

## VERATRAK TERMS OF SERVICE

### INTRODUCTION

Veratrak operates a software platform that it makes available as a service that allows pharmaceutical supply chain companies to manage and collaborate with their customers, suppliers and partners on data and documents (the "**Collaboration Service**").

The Collaboration Service is customisable and can be integrated with the Client's existing systems. In order to customise and integrate the Collaboration Service, Veratrak offers the Implementation Services.

Veratrak also operates a software platform that it makes available as a service which enables users to view guides and tutorials for using the Collaboration Service, submit queries to Veratrak in relation to the use of the Collaboration Service and notify Veratrak of any errors or downtime in respect of the Collaboration Service (the "**Technical Support Service**" and, together with the Collaboration Service, the "**Veratrak Service**").

This agreement (comprising the Order Form and these Terms of Service) set out the terms and conditions upon which you may use the Veratrak Service (as defined below) and any application or functionality Veratrak makes available through the Veratrak Service.

**By using the Veratrak Service or signing an Order Form, you agree to and accept these Terms of Service and the Order Form.**

#### 1. INFORMATION ABOUT VERATRAK

The Veratrak Service is provided by Veratrak Limited, a company incorporated and registered in England with company number 10998554, whose registered office is at Unit 2.05, 12-18 Hoxton Street, London, N1 6NG, United Kingdom ("**Veratrak**").

#### 2. INTERPRETATION

2.1 In these Terms of Service, save where the context requires otherwise, the following words and expressions have the following meaning:

**"Acceptance"** means the date of completion of the Implementation Services, or, where no Implementation Services are to be provided, means the date of Validation;

**"Additional File Limit"** means the additional number of files per Authorised Internal User that any Authorised User may upload to the Veratrak Service, as set out in the Order Form and agreed in accordance with clause 13.2 below;

**"Agreement"** means the agreement between the Client and Veratrak, comprising the Order Form and the Terms of Service, for the provision of the Veratrak Service;

**"Authorised Internal User"** means an employee, contractor or other person engaged by the Client, in each case who is authorised by the Client to access the Veratrak Service;

**"Authorised Guest"** means an employee, contractor or other person engaged by any Customer or Supplier, in each case who is authorised by the Client to access the Veratrak Service;

**"Authorised Users"** means the Authorised Guests and Authorised Internal Users;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**"Claim"** has the meaning given in clause 18.1;

**"Client"** or **"you"** means the person identified on the Order Form;

**"Client Account"** means the account set up by the Client with an ID and password that the Client uses to access, and monitor its and its Authorised Users' activities on, the Veratrak Service;

**"Client Data"** means the content and data that is hosted by Veratrak in connection with the provision of the Veratrak Service;

**"Confidential Information"** means information which is identified as confidential or proprietary by either party, or by the nature of which is clearly confidential or proprietary;

**"Contract Year"** means, in respect of the first Contract Year ("**Contract Year 1**"), the period of 12 months commencing on the Service Start Date, and, thereafter, each 12 month period commencing on each anniversary of the Service Start Date;

**"Customer"** means a customer of the Client;

**"DPA"** has the meaning given to it in clause 11.1;

**"Extended Term"** means the period set out in the Order Form or as otherwise agreed by the parties in writing;

**"Fees"** means the Implementation Fees (if any), the Service Fees, and the Incidental Costs (if any);

**"Fair Use Limit"** means the maximum number of documents the Client is permitted to upload, or permit its Authorised Users to upload, being [5,000] files per month, or such other limit as agreed by the parties in writing;

**"Group"** means, in relation to a company, that company, any subsidiary or holding company (each having the meanings in sections 1161 and 1162 of the Companies Act 2006) from time to time of that company, and any subsidiary from time to time of a holding company of that company;

**"Implementation Fee"** means the fee set out in the Order Form relating to the provision of the Implementation Services;

**"Implementation Services"** means the implementation services described in the Order Form;

**"Implementation Term"** means (where applicable) the period commencing on the date of the Order Form and ending on the date of Acceptance;

**"Incidental Costs"** has the meaning given to it in clause 5.4;

**"Initial Term"** means the period set out in the Order Form, commencing on the Service Start Date;

**"Minimum Authorised Internal Users"** means the minimum number of Authorised Internal Users to which the Client is permitted to grant access to the Veratrak Service, as set out in the Order Form or as otherwise agreed by the parties in writing;

**"Minimum Service Fee"** means the minimum Service Fee payable by the Client in relation to the provision of the Veratrak Service, as set out in the Order Form or as otherwise agreed between the parties;

**"Number of Authorised Guests"** means the maximum number of Authorised Guests to which the Client is permitted to grant access to the Veratrak Service, as set out in the Order Form or as otherwise agreed between the parties in writing;

**"Number of Authorised Internal Users"** means the maximum number of Authorised Internal Users to which the Client is permitted to grant access to the Veratrak Service, as set out in the Order Form or as otherwise agreed between the parties in writing;

**"Order Form"** means the order form signed (whether electronically or otherwise) by the parties, and which, amongst other things, identifies the Client and sets out the Service Fees;

**"Permitted Downtime"** has the meaning given to it in clause 14.1;

**"Rate Card"** means the rate card setting out Veratrak's current daily rates, as provided by Veratrak to the Client from time to time;

**"Service Fees"** means the fees set out in the Order Form, or such other amount that the parties may agree in writing from time to time, relating to the provision of the Veratrak Service;

**"Service Start Date"** means the date from which the Client will have access to the Veratrak Service, being the date of Acceptance;

