



# Terms and Conditions

## Yorbl Digital Health & Care Solutions Ltd (Yorbl) Standard Terms & Conditions v2.1 June 2023

### BACKGROUND

Yorbl Digital Health & Care Solutions Ltd (Yorbl) has agreed to provide, and the Customer has agreed to take and pay for the products and or services provided by Yorbl subject to a Yorbl Master Subscription Agreement (“YMSA”) and these supplemental Standard Commercial Terms and Conditions set out herein.

The Yorbl Terms and Conditions set out in this schedule to the YMSA includes but is not limited to any supply by Yorbl of Yorbl Memo and/or 3rd Party Telecare Equipment and/or Yorbl Services including Yorbl Analytics and/or SIMs (as defined below) to the Customer by Yorbl and except for the terms of the YMSA, all or any other Terms and Conditions or enquiries (whether in the Customer’s order or otherwise) shall be of no effect.

### DEFINITIONS & INTERPRETATION

The definitions and rules of interpretation in this condition apply in these Terms and Conditions.

- **Agreement:** the agreement between Yorbl and the Customer arising from Yorbl’s acceptance of an order made by the Customer for the supply of products and or associated services and which incorporates the terms of the Yorbl Master Subscription Agreement (“YMSA”) and these supplemental Standard Terms and Conditions
- **YORBL** means Yorbl Digital Health & Care Solutions Ltd, registered in the UK with Company Number 15440831, having its Registered office at Station House, North Street, Havant, Hampshire, PO9 1QU, United Kingdom.
- **Authorised Users:** those employees, agents, independent contractors, and end users of the Customer who are authorised by the Customer to use the Products, Services, and the Documentation.
- **Business Day:** a day other than a Saturday, Sunday, or public holiday in England when banks are open for business.
- **Cloud Service Provider:** the third-party hosting provider of cloud computing services used by Yorbl in the provision of the Services.
- **Analytics Cloud Service End-User Terms:** the terms set out by Yorbl for the use by the Authorised Users of Yorbl Analytics services required in the provision of the Services.
- **Confidential Information:** all data and information supplied by either party to the other or the supply of which is procured by either party to the other, whether in the form of written and/or printed documents (including facsimile transmissions), oral communication, data stored on magnetic or electronic media or data communicated over communication lines, including but not limited to information relating to the disclosing party’s operations, processes,



plans or intentions, production information, know-how, design rights, trade secrets, market opportunities and business affairs.

- **Connected Device:** any device running Yorbl Software or Apps, sensor or peripheral that is connected to the Yorbl Services in accordance with the terms of the agreement.
- **Connection Procedure:** the procedure for enabling Authorised Users to have access to and use the Services, as the same may be amended from time to time.
- **Customer:** the purchaser of any Products and/or Service from Yorbl who has entered into the Agreement.
- **Customer Data:** data provided by the Customer, Authorised Users, or Yorbl on the Customer's behalf for the purpose of using the Products and or Services or facilitating the Customer's use of the Products or Services.
- **Device:** Any device such as a SMART Phone, Tablet Computer, Sensor etc. that has Yorbl Software installed upon it or is used by a Yorbl Service.
- **Data Protection Legislation:** the UK GDPR and the Data Protection Act 2018 and any successor legislation to the UK GDPR, the Data Protection Act 2018 or any other applicable UK implementing laws, regulations, and secondary legislation.
- **Documentation:** the documents made available to the Customer by Yorbl to the Customer from time to time which set out a description of the Products and or Services and the user instructions for the Products and or Services.
- **Effective Date:** the date of the Agreement.
- **Free on Board (FOB):** a shipment term used to indicate whether the seller or the Customer is liable for goods that are damaged or destroyed during shipping.
- **Material:** means any materials, goods, products, equipment, systems, software, programs, or processes, in whatever form, used by Yorbl to provide the Services or supplied by Yorbl to the Client in the performance of the Product and or Service, including the Software.
- **Normal Business Hours:** 9.00 am to 5.00 pm local UK time, Monday to Friday, excluding Weekends and Public Holidays.
- **Personal Data:** has the meaning given in UK GDPR and UK Data Protection Legislation.
- **Schedule of Prices:** the Schedule produced by Yorbl which sets out the prices payable from time to time for the Products and the provision of the Services.
- **Services:** the services provided by Yorbl to the Customer under these Terms and Conditions, as more particularly described in the Services Description, as the same may be amended from time to time.
- **Services Description:** descriptions of the Yorbl Services as may be published from time to time.
- **Shipping Costs:** all delivery and freight charges, all taxes and duties, and all other shipping costs and expenses with respect to the delivery or return of any Yorbl equipment hereunder.
- **SIM Provider:** the third-party provider of the SIMs to Yorbl, supplied by Yorbl for use within the any device supplied by Yorbl.
- **Software:** Yorbl Analytics Software-As-A-Service and any proprietary Apps or Firmware installed within an Yorbl supplied Device.



- **Subscription Fees:** the recurring subscription fees payable by the Customer to Yorbl for the Services, as set out in the Schedule of Prices.
- **SIM:** a removable subscriber identity module provided by Yorbl that allows use of the Services over 4G when installed and used in the Device
- **SIM End-User Terms:** the terms set out in Schedule 1 for the use of the SIMs by the Authorised Users.
- **Support Services:** means the first line support services provided by Yorbl to the Customer, as more particularly described in Support Services Description in Schedule 2, as the same may be amended from time to time.
- **Term:** has the meaning given in the agreement.
- **Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.

