

Todium Group Master Service Agreement

Thank you for choosing Topodium Group as your partner in marketing, advertising, creative, innovation and professional services. We are excited to work with you!

This Master Service Agreement (“MSA”) governs the procurement of Topodium Products and Services as set forth in the Sales Order (or other ordering document) which references this MSA and the terms and conditions that will govern our relationship. This MSA may govern multiple Sales Orders between Topodium and Customer (including between their Affiliates).

Contents

1. Topodium Products and Services
2. License Grant and Restrictions to Topodium Products and Services
3. Customer Software and Materials, Content, Privacy, and Security
4. Working Together and Performance
5. Website Service Levels
6. Fees, Payments, & Taxes
7. Intellectual Property Indemnification
8. Limitation of Liability
9. Term and Termination
10. Warranties, Disclaimers, and Remedies
11. Confidentiality
12. General Provisions
13. Definitions

1. Topodium Products and Services.

1.1. Description. The Products and Services consist of Email Marketing and Messaging, SEO, PPC, Social Media Website Design and Build, Video Development, Content Marketing, POS/Retail Technology and Design, Brand Activation, Product GTM, Visitor Experience, Innovation and Technology, Software and Application Development, Learning and Development, User Engagement, Consulting and Professional Services and other services defined in Sales Order(s).

1.2. Future Functionality, Modifications, and Enhancements. Customer’s procurement is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Topodium regarding future functionality or features. The Products and Services are regularly updated and enhanced using a continuous delivery model during the Subscription Term. No changes will have a materially adverse impact on Customer’s use of the Products and Services unless Customer consents to such change.

Todium Group Master Service Agreement

1.3. Professional Services. If Customer procures Professional Services from Topodium, the specific details of the Professional Services will be described on the Sales Order on a per-project basis. Professional Services are not subject to any acceptance procedure. Professional Services will be performed remotely unless otherwise specified, in which case, Customer will be invoiced at cost for pre-approved reasonable travel, hotel, and out-of-pocket expenses properly incurred by Topodium in connection with the Professional Services.

1.4. Technical Support Services. Topodium's standard technical support services are included at no additional charge during the Service Term.

1.5. Feedback and Usage Analytics. Customer may provide feedback to Topodium about the Products and Services (e.g. technical support input, suggestions, or enhancement requests) and generate usage analytics (i.e. aggregated non-personal technical data and metadata from the Products and Services). Usage analytics do not include Personal Data. Topodium may develop, modify, and improve the Products and Services based on Customer's feedback and usage analytics. Topodium reserves the right to use, publish, and otherwise exploit anonymous usage analytics and feedback without restriction.

2. License Grant and Restrictions to Topodium Products and Services.

2.1. License Grant and Reservation of Rights. Subject to ongoing compliance with the Agreement, Topodium grants Customer a non-exclusive and non-transferable license during the Subscription Term to permit Authorized Users to access, install, implement, and use Topodium Products and Services solely for Customers direct beneficial business purposes. Customer's rights to use the Products and Services are limited to those expressly set forth in the Agreement, including limitations based on license type set forth in the Sales Order. Topodium retains all right, title, and interest in and to the Products and Services and all related intellectual property rights, including without limitation any modifications, updates, customizations, apps, or other add-ons.

2.2. Restrictions and Acceptable Use. Except as explicitly permitted under the Agreement, Customer must not do any of the following with the Products and Services: (i) use in violation of any applicable law or regulation; (ii) use in a manner that would cause a material risk to the security or operations of Topodium or any of its other customers; (iii) disassemble, decompile, or reverse engineer; (iv) redistribute, republish, sell, rent, lease, host, sub-license, or permit usage on a time-sharing basis as part of a hosted service or on behalf of any third party; (v) remove, obscure, or alter any proprietary notices; or (vi) circumvent, disable, or stress test any security or other technological features.

Todium Group Master Service Agreement

2.3. Authorized Users. Access to the Products and Services is limited to Authorized Users, and must not exceed the number of users specified in the Sales Order. Authorized User accounts may be reassigned by the Customer, but accounts must not be shared among multiple users. The Products and Services may not be accessed from more than five (5) unique devices per Authorized User. Customer will (i) ensure that its Authorized Users use the Products and Services in compliance with the terms of the Agreement; (ii) promptly report to Topodium any violation of the Agreement by its Authorized Users and disable such users' access; and (iii) ensure that no false or misleading personal information is used to create user accounts. Customer is responsible for any breach of this Agreement by any of its Authorized Users.

3. Customer Software and Materials, Content, Privacy, and Security.

3.1 Software and Materials. Customer will have the opportunity to review and approve any Software and Promotional Materials developed by Topodium on behalf of the Customer before they are used, published or distributed. Software includes SaaS, applications, databases and other systems developed by Topodium on behalf of the Customer. The period for review and acceptance of these Software and Promotional Materials will vary depending on the Service. Your Topodium representative will communicate these deadlines to you in writing, which may include email.

