

Version: 21 July 2021

## **TERMS AND CONDITIONS**

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions, and the Provider will ask for the Customer's express acceptance of these Terms and Conditions before providing any such services to the Customer.

### **1. Definitions**

1.1 Unless otherwise defined herein, capitalized terms and expressions used in this Agreement shall have the following meaning

**"Acceptable Use Policy"** means the Acceptable Use Policy having the same version date as these Terms and Conditions, published by the Provider and amended from time to time. The Acceptable Use Policy constitutes a Schedule of these terms and conditions;

**"Access Credentials"** means the usernames, passwords and other credentials enabling access to the Hosted Services, excluding usernames and passwords transmitted to the BigBlueButton software in order to join and participate in BigBlueButton meetings;

**"Agreement"** means a contract made under these Terms and Conditions and all its Schedules, between the Provider and the Customer;

**"API"** means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer;

**"Business Day"** means any weekday other than a bank or public holiday in England;

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

**"Charges"** means the amounts specified in the pricing page of the Website from time to time;

**"Customer"** means the person or entity registering on the Website in order to use the Hosted Services;

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer or authorised by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

**"Data Processing Agreement"** means the Data Processing Agreement having the same version date as these Terms and Conditions, published by the provider and amended from time to time. The Data Processing Agreement constitutes a Schedule of these Terms and Conditions.

**"Documentation"** means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

**"Effective Date"** means the date upon which the Customer completes and submits the Services Order Form on the Provider's Website;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosted Services"** means the online services – including but not limited to the use of BigBlueButton meetings and instances - provided from the domain bbbondemand.com, which will be made available by the Provider to each Customer as a service via the internet in accordance with these Terms and Conditions;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Platform"** means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the Google Compute virtual servers on which that application, database, system and server software is installed;

**"Provider"** means Richard Phillips, Flat 18 Bradbury Court, 16 St Johns Park, London SE3 7TP – and any successor company or individual which assumes legal ownership of the Website and Hosted Services;

**"Services"** means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

**"Services Order Form"** means an online order form – including the registration form on the Website - published by the Provider and completed and submitted by the Customer incorporating these Terms and Conditions by reference;

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

**"Supported Web Browser"** means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

**"Term"** means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Terms and Conditions"** means all the documentation containing the provisions of the Agreement, namely the main body of these Terms and Conditions and Acceptable Use Policy, including any amendments to that documentation from time to time; and

**"Third Party Users" or "Participants"** means individuals or organisations which the Customer permits to make use of the Hosted Services provided to the Customer by the Provider.

**"Website"** means the website bbbondemand.com and its subdomains; and

**"Website API"** means the Application Programming Interface hosted on the Website which can be used under the terms of this agreement by a Customer to access the Hosted Services; and

**"User Interface"** means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

## **2. Term**

- 2.1 The Agreement shall come into force upon the Effective Date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 16 or any other provision of these Terms and Conditions.
- 2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

## **3. Hosted Services**

- 3.1 The Provider hereby grants to the Customer a non-exclusive licence to use the Hosted Services by means of the Website API for the creation, use and associated management of BigBlueButton meetings and meeting recordings and / or virtual servers running BigBlueButton accordance with the Documentation during the Term.
- 3.2 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.1 is subject to the following prohibitions:

- (c) the Customer must not pass or share the Access Credentials with any third party including Third Party Users nor allow any unauthorised person or application to use the Access Credentials to access or use the Website API; and
- (b) the Customer must not sub-license its right to access and use the Website API other than as permitted in 3.3; and
- (c) the Website API may only be used by an application or applications controlled by the Customer other than as permitted in 3.3; and
- (d) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and
- (e) the Customer must not conduct or request or allow any person to conduct load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