**"Service Term"** means the Initial Term and any Extended Term;

**"Supplier"** means a supplier of the Client;

**"Term"** means the term of the Agreement, comprising the Implementation Term or the Validation Term (as applicable), the Initial Term and any Extended Term;

**"Terms of Service"** means these terms and conditions of service, as amended from time to time;

**"Third Party Sites"** has the meaning given in clause 7.3;

**"Training Services"** means the services described in the Order Form to be provided by Veratrak to the Client upon completion of the Implementation Services (or as otherwise agreed between the parties);

**"Validation"** means the written confirmation of the Client to Veratrak that the Veratrak Service complies with applicable laws and regulations relating to the Client's use of the Veratrak Service. The term **"Validate"** shall be construed accordingly;

**"Validation Term"** means (where applicable) the period commencing on the date of the Order Form and ending on the date of Acceptance;

**"VAT"** means value added tax; and

**"Virus"** means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware, or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including works, Trojan horses, viruses and other similar things or devices.

### **3. DURATION**

3.1 The Agreement shall commence on the date of the Order Form and, subject to earlier termination in accordance with clause 4.2 or clause 15, shall continue for the Implementation Term or the Validation Term (as applicable), and the Initial Term.

3.2 The Initial Term shall automatically extend for an Extended Term at the end of the Initial Term and at the end of each Extended Term thereafter, unless either party gives written notice to the other party to terminate the Agreement at the end of the Initial Term or the then-current Extended Term (as applicable), such notice to be given no later than 90 days prior to the expiry of the Initial Term or Extended Term (as applicable).

### **4. IMPLEMENTATION, VALIDATION AND TRAINING**

4.1 Veratrak shall provide the Implementation Services (if the provision of Implementation Services has been agreed on the Order Form), and shall provide the Training Services,

to the Client with reasonable diligence and dispatch, and with reasonable skill and expertise, in accordance with this Agreement.

- 4.2 In performing the Implementation Services (if any), Veratrak shall comply with the Client's reasonable instructions, and the Client shall provide Veratrak, its agents, subcontractors and employees, in a timely manner at no charge, with (a) such access to its sites and computer systems, and (b) all information, documents, items, and materials in any form, in each case as Veratrak may reasonably require in order to provide the Implementation Services. The Client acknowledges that the Client's timely provision of the co-operation and assistance (as set out in this clause 5.2) is essential to the performance of the Implementation Services, and that Veratrak will not be liable for any deficiency or delay in performing the Implementation Service to the extent directly arising from the Client's failure to provide, or the Client's delay in the provision of, such co-operation and assistance.
- 4.3 Subject to clause 5.5, Veratrak shall inform the Client in writing upon completion of the Implementation Services, and the Client shall, subject to satisfactory completion of any applicable testing of the Veratrak Service reasonably required by the Client, confirm its Acceptance to Veratrak in writing.
- 4.4 The Client shall reimburse Veratrak for any reasonable costs incurred by Veratrak in the performance of the Implementation Services or Training Services, including any costs incurred by Veratrak in the performance of additional or expedited work relating to the Implementation Services and required as a result of any delay or failure by the Client to provide co-operation and assistance as set out in clause 5.3 (the "**Incidental Costs**"), provided always that Veratrak shall obtain the Client's written approval before incurring any such expense and provided that Veratrak submits to the Client appropriate invoices in respect of any Incidental Costs together with receipts or other such documents evidencing the Incidental Costs
- 4.5 If the provision of Implementation Services has not been agreed on the Order Form, the Client will, promptly after the date of the Order Form, Validate the Veratrak Service, and shall inform the Client in writing upon completion of the Validation and confirm its Acceptance to Veratrak in writing.

## **5. ACCESS TO THE VERATRAK SERVICE**

- 5.1 Veratrak grants the Client (and to all members of the Client's Group who agree to the terms of this Agreement) a non-exclusive, non-transferable licence from the Service Start Date and for the remainder of the Term to access, use, and permit Authorised Users to access and use the Veratrak Service, in accordance with and subject to the terms and conditions of this Agreement, for the Client's internal business purposes.

- 5.2 The Client may not sublicense the rights granted in clause 6.1 other than to allow Authorised Users to access and use the Veratrak Service.
- 5.3 The Client may grant Authorised Guests access to the Veratrak Service provided that the Client:
- (a) does not make or give any representations, warranties or other promises concerning the Veratrak Service unless agreed by Veratrak in writing from time to time;
  - (b) ensures that the terms on which the Authorised Guests granted access to the Veratrak Service protect Veratrak and its proprietary rights in the Veratrak Service to the same extent as set out in this Agreement (and the Client will take reasonable steps to enforce such terms at Veratrak's request); and
  - (c) ensures that Veratrak is not liable to Customers, Suppliers or Authorised Guests in any way.
- 5.4 The Client shall ensure that:
- (a) the maximum number of Authorised Internal Users and Authorised Guests that the Client authorises to access and use the Veratrak Service does not exceed the Number of Authorised Internal Users and Number of Authorised Guests, respectively; and
  - (b) the maximum number of documents uploaded to the Collaboration Service by the Client or its Authorised Users does not exceed the Fair Use Limit.
- 5.5 The Client must treat any username and password used to access the Veratrak Service or the Client Account as Confidential Information, and must not disclose such information to any third party (other than to Authorised Users).
- 5.6 The Client shall procure that each Authorised User keeps secure and confidential any username and password provided to, or created by, that Authorised User for their use of the Veratrak Service, and that they will not disclose such username and password to any third party, including any other Authorised Users or persons within the Client's organisation, company or business.
- 5.7 The Client is responsible for maintaining the confidentiality of its login details for its Client Account and for any activities that occur under its Client Account, including the activities of Authorised Users.
- 5.8 Veratrak encourages the Client to use "strong" passwords (using a combination of upper and lower case letters, numbers and symbols) with its Client Account, and to encourage

Authorised Users to use strong passwords with any account used to access the Veratrak Service.