3.2 Ownership of Software and Data. Customer retains all rights and ownership of the data associated with, held in or used by the Software developed by Topodium on behalf of the Customer. Customer retains all rights and ownership of the data supplied to or entered into Topodium Products and Services. All rights, ownership and intellectual property of Software developed on behalf of the Customer will automatically transfer to the Customer upon the final payment to Topodium for the associated development Services.

3.3. Ownership and Permitted Use of Customer Content and Customer Materials. As between Topodium and Customer, all Customer Content is Customer's property. Customer grants Topodium a non-exclusive, worldwide, royalty-free license to process, reproduce, display, copy, communicate, and otherwise use Customer Content solely (i) to the extent necessary to perform its obligations or enforce its rights under the Agreement, or (ii) where required or authorized by law. The Customer retains all rights in and to its Customer Materials except for the limited rights granted to Topodium under the Agreement. By providing Topodium with Customer Materials, you warrant that: (1) you have reviewed and approved the Customer Materials for use as-provided in the Services; (2) you have all of the rights and licenses necessary for Topodium and its Partners (defined in Section 6 below) to use the Customer Materials in the Services; (3) the use of the Customer Materials by Topodium and its Partners will not infringe on any third-party rights, including intellectual property rights, or rights of privacy or publicity; and (4) the Customer Materials do not contain any of the following "Prohibited Materials": (i) malicious code, including malware, trojan horses, time bombs, viruses, adware or spyware (but excluding cookies to the extent disclosed in the Customer's privacy policy); (ii) content which is false or misleading, obscene or sexual in nature,

Todium Group Master Service Agreement

graphically violent, slanderous or defamatory, bigoted/hate-oriented, or abusive/advocating violence; (iii) content that promotes any illegal activity including spam, mail fraud, pyramid schemes, or investment opportunities or advice not permitted by law; or (iv) content which promotes the sale of alcohol, tobacco products, prescription drugs, recreational drugs, weapons (including ammunition and firearms), or casino gambling or sweepstakes in a manner that is inconsistent with applicable laws, regulations or industry self-regulatory standards. We may refuse, reject, or remove any Customer Materials or cancel any advertising space reservation at any time if we believe your Customer Materials violate any of the above warranties. TOPODIUM'S ACCEPTANCE AND USE OF ANY CUSTOMER MATERIALS DOES NOT IMPLY THAT SUCH MATERIALS CONFORM TO THE ABOVE-LISTED WARRANTIES. TOPODIUM EXPRESSLY DISCLAIMS ALL LIABILITY FOR THE CUSTOMER MATERIALS AND ANY COMPONENTS THEREOF, EXCEPT TO THE EXTENT THAT THE CUSTOMER MATERIALS HAVE BEEN MATERIALLY ALTERED BY TOPODIUM WITHOUT THE CUSTOMER'S AUTHORIZATION.

3.4. Deliverables. Except as set forth in the Agreement or associated documentation, all original, copyrightable aspects of the Deliverables will be considered a "work made for hire" within the meaning of the Copyright Act of 1976, as amended, and in any event Topodium expressly assigns to the Customer all rights, title and interest in and to the Deliverables upon Customer's payment of all associated fees. Subject to these Terms, Topodium retains only a limited license to use select portions of the Deliverables for the limited purpose of promoting Topodium's services to other potential Customers (or as otherwise permitted by you in writing). Topodium warrants that, to the best of its knowledge, the Deliverables, as originally provided to you, do not infringe on any third-party rights.

3.5. Topodium Materials. We retain all rights, title and interest in and to any intellectual property created or licensed by Topodium which was NOT created specifically for you as part of the Services ("Topodium Materials"). If any Topodium Materials are incorporated into the Promotional Materials, we hereby grant you a non-exclusive, perpetual, fully-paid, royalty-free, irrevocable and world-wide licenses to use Topodium Materials as necessary for your full use of the Promotional Materials, including the right to reproduce, make derivative works from, distribute, publicly perform, and publicly display (in any form or medium, whether now known or later developed) Topodium Materials as a component of the Promotional Materials.

3.6. Security. Topodium will establish and maintain appropriate administrative, technical, and physical safeguards and controls to: (i) ensure the ongoing confidentiality, integrity, availability, and resilience of the Products and Services and Customer Content; (ii) restore the availability and access to Customer Content in a timely manner in the event of a physical or technical incident; and (iii) have in place the process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing through the Products and Services.

Todium Group Master Service Agreement

3.7. Compliance with Privacy Laws. Topodium will comply with applicable privacy and data protection laws governing its processing and storage of Personal Data in connection with its role as described in the Agreement. The Topodium Privacy Policy applies to the limited scenarios where Topodium is the Data Controller as explained in the Privacy Policy. If Customer's use of the Products and Services also requires the Customer to enter into a data processing agreement, the Topodium DPA will be incorporated into the Agreement upon execution and submission by Customer.

