

## TERMS OF SERVICE

This CultureArk Services Agreement (this "Agreement") constitutes a legal, binding agreement between Fastnet Archiving Ltd. trading as CultureArk, a company incorporated in Ireland and having its registered office at Kilmoon, Sherkin Island, Cork ("CultureArk") and the client identified in the account creation form (whether online or otherwise) ("Client") for certain archiving or other Services (as defined in Section 1.1) and states the terms upon which CultureArk provides such services to Client. By using such services, Client agrees to be bound by these Terms of Service. The "Effective Date" of this Agreement shall be the date upon which Client's account is created by CultureArk following completion of the account creation form ("Form") by Client. By completing a Form or placing an order for additional Services, as described in Section 1.2, Client agrees to the terms of this Agreement; provided that, to the extent of any conflicting term, the Form shall supersede this Agreement solely with respect to the conflicting term. "Affiliate" shall mean, with respect to Client, any entity who (a) Client purchases Services on behalf of under this Agreement; or (b) purchases Services under a Form referencing Client's Agreement and which either (i) controls Client; (ii) is controlled by Client; or (iii) is under common control with Client. The term "Client" shall include Affiliates.

### 1. SERVICES.

**1.1. CultureArk Services.** Subject to Client's compliance with this Agreement and subject to the payment of any fees due, CultureArk will provide, and hereby grants Client the limited, non-exclusive, non-transferable, non-sub-licensable right to access and use CultureArk's software as a service archiving services, or other software as a service services, initially set forth in the Order Form or purchased pursuant to Section 1.2 ("Services"). Service descriptions are available at: [www.cultureark.com/products](http://www.cultureark.com/products) and incorporated by reference herein ("Service Description"). CultureArk may modify the Services and the Service Descriptions from time to time, provided that such modifications do not materially adversely affect the Services, and such modifications are effective as of the effective date noted in the Service Description.

**1.2. Additional Services.** Following the completion of the Form, Client may order additional Services by placing an order for additional Services online, through Client's account within the CultureArk archiving platform Client uses to access the Services; or (b) by completing an order form (in such form as CultureArk may designate from time to time) for such additional Services. Additional Services shall be included in the definition of "Services" upon CultureArk's acceptance of Client's order, and such additional Services shall be subject to the terms of this Agreement. All additional Services shall be provided at the price listed for such additional Services at the time of their order, or if no price is listed, at CultureArk's then current list price for such additional Service. All Services purchased pursuant to this Section 1.2 shall terminate with the then current Term (as defined in Section 7.1) of this Agreement and shall be subject to any renewals thereof.

**1.3. Services Activation.** Following completion of the Form, or acceptance of an order for additional Services, CultureArk shall initiate activation of the relevant Services by providing Client with access to an account within the applicable relevant Services ("Activation Date").

**1.4. Data Retention.** CultureArk will retain all Client Data (as defined in Section 3.4) for the Term (as defined in Section 7.1), unless Client requests or implements specific retention policies within the Services. Any specific retention policies shall be based on variables assigned to Client Data by Client and Client shall be solely responsible for the retention policies applied to Client Data. Following termination or expiration of this Agreement, CultureArk will retain the Client Data for a minimum of six (6) months. Thereafter, CultureArk reserves the right, in its sole discretion, to retain or delete Client Data.

**1.5. Support.** As a part of the Services, CultureArk provides standard support to Client. Client may contact CultureArk support via email at [hello@cultureark.com](mailto:hello@cultureark.com). CultureArk will conduct maintenance, to the extent reasonably possible, during times other than normal business hours.

**1.6. Attestation Letter.** If requested by Client, CultureArk will provide Client with CultureArk's standard third party attestation letter.

**1.7. Free Trial Services.** CultureArk may provide Client with a temporary account to one or more of the Services (a "Free Trial Account"). The Free Trial Account shall be accessible for the trial period set forth in the Form, or if no trial period is stated, the trial period shall be fifteen (15) days from the Effective Date. During the trial period, the Free Trial Account and associated Services are provided "AS IS" and without representation or warranty of any kind. CultureArk is under no obligation to store Client Data during the free trial period and may delete such data unless Client subsequently purchases the same Services as the Free Trial Account Services. CultureArk will not be responsible for any direct, indirect, consequential or any other damages resulting from Client's access to, or use of the Trial Account or the Trial Account Services during the trial period.

