

Thanks for using Instrumental Group LLCs (“Instrumental Group”) products and services. These Terms of Service set out the terms under which Instrumental Group’s products and services are provided. By accessing this site, the HubSpot API and/or any product or service offered on by either Instrumental Group or any of its affiliates or HubSpot, you agree to be bound by these Terms of Services, including as such may be amended from time to time.

1 Our Agreement

- 1.1 The definitions and rules of interpretation set out in the schedule shall apply to our Agreement.
- 1.2 Each Order entered into by the Customer shall form a separate agreement, incorporating these Instrumental Group Terms of Service together with the [Data Processing Addendum](#) (**our Agreement**);

2 Rights of use

- 2.1 Upon Order Acceptance and subject to the terms of our Agreement, Instrumental Group grants the Customer a non-exclusive, non-transferable, personal right to use the Services during the Subscription Period for the Permitted Purpose.
- 2.2 The Customer acknowledges that access to the Services may take up to two (2) Business Days from Order Acceptance to initially set up and that use of the Services is at all times subject to the Customer’s compliance with our Agreement and the requirements identified in our Agreement (including all minimum system requirements).
- 2.3 The Customer acknowledges that the Services do not include:
 - 2.3.1 dedicated data back up or disaster recovery facilities (and the Customer should ensure it at all times maintains backups of all Customer Data); or
 - 2.3.2 legal, accounting or other professional or regulated services and that, except as expressly stated in our Agreement, no assurance is given that the Services will comply with or satisfy any legal or regulatory obligation of any person.
- 2.4 The Services are protected by Intellectual Property Rights. Those Intellectual Property Rights belong to and are the property of Instrumental Group and its licensors. Instrumental Group retains all ownership rights in the Services. The Customer agrees that all recommendations, comments and suggestions made by it to Instrumental Group in respect of the Services will be non-confidential and Instrumental Group shall own all rights to use and incorporate them into the Services, without payment to the Customer.

3 HubSpot Account

- 3.1 Instrumental Group is a member of the HubSpot App Partner Program. Instrumental Group shall use best endeavors to remain a member of the HubSpot App Partner Program and to retain access to the HubSpot API.
- 3.2 The Customer acknowledges that the Services require connection with a valid current HubSpot account and that Instrumental Group will have no responsibility for any failure to provide or use the Services in the event that the Customer does not have a valid current HubSpot account in respect of which it has facilitated access by Instrumental Group for the purposes of providing the Services.
- 3.3 For the avoidance of doubt, Instrumental Group will not be obliged to make any refund of any Subscription Charges in the event that the Customer no longer facilitates Instrumental Group’s access to a valid current HubSpot account owned and operated by the Customer.
- 3.4 Instrumental Group makes no representation, warranty or commitment and shall have no liability or

obligation whatsoever in relation to the content or use of, or correspondence with, HubSpot, or any actions completed with or by means of HubSpot.

- 3.5 Integration with HubSpot is provided on the basis of HubSpot's API as of the date of Order Acceptance. Instrumental Group shall use reasonable endeavors to continue such integration but makes no warranty that such integration shall remain throughout the Subscription Term. In the event that Instrumental Group is no longer integrated with HubSpot (for example, because HubSpot ceases making API access available to Instrumental Group), the Customer's sole remedy will be to terminate our Agreement and receive a pro-rata refund, under clause 19.4.
- 3.6 The Customer will abide by HubSpot's terms of service in respect of any use by it of the Services.
- 3.7 The Customer hereby gives Instrumental Group express permission to access and use information from its account with HubSpot.
- 3.8 'HubSpot' is a trade mark of HubSpot, Inc and its affiliates. Nothing in these terms or the Instrumental Group website is intended to imply any endorsement, sponsorship or approval by HubSpot of the Services.