## AGREED TERMS

### 1. General

- 1.1. Yorbl's sale to the Customer is limited to and expressly made conditional on the Customer's assent to the ASMA together with these Terms and Conditions of Sale, and any additional terms set forth.
- 1.2. These Terms and Conditions govern all sales of product(s) and services by Yorbl to the Customer regardless of whether the Customer purchases through the medium of written purchase orders, telephonic orders, internet orders, electronic orders or via Yorbl solution partners or otherwise, and supersede and take precedence over any other Terms and Conditions including, but not limited to,
- 1.3. Terms and Conditions which may appear in the Customer's order or in any document incorporated by reference in the Customer's order.
- 1.4. Any term or condition of the Customer's order which is in addition to, inconsistent with, contrary to or different from these Terms and Conditions is rejected and shall not become part of the contract unless explicitly referenced and agreed to in writing by an authorised executive of Yorbl at its principal office in the UK.



- 1.5. Retention and/or acceptance by the Customer of any product delivered by Yorbl, or payment by the Customer of any invoice tendered hereunder, shall operate as acceptance by the Customer of these Terms and Conditions.
- 1.6. Yorbl's failure to object to any provision contained in any communication from the Customer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

## **2. Orders**

- 2.1. By submitting an order to Yorbl, the Customer agrees to be subject to the YMSA and these supplemental Standard Terms and Conditions of Sale in their entirety.
- 2.2. All Yorbl acceptable orders must be bonafide commitments showing definite prices and quantities and mutually agreed to shipping and/or effective dates.
- 2.3. Each order shall be a separate offer by the Customer to buy Products and or Services on these Terms and Conditions, which Yorbl shall be free to accept or decline at its absolute discretion.

## **3. Prices and Taxes**

- 3.1. Prices quoted or stated do not include taxes, including, without limitations, sales, use or value added taxes, now or hereafter enacted, applicable to the products and or services sold in this transaction, which taxes may, in Yorbl's discretion, be added by Yorbl to the sales price or may be billed separately, and which taxes will, in any event, be paid by the Customer unless the Customer provides Yorbl with a proper tax exemption certificate at the time the order is placed.
- 3.2. Prices quoted for goods or posted on Yorbl's website or otherwise presented are subject to change without notice.
- 3.3. Acceptance of any order sent to Yorbl by the purchaser is entirely at the discretion of Yorbl.

## **4. Delivery and Shipment**

- 4.1. All Yorbl telecare Products and Services will be tendered and shipped on a Free on Board (F.O.B.) basis.
- 4.2. The Customer bears all risk of loss or damage in transit and shall be responsible to file claims with any carrier for damage occurring during shipment. Yorbl is not responsible for damage or loss in transit.
- 4.3. Yorbl will use commercially reasonable efforts to deliver as specified herein but shall not be liable in any manner for any delays in delivery.
- 4.4. The Customer bears all risk of delays in delivery and waives all claims against Yorbl arising out of any such delays.
- 4.5. Yorbl reserves the right to make delivery in instalments and back-order goods unless the Customer expressly states otherwise in writing. All such instalments and back orders shall be separately invoiced and paid for when due, without regard to subsequent deliveries.
- 4.6. Delay in delivery of any Yorbl products, whether by instalment or back order or otherwise, shall not relieve the Customer of its obligation to accept remaining deliveries.



- 4.7. Without prejudice to any other rights of Yorbl under the YMSA and these supplemental Standard Terms and Conditions, if the Customer fails to give all instructions reasonably required by Yorbl at the point of Order, or fails to provide all necessary documents, licences, consents and authorities for forwarding the Products and or Services or otherwise causes or requests delay, Yorbl may charge the Customer for all reasonable storage and other costs of whatever nature incurred or arising from such delay.
- 4.8. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery or instalment or any part of it shall not entitle the Customer to cancel or refuse delivery of or payment for any other delivery or instalment or any part of the same delivery or instalment.
- 4.9. The Customer shall not be entitled to rely on any oral statement or representation made by Yorbl or by Yorbl's employees, agents or servants and the Customer acknowledges that it will only rely on written data and specifications supplied by Yorbl. For the avoidance of doubt: risk in the Yorbl Products and or Services shall pass to the Customer on completion of delivery. For this purpose, delivery is completed:
  - 4.9.1. where F.O.B. delivery is performed by Yorbl or
  - 4.9.2. where Yorbl Products are collected by the Customer or
  - 4.9.3. where the Customer first logs in to the Services, whichever is the sooner, and the risk of damage to or loss of the Yorbl Products will pass to the Customer at that time.
- 4.10. Yorbl shall be under no obligation to effect insurance of the Yorbl Products once risk has passed to the Customer.
- 4.11. On termination, Yorbl's rights contained in this condition 4 shall remain in effect.
- 4.12. Unless otherwise agreed in writing by Yorbl, the Customer will be responsible for and pay all delivery and freight charges, all taxes and duties, and all other shipping costs and expenses with respect to the delivery or return of any Yorbl Equipment purchased by the Customer.

