a) the Services (excluding any Client IP in the Services, or Client's use of the Services) do not infringe the Intellectual Property Rights of a third party; and
- (b) Vista will comply with all applicable laws in providing the Services.

- 6.2 If a claim is made that the Services are an Infringing Service, Vista will, at its option, either:

- (a) modify the Infringing Service such that it does not infringe the relevant Intellectual Property Rights of such third party; or
- (b) provide a workaround solution or procure a continuing lawful right for Client to use the Infringing Service (or component thereof).

If neither of the options in subclauses 6.2(a) or 6.2(b) is deemed by Vista to be commercially feasible, Vista will notify Client and either Party may terminate the Agreement by giving written notice to the other Party.

- 6.3 Except as provided for in clause 6.1:

- (a) to the extent permitted by law, the Services are provided on an "as is" basis and all representations, conditions or warranties (whether express or implied, statutory or otherwise, and including warranties of non-infringement, merchantability or fitness for a particular purpose) in respect of the Services are expressly and entirely excluded. Client is solely responsible for determining whether it is appropriate to use, and for its use of, the Services, and assumes any risks of any nature associated with the same; and
- (b) Vista will not be liable for any act or omission of Client, its Affiliates, their respective Representatives, Third Party Providers, or any other Person.

- 6.4 Vista will not be responsible for any Liabilities arising from or in connection with (i) any Client Data; or (ii) any breach of the Agreement, to the extent that the breach is related to the use of or access to the Services by Client that is contrary to clause 2.2 and/or any of Vista's other written instructions, or in combination with any hardware, software, or operating system not used in accordance with the Agreement.

- 6.5 Client represents and warrants that:

- (a) it has all of the rights, licences and consents required to lawfully use the Services, in the manner contemplated by the Agreement; and
- (b) the Client IP does not, and the use of Client IP by Vista or its Third Party Providers in accordance with the Agreement will not, infringe in any way the Intellectual Property Rights of a third party, or breach any applicable laws, orders or regulations, contracts or duty of confidence.

- 6.6 Each Party (the **Indemnifying Party**) indemnifies, defends, and holds the other Party (the **Indemnified Party**) harmless against all Liabilities such Indemnified Party may incur through any third party claim arising out of or in connection with the Agreement relating to:

- (a) the Indemnifying Party's infringement of the Intellectual Property Rights of any Person; and
- (b) the Indemnifying Party's violation of any applicable laws, orders or regulations,

provided, however, that this clause 6.6 is subject to the Indemnification Conditions at all times and in no event will such indemnity, defence, and hold harmless apply to the extent of any Liabilities directly resulting from the fraud, bad faith or wilful misconduct of the Indemnified Party or its Representatives.

- 6.7 To the extent permitted by law, neither Party will be liable to the other Party, or its Affiliates, or their respective Representatives for any loss of profits, loss of revenue, loss of data (other than as contemplated by clause 7.7 below), or any indirect, consequential or special loss or damage suffered or incurred by a Party, or its Affiliates, or their respective Representatives arising out of or in connection with the Agreement or the Services.

- 6.8 Other than in the case of: (i) personal injury or death; (ii) a Party's fraud, wilful misconduct, breach of its payment or confidentiality obligations (other than any breach of confidentiality obligations which also constitutes a breach of clause 7 which will remain subject to the following liability cap); or (iii) infringement of the other Party's Intellectual Property Rights; a Party's maximum liability arising out of all claims under the Agreement will not exceed in aggregate an amount equal to the Fees paid by Client to Vista during the twelve month period ending on the date of the breach giving rise to the relevant claim.

7. Client Data

- 7.1 Client acknowledges and agrees that Client will have sole responsibility for the necessity, legality, reliability, integrity, accuracy

and quality of the Client Data. Client will arrange all notices, consents and approvals necessary under applicable laws for Vista to access, collect, use, disclose, store and otherwise Process the Client Data as described in the Agreement, including in relation to any Personal Data contained within the Client Data.

7.2 Client acknowledges and agrees that Vista may transfer Client Data and Generated Data to its Affiliates, that Vista Affiliates may transfer Client Data and Generated Data to Vista and other Vista Affiliates, and that Vista and its Affiliates may access, collect, use, disclose, store and otherwise Process Client Data and the Generated Data for the purposes of:

- (a) performing Vista's obligations under the Agreement;
- (b) ensuring that Client is complying with the terms and conditions of the Agreement;
- (c) improving or enhancing the Services, and any services provided to Client by a Vista Affiliate;
- (d) understanding how Client is using the Services; and
- (e) performing Data Analysis and sharing the results of such Data Analysis with any of Vista's Affiliates, Vista's Affiliates' customers and Vista's customers, provided that Vista complies with its confidentiality obligations under the Agreement and does not disclose any Client Data, Personal Data or Sensitive Personal Data as part of sharing the results of such Data Analysis,

provided that Vista complies with its obligations under this clause 7.