3.8. Topodium's Remediation of Unauthorized Disclosures. In the event that unauthorized disclosure of or access to Personal Data is caused by Topodium's breach under the Agreement, Topodium shall pay the reasonable and documented costs incurred by Customer in connection with the following items: (a) costs of any required forensic investigation to determine the cause of the breach; (b) providing notification of the respective breach to applicable government and relevant industry self-regulatory agencies, to the media (if required by applicable law) and to individuals whose Personal Data may have been accessed or acquired; (c) to the extent banking or credit card data is part of the unauthorized disclosure of Personal Data, providing credit monitoring service to individuals whose Personal Data may have been accessed or disclosed for a period of one year after the date on which such individuals were notified of the unauthorized access or disclosure for such individuals who elect to receive such credit monitoring service; and (d) operating a communications platform appropriate to the scope of the unauthorized disclosure (e.g. website, email address, call center) to respond to questions from individuals whose Personal Data may have been accessed or disclosed for a period of one (1) year after the date on which such individuals were notified of the unauthorized access or disclosure. Notwithstanding the foregoing, or anything in this Agreement to the contrary, Topodium shall have no responsibility to pay costs of remediation to the extent that they are due to the negligence, willful misconduct and/or fraud by Customer or its employees, agents, contractors, or Authorized Users.

3.9. Customer Responsibility and Obligations Regarding Customer Content.

3.9.1. Customer acknowledges and agrees that the Products and Services are not designed to serve as master storage of Customer Content, and Customer is responsible for ensuring that master copies of the Customer Content are stored in a separate system.

3.9.2. Customer retains complete control over the installation, configuration, and usage of the Products and Services, and Topodium will not be responsible or liable for any deletion, corruption, damage, destruction, or unintended exposure of Customer Content due solely to acts or omissions of Customer.

3.9.3. Customer is responsible for ensuring that Customer Content does not violate the Agreement, third-party intellectual property rights, or applicable laws and regulations (including illegal, harmful, offensive, defamatory, misleading, obscene, or abusive material), and allows for the processing of the Customer Content. Customers will take reasonable steps to identify and promptly remove any such Customer Content.

Todium Group Master Service Agreement

3.9.4. Customer represents and warrants that Customer Content will not include any Sensitive Personal Information, and that all collection, transfer, and use of any Personal Data in connection with the Products and Services will comply with all applicable privacy laws, regulations, self-regulatory guidelines (including proper disclosure via Customer's privacy policy and receipt of all consents required to process any Personal Data with the Products and Services).

4. Working Together and Performance.

4.1. Best Efforts. We will use our best efforts to ensure that your campaign is successful. To drive campaign success and relevancy, we may sometimes re-allocate spending between the Services in your Contract. Topodium will NOT make any changes to the Services that could result in additional fees, obligations or liabilities for you without your written approval (email accepted). All Services will be performed with reasonable care and skill in accordance with industry standards and will conform in all material respects to the Contract and any specification documents we provide. We will use our best efforts to ensure that your campaigns meet any applicable performance metrics stated in the Contract ("Metrics"). We are only responsible for Metrics that are captured in the Contract in writing. If we fail to deliver to the Metrics specified in the Contract, you may choose to (i) extend the term of the Contract until the Metrics are met; (ii) work with us to develop a new approach and adjust the Contract accordingly; or (iii) terminate the underperforming Services in your Contract and receive a prorated refund of the fees commensurate to the underperformance. These are the only remedies available to you if we fail to meet the Metrics specified in your Contract.

4.2. Customer Input. Customer is responsible for providing us with any Customer Materials, Third-Party Materials, feedback, instructions, technical information and other resources and support that we reasonably request from you to facilitate the Services ("Customer Input"). Customer is responsible for ensuring that Customer Input is accurate, complete, and provided in time for us to meet any delivery dates or milestones. Topodium is not responsible for delays, errors or issues caused by your failure to provide us with complete, accurate, and timely Customer Input. Be aware that delays or errors in your Customer Input could impact the price or performance timelines of certain Services in your Contract. OUR ACCEPTANCE OR USE OF YOUR CUSTOMER INPUT DOES NOT SERVE AS A GUARANTEE THAT SUCH CUSTOMER INPUT CONFORMS WITH APPLICABLE LAWS, RULES, REGULATIONS OR ANY PARTNER POLICIES.

Todium Group Master Service Agreement

4.3. Timing. Any target dates in Agreement are intended as an estimate; they are not a binding commitment unless expressly stated in writing as such in the Sales Order or other written documents and agreed upon by both Topodium and Customer. Actual start dates may vary based on a variety of factors. We are not responsible for delays in performance caused by factors beyond our control, including platform unavailability, network errors, the technical issues of our partners, or Customer delays in providing required materials. Topodium will, however, work with you to ensure that the Services are performed as soon as reasonably possible after such issues are resolved. Your Topodium representative will communicate with you regarding the exact timing for delivery of Services.