## **5. Services**

- 5.1. Subject to the Customer purchasing Services in accordance with the provisions of these Terms and Conditions, Yorbl grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Products and or Services, the Software, and the Documentation solely for the Customer's business or service operations. The Customer Undertakes that:-
  - 5.1.1. it shall ensure that each Yorbl Analytics User keeps a secure password in respect of the use of the Services and Documentation and shall keep such password confidential.
  - 5.1.2. it shall permit Yorbl to audit the Services in order to verify compliance with these Terms and Conditions. Such audit may be conducted no more than once per quarter, at Yorbl's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - 5.1.3. if any of the audits referred to herein reveal that the Customer has underpaid Subscription Fees to Yorbl, then without prejudice to Yorbl's other rights, the Customer shall pay to Yorbl an amount equal





to such underpayment as calculated in accordance with the prices set out in the current Yorbl Schedule of Prices within 10 Business Days of the date of the relevant audit; and

- 5.1.4. where a SIM is supplied by Yorbl to the Customer, it shall comply with the terms of any SIM End-User Terms.
- 5.2. The Customer shall comply with such acceptable usage policies as may be notified to it from time to time and shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or in a manner that is otherwise illegal or causes damage or injury to any person or property.
- 5.3. The Customer shall not:
  - 5.3.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms and Conditions, (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Yorbl Software and/or Documentation (as applicable) in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software.
  - 5.3.2. 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.
  - 5.3.3. subject to the other terms herein, 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.
  - 5.3.4. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this condition; and 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 Yorbl.
- 5.4. Yorbl shall use commercially reasonable endeavours to make the Yorbl Services available 24 hours a day, seven days a week, but the Customer recognises that Yorbl is reliant upon the SIM Provider for the supply of SIMs and SIM services and the Cloud Service Provider for the provision of the Yorbl Services and shall not be required to provide a level of availability that is greater than the level provided to it by either the SIM Provider or the Cloud Service Provider (as the case may be).
- 5.5. The Customer acknowledges that in measuring the availability of the Services, no regard shall be had to: (a) planned maintenance carried out following the provision to the Customer of at least 48 hours' notice in



advance; and (b) unscheduled maintenance whenever carried out, provided that Yorbl shall use reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

5.6. Yorbl will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Support Services during Normal Business Hours. Yorbl may amend the Support Services in its sole and absolute discretion from time to time.

5.7. Yorbl further warrants that:

- 5.7.1. the Services will be provided using reasonable care and skill. Notwithstanding any provision to the contrary, any dates, periods or times specified in supply are estimates only and time shall not be of the essence for the performance of Yorbl's obligations.
- 5.7.2. Yorbl will supply all parts and materials necessary for the provision of the Services.

5.8. Notwithstanding the foregoing, Yorbl (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and (b) 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.

5.9. For the avoidance of doubt: Yorbl Service undertakings as expressed herein shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Yorbl's instructions, or modification or alteration of the Services by any party other than Yorbl or Yorbl's duly authorised contractors or agents. If the Services do not conform with the undertakings herein, Yorbl will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in condition herein.

## **6. Charges and Terms of Payment**

6.1. The Customer shall pay the Subscription Fees for the Services and the purchase price of the Smart Hubs supplied to it to Yorbl in accordance with the terms of the YMSA and supplemental Standard Terms and Conditions herein and the Schedule of Prices. Payment shall be in UK Pounds Sterling (£GBP). Unless otherwise stated on Yorbl's invoice, terms of payment shall be net thirty (30) days from the date of the invoice.

6.2. If at any time Yorbl, in its sole discretion, determines that payment in advance would be prudent, Yorbl may require full or partial payment in advance, and if such requirement is not met, may withhold and or cancel the order or any part thereof and receive reasonable cancellation fees.



- 6.3. If the Customer fails to pay the price or any other payment due hereunder Yorbl may recover, in addition to the price or payment and all costs of collection including, but not limited to reasonable legal fees, interest thereon at an annual rate equal to 3% over the then current base lending rate of HSBC Bank PLC from time to time, commencing on the due date and continuing until fully paid.
- 6.4. The terms of payment hereunder may be changed by Yorbl at any time.
- 6.5. The Customer shall, upon receipt of an Yorbl invoice be entitled to connect the Products in its possession and use the Services in accordance with the Connection Procedure and the other terms contained in the Agreement.
- 6.6. The Customer may resell Yorbl Products in the ordinary course of its business (but not otherwise) before Yorbl receives payment for such Yorbl Products. However, if the Customer resells any Yorbl Products before that time: (i) it does so as principal and not as Yorbl's agent; and (ii) title to such Yorbl Products shall pass from Yorbl to the Customer immediately before the time at which resale by the Customer occurs.
- 6.7. The Customer's right to possession of a Yorbl Product before ownership has passed to it shall terminate immediately if any of the circumstances set out herein arise or if the Customer encumbers or in any way charges a Yorbl Product, or if the Customer fails to make any payment to Yorbl on the due date. Where such circumstances arise, Yorbl may (without prejudice to any part of its other rights) recover or resell the Yorbl Product or any of them and the Customer grants Yorbl, its agents and employees an irrevocable licence to enter any premises where the Yorbl Products are or may be stored in order to remove them. All costs incurred by Yorbl in repossessing Yorbl Product shall be borne by the Customer.
- 6.8. Yorbl may maintain any action for the price of the Yorbl Products whether or not ownership in them has passed to the Customer.
- 6.9. The Customer shall not dispute any Yorbl invoice without reasonable cause but if the Customer does dispute an invoice: (a) the Customer shall notify Yorbl in writing within 7 days of the receipt of the invoice specifying the reasons for disputing the invoice; (b) the parties shall negotiate in good faith to attempt to resolve the dispute promptly; and (c) if the dispute is resolved in favour of the Customer, Yorbl shall within 7 days of the date of such resolution issue a revised and corrected invoice to the Customer which the Customer shall pay within 7 days of the date of such revised invoice.

## **7. Contingencies**

- 7.1. Yorbl shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Yorbl including, by way of illustration but not limitation, war (whether an actual declaration is made or not), sabotage, insurrection or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or agency or subdivision thereof, judicial action, labour dispute, accident, fire explosion, adverse weather, floods, storm or other act of God, shortage of labour, raw materials or machinery or technical failure. If any such contingency occurs, Yorbl may allocate production and deliveries in its discretion among Yorbl's customers.