7.3 Client warrants that:

- (a) it owns or has obtained all necessary rights, title and interest in the Client Data and all Intellectual Property Rights and other rights contained therein, as well as the consent of any Data Subjects necessary for the Parties to perform their respective obligations under the Agreement;
- (b) Vista's use and other Processing of the Client Data in accordance with the Agreement will not constitute an infringement of the Intellectual Property Rights, publicity or privacy or other proprietary rights of a third party, or the violation of any applicable laws, rules or regulations (including Data Protection Laws) or a violation of any applicable privacy policy or terms and conditions;
- (c) it has disclosed to the Data Subjects in compliance with applicable Data Protection Laws how it (and Vista and its Affiliates) will collect, hold, use, and disclose their Personal Data (and any other matters requiring disclosure according to applicable Data Protection Laws); and
- (d) unless otherwise stated in the Agreement, it will not upload any Sensitive Personal Data, nor instruct Vista to upload, include or Process any Sensitive Personal Data, in the SaaS Service.

7.4 Client, subject to the Indemnification Conditions, indemnifies, defends and holds harmless Vista from and against all Liabilities arising out of or in connection with Client's breach of any of the warranties in clause 7.3.

7.5 The Parties acknowledge and agree that the Generated Data in whatever form and on whatever media remains at all times jointly owned by the Parties and each Party grants to the other Party an unrestricted, royalty free, transferable, sub-licensable, perpetual and irrevocable licence, without the need for the approval of the other Party, to use, copy, modify, and in the case of Vista only, distribute and commercialise, the Generated Data provided that, neither Party may use the Generated Data for any purpose where that use discloses any Confidential Information of that other Party.

7.6 The Parties will comply with the terms of the Data Processing Agreement with respect to Personal Data.

7.7 Each Party will take appropriate technical and organisational security measures against unauthorised or unlawful Processing of Client Data or Generated Data, or their accidental loss, destruction or damage and Vista will, as part of these measures, use reasonable endeavours to back-up Client Data and Generated Data. Client acknowledges that if there is any loss or damage to Client Data or Generated Data as a result of Vista's negligence or breach of this clause, Client's sole and exclusive remedy will be for Vista to use reasonable commercial endeavours to restore such lost or damaged data from the latest back-up of the Client Data or Generated Data that Vista has maintained. Subject to Vista's use of Sub-Processors in accordance with the Data Processing Terms (where applicable to Client) and applicable Data Protection Laws where related solely to Personal Data, and Vista's compliance with its obligations under this clause 7.7, Vista will not be responsible for any misuse, interference, loss, destruction, or for any unauthorised access, alteration or disclosure of Client Data or Generated Data caused by Vista, Client or any third party.

8. Confidentiality

8.1 The Parties recognise and acknowledge the confidential nature of the Confidential Information. Client recognises and acknowledges that the Services and Vista IP are Vista's Confidential Information.

8.2 Neither Party will use or disclose any Confidential Information other than:

- (a) to its or its Affiliates' Representatives to the extent necessary in the performance of the Agreement;
- (b) with the express prior written consent of the other Party;
- (c) to its professional advisers;

- (d) if compelled to in accordance with clause 8.3; or
- (e) if permitted in accordance with the Agreement.

- 8.3 A Receiving Party may disclose the Confidential Information of the Disclosing Party if it is required by law, compelled by any regulatory authority or government body, or necessary to comply with the rules of any recognised securities exchange, provided that the Receiving Party gives the Disclosing Party prior notice of such disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 8.4 Except as required to comply with relevant laws or the rules of a recognised stock exchange, neither Party will make any public announcement relating to the Agreement without the prior written approval of the other Party (not to be unreasonably withheld or delayed), provided that a Party may communicate information concerning the Agreement and the provision of the Services contemplated by the Agreement to its respective Affiliates and Representatives.
- 8.5 This clause 8 does not apply to the Parties' obligations regarding use, disclosure, protection and other Processing of Personal Data: such obligations are specified in clause 7. Accordingly, a breach of a Party's data protection obligations pursuant to the Agreement will not constitute a breach of that Party's confidentiality obligations under the Agreement.
- 8.6 This clause 8 will survive termination of the Agreement.