### 2. FEES FOR SERVICES.

**2.1. Payment of Fees.** Client shall pay the fees for the Services as set forth in the Form, or the fees for additional Services ordered by Client pursuant to Section 1.2 ("Fees"). Fees may include Implementation Fees, Monthly Fees and/or Annual Fees. One-time, set up or Implementation Fees shall be invoiced upon execution of the Form, or in the case of additional Services ordered pursuant to Section 1.2, the date purchased ("Implementation Fees"). License Fees or web archiving Fees ("Monthly Fees") are invoiced in arrears on the last day of the applicable month following the Activation Date. Monthly Fees are not pro-rated. All Fees shall be due and payable within thirty (30) days following the date of invoice. Interest is payable on all overdue accounts at the maximum rate legally applicable under the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (being 8% above the base rate of the European Central Bank). CultureArk reserves the right to recover from Client any direct cost of effecting collection of any amounts due as well as any related costs or expenses such as solicitor and/or collection agency fees. CultureArk reserves the right to suspend Client's access to the Services in the event Client fails to pay the Fees when due.

**2.2 Disputes.** Client must notify CultureArk of any charge disputed in good faith, and with supporting documentation within 30 days from the date of the relevant invoice, or Client will be deemed to agree that such charges are validly due and payable in full. Client remains responsible to pay all undisputed charges by the due date.

**2.3. User License.** Certain Monthly Fees are based on the number of users, email addresses, accounts or other usage metric. A “User License” means any account, user, email address or other usage metric for which CultureArk archives certain digital message data, or encrypts messages, through the provision of the Services. If such Services are ordered by Client, CultureArk grants Client the right to use the Services for the number of User Licenses set forth in the Form, as may be amended pursuant to orders placed under Section 1.2. The number of User Licenses specified in the initial Form is Client’s minimum User License commitment. Client shall pay for additional User Licenses based on the rate for additional User Licenses specified in the initial Form, or the rates agreed by the parties pursuant to orders placed under Section 1.2. Client shall report any increase in the number of User Licenses to CultureArk and pay the associated Fee.

**2.4. Web Archiving License.** Certain Monthly Fees are based on the number of webpages associated with the URL(s) which Client archives with CultureArk through the Services. If such Services are ordered by Client, CultureArk grants Client the right to use the Services up to the number of webpages and URL(s) set forth in the Form, as may be amended pursuant to orders placed under Section 1.2. The number of webpages set forth in the initial Form is Client’s minimum commitment. In order to determine the initial Monthly Fees due for such Service, CultureArk shall conduct an initial assessment of Client’s URL(s). Client understands and acknowledges that due to changes in Client’s URL(s), website(s), hidden webpages or similar kinds of changes, CultureArk’s initial assessment is an estimate and may change between the date in which the assessment was conducted and the Activation Date. Further, Monthly Fees for website archiving Services may increase during the Term due to changes to the archived URL(s) or webpages.

**2.5. Audits.** From time to time CultureArk may audit Client’s account within the Services to validate Client’s compliance with Sections 2.3 or 2.4. Additionally, Client agrees to provide CultureArk with usage reports in the format CultureArk may reasonably request. In the event that such audit or report reveals that Client’s use of the Services exceeds Client’s license for such Service, Client shall pay CultureArk the Monthly Fees due for such usage for the months in which Client was not in compliance with Section 2.3 or (as the case may be) 2.4.

**2.6. Taxes.** All rates are exclusive of value added tax and this will be charged by CultureArk where appropriate and will be payable at the applicable rate.

**2.7. No Set Off/Withholding.** Each amount stated to be payable by Client to CultureArk hereunder: (1) shall not be reduced by any right of set off or counterclaim, recoupment, defence or other right which Client may have, whether in connection with this Agreement, or otherwise; and (2) shall be free of all withholdings of whatsoever nature except to the extent otherwise required by law, and if any withholding is so required Client shall pay to CultureArk an additional amount such that after deduction of all amounts required to be withheld, the net amount actually received by CultureArk shall equal the amount which CultureArk would have received if the relevant withholding had not been required.