## **8. Refunds, Exchanges, and Returns**





- 8.1. Custom made products or bundles are non-returnable. Standard Yorbl products may not be returned more than fourteen (14) days after the date of invoice, and then, only upon the prior written approval of Yorbl.
- 8.2. All returns will be subject to a twenty-five percent (25%) restocking charge and must be returned freight prepaid.
- 8.3. No refunds or exchanges are ever allowed on modified; 3rd party goods supplied through Yorbl or damaged goods.

## 9. Warranties

9.1. Products Manufactured by Yorbl; Limited Warranty. Yorbl warrants to the Customer that:

- 9.1.1. Each Yorbl Product (but not any SIM supplied with it will be free from defects in material and workmanship for a period of one (1) year from the date of delivery to the Customer, provided that such products are installed and used in accordance with standard industry practice pertaining to these products and product installation instructions ("Limited Warranty Period")
- 9.1.2. Yorbl will, at its option, repair, replace or refund the purchase price of any such defective Yorbl Product (other than consumable items including sensors).
- 9.1.3. This limited warranty excludes remedy for damage or defect caused by abuse, alterations to the product(s) not executed by Yorbl, improper or insufficient maintenance, improper operation and normal wear and tear.
- 9.1.4. Yorbl's obligation under the foregoing warranty is limited to the repair or replacement of defective product(s) and does not include reimbursement for the expense of initial install and or removing the defective product(s), installing the repaired or replacement product(s) or any other damages.
- 9.1.5. In no event shall Yorbl be liable for any other losses, claims or damages, whether direct, indirect, incidental, consequential or otherwise, arising from the foregoing warranty.
- 9.1.6. For the avoidance of doubt:-
  - 9.1.6.1. the SIM shall be subject to the warranty referred to in the SIM End-User Terms appended.
- 9.1.7. Yorbl shall not in any circumstances be liable for a breach of the warranty contained in condition herein unless:
  - 9.1.7.1. the Customer gives written notice of the defect to Yorbl within seven days of the time when the Customer discovers or ought reasonably to have discovered the defect.
  - 9.1.7.2. after receiving the notice, the Customer (if asked to do so by Yorbl) returns such Goods to Yorbl's place of business for examination.
  - 9.1.7.3. where following the giving of notice under these Terms and Conditions, the Customer has made use of the Yorbl Product in respect of which it has given such notice.
  - 9.1.7.4. where the defect arises because the Customer failed to follow Yorbl's oral or written instructions as to the storage,



- installation, commissioning, use or maintenance of the Yorbl Product or (if there are none) good trade practice.
- 9.1.7.5. where the Customer has altered or repaired the relevant Yorbl Product without the written consent of Yorbl.
  - 9.1.7.6. where the Yorbl Product has been used in conjunction with any equipment or materials manufactured or supplied to the Customer by a third party other than Yorbl.
  - 9.1.7.7. where the Yorbl Product has been used improperly or outside of their normal application.
  - 9.1.7.8. where the Customer has not used the provided qualified, Yorbl certified and approved, technical service personnel to maintain and repair the equipment.
  - 9.1.8. Where a Yorbl Product is repaired or replaced by Yorbl, any such repaired or replacement Yorbl Product shall remain under warranty for any unexpired portion of the Limited Warranty Period.
  - 9.1.9. All batteries supplied with Yorbl Products are excluded from the warranty detailed herein.
  - 9.1.10. Yorbl does not warrant or guarantee, and is not responsible for defects, failures, damages or performance limitations caused in whole or in part by:-
    - 9.1.10.1. power failures, surges, fires, floods, snow, ice, lightning, excessive heat or cold, highly corrosive environments, accidents, actions of third parties, or other events outside of Yorbl's control.
    - 9.1.10.2. the Customer's or Authorised User's abuse, mishandling, misuse, negligence, improper storage, servicing or operation, or unauthorised attempts to repair or alter the equipment in any way
    - 9.1.10.3. the Customer's use of a SIM that has not been provided by Yorbl for use with an Yorbl Product.
  - 9.1.11. The Customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the Yorbl Product or any workmanship in relation to them (whether or not involving negligence on the part of Yorbl) shall, in all cases, be limited to repair, replacement, or refund of the purchase price.

**THE WARRANTIES IDENTIFIED ABOVE ARE YORBL'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE PRODUCT(S) IT MANUFACTURES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. YORBL HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR YORBL OWN OR THIRD-PARTY SUPPLIED PRODUCT, EXCEPT AS SET FORTH HEREIN.**

## 9.2. Products Not Manufactured by Yorbl;



- 9.2.1. Yorbl provides no warranty of any kind to the Customer for products supplied by it to the Customer which are not manufactured by Yorbl. The Customer must look solely to the 3rd Party manufacturer's warranty, if any, for such products.
- 9.2.2. the Customer agrees that the 3rd Party manufacturer's warranty supplants Yorbl's limited warranty and that Yorbl's limited warranty shall not be applicable to products manufactured by anyone other than Yorbl.
- 9.2.3. 3rd Party Manufacturer warranty policy information may be requested from the relevant manufacturer.