4.4 Change Requests. If you want to make changes to your Agreement, you must make a written request (email accepted) to your Topodium representative. Topodium will use our best efforts to comply with a reasonable Change Request within thirty (30) days of receipt. **BE AWARE THAT A CHANGE REQUEST MAY IMPACT THE FEES, TARGET START DATES OR EFFECTIVENESS OF SERVICES IN YOUR AGREEMENT.** You should ask your Topodium representative how your Change Request might affect your obligations or the overall success of your campaign. If you choose to proceed with your Change Request, you waive all claims against us for failure to make best efforts or failure to achieve Metrics relating to the impacted Services. **BE AWARE THAT CERTAIN SERVICES MAY BE SUBJECT TO MINIMUM COMMITMENTS IN DURATION, VOLUME OR SPEND, AND YOU WILL REMAIN RESPONSIBLE FOR THE MINIMUM COMMITMENT VALUE OF SUCH SERVICES EVEN IF YOU ELECT TO CANCEL THE SERVICE OR REDUCE ITS VOLUME OR DURATION.**

4.5. Errors. If Topodium commits a material error when performing the Services, we will make a good faith effort to correct it. This may include reperforming the impacted Services, offering you a credit for additional services, or providing you a pro-rata refund based on the portion of the Service impacted by the error. Topodium is NOT responsible for errors caused by factors beyond our control, including the errors of our Partners or errors in your Customer Input.

4.6. No Guarantees. Topodium does not guarantee any level of impressions, views, clicks, likes or engagement unless it is expressly stated as a Metric in your Agreement. **WE DO NOT GUARANTEE ANY SPECIFIC OUTCOMES FROM THE SERVICE EXCEPT FOR THE METRICS SPECIFIED IN THE CONTRACT.** Topodium does not guarantee that your Promotional Materials will appear in any specific position on any search engine, third-party website/app, or social media platform. We do not guarantee any increase in sales revenue associated with the Services.

Todium Group Master Service Agreement

5. Website Service Levels.

5.1. Hosting. Topodium provides a reactive hosting service for all websites and offer a 99.9% uptime. Topodium does not constantly check the websites we host to ensure they are functioning correctly as routine use, maintenance and software updates can affect website functions. Topodium can monitor the hosting up-time and down-time; however, it is the responsibility of the Customer to ensure their website is operating as it should. 'Always on' and 'managed hosting services' support can be provided and can be quoted on an individual basis.

5.2. Uptime. Topodium guarantees that the Customer's website, which is hosted on a secure third party network and server in Europe, will be available at 99.9% of the time, excluding maintenance, as defined below. Network downtime is defined as the Customer's hosted website being unable to be viewed or accessed through the Internet, caused by failure of network equipment managed and owned by Topodium, excluding scheduled or emergency maintenance. Maintenance means scheduled maintenance or emergency maintenance. Scheduled Maintenance means any maintenance in the Topodium or partner network/servers of which the Customer is notified at least 5 days in advance. Emergency maintenance means any maintenance in the Topodium or partner network/servers that: (a) in Topodium's sole discretion, is necessary to avoid an immediate threat to the networks/servers or Customer's server and (b) of which Customer is notified.

5.3. WordPress. For those websites hosted by Topodium which have been built (or part-built) upon the WordPress platform, please be aware that WordPress irregularly makes updates which means that Topodium may need to make updates to your site so that your website continues to work upon our servers. It is not known how many times per annum that WordPress makes updates, however, we estimate between 4 – 8 updates per year. The more functionality a WordPress site has the more time needed to make updates to that website. Topodium works with our partner reactively for such updates – we respond should we be informed of a critical change (by WordPress) or should the Customer point out an error in functionality. Please note, Topodium cannot be held responsible for any functionality failure caused directly by an update to WordPress or a plug-in of which we were not made aware. WordPress updates are not always considered to be standard maintenance of a website. Topodium will notify the Customer where WordPress updates are not within their original project scope.

5.4. Design and Build. Topodium will present the number of concepts defined in the Sales Order. Designs will be supported with a strategic and creative rationale. Recommendation will be provided to the Customer as requested. Creative execution will adhere to the Customer's brand (and guidelines where available) where appropriate. Topodium will attend presentations, discussions and be available on conference calls where feasible. A review of each Customer will take place on a quarterly basis.

Todium Group Master Service Agreement

6. Fees, Payments, & Taxes.

6.1. Payments and Fees. Customers must pay the Fees according to the payment terms in the Sales Order in the currency stated. All invoices will only be delivered electronically using the billing and contact information provided by Customer. Customer agrees to provide clear indication with its payment as to which invoices (or portions thereof) the payment should be applied. Alternatively, these payment details can be emailed to Billing@TopodiumGroup.com.

6.2. Failure to Pay. If a Customer fails to pay any amount due under the Agreement according to the payment terms in the Sales Order, Topodium will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice, Topodium may, in its sole discretion, suspend or restrict the Products and Services. Topodium may charge interest at a monthly rate equal to the lesser of 1% per month or the maximum rate permitted by applicable law on any overdue Fees, from the due date until the date the overdue amount (plus applicable interest) is paid in full.

