

TERMS & CONDITIONS OF USE

These Terms & Conditions of Use (this “**Agreement**”) governs your (the “**Customer**”) use of Activity Stream’s Services, as further set out below.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Activity Stream Services Agreement:

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 7.

Customer Data: the data inputted by the Customer, Authorised Users, or Activity Stream on the Customer’s behalf for the purpose of using the Services or facilitating the Customer’s use of the Services.

Documentation: the documentation made available to the Customer by Activity Stream online via www.activitystream.com or by such other means notified by Activity Stream to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date when you subscribe to our Services.

Fees: the fees payable by the Customer to Activity Stream for the Services, as has been agreed between the parties under the Activity Stream Services Agreement.

Services: the services (including any training) provided by Activity Stream to the Customer, as set out below.

Software: the online software applications provided by Activity Stream as part of the Services.

1.2 A reference to “writing” or “written” includes any e-mail communication.

2. The Services

2.1 Activity Stream shall, during the term of this Agreement, provide the Services as set out in Schedule 2.

2.2 Activity Stream hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the term of this Agreement solely for the Customer's own operations.

3. Customer Data

The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

4. Activity Stream's Obligations

4.1 Activity Stream undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

4.2 The undertaking in clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Activity Stream's instructions, or modification or alteration of the Services by any party other than Activity Stream or Activity Stream's duly authorised contractors or agents.

4.3 Activity Stream 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, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.4 Activity Stream shall also:

- (a) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (b) carry out all its responsibilities set out in this Agreement in a timely and efficient manner; and
- (c) obtain and shall maintain all necessary licences, consents, and permissions necessary for it to perform its obligations under this Agreement, including without limitation the Services.

5. Customer's Obligations

5.1 The Customer shall:

- (a) provide Activity Stream with all necessary co-operation in relation to this Agreement; and all necessary access to such information as may be required by Activity Stream in order to render the Services;

- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Activity Stream may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Activity Stream, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Activity Stream from time to time;
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Activity Stream's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
- (h) allow Activity Stream to use the Customer's name, logo and/or trade marks in any marketing communication.

5.2 The Customer shall not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (d) use the Services and/or Documentation to provide services to third parties; or
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or

Documentation available to any third party except the Authorised Users,
or

(f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation.

5.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Activity Stream.

6. Proprietary Rights

The Customer acknowledges and agrees that Activity Stream and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

Activity Stream shall indemnify and hold harmless the Customer in relation to any infringement by Activity Stream of any third-party intellectual property rights.

7. Confidentiality

7.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement.

7.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

7.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

7.4 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Activity Stream's Confidential Information.

7.5 Activity Stream acknowledges that the Customer Data is the Confidential Information of the Customer.

7.6 The above confidentiality obligations shall remain in force regardless of the termination of this Agreement for any reason.

8. Limitation of Liability

- 8.1 This clause 8 sets out the entire financial liability of Activity Stream (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of this Agreement;
 - (b) any use made by the Customer of the Services and Documentation or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 8.2 Except as expressly and specifically provided in this Agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Activity Stream shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Activity Stream by the Customer in connection with the Services, or any actions taken by Activity Stream at the Customer's direction; and
 - (b) the Services and the Documentation are provided to the Customer on an "as is" basis.
- 8.3 Activity Stream's liability shall be as follows:
- (a) Activity Stream undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use by the Customer of the Services infringes the intellectual property rights of any third party.
 - (b) Activity Stream shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information (in relation to loss or corruption of data or information, other than due to Activity Stream's intention or gross negligence), or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
 - (c) Activity Stream's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid by the Customer for the Services during the 12 months immediately preceding the date on which the claim arose. The above limitation shall

not apply to any loss resulting from Activity Stream's (i) infringement of any third-party intellectual property rights or (ii) breach of any data protection legislation.

9. Term and Termination

- 9.1 This Agreement shall, unless otherwise terminated as provided in this clause 9, commence on the Effective Date.
- 9.2 Either Party can terminate this Agreement by giving the other Party a three-months prior written notice at any time after the 6 months non-cancellable period from the Effective Date.
- 9.3 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement without liability to the other at any time if:
- (a) the other Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or
 - (b) the other Party enters into insolvency proceedings or takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 9.4 On termination of this Agreement for any reason:
- (a) all licences granted under this Agreement shall immediately terminate;
 - (b) each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;
 - (c) Activity Stream may destroy or otherwise dispose of any of the Customer Data in its possession unless Activity Stream receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Activity Stream shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Activity Stream in returning or disposing of Customer Data; and
 - (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

10. Data Protection

- 10.1 In order to comply with applicable Danish and European data protection rules, regarding the processing of personal data under this Agreement, the parties agree as follows:
- (a) Activity Stream shall comply with all applicable data protection legislation when processing personal data under this Agreement.
 - (b) Activity Stream shall store and otherwise process the personal data on behalf of the Customer, in accordance with its instructions and with the exclusive aim of performing its obligations under this Agreement. Activity Stream will not use the personal data for any purpose other than the provision of the Services.
 - (c) Upon termination of this Agreement, Activity Stream undertakes to destroy or to return to the Customer, at the latter's discretion, all personal data and copies thereof.
- 10.2 For the purposes of this Agreement, the Customer is a "data controller" and Activity Stream a "data processor", as these terms are defined in the applicable European data protection rules.
- 10.3 Activity Stream shall be entitled to anonymise any data processed under this Agreement and further process it in order to improve the Services and the Software.

11. Force Majeure

Activity Stream shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Activity Stream or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event.

12. Assignment

- 12.1 The Customer shall not, without the prior written consent of Activity Stream, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 12.2 Activity Stream may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. In the event of such assignment, transfer, charge or sub-contract, the Customer shall be entitled to terminate this Agreement with three months' notice.

13. Governing Law and Dispute Resolution

13.1 This Agreement shall be governed by English law.

13.2 Any dispute, controversy or claim arising under, out of or relating to this Agreement shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be Geneva, Switzerland. The language to be used in the mediation shall be English.

13.3 If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either Party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. Alternatively, if, before the expiration of the said period of 60 days, either Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English.

14. Access to and Amendments to this Agreement

14.1 Activity Stream shall be entitled to amend this Agreement by giving the Customer a prior written notice thereof.