## **10. Limitation of Liability**

- 10.1. **UNDER NO CIRCUMSTANCES SHALL YORBL'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, PRODUCTS AND OR SERVICES SOLD BY YORBL, OR YORBL'S PERFORMANCE OR ALLEGED FAILURE TO PERFORM, WHETHER IN CONTRACT, IN TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCTS, OR IN RESPECT OF THE SERVICES SHALL NOT EXCEED 1 POUND GBP AND IN NO EVENT SHALL YORBL BE LIABLE FOR SPECIAL, INCIDENTAL, PUNATIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROCESS, LOSS OF BUSINESS OR LOSS OF GOODWILL.**

## **11. Cancellation and Rescheduling**

- 11.1. Orders accepted by Yorbl may be cancelled or rescheduled by the Customer only with a written consent of Yorbl and upon payment of the then currently published cancellation or rescheduling charges, or a minimum of twenty percent (20%) of the order purchase price, whichever is greater.
- 11.2. If Yorbl agrees to the Customer cancelling an order, the Customer will indemnify Yorbl against all losses (which may include the profits that Yorbl would have made from the order had it not been cancelled) suffered by Yorbl arising out of such cancellation.
- 11.3. Yorbl shall reserve the right without penalty or payment to cancel any order accepted, or to refuse or delay the shipment thereof if:-
  - 11.3.1. the Customer fails to make promptly any payment due Yorbl or to meet any other reasonable requirements established by Yorbl.
  - 11.3.2. any act or failure to act of the Customer delays Yorbl's performance.
  - 11.3.3. the Customer's credit becomes impaired. In such event, Yorbl shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.
- 11.4. Where cancellation is for a managed service, the Customer must give Yorbl a minimum of 90 Days written notice of cancellation.
  - 11.4.1. If the Notice of Cancellation is made more than 90 Days before the end of the already paid for service or contract period, no refunds will be made for any unused period.



## 12. Notice and Returns

- 12.1. Any claims for defective product(s) and any claims resulting from freight shortages must be made in writing by the Customer within seven (7) days of receipt of such product(s). Failure to make a written claim within the stated time constitutes acceptance of the product(s) as is and a waiver of any claims.
- 12.2. the Customer must promptly return any rejected product(s) to Yorbl, accompanied by a valid return authorisation obtained from Yorbl.
- 12.3. For any valid claim timely made, Yorbl, at its option, may repair product(s) or replace product(s) with an identical or substantially similar product(s).

## 13. Confidentiality

- 13.1. Pricing schedules, quotes and any other discounts contained in any Yorbl proposal documentation or commercial communication with the Customer are considered Confidential Information of Yorbl and the Customer shall not discuss with or disseminate such Confidential Information to any third-party without the prior, written authorisation of Yorbl.

## 14. Intellectual Property Indemnification

- 14.1. Products Manufactured by Yorbl only:-
  - 14.1.1. Yorbl will indemnify and defend the Customer against any claim that a product of Yorbl's own manufacture sold to the Customer, or any part thereof, constitutes a direct infringement of any patent, provided that such alleged direct infringement shall consist only in the use of such product alone and not as a part of or in combination with any other devices and/or parts not provided by Yorbl and provided further that:
    - 14.1.1.1. the Customer gives Yorbl immediate written notice of any claim of alleged infringement.
    - 14.1.1.2. the Customer is not in breach of its contract with Yorbl.
    - 14.1.1.3. Yorbl is given authority, information and assistance by the Customer for the defence of same.
- 14.2. If at any time Yorbl determines there is a substantial question of infringement, Yorbl may, in addition to the foregoing, and in its sole discretion, either (i) procure for the Customer the right to continue using and selling the product or part; (ii) replace it with a non-infringing product or part of its choosing; or (iii) refund the purchase price thereof to the Customer.
- 14.3. Yorbl shall retain control over any defence proffered hereunder, including the selection of defence counsel.
- 14.4. The foregoing is subject to the limitations of liability in the YMSA and these Terms and Conditions and states the Customer's exclusive remedy for patent infringement or infringement of any other intellectual property right.
- 14.5. Products manufactured to the Customer's designs or specifications are not warranted against patent or any other intellectual property infringement and are excluded from this indemnity and defence obligation.



- 14.6. The Customer agrees to defend, indemnify, and hold Yorbl harmless from and against any claim that a product manufactured to the Customer's designs or specifications, or any part thereof, constitutes an alleged infringement of any patent or any other intellectual property right.
- 14.7. For the avoidance of doubt, intellectual property in the firmware or Software contained within any Yorbl Product shall remain within the sole ownership of Yorbl or its suppliers.
- 14.8. Yorbl hereby also grants to the Customer a non-exclusive, irrevocable, royalty free licence to use any elements of such firmware.

## **15.Changes**

- 15.1. Yorbl reserves the right (but does not assume the obligation) to make process, composition, design and specification changes to its Products and Services, including but not limited to those changes which are required to conform with any legislation, and which do not materially affect the nature or quality of the Products and/or the Services, without prior approval of or notification to the Customer.
- 15.2. No Yorbl Product and or Service sales, marketing or specification collateral forms part of the Agreement or give rise to any independent or collateral liability of any nature whatsoever on the part of Yorbl and Yorbl shall be under no liability whatsoever for inaccuracies, changes or alterations to specification, features, dimensions, or measurements given, quoted, or made by it.
- 15.3. Yorbl shall be entitled to increase the fees payable in respect of additional Yorbl Products or Services purchased pursuant to the terms herein upon thirty (30) days' prior notice of price increase to the Customer.
- 15.4. Where the Customer has opted to pay Subscription Fees monthly, Yorbl shall be entitled to increase the Subscription Fees upon thirty (30) days' prior notice of price increase to the Customer.
- 15.5. In the case of either 15.3 or 15.4, the Schedule of Prices shall be deemed to have been amended accordingly.