6.3. Disputes. If Customer believes that Topodium has incorrectly billed Customer, Customer must contact Topodium in writing within 30 days of the invoice date, specifying the error. Customer is not entitled to offset or deduct any amounts from Topodium's invoice unless (i) Customer has properly notified Topodium of the dispute, and (ii) the dispute is made in good faith.

6.4. Taxes. Customer is responsible for paying all applicable Taxes. If Topodium determines that Topodium has the legal obligation to pay or collect Taxes, Topodium will add such Taxes to the applicable invoice and Customer will be obligated to pay such Taxes, unless Customer provides Topodium with a valid tax exemption certificate from the appropriate taxing authority. If a taxing authority subsequently pursues Topodium for unpaid Taxes for which Customer is responsible under the Agreement and which Customer did not pay to Topodium, Topodium may invoice Customer and Customer will be obligated to pay such Taxes to Topodium or directly to the taxing authority, plus all applicable interest, penalties, and charges.

7. Intellectual Property Indemnification.

7.1. Topodium Obligations. Topodium will (i) defend at its expense, and (ii) pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Topodium) for third-party Claims alleging that the Products and Services directly infringe the third party's patent, copyright, or trademark; or Topodium has misappropriated the third party's trade secret.

7.2. Customer Obligations. Customer will (i) defend at its expense, and (ii) pay any damages finally awarded by a court of competent jurisdiction (or settlement amounts agreed to in writing by Customer) for third-party Claims alleging that the Customer Content infringes the third party's patent, copyright, trademark, or other intellectual property right.

Todium Group Master Service Agreement

7.3. Conditions. The indemnification obligations under this article are subject to the indemnified Party (i) promptly giving written notice of the Claim to the indemnifying Party, (ii) giving the indemnifying party sole control of the defense, negotiation, and settlement of the indemnified portion of the Claim, (iii) providing the indemnifying Party with all reasonable assistance required to effectively defend the Claim.

7.4. IP Exceptions.

7.4.1. Topodium will not have any indemnification obligation or liability regarding a third-party intellectual property infringement Claim when the infringement was caused by: (i) a combination of the Products and Services with any component not supplied by Topodium, or with a third-party component activated at the sole risk of Customer; (ii) unauthorized alteration or modification of the Products and Services by anyone other than Topodium, or (iii) failure by Customer to use the latest version of the Products and Services as requested by Topodium.

7.4.2. Customer will not have any indemnification obligations or liability regarding a third-party intellectual property infringement Claim when the infringement was caused by any unauthorized combination of Customer Content with any third-party component not provided by the Customer so long as the non-combined or non-altered Customer Content as such is not infringing. 5.5. IP Remedies. In the defense or settlement of any third-party intellectual property infringement Claim, Topodium may, at its sole option and expense: (i) procure for Customer a license to continue using the Products and Services in the same manner as anticipated by the Agreement; (ii) replace or modify the allegedly infringing Products and Services to avoid the infringement at no additional cost to Customer; or (iii) terminate Customer's license and access to the Products and Services (or its infringing part) and refund any prepaid unused Fees as of the date of termination. The remedies and obligations in this section of the Agreement are Topodium's sole and exclusive remedies and liability regarding the subject matter giving rise to any third-party intellectual property infringement Claim.

8. Limitation of Liability.

8.1. Disclaimer of Indirect Damages. To the extent permitted by law, neither Party will, under any circumstances, be liable to the other Party or to any third party for indirect, consequential, incidental, special, or exemplary damages, or for lost profits or loss of business arising out of or related to the Agreement, even if the Party is apprised of the likelihood of such damages occurring.

Todium Group Master Service Agreement

8.2. Cap on Liability. To the extent permitted by law, under no circumstances will either Party's total aggregate liability of all kinds arising out of or related to the Agreement, regardless of the forum and regardless of whether any action or claim is based on contract, tort (including negligence), or otherwise, exceed the total amounts paid or payable by Customer under the Agreement during the 12 months immediately preceding the date of the event giving rise to the Claim. The foregoing limitations in Sections 6.1 and 6.2 do not apply to claims based on: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; (iii) either Party's intellectual property indemnification obligations in Section 5; (iv) the liability of either Party for misappropriating the other Party's intellectual property; (v) Topodium's data privacy remediation obligations in Section 3.4; (vi) Customer's payment obligations.