### **3. CLIENT OBLIGATIONS.**

**3.1. Client Account.** Client shall create an account within the Services. Client is responsible for (a) ensuring that Client’s account registration information is complete and accurate; and (b) the security and confidentiality of Client’s account credentials. Client shall designate at least one authorized user who shall have administrative access to Client’s account, with full access privileges and the authority to place orders under Section 1.2 (“Authorized User”). The Authorized User is responsible for managing all aspects of the Services, including without limitation, requesting changes or modifications to the Services, adding or removing users, webpages, URL(s), or adding or deleting Authorized Users. Client acknowledges and agrees that CultureArk will only accept such requests from Authorized Users, or a verified officer of Client’s organization. CultureArk may, in its sole discretion, refuse to comply with any request if the identity of the Authorized User or the officer making any such request cannot be reasonably verified. The Services may only be used by Client’s authorized employees, agents or contractors in the performance of their duties to Client. Client shall notify CultureArk immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Client is solely responsible for all activity which occurs within Client’s account and for the actions of its employees, contractors or agents, whether or not such person is or was acting within the scope of their employment, engagement or agency relationship.

**3.2. Acceptable Use Policy.** Client is prohibited from, and shall not save to the extent permitted by law, copy, reverse engineer, modify, translate, adapt, transmit, sell, distribute, attempt to derive source code from or otherwise use the Services, in whole or in part, except as expressly permitted in this Agreement. Client shall not remove, alter or obscure in any way any proprietary rights notices or marks (e.g. copyright notices). Except as required for use of the Services, Client shall have no right or license to use any of the trademarks or trade names owned by, licensed to or associated with CultureArk during the term of this Agreement without prior express written consent from CultureArk. In the event of such prior approval, Client agrees to immediately cease and desist using CultureArk trademarks or trade names upon notice from CultureArk or upon termination of this Agreement. Client is responsible for the content archived by, or provided to CultureArk via the Services and represents and warrants that such content (a) shall not infringe any third party right, including, without limitation, third party intellectual property rights in patents, trademarks, copyright, or trade secrets; (b) shall not constitute a breach of any other right of a third party, including without limitation, any right under contract or tort; (c) shall not violate any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); (d) is not defamatory, trade libellous, unlawfully threatening or unlawfully harassing; (e) is not profane, indecent, obscene, harmful to minors or child pornographic; (f) does not contain any viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information or property of another; or (g) is not materially false, misleading or inaccurate. Client shall abide by all applicable local, state, national or foreign laws, rules, regulations or treaties in connection with Client’s use of the Services including, without limitation, those related to data privacy, communications, SPAM communications and the transmission and storage of technical or personal data.

**3.3. Client Data Transmission.** Client acknowledges and agrees that: (a) it is Client’s sole responsibility to monitor Client Data to be transmitted to CultureArk to ensure that Client Data which is to be archived is properly transmitted to CultureArk; (b) despite any

monitoring services provided by CultureArk, Client shall notify CultureArk of any delivery failures or outages of its systems which may affect the transmission of Client Data; and (c) it is Client's responsibility to encrypt data sent to CultureArk and CultureArk is not responsible or liable for any data which Client transmits to CultureArk in an unencrypted format. CultureArk is not responsible or liable for any update, upgrade, patch, maintenance or other change which affects the transmission of Client Data to CultureArk. It is Client's responsibility to (i) ensure that CultureArk is notified of all email domains, or other electronic messages to be archived; and (ii) to obtain all necessary consents with respect to the transmission, collection and storage of Client Data.

**3.4. License to Client Data.** "Client Data" means the data of Client, which is either: (a) transmitted to CultureArk by or on behalf of Client, for archiving purposes, in connection with the provision of the Services; or (b) collected or received via the Services at the direction of Client. Client hereby grants CultureArk the limited, non-exclusive right to access, copy, transmit, download, display, and reproduce Client Data as necessary to provide, support and improve the Services, or as otherwise authorized hereunder. Client represents and warrants that Client has all necessary rights in and to the Client Data to grant the foregoing license to CultureArk.

**3.5. Client Indemnification.** Client shall indemnify, defend and hold harmless CultureArk, its officers, directors, employees and agents, from and against all claims, losses, damages, liabilities and expenses (including reasonable legal fees), arising from Client's breach of any of its obligations under this Section 3.