## **16.Customer Obligations**

### **The Customer shall:-**

- 16.1. Comply with the terms of the Connection Procedures when connecting Authorised Users to the Services and such other reasonable procedures relating to the use of the Product and/or the Services as Yorbl shall notify to the Customer from time to time.
- 16.2. Provide Yorbl with all necessary co-operation in relation to these Terms and Conditions; and all necessary access to such information as may be required by Yorbl in order to provide the Services, including but not limited to Customer Data, security access information and configuration services
- 16.3. Comply with all applicable laws and regulations with respect to its activities under the Agreement
- 16.4. Not use or permit the use of the Services to transmit data that infringes any applicable laws, regulations or third-party rights.
- 16.5. Ensure that the Authorised Users use the Services, the Software and the Documentation in accordance with these Terms and Conditions and shall





be responsible for any Authorised User's breach of these Terms and Conditions.

- 16.6. Obtain and shall maintain all necessary licences, consents, and permissions necessary for Yorbl, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services.
- 16.7. Ensure that its business network and systems or the End User's Home network and systems comply with the relevant specifications provided by Yorbl from time to time. In particular, the Customer shall promptly install and implement any updates, upgrades, modifications and enhancements provided to it under the Agreement and acknowledges that any failure to do so could lead to security risks in its use of the Services.



- 16.8. Comply with such reasonable instructions that may be given to it by Yorbl which are necessary for reasons of: (i) health and safety; (ii) quality of the Services; (iii) an emergency; or (iv) ensuring compliance by Yorbl and/or the SIM Provider with relevant and applicable UK and/or EU legislation or regulations.
- 16.9. Take reasonable steps to ensure that any end users agree to allow the installation and use of equipment required for the receipt of the Services at their site(s) and prepare and provide a suitable place, conditions and connection points required for such equipment and electricity at such site(s) in accordance with Yorbl's reasonable instructions, if any.
- 16.10. Follow any reasonable instructions given to it by Yorbl (including testing with the latest commercially available virus detection software) to ensure that any software used with or in connection with the Services is not infected by any or any other types of disruptive, destructive or nuisance programs.
- 16.11. Report faults or requests for support only to Yorbl's support team at the number or email address provided from time to time for such purpose, providing such information as Yorbl shall reasonably require to assist it in remedying such faults or providing support in accordance with these Terms and Conditions.
- 16.12. Be solely responsible for maintaining the security of any equipment connected to the Services.
- 16.13. Be solely responsible for procuring and maintaining its Business or Home network connections and telecommunications links from its systems to the Services, 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.
- 16.14. The Customer acknowledges that Yorbl shall provide some elements of the Services (including, for the avoidance of doubt, the provision of SIMs) under standard terms provided by relevant third parties.
- 16.15. The Customer agrees to be bound by such terms and to ensure that the Authorised Users are bound under similar obligations. In particular, the Customer agrees to:-
  - 16.15.1. Comply with the SIM End-User Terms (as the same may be amended from time to time by Yorbl giving no less than 7 days' notice to the Customer)
  - 16.15.2. Comply with the Yorbl Analytics Cloud Service End-User Terms (as the same may be amended from time to time by Yorbl giving no less than 7 days' notice to the Customer).
  - 16.15.3. Indemnify Yorbl against all such additional fees, costs and charges as Yorbl may incur from a relevant third party by reason of the Customer's termination of the Agreement or early cancellation of a SIM (including, for the avoidance of doubt, any cancellation charges or compensation payable by Yorbl to the relevant third party).



## **17. Governing Law/Jurisdiction**

17.1. The sale of any product(s) and/or services by Yorbl and the contract between Yorbl and the Customer including but not limited to the YMSA and these Terms and Conditions shall be governed by and construed in accordance with the laws of the UK, exclusive of its choice of law provisions. All claims, disputes, controversies, and other matters in question arising out of or relating to the sale of any product(s) by Yorbl and/or the contract between Yorbl and the Customer, including, but not limited to, the YMSA and these Terms and Conditions, shall be decided and adjudicated through litigation in a UK Court, which shall have exclusive jurisdiction and be the exclusive venue.

## **18. No Waiver and Severability**

- 18.1. No waiver of any provision of these Terms and Conditions by Yorbl shall be construed as a subsequent waiver of same, or waiver of any other provision. No invalidity of any provision of these Terms and Conditions shall invalidate the other provisions, which shall remain in full force and effect. If there is an inconsistency between any of the provisions of these Terms and Conditions and the YMSA, Schedule of Prices, the Connection Procedure, the Services Description, the SIM terms, or the Support Services Description; the provisions of these Terms and Conditions shall prevail.
- 18.2. In the event that a court of competent jurisdiction determines that a provision of these Terms and Conditions imposes on the Customer a greater obligation than permitted by applicable law, such provision shall be deemed to be re-written to provide for the maximum permitted obligation. It is the party's express intention that no provision shall be declared void or unenforceable.

## **19. Basis of Bargain**

19.1. Yorbl and the Customer agree that the warranty disclaimers, the limitations of liability, governing law and jurisdiction and exclusive remedy provisions are material, bargained for terms that are fundamental to these Terms and Conditions and are reflected in the consideration to be given to both parties under these Terms and Conditions and in the decision by both parties to accept these Terms and Conditions.

## **20. No Partnership or Agency**

20.1. Nothing in these Terms and Conditions or the YMSA is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **21. Entire Agreement and Amendment**



- 21.1. The YMSA together with these supplemental Yorbl Standard Terms and Conditions and Yorbl Order Form constitute the entire commercial agreement between the parties and supersede all previous negotiations, agreements, or communications, whether oral or written. Any change to the YMSA together with these supplemental Yorbl Standard Terms and Conditions and Yorbl Order Form may be made only upon mutual agreement of the parties in writing.