- 5.9 The Client must prevent any unauthorised access to, or use of, the Veratrak Service, and must promptly notify Veratrak in the event of any such unauthorised access or use. If the Client has any concerns about the login details for its Client Account, or thinks any of them may have been misused, the Client shall notify Veratrak at [admin@veratrak.com](mailto:admin@veratrak.com). The Client must immediately notify Veratrak if the Client becomes aware that the login details of any Authorised User are lost, stolen, or otherwise compromised.
- 5.10 The Client is responsible for making all arrangements necessary for Authorised Users to gain access to the Veratrak Service.
- 5.11 The Client is responsible for ensuring that all Authorised Internal Users are aware of the terms and conditions of this Agreement and act in compliance with them.
- 5.12 The Client shall not at any time, whether during or after the Term, accept any commission or payment for, or otherwise seek to profit financially or otherwise from granting access to the Veratrak Service to Authorised Users, other than in connection with providing its services to Customers in the ordinary course of its business.
- 5.13 Subject to clause 18, the Client shall indemnify, defend, and hold harmless, Veratrak, and its agents and contractors from and against any and all losses, damages, claims, liabilities or expenses (including reasonable lawyer's fees) arising out of a claim brought by an Authorised User, Supplier or Customer or any other third party relating to the Client's use of the Veratrak Service (except to the extent caused by Veratrak's negligence).

## **6. CLIENT'S OBLIGATIONS**

### **6.1 The Client:**

- (a) must comply with all applicable laws and regulations with respect to its use of the Veratrak Service and its activities under the Agreement;
- (b) must use the Veratrak Service in accordance with the terms of the Agreement and shall be responsible for any acts and omissions in connection with the use of the Veratrak Service by its Authorised Users;
- (c) must ensure that the Client ends an Authorised User's right to access and use the Veratrak Service, if:
  - (i) the Authorised Internal User ceases its employment or other relationship with the Client;

- (ii) the Authorised Guest ceases its employment or other relationship with the Customer or Supplier, or the relevant Customer or Supplier ends its relationship with the Client;
- (d) must notify Veratrak in writing if there are any changes to any of the Client's contact details as set out in the Order Form;
- (e) must ensure that its network and systems, including its internet browser, complies with any relevant specifications provided by Veratrak in writing (including e-mail) from time to time;
- (f) is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems in order to access and use the Veratrak Service; and
- (g) must not do, or allow any Authorised Users to do, any of the following:
  - (i) access, store, distribute, or transmit any Virus through the Veratrak Service;
  - (ii) use the Veratrak Service to access, store, distribute, or transmit any material that is unlawful, harmful, threatening, defamatory, inflammatory, violent, obscene, infringing, harassing, or racially or ethnically offensive;
  - (iii) use the Veratrak Service in a manner that is illegal or causes damage or injury to any person or property;
  - (iv) use any automated system, including without limitation "robots", "spiders", or "offline readers", to access the Veratrak Service in a manner that sends more request messages to the Veratrak Service than a human can reasonably produce in the same period of time by using a conventional online web browser;
  - (v) attempt to interfere with or compromise the integrity or security of the Veratrak Service,

and Veratrak reserves the right, without liability or prejudice to its other rights under the Agreement, to disable the Client Account or access to all or any part of the Veratrak Service by any Authorised User, for any breach of any provision of this clause 7.1(g).

6.2 Veratrak may monitor the Client's and Authorised Users' use of the Veratrak Service to ensure the quality of, and improve, the Veratrak Service, and verify the Client's compliance with the Agreement.



6.3 The Veratrak Service may contain links to, or call the servers of, third party websites or services that are not under Veratrak's control, solely at the direction of and/or as a convenience to the Client ("**Third Party Sites**"). As such, Veratrak is not responsible for, and makes no express or implied warranties with regard to, the information, content or other material, products, or services that are contained on or are accessible through, or the policies regarding use and privacy in respect of, Third Party Sites. Access to and use of Third Party Sites, including information, content, material, products, and services on such websites or available through such websites, is solely at the Client's risk.

## **7. AUDIT**

7.1 Veratrak may, on reasonable notice to the Client, and at Veratrak's own cost, during normal business hours, audit the Client's use of the Veratrak Services in order to audit the Client's compliance with this Agreement, including to verify that no password has been provided to any individual who is not an Authorised User and to verify the number of Authorised Users with access to the Veratrak Service.

7.2 Veratrak shall use reasonable endeavours to conduct audits remotely, and to conduct audits in such a manner as not to substantially interfere with the Client's normal conduct of business.

7.3 In the event that it becomes necessary for Veratrak to conduct an on-site audit, the Client shall grant to Veratrak, or its agent or representative, all necessary access rights to the Client's relevant premises, records or to any relevant computer hardware belonging to or under the control of the Client to allow such audit to be carried out and shall furnish Veratrak, its agent or representative, with such information in respect of the use of the Veratrak Service as Veratrak may reasonably require.

7.4 If any audit conducted pursuant to this clause 7 or otherwise reveals any use of the Veratrak Service not in accordance with this Agreement, then without prejudice to any remedies Veratrak may have in respect of any breach by the Client of its obligations under this Agreement, the Client shall, within 21 days of receipt of an invoice for the same, pay to Veratrak its reasonable costs and expenses incurred in carrying out the audit.