8.3. Third-Party Products and Third-Party Materials. The Agreement does not govern Customer's use of Third-Party Products used in connection with the Products and Services. Third-Party Products are governed solely by the terms and conditions between Customer and the Third-Party Product developer or provider. Topodium does not make any commitments or claims regarding security, confidentiality, or performance of any Third-Party Products, and specifically disclaims any liability regarding Third-Party Products. Customer acknowledges and accepts that Third-Party Products: (i) are activated and used at the sole risk of Customer; (ii) are not warranted, supported, or endorsed by Topodium; and (iii) may degrade the performance the Products and Services beyond Topodium's reasonable control. To the extent any Third-Party Product accesses, processes, or gathers Personal Data, the applicable third party is Customer's direct data processor, and is not acting as a data sub-processor of Topodium. Depending on the Services, Topodium may need to incorporate some third-party intellectual property ("Third-Party Materials") into the Promotional Materials. Some common examples of Third-Party Materials include stock-art images, "influencer content," and website widgets. Be aware that the use of Third-Party Materials may be subject to additional fees and Partner Policies (as defined in Section 6 below). In some instances, we will acquire the licenses needed for the use of Third-Party Materials on your behalf. In others, you will need to obtain such licenses directly from the Third-Party Material's provider. Your Topodium representative will notify you of any Third-Party Materials to be used in the Promotional Materials if such use could impact your rights in the final Promotional Materials or your obligations to Topodium or any third party.

9. Term and Termination.

9.1. Term. The Subscription Term is set forth in the applicable Sales Order. This MSA will apply to each Sales Order in which it is incorporated until the expiration of the Subscription Term, as modified by any applicable extension or early termination.

9.2. Termination for Cause.

9.2.1. If either Party commits a material breach of the Agreement, the non-breaching Party may give written notice describing the nature and basis of the breach to the breaching Party. If the breach is not cured within 30 days of the notice date, the non-breaching Party may immediately terminate the Agreement, in whole or in part.

Todium Group Master Service Agreement

9.2.2. In the event a Party learns the other Party is subject to an insolvency event (e.g. failing to pay its obligations as they arise, being declared bankrupt, or commencing proceedings under any law providing debt relief to the Party), the Party that is not the subject of the insolvency event may terminate the Agreement immediately upon notice to the Party that is the subject of the insolvency event.

9.3. Suspension. Topodium may, without limitation to any other rights or remedies, temporarily suspend access to the Products and Services if Customer's use of Products and Services poses a security risk or may adversely impact Topodium's systems.

9.4. Effect of Termination or Expiration.

9.4.1. All access to and use of the Products and Services must immediately cease upon termination or expiration of the Sales Order.

9.4.2. If the Agreement is terminated for any reason other than Topodium's uncured material breach, Customer will be responsible for Fees covering the remainder of the then-current term.

9.4.3. If the Agreement is terminated for Topodium's uncured material breach, Topodium will provide Customer a pro rata refund of all prepaid but unused Fees.

9.4.4. Each Party will return to the other Party or destroy all materials containing or reflecting any of the other Party's Confidential Information. Customer Content will be purged from Topodium systems in accordance with its internal data retention policies and procedures.

9.4.5. Topodium is not obligated to retain any Customer Content for longer than 30 calendar days after the applicable Subscription Term. During such period, Customer will be able to retrieve all Customer Content in its native format, and analytics relating to the use of the Products and Services.

9.5. Survival. The termination or expiration of the Agreement will not affect any provisions of the Agreement which by their nature survive termination or expiration, including the provisions that deal with the following subject matters: definitions, payment obligations, confidentiality, term and termination, effect of termination, intellectual property, license compliance, limitation of liability, privacy, content monitoring, and the "General Provisions" section in this MSA.

Todium Group Master Service Agreement

10. Warranties, Disclaimers, and Remedies.

10.1. Products and Services. Topodium warrants that the Products and Services as delivered to Customer will materially conform to the Documentation and specifications set forth in the applicable Sales Order. Topodium further warrants that Topodium will perform Professional Services in a professional and workmanlike manner. Customers must notify Topodium of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears.

10.2. Remedies. To the extent permitted by law, Customer's sole and exclusive remedy arising out of or in connection with a breach of warranty is limited to replacement of the non-conforming Products and Services or re-performance of the Professional Service, as applicable. If Topodium's sole discretion replacement or re-performance is not commercially reasonable, Topodium may terminate the applicable portion of the Sales Order and provide a refund of any prepaid unused Fees for the applicable Product and Services.

10.3. Implied Warranties. To the maximum extent permitted by law and except for the express warranties in this section, Topodium provides the Products and Services on an "as-is" basis. Topodium disclaims and makes no other representation or warranty of any kind, express, implied, or statutory (including claims about merchantability, title, non-infringement, accuracy, or fitness for a particular purpose). Customer acknowledges that Topodium does not control and Topodium is not responsible for any interruptions, delays, cancellations, delivery failures, data loss, content corruption, packet loss, or other damage arising from (i) Customer equipment or the transfer of data over communication networks, facilities, and devices (including the Internet); (ii) limitations, interruptions, delays, cancellations, and other problems inherent in the use of such communications networks, facilities, and devices not within Topodium's control; and (iii) Customer's failure to properly install appropriate security updates and patches to software and programs on networks and devices within Customer's control.

