

Open Blend Service Terms & Conditions

Please read these Terms and Conditions carefully. All contracts that OB may enter into from time to time for the provision of the Services shall be governed by these Terms and Conditions. By executing an Order Form, the Customer accepts these Terms and Conditions.

1. Definitions

1.1. In these Terms and Conditions, except to the extent expressly provided otherwise:

Access Credentials means the usernames, passwords and other credentials enabling access to the Subscription Services, including both access credentials for the User Interface and access credentials for the API;

Agreement means a contract between the parties created by the Customer accepting the terms of an Order Form incorporating these Terms and Conditions, including any amendments to that contract from time to time;

API means the application programming interface for the Subscription Services defined by OB and made available by OB to the Customer;

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

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

Charges means the amounts specified in the Order Form for the Services, any amounts due in respect of an increase in licenced Users and any other amounts that OB has a right to charge the Customer under these Terms and Conditions;

Confidential Information means any information disclosed (whether disclosed in writing, orally or otherwise) by one party to the other that is marked or described as "confidential" or should have been reasonably understood by the other party at the time of disclosure to be confidential, and the terms and conditions of the Agreement; in the case of the Customer, the Confidential Information includes the Customer Data. Confidential Information does not include:

- a) information that is publicly known (other than through a breach of an obligation of confidence);
- b) information that is in possession of the other party prior to disclosure without an obligation of confidence;
- c) information that is received by the recipient from an independent third party who has a right to disclose the relevant information;

Contract Year means a period of 12 months beginning on the day the First Contract Year commences and on each anniversary of the day the First Contract Year commences;

controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation

Customer means the person or entity identified as such in the Customer details section of the Order Form;

Customer Data means all data, works and materials uploaded to or stored on the Subscription Services by the Customer; transmitted by the Subscription Services at the instigation of the Customer; supplied by the Customer to OB for uploading to, transmission by or storage on the Subscription Services; or generated by the Subscription Services as a result of the use of the Subscription Services by the Customer but excludes Use Data;

Customer Personal Data means personal data processed by OB on behalf of the Customer in the provision of the Services, but excluding personal data OB processes as controller, as described in more detail in Clause 5 and the Data Processing Addendum;

Data Processing Addendum means the document at Schedule 2 setting out the detail of the processing of Customer Personal Data in connection with the Agreement;

Data Protection Legislation means the laws to which the Customer or OB are subject which relate to the protection of personal data;

Documentation means the documentation for the Services produced by OB and delivered or made available online or within the Services by OB to the Customer;

First Contract Year means the 12 month period commencing on the day specified in the Order Form;

Intellectual Property Rights means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets,

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know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

Initial Term means the term stated in the Order Form for the provision of the Subscription Services;

OB means Open Blend Method Limited, a private limited company incorporated in England and Wales (registered company number 09283273) having its registered office at Camburgh House, 27 New Dover Rd, Canterbury, CT1 3DN;

Order Form means an order form issued by OB and accepted by the Customer for the provision of the Services, in each case incorporating these Terms and Conditions by reference;

Professional Services means the set-up, integration and training services set out in an Order Form to assist the Customer in setting up, accessing and using the Subscription Services;

Research Content means anonymized and aggregated know-how, benchmarking data and marketing content in part derived from Customer Data;

Services means the services that OB provides to the Customer under the Agreement, including the Subscription Services, the Support Services and the Professional Services;

Start Date means the date on which the Subscription Services will be made available for use by the Customer, as set out in the Order Form;

Subscription Services means the OB software as a service application for employee performance management which will be made available by OB to the Customer via the internet in accordance with an Order Form and these Terms and Conditions;

Support Services means support provided by OB to the Customer in relation to its use of the Subscription Services as described in Schedule 1;

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

Terms and Conditions means the main body of these Terms and Conditions and the Schedules;

Third Party Tools has the meaning given to it in Clause 5.7;

Use Data means the data collected and used by OB in accordance with Clause 5.2.1;

User Interface means the interface for the Subscription Services designed to allow individual human users to access and use the Subscription Services; and

Users means the officers, employees, agents and subcontractors of the Customer that use the Subscription Services with the authority of the Customer or by means of the Access Credentials.