## **8. IMPORTANT NOTE ON INTELLECTUAL PROPERTY RIGHTS**

8.1 Veratrak is the owner or licensee of all intellectual property rights in the Veratrak Service. These works are protected by copyright and other laws and treaties around the world. All such rights are reserved. Except as expressly set out in this Agreement, Veratrak does not grant to the Client any rights to or licenses in respect of the Veratrak Service.

8.2 The Client will not, when using the Veratrak Service:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Veratrak Service in any form or media or by any means;
- (b) attempt to reverse compile, disassemble, reverse engineer, or otherwise reduce to human-perceivable form all or any part of the Veratrak Service;
- (c) access all or any part of the Veratrak Service in order to build a product or service which competes with the Veratrak Service, or use or attempt to use the Veratrak Service to directly compete with Veratrak; or
- (d) erase or remove any proprietary or intellectual property notice contained in the Veratrak Service.

8.3 The Client grants Veratrak a licence to access, download and use:

- (a) data concerning the use of the Veratrak Service by the Client and any Authorised User for the purpose of developing, testing, improving and altering the functionality of the Veratrak Service; and
- (b) data concerning the use of the Veratrak Service by the Client and any Authorised User for the purpose of producing anonymised or anonymised and aggregated statistical reports, research and case studies.

8.4 The Client represents and warrants to Veratrak that it has all necessary right, title, interest and consent, in each case as necessary to upload the Client Data to the Veratrak Service in accordance with and pursuant to this Agreement.

8.5 The Client acknowledges that Veratrak may use and allow others to use any feedback relating to the Veratrak Service provided by the Client in the Veratrak Service or otherwise without any restriction and without payment of any kind to the Client.

8.6 The Client shall maintain a backup of Client Data and Veratrak shall not be responsible or liable for the deletion, correction, alteration, destruction, damage, loss, disclosure or failure to store any Client Data.

8.7 Veratrak may use the Client's name, logo, and related trade marks in Veratrak's publicity or marketing materials (whether in printed or electronic form) for the purpose of highlighting that the Client uses the Veratrak Service and alongside any testimonials that the Client has agreed to give. The Client grants Veratrak such rights as are necessary to use its name, logo, related trade marks and testimonials for the purpose of this clause 9.7.

8.8 The Client agrees to provide regular feedback to Veratrak in relation to the Client's use of the Veratrak Service. By submitting feedback, the Client acknowledges that Veratrak may

use and allow others to use this feedback in the Veratrak Service or otherwise, without any restriction and without payment of any kind to the Client.

## **9. REFERRALS AND PROMOTION**

If the Client introduces a party to Veratrak, and, following such referral, Veratrak enters into an agreement with that party within six months of the date of the first introduction for the provision of the Veratrak Service, Veratrak shall pay to the Client a sum equal to 10% of the total fees (other than any costs incurred by Veratrak) payable by that party during the initial term of that agreement.

## **10. DATA PROTECTION**

10.1 To the extent that Veratrak processes any personal data on behalf of the Client as a processor or subprocessor as a result of hosting the Client Data or otherwise as a result of the Client's use of the Veratrak Service, it shall do so in accordance with the data processing addendum in Schedule 1 (the "**DPA**").

10.2 For the purpose of this clause 11 the terms "**controller**", "**processor**", "**data subject**", "**personal data**", and "**process**" shall have the same meaning as set out in Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

## **11. CONFIDENTIAL INFORMATION**

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction, or by any regulatory or administrative body.

- 11.2 Each party shall hold the other party's Confidential Information in confidence and, unless required by law, shall not make the other party's Confidential Information available for use for any purpose other than as needed to perform the terms of the Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 11.4 Each party shall take a backup of its own Confidential Information and shall not be responsible to the other party for any loss, destruction, alteration, or disclosure of Confidential Information.

**12. FEES AND PAYMENT**

- 12.1 The Client will pay the Fees as set out in the Order Form, or as otherwise agreed by the parties in writing.
- 12.2 In the event that the Client wishes to increase the number of Authorised Internal Users or Authorised Guests, or upload (by itself or by any Guest) documents to the Veratrak Service in excess of the Fair Use Limit, at any time during the Service Term, the Client shall notify Veratrak in writing and request to purchase additional Authorised Internal Users. If Veratrak agrees in writing to any such request (which Veratrak may accept or reject in its sole discretion), the Number of Authorised Internal Users shall be increased to the agreed number, and the Number of Authorised Guests and the Additional File Limit shall be increased accordingly in accordance with the numbers set out in the Order Form, and the Client shall pay the additional Service Fees in accordance with clause 13.4 below.
- 12.3 The Client will pay the Implementation Fees (if any) on the date of the Order Form.
- 12.4 Veratrak shall submit an invoice to the Client:
- (a) in respect of the Service Fees, in advance (in respect of each Contract Year), on the Service Start Date and on each anniversary of the Service Start Date, as set out in the Order Form or as otherwise agreed by the parties in writing;
  - (b) in respect of any Service Fees for additional Authorised Internal Users agreed during the course of any Contract Year (in accordance with clause 13.2 above), in arrears at the start of the following month for the remainder of the Contract Year, and thereafter in accordance with clause 13.4(a);
  - (c) in respect of any Implementation Fees (if any) incurred during any month, in arrears at the start of the following month; and

- (d) in respect of any Incidental Costs incurred in the previous month, in arrears at the start of the following month,

and the Client will pay the Service Fees, Implementation Fees (if any), and Incidental Costs within 30 days of the date of the relevant invoice.