4 Authorized Users

- 4.1 The Customer shall ensure that only Authorized Users use the Services and that such use is at all times in accordance with our Agreement. The Customer shall ensure that Authorized Users are, at all times whilst they have access to the Services, the employees or freelance individual contractors of the Customer.
- 4.2 The Customer shall:
 - 4.2.1 be liable for the acts and omissions of the Authorized Users as if they were its own;
 - 4.2.2 only provide Authorized Users with access to the Services via the Customer's authentication credentials provided by Instrumental Group and shall not provide access to (or permit access by) anyone other than an Authorized User; and
 - 4.2.3 procure that each Authorized User is aware of Instrumental Group's [Privacy Policy](#) and is aware of, and complies with, the obligations and restrictions imposed on the Customer under our Agreement, including all obligations and restrictions relating to Instrumental Group's Confidential Information.
- 4.3 The Customer warrants and represents that it, and all Authorized Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party (or with other individuals except those with administration rights at the Customer organization as necessary for use of the Services) their password or access details for the Services.
- 4.4 The Customer shall (and shall ensure Authorized Users shall) at all times comply with all provisions of our Agreement.
- 4.5 If any password has been provided to an individual that is not an Authorized User, the Customer shall, without delay, disable any such passwords and notify Instrumental Group immediately.
- 4.6 The Customer shall comply (and shall ensure all Authorized Users comply) with all applicable laws, rules, and regulations governing export that apply to the Services or the Customer Data.
- 4.7 Clauses 4.2 to 4.6 (inclusive) shall survive termination or expiry of our Agreement.

5 Mutual Indemnity and Limitation of Liability

5.1 **Our Indemnity.** Instrumental Group will defend, indemnify and hold Customer harmless against any liabilities, expenses, or damages arising from or relating to a third-party claim alleging that Customer's use of the unaltered Services infringes or misappropriates any U.S. patent, copyright, or trade secret of a third party. The foregoing indemnity does not extend to claims arising from or relating to Third-Party Services or claims covered by Customer's indemnification obligations under this agreement. In the event of a claim or threatened claim, Instrumental Group may, at its sole option, (A) revise the Services so that they are no longer infringing, (B) obtain the right for Customer to continue using the Services, or (C) terminate this agreement and any applicable Services Order upon 30 days' notice and refund any unused fees Customer has prepaid. These provisions notwithstanding, Instrumental Group shall have no obligation to indemnify Customer for any claims, losses or damages arising out of or related to HubSpot or any Third-Party Integration services.

5.2 **Your Indemnity.** You will defend, indemnify and hold Instrumental Group harmless against any liabilities, expenses, or damages arising from or relating to a third-party claim alleging that your User Data, Your Software, modifications to the Services made by or on your behalf, or your use of the Services in breach of this agreement infringes or misappropriates any U.S. patent, copyright, or trade secret or violates applicable law.

5.3 THIS SECTION TITLED "*MUTUAL INDEMNIFICATION AND LIMITATION OF LIABILITY*" REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF THE INDEMNIFYING PARTY AND THE EXCLUSIVE REMEDY OF THE INDEMNIFIED PARTY FOR ANY TYPE OF CLAIM DESCRIBED IN THIS SECTION.

5.4 EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THE SECTION OF THIS AGREEMENT TITLED "*MUTUAL INDEMNIFICATION AND LIMITATION OF LIABILITY*", IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT IN CONNECTION WITH A MISAPPROPRIATION OF INTELLECTUAL PROPERTY, OR OBLIGATIONS UNDER THE SECTION OF THIS AGREEMENT TITLED "*MUTUAL INDEMNIFICATION AND LIMITATION OF LIABILITY*", THE AGGREGATE LIABILITY OF ONE PARTY TO THE OTHER FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (AND WHETHER IN CONTRACT OR IN TORT) WILL BE LIMITED TO THE TOTAL AMOUNT PAYABLE TO INSTRUMENTAL GROUP UNDER THIS AGREEMENT OVER THE 12 MONTH PERIOD PRIOR TO THE DATE THE CLAIM ARISES. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT OR SPECIAL LOSSES, INCLUDING BUT NOT LIMITED TO (WHETHER DIRECT OR INDIRECT): LOSS OF PROFIT, DESTRUCTION, LOSS OF USE OR CORRUPTION OF DATA, LOSS OR CORRUPTION OF SOFTWARE OR SYSTEMS; LOSS OR DAMAGE TO EQUIPMENT; LOSS OF USE; LOSS OF PRODUCTION; LOSS OF CONTRACT; LOSS OF OPPORTUNITY; LOSS OF SAVINGS, DISCOUNT OR REBATE (WHETHER ACTUAL OR ANTICIPATED); AND/OR HARM TO REPUTATION OR LOSS OF GOODWILL.