- 1.2. In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to that statute or statutory provision as modified, consolidated and/or re-enacted from time to time and any subordinate legislation made under that statute or statutory provision.
- 1.3. The Clause headings do not affect the interpretation of these Terms and Conditions.
- 1.4. In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

2. Term and contract formation

- 2.1. The Agreement shall come into force on the date the Customer signs and returns an Order Form to OB (whether signed electronically or by hand) and shall continue in force until terminated in accordance with the provisions of Clause 13 or any other provision of these Terms and Conditions.
- 2.2. Unless the parties expressly agree otherwise in writing, each Order Form shall create a distinct contract under these Terms and Conditions.
- 2.3. Any contract formed by OB and the Customer will be on the terms of this Agreement to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). Any variation to this Agreement and any representations about the Services shall have no effect unless expressly agreed in writing and signed by duly authorised signatories of OB and the Customer.

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2.4. In the event of any conflict between the documents forming the Agreement, they shall be interpreted in the following order of precedence:

- The terms contained in an Order Form; and
- The terms and conditions set out in these Terms and Conditions.

3. Subscription Services and Support Services

- 3.1. OB shall provide to the Customer on or before the Start Date the Access Credentials necessary to enable the Customer to access and use the Subscription Services.
- 3.2. OB hereby grants to the Customer a worldwide, non-exclusive licence for Users to use the Subscription Services by means of the User Interface and the API for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 3.3. The licence granted by OB to the Customer under Clause 3.2 is subject to the following limitations:
 - 3.3.1. the User Interface may only be used by Users;
 - 3.3.2. the API may only be used by an application or applications approved by OB in writing and controlled by the Customer and access granted via the API may only be granted to Users; and
 - 3.3.3. the User Interface and access via the API must not be used at any point in time by more than the number of Users for which the Customer has purchased user licences, provided that the Customer may reassign User licences from one User to another and may add to its total number of User licences in accordance with the tools available within the Subscription Services.
- 3.4. Except to the extent expressly permitted in writing by OB or required by law on a non-excludable basis, the licence granted by OB to the Customer under Clause 3.2 is subject to the following prohibitions:
 - 3.4.1. the Customer must not sub-license its right to access and use the Subscription Services;
 - 3.4.2. the Customer must not permit any unauthorised person or application to access or use the Subscription Services;
 - 3.4.3. the Customer must not use the Subscription Services to provide services to third parties;
 - 3.4.4. the Customer must not make any alteration to the Subscription Services, other than as permitted by the Subscription Services; and
 - 3.4.5. the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Subscription Services.
- 3.5. The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Subscription Services by means of the Access Credentials.
- 3.6. The Customer must not use the Subscription Services, and must ensure that all Users do not use the Subscription Services:
 - 3.6.1. in any way that causes, or may cause, damage to the Subscription Services or may impair the availability or accessibility of the Subscription Services;
 - 3.6.2. in any way that uses excessive service resources and as a result is liable to cause a material degradation in the services provided by OB to its other customers using the Subscription Services; and the Customer acknowledges that OB may use reasonable technical measures to limit the use of Subscription Services by the Customer for the purpose of assuring services to its customers generally;
 - 3.6.3. in any way that is unlawful, illegal, fraudulent or harmful; or
 - 3.6.4. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.7. The Customer has no right to access the software code (including object code, intermediate code and source code) of the Subscription Services, either during or after the Term.
- 3.8. OB shall maintain the availability of the Subscription Services, maintain the hardware and software supporting the Subscription Services (including the application of updates and upgrades) and provide Support Services to the Customer all in accordance with the provisions set out in Schedule 1.

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- 3.9. OB may suspend the provision of the Subscription Services if any amount due to be paid by the Customer to OB under the Agreement is overdue, and OB has given at least 30 days' written notice to the Customer of its intention to suspend the Subscription Services on this basis.