3.3 The Customer may allow Third Party Users to access and use Hosted Services subject to the following terms:

- (a) the Customer may provide Third Party Users with access to BigBlueButton meetings provided to the Customer through the Hosted Services; and
- (b) the Customer may provide Third Party Users with usernames and passwords sufficient to access and participate in BigBlueButton meetings provided to the Customer through the Hosted Services. For the avoidance of doubt, the Customer agrees that these are different from the Access Credentials; and
- (c) the Customer may not allow Third Party Users to access the Website API other than for the purpose of their participation in BigBlueButton meetings, listing records of such meetings or accessing or managing recordings of such meetings; and
- (c) the Customer assumes full responsibility for the activity of Third Party Users and any action of Third Party Users that would be a breach of this agreement if carried out by the Customer will be construed as a breach of this agreement by the Customer; and
- (d) the Customer warrants that the Third Party Users have agreed to the terms of the Acceptable User Policy; and
- (e) the Customer agrees that either the Customer or Third Party User is the Data Controller for any information that the Third Party User uploads to the Providers Systems.

3.4 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.

- 3.5 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.
- 3.6 The Customer must comply with the Acceptable Use Policy, and must ensure that all persons using the Hosted Services with the authority of the Customer, including Third Party Users, comply with the Acceptable Use Policy.
- 3.7 The Customer must not use or allow the Hosted Services to be used in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.8 The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.
- 3.9 The Customer must not use the Hosted Services:
  - (a) in any way that is unlawful, illegal, fraudulent or harmful; or
  - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 3.11 For the avoidance of doubt, the Customer has no right to access servers managed by the Provider using SSH or otherwise attempt shell / command line access. Such access or attempted access is a criminal offence that may be reported by the Provider to relevant authorities.
- 3.12 The Provider may suspend the provision of the Hosted Services without notice if any amount due to be paid by the Customer to the Provider under the Agreement is overdue.

#### **4. Customer Data**

- 4.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.
- 4.2 The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with the Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not

breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

## **5. Support Services**

- 5.1 The Provider may provide the Support Services to the Customer during the Term, but shall have no obligation to do so; any such Support Services shall be subject to this Clause 5.
- 5.2 The Provider may make available to the Customer an email-based helpdesk.
- 5.3 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
- 5.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue.

## **6. Acknowledgement of Copyright**

- 6.1 The Hosted Services includes providing the Customer with access to running instances of the BigBlueButton software system. For the avoidance of doubt, the Provider acknowledges that the Provider does not own BigBlueButton and recognises in full the intellectual property rights of BigBlueButton Inc.
- 6.2 Under the terms of the BigBlueButton software license (the GNU Lesser General Public License) the Provider asserts that it has the necessary rights to offer the Hosted Services to the Customer.

## **7. No assignment of Intellectual Property Rights**

- 7.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer or from the Customer to the Provider.

## **8. Charges**

- 8.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 8.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 8.3 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation.

## **9. Payments**

- 9.1 The Customer agrees to pay for their activity using the Hosted Services, at a charge calculated by the metering system built into the Hosted Services using the tariff published on the Website. The Customer agrees for charges to be

made against their account after advance notification but without further action by them. The Customer agrees that the calculation of charges will involve rounding of temporal and financial values, a minimum charge for some activities and other pricing assumptions as described on The Website.

- 9.2 The Customer agrees to keep their payment method details up to date on the Website.
- 9.3 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
  - (c) stop providing the service until the outstanding sum is paid and at the option of the Provider, terminate this agreement.

## **10. Not a Distance Contract**

- 10.1 The Services are provided on a Business to Business basis only. The Customer confirms that they are not entering into this Agreement wholly or mainly outside of the Customers trade, business, craft or profession. The Customer agrees that this is not a distance contract within the meaning of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

## **11. Data protection**

- 11.1 The Customer and Provider agree to the terms set out in the Data Processing Agreement.

## **12. Warranties**

- 12.1 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.
- 12.2 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **13. Acknowledgements and warranty limitations**

- 13.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

- 13.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 13.3 The Customer acknowledges that although portions of the Hosted Services aim for compatibility with the published open source BigBlueButton API; the Provider does not warrant or represent that the Hosted Services will be 100% compatible or will work with all other software, systems or libraries which claim BigBlueButton interoperability.
- 13.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

#### **14. Limitations and exclusions of liability**

14.1 Nothing in these Terms and Conditions will:

- (a) limit any liabilities in any way that is not permitted under applicable law; or
- (b) exclude any liabilities that may not be excluded under applicable law, and, if a party is a consumer, that party's statutory rights will not be excluded or limited by these Terms and Conditions, except to the extent permitted by law.