#### **4. CONFIDENTIALITY.**

**4.1. Confidential Information.** "Confidential Information" means (a) the non-public business or technical information of either party, including but not limited to information relating to either party's product plans, customers, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how; (b) any information designated by either party as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; (c) the terms of this Agreement; and (d) Client Data. "Confidential Information" will not include information that: (i) is in, or enters, the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving party knew prior to receiving such information from the disclosing party; or (iv) the receiving party develops independently without reference to the Confidential Information. Either party may disclose Confidential Information of the other party: (x) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and legally permitted to do so, gives reasonable notice to the disclosing party to contest such order or requirement; or (y) to that party's agents, representatives, subcontractors or service providers who have a need to know such information provided always that such party shall remain responsible for ensuring that all such persons maintain the Confidential Information on a confidential basis.

**4.2. Confidentiality Obligations.** Each party agrees: (a) that it will not disclose to any third party, or use for its own benefit or the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted in this Agreement; and (b) that it will take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which will not be less than the measures it uses to maintain the confidentiality of its own information of similar importance.

**4.3. Remedies.** Each party acknowledges and agrees that a breach of any of the obligations of this Section 4 by the other party will result in irreparable injury to the disclosing party for which there will be no adequate remedy at law, and the disclosing party shall be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach by recipient.

#### **5. INTELLECTUAL PROPERTY RIGHTS.**

As between CultureArk and Client, all server hardware, including all installed software and applications needed to operate the Services ("Software"), and other associated technology or documentation are the sole and exclusive property of CultureArk. Except as expressly stated herein, nothing in this Agreement shall serve to transfer to Client any intellectual property right in or to the Services, Software, CultureArk trademarks or other intellectual property. CultureArk retains all right, title and interest in and to the Services, Software and the associated technology and documentation. As between CultureArk and Client, Client Data and Client trademarks are the sole and exclusive property of Client and, other than the limited license to Client Data granted in Section 3.4, nothing in this Agreement shall serve to transfer to CultureArk any intellectual property right in the Client Data or Client trademarks.

#### **6. THIRD PARTY NETWORKS, PLATFORMS AND COMPONENTS.**

Certain Services offered by CultureArk may be dependent on third party software, applications, platforms (such as third party social media or business networking platforms), messaging or communication services, API's, or third party data capture tools ("Third Party Services"). These Third Party Services are not offered, controlled or provided by CultureArk. In some cases the Third Party Service may make changes to its service, or components thereof, or discontinue a service without notice to CultureArk. Accordingly, CultureArk expressly disclaims any liability related to, or arising from, these Third Party Services, including Client's use thereof, or any updates, modifications, outages, delivery failures, corruptions, discontinuance of services or termination of Client's account by the Third Party Service. CultureArk is not responsible or liable for how the Third Party Service transmits, accesses, processes, stores, uses or provides data to CultureArk. Client is solely responsible for complying with any Third Party Services terms and conditions.

## 7. TERM AND TERMINATION.

**7.1. Term.** This Agreement shall commence on the Effective Date and shall remain in effect for the term specified in the initial Form, or if no term is specified, for an initial term of twelve (12) months from the Effective Date. Unless CultureArk or Client provides the other party with at least sixty (60) days prior written notice to expire at the end of the said initial term or any additional twelve (12) month term, this Agreement and all purchased Services will automatically renew for additional twelve (12) month terms. The initial twelve (12) month term plus any renewal terms are, collectively, the "Term."

**7.2. Termination for Breach.** Either party may terminate this Agreement if the other party materially breaches its obligations hereunder and such breach remains uncured for thirty (30) days following the written notice of such breach to the non-breaching party. CultureArk reserves the right to suspend Client's access to the Services in the event of any breach of this Agreement and shall not be liable for any damages resulting from such suspension.

**7.3. Termination for Bankruptcy.** This Agreement shall terminate immediately, upon written notice, where (a) Client is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due or Client suspends making payments on all or any class of its debts or announces an intention to do so or a moratorium is declared in respect of any of its indebtedness; (b) any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditor of, or the winding up, liquidation or dissolution of, Client, or any liquidator, receiver or examiner is appointed to or in respect of Client or any of its assets; or (c) Client does or suffers to be done anything which might, in the opinion of CultureArk, prejudice CultureArk's rights under this Agreement or which might cause CultureArk to suffer any loss or damage.