11. Confidentiality.

11.1. Use and Protection. The receiving Party will only use Confidential Information for the purposes of the Agreement and will not reproduce, disseminate, or disclose Confidential Information to any person, except to its employees and authorized representatives (e.g. temporary employees, consultants, and contractors) who need to know the Confidential Information for the purposes of the Agreement and are bound by confidentiality obligations at least as restrictive as those in this section. The receiving Party will treat Confidential Information with the same degree of care as it treats its own information of similar sensitivity, but never with less than reasonable care. The obligations in this section survive for three (3) years following expiration or termination of the Agreement. Any Confidential Information retained in back-up media will continue to be subject to this section until it is deleted.

Todium Group Master Service Agreement

11.2. Permitted Disclosure. The receiving Party may disclose Confidential Information: (i) as approved in a writing signed by the disclosing Party; (ii) as necessary to comply with any law or valid order of a court or other governmental body; or (iii) as necessary to establish the rights of either Party, but in the case of (ii) and (iii), only if the receiving Party promptly notifies the disclosing Party of the details of the required disclosure and gives the disclosing Party all assistance reasonably required by the disclosing Party to enable the disclosing Party to take available steps to prevent the disclosure or to ensure that disclosure occurs subject to an appropriate obligation of confidence.

12. General Provisions.

12.1. Relationship. Topodium will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of the Agreement. The Agreement does not create a partnership, franchise, joint venture, agency, or fiduciary relationship between the Parties.

12.2. Notices. Any notice given under the Agreement must be in writing and delivered by email to the following addresses (or alternative addresses provided in writing by each Party): Legal.Notifications@TopodiumGroup.com (to Topodium); the primary billing email address set forth in the Sales Order (to Customer). All notices will be deemed to have been delivered the second business day after sending by email.

12.3. Waiver, Modification. No failure or delay by either Party in exercising any right under the Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies. The Agreement may not be modified nor any rights under it waived, in whole or in part, except in writing signed by the Parties.

12.4. Severability. If any provision of the Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or invalid, the provision may be interpreted by the court so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining portions of the Agreement will remain in full force and effect.

12.5. Independent Allocations of Risk. Each provision of the Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is to allocate the risks of the Agreement between the Parties. This allocation is reflected in the pricing offered by Topodium to Customer and is an essential element of the basis of the bargain between the Parties.

Todium Group Master Service Agreement

12.6. Assignment. Neither Party may assign any of its rights or obligations under the Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either Party may assign the Agreement in its entirety (including all rights and obligations) without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Any purported assignment in violation of this section will be null and void. Subject to the foregoing, the Agreement will bind and insure to the benefit of the Parties, their respective successors and permitted assigns.

12.7. Force Majeure. Neither Party will be liable for, or be considered to be in breach of the Agreement on account of any delay or failure to perform as required by the Agreement as a result of any unforeseeable or exceptional situation beyond its reasonable control, so long as the non-performing Party (i) did not cause such situation by its own negligent acts or omissions, and (ii) exercised all due diligence and used commercially reasonable efforts to avoid such situation and mitigate the impact.

12.8. No Third-Party Beneficiaries. There are no third-party beneficiaries to the Agreement, including, without limitation, Authorized Users.

12.9. Entire Agreement. The Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter.

12.10. Customer's Purchase Order. Any terms or conditions in Customer's purchase order or any other related documents submitted by or on behalf of Customer to Topodium do not form part of the Agreement and are void, unless otherwise expressly agreed in writing and signed by the Parties.

12.11. Counterparts. The Agreement (or a component) may be executed in counterparts, which taken together will form one legal instrument.

12.12. Anti-Corruption and Compliance. Customer acknowledges and agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Topodium's employees or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Topodium of such violation. Each Party agrees to comply with applicable trade control laws and regulations. For US Government end users only: Customers acknowledge that Products and Services are "Commercial Item(s)," as that term is defined at 48 C.F.R. section 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as the terms are used in 48 C.F.R. section 12.212 or 48 C.F.R. section 227.7202, as applicable.

Todium Group Master Service Agreement

12.13. Governing Law, Venue, and Disputes. The Agreement is governed by and construed under the laws of the United Kingdom (for Agreements with Topodium Group Ltd) or the laws of the state of Colorado (for Agreements with Topodium Group, LLC), without regard to any conflict of law rules or principles, and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. The Parties irrevocably submit to the exclusive jurisdiction of the courts of competent jurisdiction in London, England (for Agreements with Topodium Group Ltd) or Denver County, Colorado (for Agreements with Topodium Group, LLC). Parties will first try to settle any dispute between them amicably in good-faith negotiations prior to seeking enforcement from a court.

13. Definitions.

13.1. “Affiliate(s)” means, for a Party, any other entity that controls, is controlled by, or under common control with the Party. For the purposes of this definition, the term “control” means the direct or indirect power to direct the affairs of an entity through at least 50% of the shares, voting rights, participation, or economic interest in such entity.

13.2. “Agreement” means the applicable Sales Order and this MSA (including all exhibits, addenda, and amendments which are properly attached or incorporated by reference).

13.3. “Authorized User(s)” means any individual or entity for whom a unique username and password has been created under Customer’s Topodium account. Authorized Users may include employees of Customer or its Affiliates or other third parties, so long as they are not a direct competitor of Topodium.