12.5 If Veratrak has not received payment in full within 30 days of the date of the relevant invoice, and without prejudice to any other rights and remedies available to Veratrak:

- (a) Veratrak may, without liability to the Client, suspend or temporarily disable all or part of the Client's access to the Veratrak Service and Veratrak shall be under no obligation to provide any access to the Veratrak Service while the relevant sum remains unpaid; and
- (b) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of Barclays Bank PLC at the due date for payment of the relevant Fees, commencing on the due date for payment and continuing until the Fees have been paid in full, whether before or after judgment; and
- (c) the Client shall reimburse Veratrak for all reasonable costs and expenses (including reasonable lawyers' fees) incurred by Veratrak in collecting any overdue amounts.

12.6 All amounts and Fees stated or referred to in the Agreement:

- (a) are payable in pounds sterling; and
- (b) are exclusive of VAT unless otherwise expressly stated, which shall be paid at the same time as payment of the Fees. Each party shall send the other a VAT invoice if it is requested to do so.

12.7 Unless otherwise agreed by the parties in writing, Veratrak may increase any of the Fees upon giving at least 120 days' notice in writing to the Client, such increase to take effect from the commencement of the Extended Term following expiry of such notice. If the Client is unhappy with the increase, the Client may give notice to terminate the Agreement at the end of the Initial Term or then-current Extended Term (as applicable) by giving no less than 90 days' notice in writing to Veratrak, such notice to expire no later than the end of the Initial Term or the then-current Extended Term (as applicable). The Fees will not increase during the notice period.

### **13. AVAILABILITY AND SUPPORT**

13.1 Veratrak will use commercially reasonable endeavours to make the Veratrak Service available with an uptime rate of 99% during the Service Term, except for:

- (a) planned maintenance for which 24 hours' notice will be given; and
- (b) unscheduled maintenance during normal business hours (UK time) or otherwise, for which Veratrak will use reasonable endeavours to give the Client advance notice,

(such maintenance being "**Permitted Downtime**").

13.2 During the Service Term, Veratrak will, as part of the Veratrak Service, use reasonable endeavours to provide a level of support (via e-mail, online chat messaging and the Technical Support Service) that is appropriate to the nature of any issues requiring support during normal business hours (UK time), and such support shall be provided at Veratrak's sole discretion and at no additional charge to the Client. The Client shall provide all support reasonable required by Veratrak to perform its obligations under this clause 14, including providing reasonably detailed descriptions of issues and updates on the performance of the Veratrak Service.

#### **14. SUSPENSION AND TERMINATION**

14.1 Without prejudice to any other rights and remedies available to it, each party may terminate the Agreement at any time with immediate effect on giving notice in writing to the other party, if that other party:

- (a) is in material breach of any of the terms of the Agreement and either that breach is incapable of remedy, or, if capable of remedy, the other party fails to remedy the breach within 30 days after receiving written notice requiring it to remedy the breach; or
- (b) is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

14.2 Without prejudice to any other rights and remedies available to Veratrak, Veratrak may terminate this Agreement with immediate effect on giving notice in writing to the Client if the Client:

- (a) infringes Veratrak's intellectual property rights in the Veratrak Service;
- (b) is in breach of clause 9.2; and/or

(c) is in breach of any applicable law.

14.3 Without prejudice to any other rights and remedies available to Veratrak, Veratrak may immediately suspend the Client Account (in whole or in part), any Authorised User accounts and any Authorised User's right to access and use the Veratrak Service without giving prior notice to the Client, if:

(a) the Client is in material or persistent breach of any of the terms of the Agreement; and/or

(b) in Veratrak's reasonable determination, the Client is suspected of being in material breach of any of the terms of this Agreement,

and for the purposes of this clause 15.3, the parties acknowledge that any breach of clause 9.2 will be a material breach of this Agreement.

14.4 On termination of the Agreement for any reason:

(a) all rights and licenses granted under the Agreement shall immediately terminate and the Client's right to access and use, and grant Authorised Users the right to access and use the Veratrak Service will end;

(b) each party shall return to the other party or (at the other party's request) destroy, and make no further use of, any Confidential Information (and all copies thereof) belonging to the other party (provided that each party may retain documents and materials containing Confidential Information to the extent required by law or any applicable governmental or regulatory authority); and

(c) the Client will pay to Veratrak, within 30 days of the date of receipt of an invoice from Veratrak, any unpaid Fees for the Implementation Term (if any) and the Initial Term and/or then-current Extended Term (except where the Agreement is terminated by the Client under clause 15.1(a) or by Veratrak under clause 18.2). For clarity, if the Agreement is terminated during the Implementation Term or the Validation Term, the Client will pay to Veratrak any unpaid Fees for the Implementation Term (if any) and the Initial Term.

14.5 Where the Agreement is terminated by the Client under clause 15.1(a) or by Veratrak under clause 18.2, Veratrak shall refund any Service Fees paid in advance by the Client which relate to the period after the date of termination, on a pro rata basis calculated by multiplying the monthly Service Fees by the number of months remaining in the relevant Contract Year.

14.6 Veratrak shall permit the Client to download any Client Data from the Veratrak Service for a period of 15 days after the expiry or termination of the Agreement. Veratrak may:

- (a) thereafter delete any Client Data at any time;
- (b) retain Client Data upon expiry or termination of the Agreement in order to comply with applicable law, or as Veratrak may deem necessary to prosecute or defend any legal claim (in which case Veratrak may retain Client Data for a reasonable period of time pending resolution of such obligation or issue),

in each case subject to the DPA.