**7.4. Effect of Termination.** Upon any termination or expiration of this Agreement: (a) all rights and licenses to the Services shall immediately terminate; (b) Client shall make payment to CultureArk of any Fees then due and payable up to the date of termination, except in the case of CultureArk's termination for Client's breach, and, in such case, Client shall pay the Fees owing for the remainder of the then current Term; and (c) upon request, each party shall return to the other or delete Confidential Information of the other party, provided however, if Client wishes CultureArk to return Client Data, Client agrees to pay CultureArk's then current data extraction and exportation fees.

## 8. WARRANTY AND DISCLAIMERS.

**8.1. Performance Warranty.** CultureArk warrants that the Services shall be accessible at least 99% of the time measured on a monthly basis ("Performance Warranty"). The Performance Warranty shall not apply where the downtime or interruption of the Services resulted from: (a) CultureArk's routine maintenance, repair and upgrade of the Services; (b) issues or failures with Client's hardware, service providers, software, communications or internet providers; (c) issues, actions, omissions or failures of Third Party Services; (d) Client's acts or omissions; or (e) a Force Majeure event as set out in Section 11.3.

**8.2. Proper Authority.** CultureArk represents that it has the right and authority to enter into this Agreement, to grant to Client the rights hereunder, and that the performance of its obligations under this Agreement will not breach or be in conflict with any other agreement to which CultureArk is a party to.

**8.3. Intellectual Property Warranty.** CultureArk represents that, to the best of CultureArk's knowledge, the provision of the Services does not infringe any third party's granted patent in existence on the Effective Date.

**8.4.** EXCEPT AS SET FORTH IN SECTIONS 8.1 — 8.3 ABOVE, CULTUREARK MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND IN CONNECTION WITH THE SERVICES OR SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY OTHER INFORMATION OR MATERIALS PROVIDED, OR MADE AVAILABLE, BY CULTUREARK. CULTUREARK HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, COVENANTS, GUARANTEES, TERMS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED TERMS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CULTUREARK DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SOFTWARE WILL BE AVAILABLE OR ERROR FREE. CULTUREARK SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF CULTUREARK.

## 9. REMEDIES AND LIMITATION OF LIABILITY.

**9.1.** In the event of a breach of the Performance Warranty under Section 8.1, CultureArk shall use commercially reasonable efforts to provide Client with an error correction or work-around that corrects the reported non-conformity, and to provide Client a credit equal to 1/30th of the Monthly Fees for the applicable Service in respect of which the Performance Warranty was not met. Credits must be requested in writing within thirty (30) days and must be verified by CultureArk. Credits shall be credited towards Client's next invoice. In the event that CultureArk breaches the Performance Warranty for three consecutive months or for any four months of a six month period, Client may terminate this Agreement in written form with 30 days notice. The foregoing represents Client's sole remedy for any breach of the Performance Warranty.

**9.2.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF USE, DATA, BUSINESS OR PROFIT), ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE OR WHETHER THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. CULTUREARK'S AGGREGATE LIABILITY HEREUNDER FOR ALL DAMAGES ARISING UNDER OR RELATING TO THE PROVISION OF SERVICES, NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY ACTION IS BROUGHT, SHALL BE LIMITED TO THE TOTAL AMOUNT OF REGULAR MONTHLY FEES ACTUALLY RECEIVED BY CULTUREARK FROM CLIENT

FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE MONTH IN WHICH THE INCIDENT CAUSING THE DAMAGES AROSE. THE LIMITATION ON LIABILITY SET FORTH ABOVE IS CUMULATIVE; ALL PAYMENTS MADE FOR ALL CLAIMS AND DAMAGES SHALL BE AGGREGATED, TO DETERMINE IF THE LIMIT HAS BEEN REACHED.

**9.3.** THE ABOVE LIMITATIONS OF LIABILITY REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES IN VIEW OF THE FAVOURABLE FEES BEING CHARGED BY CULTUREARK RELATIVE TO THE SERVICES DESCRIBED HEREIN, AND ARE MATERIAL TERMS HEREOF.