5.5 The rights and obligations of both parties under this Section 5 terminate and expire on the 12-month anniversary of the termination of any services agreement between the parties.

6 Support

6.1 Support Services shall be available for the Services to the Customer for the duration of the Subscription Period.

6.2 Instrumental Group will use reasonable endeavors to notify the Customer in advance of scheduled maintenance but the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

7 Changes to services and terms

- 7.1 Instrumental Group may at its absolute discretion make, and notify the Customer of, updated versions of these terms or the Data Processing Addendum, from time to time by notifying the Customer of such update by e-mail (together with a copy of the update or a link to a copy of the update) or by any other reasonable means which Instrumental Group elects (**Update Notification**).
- 7.2 The document(s) subject to such Update Notification shall replace the preceding version of the same document(s) for the purposes of our Agreement from the date 10 Business Days' after Update Notification of such revised document(s) (the **Update**) (or at such later date as Instrumental Group may specify).
- 7.3 In the event that the Customer reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate our Agreement provided it exercises such right prior to such Update taking effect pursuant to clause 7.2 on not less than 5 Business Days prior written notice and notifies Instrumental Group at the time of exercising such right of the negative impact which has caused it to exercise this right. In the event of such termination the Customer shall receive a pro-rata refund of any pre-paid Subscription Charges corresponding to the unexpired portion of the Subscription Period.
- 7.4 The Customer acknowledges that Instrumental Group shall be entitled to modify the features and functionality of the Services. Instrumental Group shall use reasonable endeavors to ensure that any such modification does not materially adversely affect the use of the relevant Service(s) by Instrumental Group's customers generally. Instrumental Group may, without limitation to the generality of this clause 7.4, establish new limits on the Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Service, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by the Update to the relevant impacted contractual documents. Instrumental Group will comply with its related obligations in the [Data Protection Addendum](#).

8 Charges and Payment

- 8.1 Unless otherwise agreed in advance, the Customer shall pay the Subscription Charges on a **monthly** basis **or annually** in advance.
- 8.2 The Subscription Charges are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.
- 8.3 Instrumental Group shall have the right to charge interest on 18% per annum, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- 8.4 Instrumental Group shall be entitled to increase the Subscription Charges for the Services at any time by notice to the Customer provided that such increase shall only take effect at the end of the current Subscription Period.
- 8.5 To the extent our Agreement terminates or expires (other than due to termination by the Customer under clauses 7.3 or 19.2 or 19.4) the Customer shall not be entitled to any refund or discount of Subscription Charges paid for any parts of any Subscription Period during which the Services cease to be provided.
- 8.6 At any time during the Subscription Period the Customer may upgrade its subscription to a higher-tier package including a greater user allocation, by means of the Instrumental Group webstore account. Or by calling (303) 945-4341. Instrumental Group shall calculate the value of the upgraded subscription for the remainder of the Subscription Period on a pro-rata basis (the "Additional Fee") and notify the Customer. Upon receipt of payment of the Additional Fee the Customer's usage level

shall be increased to the new subscription level.

- 8.7 The Customer may downgrade its subscription at the end of the current Subscription Period, by contacting Instrumental Group by email at apps@instrumental.net.