14.7 Termination of the Agreement for whatever reason shall not affect any rights or remedies of the parties that have accrued up to the date of termination.

14.8 Any provision of the Agreement that expressly or by implication is intended to come into force or continue in force on or after expiry or termination of this Agreement shall survive and continue in full force and effect.

## **15. LIMITED WARRANTY**

15.1 Veratrak undertakes to make the Veratrak Service available as set out in clause 14.1, and the Client's sole and exclusive remedy, and Veratrak's sole liability, with respect to any failure by Veratrak to provide the Veratrak Service in accordance with clause 14.1 is for Veratrak to use commercially reasonable efforts to repair the affected part of the Veratrak Service so that it is available in accordance with clause 14.1.

15.2 Other than as set out in clause 16.1, the Veratrak Service is provided on an "AS IS" basis and Veratrak gives no representations, warranties, conditions or other terms of any kind in respect of the Veratrak Service, whether express or implied, including (but not limited to) warranties of satisfactory quality, merchantability, fitness for a particular purpose, or non-infringement.

15.3 Except as expressly provided for in the Agreement:

- (a) all representations, warranties, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement; and
- (b) Veratrak will not be responsible for any interruptions, delays, failures, or non-availability affecting the Veratrak Service or the performance of the Veratrak Service which are caused by third party services (including Third Party Sites), errors or bugs in third party software, hardware, or the Internet on which Veratrak relies to provide the Veratrak Service, or any changes to the Veratrak Service made by or on behalf of the Client, and the Client acknowledges that Veratrak does not control such third party services and that such errors and bugs are inherent in the use of such software, hardware and the Internet.



## **16. VERATRAK'S LIABILITY**

- 16.1 Subject to clause 17.2, Veratrak will not be liable to the Client, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss arising under or in connection with the Agreement in conditions that fall into any of the following categories: loss (whether direct or indirect) of profit, goodwill, business, business opportunity, revenue, turnover or reputation; loss (whether direct or indirect) of anticipated saving or wasted expenditure; loss of or damage to data; or any special, indirect or consequential damage or loss, costs or expenses.
- 16.2 Nothing in the Agreement excludes or limits Veratrak's liability for death or personal injury caused by Veratrak's negligence, or for fraud or fraudulent misrepresentation.
- 16.3 Veratrak's total liability in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, arising under or in connection with the Agreement (other than under clause 18) shall in all circumstances be limited to the Service Fees payable by the Client in respect of the 12 months prior to the event giving rise to the claim, or, in the case of an event in the Trial Period giving rise to a claim, £1.

## **17. INDEMNITY**

- 17.1 Subject to clause 18.2, Veratrak shall indemnify the Client, and its agents and contractors from and against any and all losses, damages, claims, liabilities or expenses (including reasonable lawyer's fees) suffered or incurred by the Client arising out of a claim that the Client's use of the Veratrak Service infringes any third party's intellectual property rights, provided that (a "**Claim**"):
- (a) Veratrak is given prompt notice of any such Claim;
  - (b) the Client provides reasonable co-operation to Veratrak in the defence and settlement of such Claim, at Veratrak's expense; and
  - (c) Veratrak is given sole authority to defend or settle the Claim.
- 17.2 In no event shall Veratrak be liable to the Client to the extent that any Claim is based on:
- (a) a modification of the Veratrak Service by anyone other than Veratrak or anyone acting on behalf of Veratrak;
  - (b) the Client's use of the Veratrak Service in a manner contrary to this Agreement;
  - (c) Client Data;

(d) the Client's use of the Veratrak Service after notice of the alleged or actual infringement from Veratrak or any appropriate authority has been given to the Client.

17.3 In the defence or settlement of any claim, Veratrak may procure the right for the Client to continue using the Veratrak Service, replace or modify any part of the Veratrak Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement on two Business Days' notice to the Client without any additional liability (subject to clause 15.5).

## **18. CHANGES TO THE VERATRAK SERVICE**

The Client recognises that Veratrak is always innovating and finding ways to improve the Veratrak Service with new features and services. The Client therefore agrees that the Veratrak Service may change from time to time and no warranty, representation or other commitment is given in relation to the continuity of any functionality of the Veratrak Service.

## **19. GENERAL**

### **19.1 Written communications**

Applicable laws may require that some of the information or communications that Veratrak sends to the Client should be in writing. When using the Veratrak Service, the Client accepts that communication with Veratrak will mainly be electronic. Veratrak will contact the Client by e-mail or provide the Client with information by posting notices on the Veratrak Service. For contractual purposes, the Client agrees to this electronic means of communication and the Client acknowledges that all contracts, notices, information and other communications that Veratrak provides to the Client electronically comply with any legal requirement that such communications be in writing.

### **19.2 Notices**

All notices given by the Client to Veratrak must be given to [jason.lacombe@veratrak.com](mailto:jason.lacombe@veratrak.com). Veratrak may give notice to the Client at either the e-mail or postal address the Client provides to Veratrak, or any other way that Veratrak deems appropriate. Notice will be deemed received and properly served immediately when posted on the Veratrak Service or 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

### **19.3 Transfer of any rights and obligations**

The Client may not transfer, assign, charge or otherwise deal in the Agreement, or any of the Client's rights or obligations arising under the Agreement, without Veratrak's prior written consent.

#### **19.4 Events outside a party's control**

Neither party shall be liable to the other party for any delay or non-performance of any of its obligations under the Agreement arising from any cause beyond its control including, without limitation, any of the following: telecommunications failure, Internet failure, act of God, act of a third party unless an approved sub-contractor of Veratrak, governmental act, war, fire, flood, explosion, or civil commotion. Notwithstanding the foregoing, nothing in this clause shall excuse the Client from any payment obligation under the Agreement.