## **10. INFRINGEMENT**

**10.1.** If the Services are subject to a claim of infringement of the intellectual property rights of a third party, CultureArk may, in its sole discretion, either (a) procure for Client the right to continue to use the Services; (b) modify the Services such that they are non-infringing; or (c) if in the reasonable opinion of CultureArk, neither (a) or (b) are commercially feasible, then CultureArk may upon thirty (30) days prior notice to Client, terminate the applicable Service.

**10.2.** The provisions of Section 10.1, shall be Client's sole remedy, and CultureArk's sole obligation, with respect to any breach of the warranty contained in Section 8.3.

## **11. GENERAL PROVISIONS.**

**11.1. International Sale of Goods, Export & Import control laws and regulations.** Client agrees to comply with all applicable United States and/or European Union export laws and regulations regarding the transmission of technical data exported from the United States and/or the European Union through the Services. The application of the United Nations Convention on the International Sales of Goods is hereby expressly excluded. Client acknowledges that the laws and regulations of the United States and/or the European Union restrict the export and re-export of commodities and technical data of United States and European Union origin, including the Services and any associated software. Without limiting the foregoing, Client understands that the Services and associated software are an "encryption item" subject to controls under the Export Administration Regulations promulgated by the U.S. Department of Commerce and those of the European Union. Client agrees that they will not, and will not cause others to, export or re-export the Services or any associated software in any form in violation of the export laws of the United States or the European Union or any foreign jurisdiction. Client will defend, indemnify, and hold harmless CultureArk and its suppliers from and against any violation of such laws or regulations by Client or any of Client's agents, officers, directors or employees.

**11.2. Assignment.** Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without the other's consent in the case of a merger, reorganization, acquisition, consolidation, or sale of all, or substantially all, of its assets. Any attempt to assign this Agreement other than as permitted herein will be null and void. Without limiting the foregoing, this Agreement will inure to the benefit of and bind the parties' respective successors and permitted assigns.

**11.3. Force Majeure.** No failure or omission by a party in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement, nor shall it create any liability, provided the party uses reasonable efforts to resume performance hereunder, if the same shall arise from any cause or causes beyond the reasonable control of that party, including, but not limited to the following, which, for the purpose of this Agreement, shall be regarded as beyond the control of the party in question: (a) acts of God; (b) acts or omissions of any governmental entity; (c) any rules, regulations or orders issued by any governmental authority or any officer, department, agency or instrumentality thereof; (d) wind, fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, strikes and lockouts; or (e) utility or telecommunication failures.

**11.4. Governing Law.** This Agreement including any non-contractual disputes arising hereunder will be governed by and construed in accordance with the laws of the Republic of Ireland, without regard to conflict/choice of law principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in the Republic of Ireland, and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

**11.5. Notices.** Any legal notice under this Agreement will be in writing and delivered by personal delivery or registered post. Notices will be deemed to be effective upon personal delivery or five (5) days after posting. Notices will be sent to Client at the address set forth on the Form or such other address as Client may specify. Notices will be sent to CultureArk at the following address: CultureArk, Kilmoon, Sherkin Island, Cork.

**11.6. No Agency.** The parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

**11.7. Entire Agreement.** This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, negotiations and communications (both written and oral) regarding such subject matter.

**11.8. Marketing.** Client grants CultureArk the limited right to disclose that Client is a customer of CultureArk. CultureArk agrees to obtain the prior written approval for any use of Client's name in any print marketing materials, press release, blog posts, case studies or white papers.

**11.9. Severability.** If any part of this Agreement is declared unenforceable or invalid, that provision of this Agreement will be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement will continue to be valid and enforceable.

**11.10. Waiver.** Failure of either party to enforce any provision under this Agreement will not be deemed a waiver of that party's rights.

**11.11. Modifications.** CultureArk may make non-material modifications to this Agreement by posting the modifications to the weblink this Agreement is located at. Material modifications may be made by posting an updated version of this Agreement with the updated version number to a new version weblink. Client agrees to be responsible for regularly reviewing the CultureArk website to obtain timely notice of such amended terms. By using the Services after posting or delivery of the amended terms, Client deems to have accepted and be bound by such amended Terms of Service.

Last updated 25-January-2017 | Reference: CA - Privacy Policy – EU | Issue: V1.1 | Copyright © CultureArk 2017, all trademarks acknowledged.