9 Warranties

- 9.1 Subject to the remainder of this clause 9, Instrumental Group warrants that the Services shall operate materially in accordance with its Description when used in accordance with our Agreement under normal use and normal circumstances during the relevant Subscription Period.
- 9.2 The Customer acknowledges that clause 9.1 does not apply to Free or Trial Services or to Support Services provided in connection with the same. Without prejudice to Instrumental Group's obligations under our Agreement in respect of Protected Data, Free or Trial Services and Support Services provided in connection with the same are provided 'as is' and without warranty to the maximum extent permitted by law. Instrumental Group may withdraw access to Free or Trial Services at any time without any liability to the Customer.
- 9.3 The Services may be subject to delays, interruptions, errors or other problems resulting from use of HubSpot, the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that Instrumental Group shall have no liability for any such delays, interruptions, errors or other problems.
- 9.4 If there is a breach of any warranty in clause 9.1 Instrumental Group shall at its option: use reasonable endeavors to repair or replace the impacted Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service) refund the Subscription Charges for the impacted Services which were otherwise payable for the period during which Instrumental Group was in breach of any such warranty (provided such period is at least 2 consecutive days). To the maximum extent permitted by law, this clause 9.4 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 9.1.
- 9.5 The warranties in clause 9.1 are subject to the limitations set out in clause 16 and shall not apply to the extent that any error in the Services arises as a result of:
- 9.5.1 incorrect operation or use of the Services by the Customer, or any Authorized User (including any failure to follow the Description or failure to meet minimum specifications);
 - 9.5.2 use of the Services other than for the purposes for which it is intended;
 - 9.5.3 use of the Services with other software or services or on equipment with which it is incompatible (unless Instrumental Group recommended or required the use of that other software or service or equipment in the Description);
 - 9.5.4 any act by any third party (including hacking or the introduction of any virus or malicious code);
 - 9.5.5 any modification of the Services (other than that undertaken by Instrumental Group or at its direction); or
 - 9.5.6 any breach of our Agreement by the Customer (or by any Authorized User).
- 9.6 The Customer acknowledges that no liability or obligation is accepted by Instrumental Group (howsoever arising whether under contract, tort, in negligence or otherwise):

- 9.6.1 that the Services shall meet the Customer's individual needs, whether or not such needs have been communicated to Instrumental Group;
 - 9.6.2 that the operation of the Services shall not be subject to minor errors or defects; or
 - 9.6.3 without prejudice to clause 3.5, that the Services shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible in the Description.
- 9.7 Other than as set out in this clause 9, and subject to clause 16.6, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.
- 9.8 Any obligation of Instrumental Group under our Agreement to comply or ensure compliance by any person or the Services with any law shall be limited to compliance only with laws within the United States as generally applicable to businesses and to providers of software as a service solutions. Instrumental Group shall not have any obligation to ensure that the Services comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

10 Customer's responsibilities

- 10.1 The Customer shall (and shall ensure all Authorized Users shall) at all times comply with the [Acceptable Use Policy](#) and all applicable laws relating to the use or receipt of the Service, including laws relating to privacy, data protection and use of systems and communications.
- 10.2 The Customer shall be responsible for maintaining a current HubSpot account for the term of our Agreement, and acknowledges that Instrumental Group shall not be responsible for any failure to provide the Services due to the Customer no longer having a current HubSpot account.

11 Customer Data

- 11.1 Customer Data shall at all times remain the property of the Customer or its licensors.
- 11.2 Except to the extent Instrumental Group has direct obligations under data protection laws, the Customer acknowledges that Instrumental Group has no control over any Customer Data hosted as part of the provision of the Services and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Service) complies with all applicable laws and Intellectual Property Rights.
- 11.3 Except as otherwise expressly agreed in our Agreement, Instrumental Group shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's business. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its, and its Authorized User's needs) and extracts it from its HubSpot account and the Services prior to the termination or expiry of our Agreement or the cessation or suspension of the Services.
- 11.4 Instrumental Group routinely undertakes regular backups of the Services (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make Instrumental Group responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by

applicable law, Instrumental Group shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.

- 11.5 Unless otherwise set out in the Order, or subsequently agreed by the parties in writing, the Customer hereby instructs that Instrumental Group shall within 60 days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the Services (and all existing copies of it) except to the extent that any Applicable Law (as defined in the [Data Protection Addendum](#)) requires Instrumental Group to store such Customer Data. Instrumental Group shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with our Agreement.