## **Schedule 1. SIM End-User Terms**

1. In respect of each SIM provided by Yorbl, the Customer shall:
  - 1.1. Comply with the terms of any communication plan provided to it from time to time detailing the services and networks available to the SIM.
  - 1.2. Not use a SIM beyond any hard cap on volume notified to it from time to time.
  - 1.3. Keep the SIM activated for at least the minimum activation term notified to the Customer at the commencement of the Agreement (if any).
  - 1.4. Test the SIM and any device with which it is being used at the intervals and in the manner notified to the Customer from time to time.
  - 1.5. If the Customer wishes to make any claims under the SIM Provider warranty attached to the SIM, ensure that any such claims are made within the Warranty Period attached (Warranty details available on request).
  - 1.6. If and only if required, register with (or ensure that each end user registers with) the SIM Provider, select a unique password and username ("User ID") and provide accurate, complete, and updated registration information; and ensure that any end user of the SIM.
  - 1.7. Complies with and uses the SIM in accordance with this Schedule.
  - 1.8. Notifies Yorbl promptly (and confirms in writing) on becoming aware that any SIM or any device in which it is installed ceases to work as intended or that any person is making improper or illegal use of such device, the SIM or the services provided to the Customer.
  - 1.9. The Customer will be responsible for any charges incurred by Yorbl as a result of overuse or unauthorised use of any device, or SIM, or the information contained within a SIM, until Yorbl has received and relayed to the SIM Provider a request from the Customer to suspend the SIM Services to that device or SIM.
  - 1.10. Not use the SIM Services fraudulently or in connection with a criminal offence or for the purpose of sending unsolicited text messages or any material which is offensive, abusive, indecent, defamatory, obscene, or menacing, a nuisance or a hoax or which breaches any person's intellectual property rights or rights of privacy or is otherwise unlawful.
  - 1.11. Complies at all times with such reasonable operational requirements as may be notified to the Customer from time to time.
  - 1.12. Provides such information relating to the provision of the SIM Services as Yorbl may reasonably require, evidencing, to the reasonable satisfaction of Yorbl and/or the SIM Provider, the Customer's compliance with its obligations set out in the YMSA and the Documentation including, but not limited to, keeping Yorbl informed (to the extent reasonably relevant to the



- performance of the SIM Services) of the progress of its business with end users.
- 1.13. Shall not directly or indirectly be involved or knowingly recklessly or negligently permit any other person to be involved in any fraud and shall immediately upon becoming aware of any such fraud notify Yorbl and comply with such procedures and rules adopted by or binding on Yorbl and/or the SIM Provider from time to time concerning such fraud.
  - 1.14. Shall not use any name, trademark, or other designation of Yorbl or the SIM Provider including any contraction, abbreviation, or simulation of any of the foregoing in, advertising publicity or marketing activities without the prior written consent of Yorbl or the SIM Provider (as the case may be).
  - 1.15. Complies with any and all guidelines issued by Yorbl and/or the SIM Provider to the Customer in respect of branding and use of trademarks, logos and other such intellectual property in respect of the SIM Services.
  - 1.16. Shall not use the Products and or related software in any manner that infringes the intellectual property or proprietary rights, rights of publicity or privacy or other proprietary rights of others, violates any applicable law, statute, ordinance or regulation, including but not limited to laws and regulations related to export, spamming, privacy, consumer and child protection, obscenity or defamation, or is harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libellous, or similarly offensive.
  - 1.17. Will not violate or attempt to violate the security of the Services, including, without limitation, accessing data not intended for such end user or logging into a server or account which such end user is not authorised to access, attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorisation, attempting to interfere with, disrupt or disable the Product and or Service to any end user, host or network, including, without limitation, via means of overloading, "flooding", "mailbombing" or "crashing", forging any TCP/IP packet header or any part of the header information in any e-mail, taking any action in order to obtain the Product to which such end user is not entitled, or sending any virus, worm, Trojan horse or other harmful code or attachment.
  - 1.18. Consents to the processing of information necessary to connect the Product at the SIM Provider's or its suppliers' data centres.
  - 1.19. Shall not, directly, or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Product or any technology related to the Product and or Service including documentation.
  - 1.20. Modify, translate, or create derivative works based on the Product or Technology.
2. The Customer acknowledges that:
- 2.1. The SIM Services may be suspended without notification irrespective of whether the Customer or any of its end users are in breach of the terms of this Schedule or otherwise at fault.
  - 2.2. Certain elements of GPRS Bearer, SMS and/or any other bearer services (including 3G, 4G, Circuit Switched Data), which the SIM Provider may from time to time provide ("the Bearer Services") are dependent on the Customer having a connected Product.