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4. Professional Services

- 4.1. OB shall provide ordered Professional Services to the Customer, in accordance with the timetable set out in the Order Form or, if no timetable is set out, within a reasonable period of time.
- 4.2. The Customer acknowledges that a delay in the Customer performing its obligations under the Agreement may result in a delay in the performance of the Professional Services and that OB shall not be liable to the Customer in respect of any failure to meet the Professional Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under the Agreement.

5. Customer Data and Data Processing

- 5.1. Subject to clause 5.2, the Customer owns all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data, including ensuring that it is permitted to provide the Customer Data to OB for processing as contemplated by this Agreement. The Customer hereby grants to OB a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent required for the performance of OB's obligations and the exercise of OB's rights under the Agreement.
- 5.2. The Customer hereby grants to OB the right to:
 - 5.2.1. track and analyse Users' use of the Services and interaction with other applications for the purposes of application security, for assessing performance of and optimizing and improving the Services and for providing Support Services to the Customer (**Use Data**);
 - 5.2.2. copy, reproduce, store, adapt, edit and translate the Customer Data to the extent reasonably required for the purposes of undertaking research into employee engagement and wellbeing in order to produce Research Content; and
 - 5.2.3. send Users product information about the Subscription Services and ask Users to complete occasional surveys about their use of the Services to inform improvement and development of the Services.
- 5.3. To the extent OB processes personal data to manage the Customer's account and relationship with OB, the Customer acts as a controller and OB acts as an independent controller, not a joint controller with the Customer. OB's [Website Privacy Notice](#) applies to all processing of such personal data that it undertakes as controller.
- 5.4. To the extent OB processes personal data in carrying out the Services, the parties agree that the Customer is the controller of the personal data and OB is a processor. OB will process that personal data in accordance with the provisions of the Data Processing Addendum set out in Schedule 2.
- 5.5. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5.5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.6. OB shall back-up, archive and recover Customer Data and implement security measures to protect Customer Data as set out in Schedule 3.
- 5.7. The Subscription Services provide certain capabilities for the Customer to interface the Subscription Services with third party tools (eg Teams, Slack, SMS) such that the Subscription Services will send data and communications to Users via the Customer's third party applications (**Third Party Tools**). If the Customer chooses to implement the integration of Third Party Tools with the Subscription Services:
 - 5.7.1 the Customer is responsible for ensuring that it has all rights and permissions in place to both utilize such Third Party Tools and with respect to Users;
 - 5.7.2 the Customer authorizes and instructs OB to transfer Customer Data to the implemented Third Party Tools;
 - 5.7.3 the Customer is responsible for the transfer of Customer Data via Third Party Tools, including with respect to any unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to Customer Data and OB shall have no liability or obligation whatsoever in relation to the distribution by, use of, or interaction of Users with, any such Third Party Tool.
- 5.8. OB cannot ensure nor guarantee continued interoperability or availability of Third Party Tools. OB does not endorse or approve any Third Party Tool except to the extent that OB makes available a plug-in to utilize such application. OB makes

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no warranty or representation in respect of the functionality of any Third Party Tool made available via the Subscription Services.

6. OB Property

- 6.1. As between the parties, OB exclusively owns and reserves all Intellectual Property Rights in and to (i) the Services and the Documentation; (ii) the OB Confidential Information; (iii) any Research Content; and (iv) any and all improvements, modifications, translations and derivative works of any of the foregoing.
- 6.2. Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Professional Services by OB shall be the exclusive property of OB, provided that the Customer shall have the right to use such Intellectual Property Rights to the extent necessary to use and enjoy the benefits of the Subscription Services pursuant to the licence granted in Clause 3.2.
- 6.3. If OB reasonably determines, or any third party alleges, that the use of the Subscription Services by the Customer in accordance with the Agreement infringes any person's Intellectual Property Rights, OB may at its own cost and expense:
 - 6.3.1 modify the Subscription Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - 6.3.2 procure for the Customer the right to use the Subscription Services in accordance with the Agreement.