12 Confidentiality and security of Customer Data

- 12.1 Instrumental Group shall maintain the confidentiality of the Customer Data and shall not without the prior written consent of the Customer or in accordance with our Agreement, disclose or copy the Customer Data other than as necessary for the performance of the Services or its express rights and obligations under our Agreement.
- 12.2 Instrumental Group shall implement technical and organizational security measures in accordance with the [Data Protection Addendum](#).
- 12.3 Instrumental Group:
- 12.3.1 undertakes to disclose the Customer Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement or as otherwise reasonably necessary for the provision or receipt of the Services, and
 - 12.3.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in clause 12.3.1 in respect of the confidentiality and security of the Customer Data as if they were Instrumental Group's own.
- 12.4 The provisions of this clause 12 shall not apply to information which:
- 12.4.1 is or comes into the public domain through no fault of Instrumental Group, its officers, employees, agents or contractors;
 - 12.4.2 is lawfully received by Instrumental Group from a third party free of any obligation of confidence at the time of its disclosure;
 - 12.4.3 is independently developed by Instrumental Group (or any person acting on its or their behalf), without access to or use of such information; or
 - 12.4.4 is required by law, by court or governmental or regulatory order to be disclosed,
- provided that clauses 12.4.1 to 12.4.3 (inclusive) shall not apply to Protected Data (as defined in the [Data Protection Addendum](#)).
- 12.5 This clause 12 shall survive the termination or expiry of our Agreement for a period of 5 years.
- 12.6 To the extent any Customer Data is Protected Data, Instrumental Group shall ensure that such Customer Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of Instrumental Group's obligations under the [Data Protection Addendum](#). Clauses 12.1 to 12.5 (inclusive) are subject to this clause 12.6.

13 Publicity

- 13.1 Unless Customer objects in writing, Customer expressly grants to Instrumental Group, a royalty-free, sub-licensable, perpetual, irrevocable, non-exclusive, worldwide license to use, reproduce and publish the Customer's name, logo or any other identifying words, logos or marks used by and/or associated with the Customer to identify the Customer ("Customer Marks") for use in providing the Services and for the purpose of identifying the Customer as Instrumental Group's customer on Instrumental Group's website and its sales and marketing materials. Further, without written consent from Customer, Instrumental Group may disclose Customer's name, logo and other identifying words, logos or marks for internal purpose to Instrumental Group affiliates for reference and training purposes. Any further use of the Customer Marks by Instrumental Group shall be subject to the Customer's prior consent. Instrumental Group acknowledges that all goodwill generated through Instrumental Group's use of any of the Customer Marks will accrue to the Customer's benefit and Instrumental Group hereby assigns and will assign to the Customer any and all goodwill generated through Instrumental Group's use of any of the Customer Marks, without payment or other consideration of any kind to Instrumental Group.

14 Instrumental Group's Confidential Information

- 14.1 The Customer shall maintain the confidentiality of Instrumental Group's Confidential Information and shall not without the prior written consent of Instrumental Group, disclose, copy or modify Instrumental Group's Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under our Agreement.
- 14.2 The Customer undertakes to:
- 14.2.1 disclose Instrumental Group's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under our Agreement;
 - 14.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 14; and
 - 14.2.3 be responsible for the acts and omissions of those third parties referred to in this clause 14.2 as if they were the Customer's own acts or omissions.
- 14.3 The Customer shall give notice to Instrumental Group of any unauthorized use, disclosure, theft or loss of Instrumental Group's Confidential Information immediately upon becoming aware of the same.
- 14.4 The provisions of this clause 14 shall not apply to information which:
- 14.4.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;
 - 14.4.2 is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;
 - 14.4.3 is independently developed by the Customer, without access to or use of such information; or
 - 14.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies Instrumental Group at the earliest opportunity before making any disclosure.
- 14.5 This clause 14 shall survive the termination or expiry of our Agreement for a period of 5 years.

15 Relief

To the maximum extent permitted by law, Instrumental Group shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

16 Suspension

Instrumental Group may suspend access to the Services to all or some of the Authorized Users if:

- 16.1 Instrumental Group suspects that there has been any misuse of the Services or breach of our Agreement; or
- 16.2 the Customer fails to pay any sums due to Instrumental Group by the due date for payment.

Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights under clause 18, Instrumental Group will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

In relation to suspensions under clause 16.2, access to the Services will be restored promptly after Instrumental Group receives payment in full and cleared funds.

Subscription Charges shall remain payable during any period of suspension notwithstanding that the Customer, or some or all of the Authorized Users may not have access to the Services.

17 Renewals

- 17.1 Subject to clause 17.2, on expiry of the Subscription Period, the Subscription Period shall continue and automatically renew for a further period of twelve months (**first Renewal Date**) and thereafter renew for a further period of twelve months on each anniversary of the first Renewal Date (each of the first Renewal Date and each such anniversary being a **Renewal Date**). This clause 17.1 shall not apply in respect of Free or Trial Services (which shall not renew).
- 17.2 If either party wishes for the Subscription Period to expire on the next Renewal Date, it may cause the Services to expire on that Renewal Date by notice provided such notice is served by email at least 14 days prior to that Renewal Date. If notice is not served within the timeframes set out in this clause 17.2, the Services shall renew at the next Renewal Date in accordance with clause 17.1.

18 Term and termination

- 18.1 Our Agreement shall come into force on Order Acceptance and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Subscription Period after which it shall automatically expire.
- 18.2 Either party may terminate our Agreement immediately at any time by giving notice in writing to the other party if:
 - 18.2.1 the other party commits a material breach of our Agreement and such breach is not remediable;
 - 18.2.2 the other party commits a material breach of our Agreement which is not remedied within 10 Business Days of receiving written notice of such breach; or
 - 18.2.3 the other party has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within 5 Business Days after the other party has received notification that the payment is overdue.

18.3 Instrumental Group may terminate or suspend the provision of Free or Trial Services (and all related Support Services) at any time with or without notice.

18.4 Either party may terminate our Agreement in the event that Instrumental Group ceases to have access to the HubSpot API. In the event of such termination, the Customer shall be entitled to a pro-rata refund of any pre-paid Subscription corresponding to the unexpired portion of the Subscription Period.

19 Consequences of termination

19.1 Immediately on termination or expiry of our Agreement (for any reason), the rights granted by Instrumental Group under our Agreement shall terminate and the Customer shall (and shall procure that each Authorized User shall) stop using the Services.

19.2 Termination or expiry of our Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of our Agreement that is expressly or by implication intended to continue beyond termination.

20 Entire agreement

20.1 Our Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

20.2 Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement.

20.3 Nothing in our Agreement shall limit or exclude any liability for fraud.

21 Variation

21.1 No variation of our Agreement shall be valid or effective unless it is:

21.1.1 an Update made in accordance with our Agreement; or

21.1.2 is in writing and refers to our Agreement.

22 Assignment and subcontracting

22.1 Except as expressly provided in our Agreement, Instrumental Group may at any time assign, sub-contract, sub-license (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement.

22.2 Except as expressly permitted by our Agreement, the Customer shall not assign, transfer, sub-contract, sub-license, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under our Agreement (including the license rights granted), in whole or in part, without Instrumental Group's prior written consent.

23 Set off

Each party shall pay all sums that it owes to the other party under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24 No partnership or agency

The parties are independent and are not partners or principal and agent and our Agreement does

not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

25 Severance

- 25.1 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected.
- 25.2 If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

26 Waiver

- 26.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy. A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

27 Third party rights

A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

28 Authority

Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.

29 Governing law and Jurisdiction

Our Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of the state of Colorado, United States of America, without regard for its conflict of laws provisions. The parties irrevocably agree that the courts of the United States District Court for the District of Colorado shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).