#### **19.5 Third party rights**

Other than as expressly stated in the Agreement, a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

#### **19.6 Waiver**

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

#### **19.7 Severability**

If any provision of the Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions of the Agreement shall not be prejudiced.

#### **19.8 Law and jurisdiction**

This Agreement shall be governed by, and construed in accordance with, English law, and each party hereby submits to the exclusive jurisdiction of the courts of England.

#### **19.9 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 and the Electronic Communications Act 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

## Schedule 1

### DATA PROCESSING ADDENDUM

#### 1. Background

- 1.1 This DPA is supplemental to the Agreement and applies as set out in clause 11.1 of the Agreement.
- 1.2 In the event of a conflict between any of the provisions of this DPA and the provisions of the Agreement, the provisions of this DPA shall prevail.

#### 2. Definitions

- 2.1 Unless otherwise set out below, each capitalised term in this DPA shall have the meaning set out in the Agreement and the following capitalised terms used in this DPA shall be defined as follows:

**"Client Personal Data"** means the personal data described in ANNEX 1;

**"Data Protection Laws"** means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**"), the UK Data Protection Act 2018, and all applicable legislation (including any applicable national legislation) protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the Processing of Client Personal Data, in each case as amended, replaced, or superseded from time to time;

**"European Economic Area"** or "**EEA**" means the Member States of the European Union together with Iceland, Norway, and Liechtenstein;

**"Security Incident"** means any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Client Personal Data;

**"Subprocessor"** means any Processor engaged by Veratrak who agrees to receive from Veratrak Client Personal Data.

- 2.2 The terms "**personal data**", "**Controller**", "**Processor**", "**Data Subject**", "**Process**" and "**Supervisory Authority**" shall have the same meaning as set out in the Data Protection Laws.

#### 3. Data Processing

- 3.1 Veratrak will only Process Client Personal Data in accordance with:

- (a) the Agreement, to the extent necessary to provide the Veratrak Service, Implementation Services or Training Services to the Client; and

(b) the Client's written instructions,

unless Processing is required by European Union or Member State law to which Veratrak is subject, in which case Veratrak shall, to the extent permitted by applicable law, inform the Client of that legal requirement before Processing that Client Personal Data.

3.2 The Agreement (subject to any changes to the Veratrak Service, Implementation Services or Training Services agreed between the parties) and this DPA shall be the Client's complete and final instructions to Veratrak in relation to the Processing of Client Personal Data.

3.3 Processing outside the scope of this DPA or the Agreement will require prior written agreement between the Client and Veratrak on additional instructions for Processing.

3.4 The Client shall provide all applicable notices to Data Subjects required under applicable Data Protection Laws for the lawful Processing of Client Personal Data by Veratrak in accordance with the Agreement.

3.5 The Client will obtain any consents required under applicable Data Protection Laws for the lawful Processing of Client Personal Data by Veratrak in accordance with the Agreement.

#### **4. Subprocessors**

4.1 The Client agrees that Veratrak may use Subprocessors, including Amazon Web Services, Inc, Auth0, Inc., Google, Inc., and Intercom R&D Unlimited Company, to Process Client Personal Data, provided it enters into a written agreement with the Subprocessor which imposes the same obligations on the Subprocessor with regard to their Processing of Client Personal Data as are imposed on Veratrak under this DPA.

4.2 Veratrak shall notify the Client of any changes to the Subprocessors it uses to Process Client Personal Data (including addition or replacement of any Subprocessors). If the Client (acting reasonably) does not approve of a new Subprocessor, then without prejudice to any right to terminate the Agreement, the Client may request that Veratrak moves the Client Personal Data to another Subprocessor and Veratrak shall, within a reasonable time following receipt of such request, use all reasonable endeavours to ensure that the Subprocessor does not Process any of the Client Personal Data.

4.3 Veratrak shall at all times remain responsible for compliance with its obligations under the DPA and will be liable to the Client for the acts and omissions of any Subprocessor as if they were the acts and omissions of Veratrak.

#### **5. International Transfers**

5.1 To the extent that the Processing of Client Personal Data by Veratrak involves the export of such Client Personal Data to a third party to a country or territory outside the EEA,

Veratrak will Process, or permit the Processing of, Client Personal Data outside the EEA under the following conditions:

- (a) the recipient, or the country or territory in which the recipient Processes or accesses the Client Personal Data, ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the Processing of Client Personal Data as determined by the European Commission; or
- (b) the transfer is based on the Standard Contractual Clauses (processors) approved by European Commission Decision C(2010)593, or any subsequent version thereof released by the European Commission (which will automatically apply), or (Where relevant) the U.S.-EU Privacy Shield, or another legally recognised transfer method.

## **6. Data Security, Audits and Security Notifications**

- 6.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Veratrak shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the measures set out in ANNEX 2 and (as appropriate) any other measures listed in the applicable Data Protection Laws.
- 6.2 The Client may, upon reasonable notice, audit (either by itself or using independent third party auditors) Veratrak's compliance with the security measures set out in this DPA (including the technical and organisational measures as set out in ANNEX 2), including by conducting audits of Veratrak's data processing facilities. Veratrak shall assist with, and contribute to any audits conducted in accordance with this paragraph 6.2.
- 6.3 Upon the Client's request, Veratrak shall make available all information reasonably necessary to demonstrate compliance with this DPA.
- 6.4 Where required under the applicable Data Protection Laws, Veratrak shall immediately notify the Client in the event that Veratrak believes the Client's instructions conflict with the requirements of the applicable Data Protection Laws or other EU or Member State laws.
- 6.5 If Veratrak or any Subprocessor becomes aware of a Security Incident, Veratrak will (a) notify the Client of the Security Incident without undue delay, (b) investigate the Security Incident and provide such reasonable assistance to the Client (and any law enforcement or regulatory official) as required to investigate the Security Incident, and (c) take steps to remedy any non-compliance with this DPA.
- 6.6 Veratrak shall treat the Client Personal Data as the Client's Confidential Information, and shall ensure that any employees or other personnel that have access to the Client

Personal Data have agreed in writing to protect the confidentiality and security of the Client Personal Data.