7 Charges

- 7.1 The Charges for the Professional Services are set out in the Order Form and are due as stated in the Order Form.
- 7.2 The Charges for the Subscription Services in the Initial Term are set out in the Order Form and are due annually, on the Start Date for the First Contract Year and on the commencement of each subsequent Contract Year in the Initial Term, unless otherwise specified in the Order Form.
- 7.3 The Charges for the Subscription Services in each Contract Year following the Initial Term shall increase by 2.0%, will be charged annually and shall be due on the date of commencement of each Contract Year. OB may increase the Charges by a different amount for a new Contract Year by giving no less than sixty (60) days' notice to the Customer and any increase shall only be effective from the date of commencement of the new Contract Year.
- 7.4 The Charges for the Subscription Services are calculated by reference to the number of purchased User licences. The Customer may purchase additional User licences mid Contract Year via the tools available in the Subscription Service. Additional Users will be charged from the 1st day of the month following the month of addition at the applicable monthly rate, pro-rated to the end of Contract Year in which they were added. Thereafter, additional Users will be charged annually at the commencement of each Contract Year.
- 7.5 If any of the Charges are based in whole or part upon the time spent by OB performing the Services, OB must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded.
- 7.6 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to OB.
- 7.7 All Charges are payable to OB within 30 days of the date of invoice issued in accordance with the terms of the Agreement by bank transfer using the payment details notified by OB to the Customer from time to time.
- 7.8 If the Customer does not pay any amount properly due to OB, OB may charge the Customer interest on the overdue amount at the rate of 5% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).

8 Confidentiality obligations

- 8.1 Each party must in respect of the Confidential Information of the other party:
 - 8.1.1 keep confidential and not disclose the Confidential Information to any person without the other party's prior written consent save as expressly permitted by this Clause 8;

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8.1.2 protect the Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and

8.1.3 not use any of the Confidential Information for any purpose other than to perform its obligations or enforce its rights under the Agreement.

8.2 Confidential Information of a party may be disclosed by the other party to that other party's affiliates, officers, employees, agents, insurers and professional advisers who have a need to know the Confidential Information, provided that the recipient is subject to binding obligations to maintain the confidentiality of the Confidential Information disclosed.

8.3 The restrictions in this Clause 8 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of OB on any recognised stock exchange.

8.4 The provisions of this Clause 8 shall continue in force indefinitely following the termination of the Agreement.

9 Publicity

9.1 OB may use the Customer's name, logo, details of its brand and any pre-approved Customer quotes for the purposes of OB presentations at seminars, symposia and national or regional professional meetings, publishing on OB's website and blog posts and in any testimonials used to promote OB's services and products.

10 Warranties

10.1 OB warrants to the Customer that:

10.1.1 it has the legal right and authority to enter into the Agreement and to perform its obligations under the Agreement;

10.1.2 it will comply with all applicable legal and regulatory requirements applying to the exercise of OB's rights and the fulfilment of OB's obligations under the Agreement; and

10.1.3 it will perform the Services with reasonable skill and care and that it has or has access to all necessary know-how, expertise and experience to perform its obligations under the Agreement.

10.2 The warranties in clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to OB's reasonable instructions, or modification or alteration of the Services by any party other than OB or OB's duly authorised contractors or agents.

10.3 OB does not warrant:

10.3.1 that the Customer's use of the Services will be uninterrupted, error-free or entirely free from security vulnerabilities; nor that the Services will meet the Customer's requirements; and

10.3.2 that the Subscription Services will be compatible with any other software or systems other than those specified as compatible with the Subscription Services and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet. The Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.4 The Customer warrants to OB that it has the legal right and authority to enter into the Agreement and to perform its obligations under the Agreement.

10.5 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

11 Indemnities

11.1 OB shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any claim by a third party that the Subscription Services infringe the Intellectual Property Rights of any person ("**OB Indemnity Event**").

11.2 The Customer must:

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- 11.2.1 upon becoming aware of an actual or potential OB Indemnity Event, notify OB;
 - 11.2.2 provide to OB all such assistance as may be reasonably requested by OB in relation to the OB Indemnity Event;
 - 11.2.3 allow OB the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the OB Indemnity Event; and
 - 11.2.4 not admit liability to any third party in connection with the OB Indemnity Event or settle any disputes or proceedings involving a third party and relating to the OB Indemnity Event without the prior written consent of OB.
- 11.3 The Customer shall indemnify and shall keep indemnified OB against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by OB and arising directly or indirectly as a result of a claim by a third party that the Customer Data infringes the Intellectual Property Rights or other legal rights of any person, or breaches the provisions of any law, statute or regulation (a "Customer Indemnity Event").
- 11.4 OB must:
- 11.4.1 upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
 - 11.4.2 provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
 - 11.4.3 allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
 - 11.4.4 not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer.