THE SCHEDULE
DEFINITIONS AND INTERPRETATION

1 In our Agreement:

Applications	means the software or applications used by or on behalf of Instrumental Group to provide the Services;
Authorized Users	means the named users Authorized by the Customer to use the Services in accordance with the terms of our Agreement;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in the United States;
Customer	has the meaning given in the relevant Order;
Customer Data	means all data (in any form) that is provided to Instrumental Group, either directly or by means of access to the Customer's HubSpot account, or uploaded or hosted on the Services by the Customer or by any Authorized User;
Data Protection Addendum	the addendum identifying certain respective rights and obligations of the parties' in respect of personal data and privacy under our Agreement (as Updated from time to time), which as at Order Acceptance is the latest version available here
Description	means the description of the Services (as Updated from time to time), which as at Order Acceptance is the set of features and functions as set out on the following webpage: https://www.instrumental.net/apps
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under our Agreement (provided that an inability to pay is not Force Majeure), including any action or omission of HubSpot, matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;
Free or Trial Service	means the Services where the Order specified that they are provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis);
HubSpot API	the connection to HubSpot's services made available by HubSpot to facilitate operation of the Services in conjunction with the Customer's HubSpot account;

Intellectual Property Rights

means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, domain names and all similar rights;

Instrumental Group Terms of Service

means the terms set out in the clauses and other provisions of this document (including the schedule), as Updated from time to time;

Materials

means all services, data, information, content, Intellectual Property Rights, websites, software and other materials provided by or on behalf of Instrumental Group in connection with the Services, but excluding all Customer Data;

Order Acceptance

means the effective date of the relevant Order;

Order

means the electric or physical form (including its schedules, annexes and appendices (if any)) ordering the Services entered into by or on behalf of the Customer and Instrumental Group, incorporating these Instrumental Group Terms of Service and our Agreement (and as varied by the parties by agreement in writing from time to time);

Permitted Purpose

means use solely for the Customer's internal business operations and, in each case in accordance with the Description and our Agreement. Permitted Purpose expressly excludes any of the following to the maximum extent permitted by law:

- (a) copying, reproducing, publishing, distributing, redistributing, broadcasting, transmitting, modifying,

adapting, editing, abstracting, storing, archiving, displaying publicly or to third parties, selling, licensing, leasing, renting, assigning, transferring, disclosing (in each case whether or not for charge) or in any way commercially exploiting any part of the Services;

- (b) permitting any use of the Services in any manner by any third party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third parties) or making the Services (or any part) available to any third party or allowing or permitting a third party to do any of the foregoing;
- (c) combining, merging or otherwise permitting the Services (or any Application) to become incorporated in any other program or service, or arranging or creating derivative works based on it (in whole or in part); or
- (d) attempting to reverse engineer, observe, study or test the functioning of or decompile the Applications or the Services (or any part),

except as expressly permitted under our Agreement;

Protected Data

has the meaning given in the [Data Protection Addendum](#);

Relief Event

means any breach of our Agreement by the Customer or any Force Majeure;

Renewal Date

has the meaning given in clause 18.1;

Services

means the Instrumental Group services provided by Instrumental Group, intended to enable the Customer to build and store customer organization charts, to which the Customer has subscribed as set out in the Order;

Subscription Period

means the period of 12 months from the date of acceptance of the Order by Instrumental Group;

Subscription Charges

means the charges payable by the Customer in consideration of the Services as set out in the Order;

Instrumental Group's Confidential Information

means all information (whether in oral, written or electronic form) relating to Instrumental Group's business which may reasonably be considered to be confidential in nature including information relating to Instrumental Group's technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers. All information relating to any other technical or operational specifications or data relating to the Services shall be part of Instrumental Group's Confidential Information;

Support Services	means such remote support services as may be provided by Instrumental Group to its customers generally from time to time;
Update	has the meaning given in clause 7.2, and Updated shall be construed accordingly;
Update Notification	has the meaning given in clause 7.1; and
VAT	means United States value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United States.

- 2 In our Agreement, unless otherwise stated:
- 2.1 the clause, paragraph, schedule or other headings in our Agreement are included for convenience only and shall have no effect on interpretation;
 - 2.2 Instrumental Group and the Customer are together the **parties** and each a **party**, and a reference to a 'party' includes that party's successors and permitted assigns;
 - 2.3 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
 - 2.4 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
 - 2.5 a reference to specific legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made as at the date of our Agreement under that legislation; and
 - 2.6 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.