9. Term and Termination

- 9.1 The Agreement (excluding any Statements of Work) commences on the Execution Date and, unless terminated earlier by a Party in accordance with the Agreement, will continue for the Initial Term and any Renewal Term(s) as specified in the Key Terms.

- 9.2 The Agreement and/or a SOW may be terminated by either Party as follows:

- (a) on written notice to the other Party at any time in the event the other Party has breached any representation, warranty, covenant, or other agreement contained in the Agreement in any material respect, provided the Party giving such notice is not also in breach of any provision of the Agreement in any material respect at the time such notice is given. If the breach giving rise to the notice is:
 - (i) capable of remedy, the Party giving notice shall provide thirty days' notice to remedy the breach. If the breach continues unremedied during this time, termination shall be effective immediately; or
 - (ii) in the reasonable opinion of the Party, incapable of remedy, the notice of termination shall be effective immediately;
- (b) to the fullest extent available under applicable law, on written notice to the other Party at any time in the event the other Party suffers an Insolvency Event; or
- (c) if the other Party is unable to perform a material obligation under the Agreement for a period of thirty days or more due to a Force Majeure Event.

- 9.3 On termination of the Agreement for any reason:

- (a) Client will pay Vista any Fees or any other amounts due and payable by Client up to, and including, the date of termination. Vista will refund to Client any amounts and Fees pre-paid by Client relating to periods after the date of termination or expiry, after deducting any amounts due for all Services provided up to the date of termination, except where this Agreement is terminated as a result of a breach by Client;
- (b) Client will cease to access the Services and in no event will Client reconnect to or access the Services unless or until otherwise agreed in writing by Vista;
- (c) each Party will, to the extent such information is no longer required by that Party for the purposes of the Agreement or required to be obtained according to applicable law, and at the other Party's direction, either: (i) deliver to that other Party; or (ii) destroy; all copies of that other Party's Confidential Information in its possession or control; and
- (d) Vista will provide a copy of all Client Data in Vista's possession within twenty Business Days of the date of termination, provided that Client has, at that time, paid all fees and charges outstanding at, or resulting from, termination (whether or not due at the date of termination). Vista will hold Client Data for ninety Business Days following the date of termination, after which time all Client Data in Vista's possession will be deleted (unless Vista is required to retain the Client Data according to applicable law). Vista may hold Generated Data indefinitely and use it for any purpose following termination of this Agreement, provided that such Generated Data is not used in a manner that identifies Client and/or involves the disclosure of Client's: (i) Confidential Information; (ii) Client Data; (iii) Personal Data; and/or (iv) Sensitive Personal Data. Subject to Client's payment of a fee reasonably determined by Vista (where permissible by Data Protection Laws), and at Client's written request (email to suffice), Vista will provide Client additional copies of the Client Data or Generated Data while Vista continues to hold Client Data or Generated Data in its possession.

- 9.4 The accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected.

10. Disputes

- 10.1 If any Dispute arises, the Party may give a Notice of Dispute to the other Party to the Dispute.