12 Limitations and exclusions of liability

- 12.1 Nothing in these Terms and Conditions will limit or exclude any liability for death or personal injury resulting from negligence or for fraud or fraudulent misrepresentation, limit any liabilities in any way that is not permitted under applicable law or exclude any liabilities that may not be excluded under applicable law.
- 12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in these Terms and Conditions are subject to Clause 12.1 and govern all liabilities arising under the Agreement or relating to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.
- 12.3 Neither party shall be liable to the other party in respect of any:
- 12.3.1 loss of profits, anticipated savings, revenue or income,;
 - 12.3.2 loss of use or production;
 - 12.3.3 loss of business, contracts or opportunities;
 - 12.3.4 special, indirect or consequential loss or damage.
- 12.4 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software, provided that this Clause 12.4 shall not protect OB unless OB has complied with its obligations to implement the security measures set out in Schedule 3.
- 12.5 Subject to Clause 12.6, the aggregate liability of each party to the other party under the Agreement shall not exceed an amount equal to the annual Charges payable by the Customer to OB in respect of the Subscription Services in the Contract Year (or, as applicable, the period from the Start Date to the end of the First Contract Year) in which the relevant liability arose, provided that the limitation of liability in this Clause 12.5 shall not apply to the Customer's obligations to pay the Charges under the Agreement.
- 12.6 The aggregate liability of each party to the other party under the Agreement in respect of any breach of:
- 12.6.1 its obligations under Clause 8 (Confidentiality) or Clause 5 and Schedule 2 (Customer Data and Data Processing) shall not exceed £100,000 (one hundred thousand pounds); and
 - 12.6.2 either party's obligation to indemnify the other under Clause 11 (Indemnities) shall be unlimited.

13 Termination

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- 13.1 Either party may terminate the Agreement at the end of the Initial Term or at the end of any Contract Year following the Initial Term by giving to the other party at least 30 days' written notice of termination.
- 13.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of the Agreement and has failed to remedy that breach within a period of 30 days after being notified in writing to do so.
- 13.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- 13.3.1 the other party is dissolved, ceases to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - 13.3.2 an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
 - 13.3.3 an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement).
- 13.4 At the end of the Term, or on earlier termination of the Agreement, all licences granted to access the Subscription Services will immediately terminate and the following Customer Data deletion provisions shall apply: OB will retain any Customer Data held in the Subscription Services at that time for a period of 6 months unless the Customer requests earlier deletion. During that time, the Customer may obtain, copy and delete that Customer Data itself. If the Customer so requests, OB will assist the Customer with obtaining, copying or deleting that Customer Data, provided that if the Customer is able to do this itself using tools made available by OB via the Subscription Services, OB may charge the Customer for such assistance at its standard time-based charging rates.
- 13.5 Termination of this Agreement howsoever arising will not affect (i) the parties' accrued rights and obligations as at termination or (ii) any terms of this Agreement that are expressly stated to or impliedly survive termination.

14 Notices

- 14.1 Any notice from one party to the other party under the Agreement must be given by one of the following methods (using the relevant contact details set out in the Order Form for the Customer and Clause 14.2 for OB):
- 14.1.1 delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
 - 14.1.2 sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting;
 - 14.1.3 sent by email, in which case the notice shall be deemed to be received at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent),

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

- 14.2 OB's contact details for notices under this Clause 14 are as follows: FAO: CFO, 1st floor, Park House, Park Street, Maidenhead, SL6 1SL or via email to both hello@openblend.com and accounts@openblend.com
- 14.3 The addressee and contact details set out in the Order Form and Clause 14.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 14.