14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 14.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

14.3 The Provider will not be liable to the Customer in respect of any losses arising out of a Force Majeure Event. A service outage from any third party technology provider (such as Google inc.) used by the Provider to offer the Hosted Services constitutes a Force Majeure event.

14.4 The Provider will not be liable to the Customer in respect of any loss of profits or anticipated savings.

14.5 The Provider will not be liable to the Customer in respect of any loss of revenue or income.

- 14.6 The Provider will not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 14.7 The Provider will not be liable to the Customer in respect of any loss or corruption of any data, database or software.
- 14.8 The Provider will not be liable to the Customer in respect of any special, indirect or consequential loss or damage, including but not limited to reputational harm.
- 14.9 The aggregate liability of the Provider to the Customer under the Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under the Agreement in the 3 month period preceding the commencement of the event or events.

## **15. Force Majeure Event**

- 15.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

## **16. Termination**

- 16.1 Either party may terminate the Agreement by giving to the other party at least 30 days' written notice of termination.
- 16.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of these Terms and Conditions.
- 16.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose

of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or

- (d) if that other party is an individual:
  - (i) that other party dies;
  - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
  - (iii) that other party is the subject of a bankruptcy petition or order.

## **17. Effects of termination**

17.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.10, 6, 9, 11, 14, 17, 20 and 21.

17.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

17.3 Within 30 days following the termination of the Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement, without prejudice to the parties' other legal rights.

## **18. Notices**

18.1 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods:

- (a) sent by email to the relevant email address specified through the Hosted Services, in which case the notice shall be deemed to be received upon receipt of the email by the recipient's email server; or
- (b) sent using the contractual notice mechanism incorporated into the Hosted Services, in which case the notice shall be deemed to be received upon dispatch,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

## **19. Subcontracting**

- 19.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

## **20. General**

- 20.1 No breach of any provision of the Agreement shall be waived except with the express written consent of the party not in breach.
- 20.2 If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 20.3 The Provider may vary the Agreement by giving to the Customer at least 30 days' written notice of the variation. Subject to this, the Agreement may only be varied by a written document signed by or on behalf of each of the parties.
- 20.4 The Customer hereby agrees that the Provider may assign the Provider's contractual rights and obligations under the Agreement to any successor to all or a substantial part of the business of the Provider from time to time - providing that such action does not serve to reduce the guarantees benefiting the Customer under the Agreement. Save to the extent expressly permitted by applicable law, the Customer must not without the prior written consent of the Provider assign, transfer or otherwise deal with any of the Customer's contractual rights or obligations under the Agreement.
- 20.5 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 20.6 Subject to Clause 14.1, a Services Order Form, together with these Terms and Conditions and any Schedules, shall constitute the entire agreement between the parties in relation to the subject matter of that Services Order Form, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 20.7 This Agreement is governed by the laws of the United Kingdom and any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of the United Kingdom.

- 20.8 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 16 or any other provision of these Terms and Conditions.
- 20.9 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.
- 20.10 Confidentiality. Each Party must keep this Agreement and information it receives about the other Party and its business in connection with this Agreement ("Confidential Information") confidential and must not use or disclose that Confidential Information without the prior written consent of the other Party except to the extent that:
- (a) disclosure is required by law;
  - (b) the relevant information is already in the public domain.

## **21. Interpretation**

- 21.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 21.2 The Clause headings do not affect the interpretation of these Terms and Conditions.
- 21.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 21.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.
- 22 The following Schedules (having the same version date as this document) are part of this Agreement:
- (a) Data Processing Agreement
  - (b) Acceptable Use Policy
  - (c) Referral Scheme Agreement
  - (d) Privacy Policy
  - (e) Cookie Policy