## **7. Access Requests and Data Subject Rights**

7.1 Save as required (or where prohibited) under applicable law, Veratrak shall notify the Client of any request received by Veratrak or any Subprocessor from a Data Subject in respect of their personal data included in the Client Personal Data, and shall not respond to the Data Subject.

7.2 Veratrak shall provide the Client with the ability to correct, delete, block, access or copy the Client Personal Data in accordance with the functionality of the Veratrak Service.

7.3 Veratrak shall notify the Client of any request for the disclosure of Client Personal Data by a governmental or regulatory body or law enforcement authority (including any data protection supervisory authority) unless otherwise prohibited by law or a legally binding order of such body or agency.

## **8. Assistance**

8.1 Where applicable, taking into account the nature of the Processing, and to the extent required under applicable Data Protection Laws, Veratrak shall provide the Client with any information or assistance reasonably requested by the Client for the purpose of complying with any of the Client's obligations under applicable Data Protection Laws, including:

- (a) using all reasonable endeavours to assist Client by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Client's obligation to respond to requests for exercising Data Subject rights laid down in the applicable Data Protection Laws; and
- (b) providing reasonable assistance to the Client with any data protection impact assessments and with any prior consultations to any Supervisory Authority of the Client, in each case solely in relation to Processing of Client Personal Data and taking into account the information available to Veratrak.

## **9. Duration and Termination**

9.1 Deletion of data. Subject to paragraphs (a) and (b) below, Veratrak shall, within 90 (ninety) days of the date of termination of the Agreement:

- (a) return a complete copy of all Client Personal Data by secure file transfer in such a format as notified by Client to Veratrak; and

- (b) delete and use all reasonable efforts to procure the deletion of all other copies of Client Personal Data Processed by Veratrak or any Subprocessors.

9.2 Subject to paragraph 9.3 below, Client may in its absolute discretion notify Veratrak in writing within 30 (thirty) days of the date of termination of the Agreement to require Veratrak to delete and procure the deletion of all copies of Client Personal Data Processed by Veratrak. Veratrak shall, within 90 (ninety) days of the date of termination of the Agreement:

- (a) comply with any such written request; and
- (b) use all reasonable endeavours to procure that its Subprocessors delete all Client Personal Data Processed by such Subprocessors,

and, where this paragraph 9.2 applies, Veratrak shall not be required to provide a copy of the Client Personal Data to Client .

9.3 Veratrak and its Subprocessors may retain Client Personal Data to the extent required by applicable laws and only to the extent and for such period as required by applicable laws and always provided that Veratrak shall ensure the confidentiality of all such Client Personal Data and shall ensure that such Client Personal Data is only Processed as necessary for the purpose(s) specified in the applicable laws requiring its storage and for no other purpose.



## ANNEX 1

### DETAILS OF THE PROCESSING OF CLIENT PERSONAL DATA

This ANNEX 1 includes certain details of the processing of Client Personal Data as required by Article 28(3) of the GDPR.

#### Subject matter and duration of the Processing of Client Personal Data

The subject matter and the duration of the Processing of the Client Personal Data are set out in the Agreement.

#### The nature and purpose of the Processing of Client Personal Data

The Client Personal Data will be subject to the following basic Processing activities: transmitting, collecting, storing, and analysing data in order to provide the Veratrak Service, Implementation Services or Training Services (collectively, the "**Services**") to the Client, and any other activities related to the provision of the Services or as specified in the Agreement.

#### The types of Client Personal Data to be Processed

The types of Client Personal Data to be Processed concern the following categories of data: names of Authorised Users; contact information (including email addresses and telephone numbers) of Authorised Users; photographs of Authorised Users; online identifiers of Authorised Users; any other personal data that Veratrak Processes on behalf of the Client or a member of the Client's Group during the Term in connection with the Client's use of and access to the Services.

#### The categories of Data Subject to whom the Client Personal Data relates

The categories of Data Subject to whom the Client Personal Data relates concern: Authorised Users.

#### The obligations and rights of the Client

The obligations and rights of the Client are as set out in the Agreement.

## ANNEX 2

### TECHNICAL AND ORGANISATIONAL SECURITY MEASURES

1. Veratrak maintains internal policies and procedures, or procures that its Subprocessors do so, which are designed to:
  - (a) secure any personal data processed by Veratrak against accidental or unlawful loss, access or disclosure;
  - (b) identify reasonably foreseeable and internal risks to security and unauthorised access to the personal data processed by Veratrak;
  - (c) minimise security risks, including through risk assessment and regular testing.
2. Veratrak will, and will use reasonable efforts to procure that its Subprocessors conduct periodic reviews of the security of their network and the adequacy of their information security program as measured against industry security standards and its policies and procedures.
3. Veratrak will, and will use reasonable efforts to procure that its Subprocessors periodically evaluate the security of their network and associated services to determine whether additional or different security measures are required to respond to new security risks or findings generated by the periodic reviews.