15 General

- 15.1 **Waiver:** No breach of any provision of the Agreement shall be waived except with the express written consent of the party not in breach.
- 15.2 **Severance:** If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 15.3 **Variation:** The Agreement may not be varied except in accordance with this Clause 15.3. The Agreement may be varied by means of a written document signed by or on behalf of each party. OB may vary the Agreement by giving to the Customer

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at least 30 days' written notice of the proposed variation, provided that if OB gives to the Customer a notice under this Clause 15.3, the Customer shall have the right to terminate the Agreement by giving written notice of termination to OB at any time during the period of 14 days following receipt of OB's notice.

- 15.4 **Assignment:** The Customer hereby agrees that OB may assign OB's contractual rights and obligations under the Agreement to any successor to all or a substantial part of the business of OB from time to time. Save to the extent expressly permitted by applicable law, the Customer must not without the prior written consent of OB assign, transfer or otherwise deal with any of the Customer's contractual rights or obligations under the Agreement.
- 15.5 **Sub-contracting:** OB may subcontract any of its obligations under the Agreement. OB shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 15.6 **Force Majeure:** In the event of Force Majeure, the party affected will promptly notify the other party in writing and, to the extent that the Force Majeure causes or contributes to that party's failure or delay in performing any obligation, it will be excused performance provided that it uses reasonable commercial efforts to mitigate or work round the effect of the Force Majeure. This Clause will not operate to excuse performance by the Customer of a payment obligation. For the purposes of this Clause, Force Majeure includes events, circumstances or causes beyond a party's reasonable control (whether occurring to a party or any of its subcontractors).
- 15.7 **Third party rights:** The Agreement is made for the benefit of the parties and is not intended to benefit or confer any rights on any third party or be enforceable by any third party.
- 15.8 **Entire agreement:** The Order Form and these Terms and Conditions (including the Schedules and any documents expressly referred to and/or linked to in the Schedules) shall constitute the entire agreement between the parties in relation to the subject matter of that Order Form, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 15.9 **Governing law and jurisdiction:** The Agreement shall be governed by and construed in accordance with English law. The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

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SCHEDULE 1

AVAILABILITY, MAINTENANCE AND SUPPORT SERVICES

1. Availability

OB shall use commercially reasonable endeavours to provide the Subscription Services with a minimum availability of 99.95% excluding:

- 1.1 scheduled downtime for maintenance by OB of the Subscription Services (only ever performed outside of UK hours 7:30am to 9:00pm);
- 1.2 agreed downtime in order to provide maintenance or Professional Services, for example, data cleansing, to the Customer;
- 1.3 downtime caused by the Customer, its Users or a force majeure event;
- 1.4 scheduled downtime for maintenance of the hosting facilities by OB' sub-contractors; and
- 1.5 downtime of internet and other network service providers.

Scheduled downtime under paragraph 1.1 shall be no more than 4 hours in any one calendar month. OB shall provide notice of any scheduled downtime for maintenance (by posting a notification on all pages within the Subscription Services) at least 6 hours in advance of such downtime.

2. Maintenance

OB shall maintain the Subscription Services as follows:

- 2.1 OB shall issue modifications of the Subscription Services as and when required and in whatever form in the absolute discretion of OB. A modification may be a patch or release which corrects faults, adds functionality or otherwise amends or upgrades the Subscription Services;
- 2.2 maintenance includes the issue of updates/upgrades to the Subscription Services which may improve or add to the performance or functionality of the Subscription Services that OB generally makes available to customers at no extra charge;
- 2.3 maintenance excludes any upgrades or addition of new features or functionality to the Subscription Services which are either bespoke to the Customer or which OB will generally make available to customers for additional charge.

3. Support Services

- 3.1 OB will provide its standard support services for the Subscription Services to the Customer on the following terms:
 - 3.1.1 remotely via email, online video-conference, or telephone;
 - 3.1.2 in the English language only; and
 - 3.1.3 during the Support Hours only, which are from 0900 Monday Sydney, Australia time to Friday 1800 Pacific, USA time, excluding UK public holidays.
- 3.2 OB's support services may be accessed:
 - 3.2.1 by Users;
 - 3.2.2 in respect of certain admin support services, only by Users who are designated as administrators within the Services; and
 - 3.2.3 by sending an email to helpdesk@openblend.com or by being logged through the OB helpdesk system.
- 3.3 In order to be eligible for OB Support Services, the Customer's computer hardware, operating systems, internet browser, and network (including internet speed and connectivity) must meet the OB current recommended specification.
- 3.4 OB will support the Subscription Services provided to the Customer via the User Interface or an API. The Customer is responsible for all and any issues concerning its PCs, operating systems, interfacing products or software, network or communications channels (including internet speed and connectivity).