- 10.2 On receipt of a Notice of Dispute, the Parties to the Dispute will each endeavour to resolve the Dispute by agreement between them through good faith negotiations and discussions between their respective appointed Representatives, or by an alternative dispute resolution technique that the Parties agree upon. This clause does not prevent a Party from seeking urgent interlocutory relief.
- 10.3 If the Dispute is not resolved within thirty Business Days of the date of the Notice of Dispute being served then, unless otherwise agreed and provided the Parties have first complied in full with clauses 10.1 and 10.2:
- (a) if the Governing Law is New Zealand, any Party to the Dispute may, by notice to the other, refer the Dispute for determination by arbitration in accordance with the following provisions:
 - (i) the arbitration will be conducted by a sole arbitrator agreed by the Parties (or if they fail to agree on an arbitrator within five Business Days of the reference of the Dispute to arbitration, the arbitrator will be appointed by the Chairperson for the time being of the Arbitrator's and Mediators' Institute of New Zealand (or his or her nominee));
 - (ii) the decision of the arbitrator will be final and binding on the Parties;
 - (iii) all Parties to the Dispute will use all commercially reasonable endeavours to ensure that the arbitration is conducted expeditiously, so as to obtain and implement a timely decision of the arbitrator; and
 - (iv) subject to any award made by the arbitrator (it being the intent that the Party who is found to be at fault or incorrect in the arbitration will bear costs), the costs of the arbitrator will be borne equally by the Parties;
 - (b) if the Governing Law is England and Wales, the Dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules (as then in force), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English. The Governing Law shall also apply to the arbitration agreement;
 - (c) if the Governing Law is State of California, USA, any Party to the Dispute may, by notice to the other, refer the Dispute for determination by arbitration. Any Dispute, including the determination of the scope or applicability of the Agreement to arbitrate, will be determined by arbitration in Los Angeles before one arbitrator. The arbitration will be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction; and
 - (d) if the Governing Law is Mexico, the Parties agree to refer the dispute to arbitration made up of three arbitrators in accordance with the Arbitration Rules of the National Chamber of Commerce of Mexico City. Any rules, administration and decision of the arbitrators will be final and binding on the Parties.
- 10.4 A Party may not issue legal proceedings in court (other than for urgent interlocutory and/or injunctive relief, or to enforce or challenge an arbitral award) in respect of any Dispute.
- 10.5 Pending resolution of any Dispute, the Parties will continue to perform their obligations under the Agreement without prejudice to their respective rights and remedies under or in relation to the Agreement.
- 11. Force Majeure**
- 11.1 Neither Party will have any liability to the other Party for that Party's failure to perform or a delay in performing any of that Party's obligations under the Agreement, other than any obligation to make a payment when due, where it is prevented from, or delayed in, performing that Party's material obligations under the Agreement or from carrying on its business, by a Force Majeure Event. The Party whose performance is prevented, hindered, or delayed by a Force Majeure Event will:
- (a) notify the other Party of such an event and its expected duration as soon as reasonably possible;
 - (b) use reasonable endeavours to mitigate the effects of the Force Majeure Event on that Party's material obligations under the Agreement; and
 - (c) use reasonable endeavours to perform that Party's obligations under the Agreement within the time specified by the Agreement despite the Force Majeure Event.
- 12. General**
- 12.1 Any notice to be given under the Agreement must be made in writing, by email, personal delivery or by post, sent to the email or address designated in writing by each Party for that purpose from time to time and marked for the attention of the designated person or office holder (if any). Any communication by email will be deemed to be received when transmitted to the correct email address of the recipient with confirmation of transmission by the transmitting equipment. Any other communication in writing will be deemed to be received when left at the specified address of the recipient or on the fifth Business Day following the date of posting.
- 12.2 Except as specifically provided for, no amendment to the Agreement will be effective unless agreed upon in writing and signed by both Parties.

- 12.3 A Party will not assign, transfer or otherwise deal with the Agreement or any of its rights or obligations under the Agreement, whether in whole or in part, without the other Party's prior written consent, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may assign any or all of its rights, or transfer any of its obligations, under this Agreement to an Affiliate of that Party for so long as that Person remains an Affiliate of that Party. A Party who assigns its rights, or transfers its obligations, under this Agreement to an Affiliate will procure that such entity assigns such rights, or transfers such obligations, back to it, or to such other Affiliate of the Party as it may nominate, immediately before that Person ceases to be an Affiliate.
- 12.4 The Parties will each bear their own costs and expenses incurred in connection with the preparation, negotiation and implementation of the Agreement.
- 12.5 If any part of the Agreement is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable such determination will not impair the enforceability of the remaining parts of the Agreement, which will remain in full force, and that provision will be deemed to be modified to the extent necessary to render it legal, valid, and enforceable.
- 12.6 The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named in any United States government denied-party list. Client will not engage in, and will not permit, access or use of the Services in a U.S embargoed country or in violation of any U.S. export law or regulation.
- 12.7 The Agreement constitutes the entire agreement and understanding (express and implied) between the Parties relating to the matters dealt with by the Agreement and prevails over and cancels all other agreements or documents relating thereto, whether written or oral, including any order forms, invoices, or other documents of any nature produced by either Party. No Person other than Vista, Vista's Affiliates and Client has any right to a benefit under, or to enforce, the Agreement, unless expressly permitted under the terms of the Agreement.
- 12.8 The Agreement may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the Parties.
- 12.9 Nothing in the Agreement will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the Parties, and a Party may not make, or allow to be made, any representation that any such relationship exists between the Parties. A Party will not have the authority to act for, or to incur any obligation on behalf of, the other Party, except as expressly provided for in the Agreement.
- 12.10 Any delay or failure by a Party to exercise (in whole or in part) any right, power or remedy under, or in connection with, the Agreement will not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of the Agreement will not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.
- 12.11 Where the Governing Law is New Zealand, Client acknowledges that the Services are acquired for the purposes of a business, and the Parties agree that the conditions, warranties and guarantees set out in the Consumer Guarantees Act 1993 will not apply and are excluded from the Agreement.
- 12.12 The Agreement is governed by the Governing Law and, subject to clause 10, the Parties submit to the exclusive jurisdiction of the courts of the Governing Law.