13.4. “Claim” means a claim, demand, action, or legal proceeding filed against a Party.

13.5. “Confidential Information” non-public or proprietary information about the disclosing Party’s business (including copies, summaries, and extracts) which is (i) disclosed in tangible form and is identified in writing as confidential at the time of disclosure, (ii) disclosed in non-tangible form that is unambiguously identified as confidential at the time of disclosure, or (iii) disclosed in such a manner, or of such a nature, that a reasonable person under the same circumstances would clearly understand the information to be confidential. Confidential Information of Customers includes Customer Content. Confidential Information does not include information that (i) is or becomes generally publicly available through no fault of the receiving Party, (ii) was known to the receiving Party, free of any confidentiality obligations, before it’s disclosure by the disclosing Party, (iii) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party, or (iv) is independently developed by the receiving Party without use of or reference to the Confidential Information, as demonstrated by documents and other competent evidence in the receiving Party’s possession.

Todium Group Master Service Agreement

13.6. "Customer Content" means all files, content (including audio, video, text, or images), and data (including Personal Data) belonging to or controlled by the Customer, which is uploaded into the Products and Services or otherwise provided to Topodium for processing pursuant to the Agreement.

13.7. "Customer" means the entity entering the Agreement with Topodium and identified in the Sales Order, including, as applicable, Customer's Affiliates.

13.8. "Deliverables" means any Promotional Materials that Topodium develops specifically for the Customer pursuant to the Contract. Deliverables may include images, websites, artwork, designs, code, text, works of authorship, and other works eligible for intellectual property protection. DELIVERABLES DO NOT INCLUDE "Topodium Materials" AND "Third Party Materials" as each term is defined in below.

13.9. "Documentation" means written technical and usage documentation about the Products and Services published by Topodium.

13.10. "Fees" means the fees payable for the Products and Services specified in the Sales Order.

13.11. "Party" means Topodium or Customer, as applicable.

13.12. "Personal Data" means information, taken alone or in combination with other data, which may be used to identify, directly or indirectly, a specific individual.

13.13. "Products and Services" means the Topodium marketing, technology, software, and Professional Services (including any Deliverables) set out in the Sales Order.

13.14. "Professional Services" means any consulting, training, implementation, or technical services provided by Topodium to Customer, as set out in the Sales Order.

13.15. "Promotional Materials" means the advertisements, content, creatives and other campaign materials used in the Services, including all of the individual components thereof (such as images, graphics, photos, text copy, website designs, code, branding features, video elements, and other intellectual property components).

13.16. "Sales Order" means the sales order form, statement of work, or other written document detailing the Products and Services being procured by Customer, and which references this MSA.

Todium Group Master Service Agreement

13.17. “Sensitive Personal Information” means information of a sensitive nature, including without limitation, personal financial and financial account information, sexual orientation, personal medical or health information, personal information of children under 13, personal education records, and social security, national identity, national insurance, and similar personal identifiers. Where specific privacy or data protection laws apply (e.g. the General Data Protection Regulation (GDPR), the Gramm-Leach-Bliley Act (GLB), Health Insurance Portability and Accountability Act of 1996 (HIPAA), US Children’s Online Privacy Protection Act (COPPA), Family Educational Rights and Privacy Act (FERPA)) and those laws define Sensitive Personal Information or a similar term (e.g. “Sensitive Personal Data” or “Protected Health Information”), Sensitive Personal Information will adopt the meaning from the applicable law or regulation.

13.18. “Topodium” means one the following: (i) Topodium Group, LLC with offices in Denver, Colorado, US (for customers located in North America); or (ii) Topodium Group Ltd with offices in England (for customers located anywhere else in the world).

13.19. “Topodium Privacy Policy” means the privacy policy maintained at www.TopodiumGroup.com/privacy-policy, as updated from time to time.

13.20 Data Addendum. Services that involve the exchange of sensitive personally identifiable information or the processing of personal data belonging to data subjects in the European Economic Area will require an additional data addendum (a “Data Addendum”). Ask your Company representative if you need a Data Addendum for your Services. Any Data Addendum will be incorporated into these Terms by reference. In the event of a conflict between these Terms and the Data Addendum, the Data Addendum will control.

13.21. “Subscription Term” means the duration of the subscription for Products and Services, as stated in the Sales Order, and modified by any applicable extension or early termination.

13.22. “Taxes” means any local, state, provincial, federal, or foreign taxes (e.g., value-added, sales, or use taxes), or other governmental charges or duties resulting from the Agreement, excluding income taxes on Topodium’s revenue.

13.23. “Third-Party Product(s)” means any product, platform, or service not developed by Topodium which enhances, manipulates, integrates with, interacts with, interoperates with, or adds functionality to the Products and Services or Customer Content. Third-Party Products may include public APIs, stand-alone software, or hardware. ThirdParty Products may be obtained directly from the developer or through a reseller. Topodium may act as a reseller for some Third-Party Products.