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- 3.5 OB reserves the right to charge the Customer at its then current rates for the provision of Professional Services for any Support Services provided to the Customer outside of the parameters of this Schedule.
- 3.6 OB will respond to requests for Support Services made in accordance with the terms of this Schedule on the following basis:

PROBLEM CLASS	DEFINITION	RESPONSE TIME (Support Hours)
1 – CRITICAL	A problem has occurred where the Subscription Services have completely stopped functioning and all Users are unable to work; or where a substantial portion of Customer Data is at a significant risk of loss or corruption; or that compromises overall system integrity or data integrity (i.e. causing a system crash, loss or corruption of data) and significantly impacts operations in a production environment, and where no workaround is immediately available.	1 hour
2 – HIGH	A problem has occurred where major functionality is severely impaired. Operations can continue in a restricted fashion, although long-term productivity might be adversely affected, and where no workaround is immediately available.	8 hours
3 – NORMAL	A problem has occurred where there has been a limited adverse effect on business operations, or where a workaround is available	72 hours
4 – LOW	A problem has occurred where business operations have not been adversely affected; or a minor condition or documentation error that has no significant effect on operations; or a suggestion for new features or enhancements.	Within 5 Business Days

OB aims to resolve all support requests as quickly and efficiently as possible, however some problems may require a software upgrade. Where a software upgrade is required, OB will inform the Customer of the planned timescales for any such release. Where the problem will not be resolved by issue of an upgrade or where there are no plans to issue an upgrade, OB will provide advice to the Customer as to the nature of the problem and how it might be worked around.

Without prejudice to the provisions contained above, OB will use its best endeavours to meet the response criteria defined above. OB makes no commitment that it will be able to meet these criteria or that it will be able to resolve every problem of the Customer.

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SCHEDULE 2

DATA PROCESSING ADDENDUM

- The table below sets out the scope, nature and purpose of processing by OB as processor on behalf of Customer as controller in the provision of the Services. It also sets out the duration of the processing, the types of personal data and categories of data subject.

Data Processing Details:	
Subject matter and nature of the processing	The subject matter of the processing is employee engagement and productivity drivers. The nature of the data processing is: The provision of an online application to manage 121 communication between employees and their managers to improve engagement and productivity.
Purpose of processing	The purpose of the processing is to provide the Services to the Customer.
Duration of the processing	OB will only process personal data for so long as the Agreement remains in effect.
Data subjects	The personal data to be processed concern the following data subjects: Users Third parties invited to provide feedback
Categories of data	The personal data to be processed concern the following categories of personal data: Name Email Address Employer Job title Data inputted by a User about themselves eg age bracket, gender, family status, blend, well being ratings, goals, performance objectives Data inputted by a User or their manager in using the Services including actions, objectives and feedback Data inputted by a third party who has been requested to provide feedback

- The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to OB and/or lawful collection of personal data by OB on behalf of the Customer for the duration and purposes of this Agreement.
- OB shall, in relation to any Customer Personal Data processed in connection with the performance of its obligations under the Agreement:
 - process Customer Personal Data only on the written instructions of the Customer; this Agreement and the use by the Customer of the functionality of the Services constituting written instructions, unless OB is required by applicable laws to otherwise process that personal data. Where OB is relying on laws of the UK, or of a part of the UK or EU law as the basis for processing personal data, OB shall promptly notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit OB from so notifying the Customer.
 - ensure that it has in place appropriate technical and organisational measures as described in Schedule 3 to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - ensure that all personnel who have access to and/or process Customer Personal Data are obliged to keep the personal data confidential;

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- (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach;
- (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by any applicable laws to retain the personal data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this Addendum.

3. The Customer consents to OB appointing the sub-processors identified at its <https://openblend.com/subprocessors> as third-party processors of Customer Personal Data under the Agreement. The Customer generally consents to OB engaging third party processors to process Customer Personal Data provided that: (i) OB provides at least 30 days' prior notice of the addition of any third party processor by updating its <https://openblend.com/subprocessors> (ii) OB enters into a written agreement with such processor incorporating terms which are substantially similar to those set out in this Addendum; and (iii) as between the Customer and OB, OB remains liable for any breach of the Agreement that is caused by an act, error or omission of its sub-processor. If Customer has a reasonable basis to object to the use of a new or additional sub-processor because Customer is able to show that significant risks for the protection of its Customer Personal Data exist with such new or additional sub-processor:

- (a) Customer will notify OB in writing within thirty (30) days of the date of the sub-processor notice, detailing the basis for its objection; and
- (b) OB will work with the Customer in good faith to make available a commercially reasonable change to avoid processing of Customer Personal Data by the objected-to new or additional sub-processor.

Where a change cannot be made within 30 days from OB's receipt of Customer's objection notice, notwithstanding anything in the Agreement, Customer may, as its sole remedy, by written notice to OB with immediate effect terminate that aspect of the Agreement that requires the use of such new or additional sub-processor.

- 4. Some of the sub-processors engaged by OB may be located outside of or undertake processing outside of the UK or the European Economic Area, including in the US. Details of such international transfers and the safeguards that OB has put in place in accordance with Data Protection Legislation are set out at <https://openblend.com/subprocessors>.
- 5. OB shall make available to the Customer all information necessary to demonstrate compliance with its obligations under this Addendum and will allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer. The Customer will be responsible for all costs of the carrying out of any such audit.

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SCHEDULE 3

SECURITY MEASURES

Infrastructure Security

OB will take appropriate technical and organisational precautions to secure the Customer Data and prevent accidental or unlawful destruction, loss or alteration and unauthorised disclosure of, or access to, Customer Data.

Customer Data is hosted in Microsoft Azure data centres using a private multi-tenant instance. Each data centre is designed to run 24x7 and employs various measures to protect operations from power failure, physical intrusion and network outages and industry standards for physical security and reliability. Further details of security features in Azure can be found at <https://docs.microsoft.com/en-us/azure/security/fundamentals/overview> and <https://docs.microsoft.com/en-us/azure/security/>.

Information submitted via the Subscription Services is encrypted in transit using industry standard Secure Sockets Layer (SSL) with 256-bit AES encryption.

All Customer Data is stored in a Microsoft Azure SQL database, encrypted at rest using AES 256. The data is backed up every 5 minutes and stored for 30 days. A geo-replicated copy of the database is also stored for disaster recovery purposes.

OB applies strict permission control over OB staff access to Customer Data and to Customers' instance of the Subscription Service to limit access to specified OB staff in the development team only. This access is controlled through MS Active Directory, is monitored and logged. All OB staff receive training in data security and privacy.

Application Security

OB has processes and procedures in place to ensure that access to functionality and data is restricted as appropriate. All endpoints in the server API have explicit restrictions on which user roles may access them, and queries and updates to individual data entities are all checked to ensure the logged-in user has the required privileges. All changes are peer-reviewed and independently tested.

OB initiates regular penetration tests of all publicly-accessible web pages and endpoints and will resolve any and all weaknesses identified in a timely manner. Penetration tests are performed by a respected third-party provider of OB's choice.

Monitoring

The Subscription Service is monitored 24 hours a day, seven days a week, with errors or abnormalities automatically alerted to the OB development team. This includes: monitoring the web application and database for availability and any errors; and monitoring the firewall for any changes.

In addition to ongoing live monitoring, regular scans of the Azure environment are automatically run, checking the configurations against all the Azure security recommended practices. Any items of concern are flagged and are then addressed by the OB development team.

Policies and Procedures

OB has policies and procedures in place covering information security, business continuity and disaster recovery and data breach management which are regularly reviewed and updated. Customer Data is retained by OB in accordance with clause 13.4 of the Terms and Conditions.