- 2.3. Neither Yorbl nor the SIM Provider guarantees the availability of any specific roaming partner or service provider in any part of the coverage area and the Customer acknowledges that any of such roaming partners or service providers are liable to change at any time. If a roaming partner is deemed to be not suitable for any part of the coverage area, the coverage area may be amended or reduced without giving rise to any claims of the Customer whatsoever.
- 2.4. The SIM Services may be temporarily unavailable for scheduled maintenance, either by the SIM Provider or by third-party providers. Neither Yorbl nor the SIM Provider is liable for any unavailability of the SIM Services in such circumstances provided that in the case of any scheduled maintenance, all reasonable endeavours have been used to schedule and undertake such maintenance with as minimal impact on the SIM Services as is reasonably possible in the circumstances.
- 2.5. No warranty is given or implied in respect of any wireless airtime and network capacity ("Airtime"). It is the Customer's responsibility to ensure Airtime on sites where the Customer intends to use the Bearer Services.
- 2.6. Without prior notice, any SIM service may be suspended, and a SIM be disconnected in any of the following circumstances:
  - 2.6.1. If the Customer fails in any material way to comply with the terms of this Schedule after being given written notice of its failure (including but not limited to failure to pay any sums due under the Agreement) until such failure to comply is remedied; and/or
  - 2.6.2. If the Customer causes anything, which in the reasonable opinion of Yorbl and or the SIM Provider may have the effect of jeopardising the operation of the cables, exchanges, transmitters, receivers, computer hardware and software, and other equipment and facilities by which the SIM Services are provided (excluding equipment owned or used by the Customer and by other users and customers of the SIM Services) ("the Network") or the SIM Services, or the SIM Services are being used in a manner prejudicial to the interest of the Customer and/or the SIM Provider (provided that the Customer is informed as soon as possible of any such suspension); and/or
  - 2.6.3. Due to an emergency or upon instruction by emergency SIM Services or any government or appropriate authority or for the Customer's own security.
- 2.7. Any SIM may be suspended from making calls (other than to the emergency SIM or Alarm Services) and disconnected from the SIM Services if Yorbl or the SIM Provider has reasonable cause to suspect fraudulent use of the SIM or the device in which it is installed, or either are identified as being stolen.
- 2.8. During any period of suspension arising from the circumstances detailed in conditions 2.6 and 2.7 above the Customer shall remain liable for all Charges levied in accordance with the Agreement
- 2.9. Any Service may be varied or modified, as required by legislation or other relevant authority.
- 2.10. Title to, and all intellectual property rights in the software provided in connection with the use of the SIM Services ("the SIM Software"), associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the SIM Software or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of the Agreement relating to the



- Customer's use of that SIM Software, associated documents and all parts thereof, directly against the Customer.
- 2.11. Nothing in the Agreement will be deemed to or require the SIM Provider to transfer, assign or license any intellectual property rights to the Customer.
  - 2.12. Yorbl liability to the Customer and its end users in respect of all loss or damage arising under or in connection with the supply of the SIMs and SIM Services to the Customer, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, shall be limited to the extent of any limitation within the terms of the agreement between Yorbl and the SIM Provider for the supply of the SIMs.
  - 2.13. The Service may be temporarily unavailable due to scheduled maintenance or for unscheduled emergency maintenance or because of other causes beyond the SIM Provider's or Yorbl's reasonable control.
  - 2.14. Neither Yorbl nor the SIM Provider warrant that the end results obtained as result of using the Product with the Services together with the Customer's or an end user's devices and applications or that use of the Product will be uninterrupted or error free. In particular, Yorbl and the SIM Provider disclaim all implied warranties of merchantability and fitness for a particular purpose and non-infringement in respect of the SIMs.

## **Schedule 2. Support Services Description**

The support provided by Yorbl to the Customers under these terms and conditions comprises:

### **Level 1 Support**

Level 1 support is the Customer facing support level.

Level 1 support will be responsible for the following: -

- Triage of the Customer queries/support request
- Creation and management of the Customer support "Tickets" on the Yorbl support system
- Basic troubleshooting
- Escalation of faults/Issues to Level 2 Support where a resolution cannot be found through basic troubleshooting
- Advising Customer Users on progress and resolutions

Level 1 support **will not** be responsible for the Corporate/Reseller End User queries.

### **Level 2 Support**

Level 2 support liaises with Level 1 Support and is not Customer facing.

Level 2 Support will be responsible for the following:-



- Deeper technical troubleshooting and resolution of reported product/service issues escalated by Level 1 Support
- Escalation of faults/Issues to Level 3 Support where a resolution cannot be found through basic troubleshooting
- Advising Level 1 Support of on progress and resolutions through the Yorbl support system.

### **Level 3 Support**

Level 2 support liaises with Level 1 Support and is not Customer facing.

Level 2 Support will be responsible for the following:-

- Deeper technical troubleshooting and resolution of reported product/service issues escalated by Level 2 Support
- Escalation of faults/Issues to and liaison with Manufacturer where a resolution cannot be found with 3<sup>rd</sup> party products (i.e. SMART Phones, Android Tablets etc.)
- Advising Level 1 and 2 Support of on progress and resolutions through the Yorbl support system.

**N.B. ALL FAULTS MUST BE REPORTED AS PER THE ABOVE TERMS OF SERVICE AND VIA THE YORBL ONLINE SERVICE DESK AT [HTTPS://YORBL.FRESHSERVICE.COM](https://yorbl.freshservice.com) OR, SHOULD THIS SYSTEM NOT BE AVAILABLE, VIA EMAIL TO [SUPPORT@YORBL.COM](mailto:support@yorbl.com) OR VIA TELEPHONE ON +44 (0)330 120 1523.**



### Schedule 3. Yorbl Cloud Services End-User Terms

1. The YORBL Cloud Services Terms of Service (these “Terms”) describe your rights and responsibilities as a customer of and of our Cloud based SaaS services.
  - 1.1. These Terms are between you and the YORBL entity that owns or operates the Analytics service that you are using or accessing (“YORBL”, “we” or “us”).
  - 1.2. “You” means the entity you represent in accepting these Terms or, if that does not apply, you individually.
  - 1.3. If you are accepting on behalf of your employer or another entity, you represent and warrant that:
    - 1.3.1. You have full legal authority to bind your employer or such entity to these Terms.
    - 1.3.2. You have read and understand these Terms; and (iii) you agree to these Terms on behalf of the party that you represent.
  - 1.4. These Terms are effective as of the date you click “I agree” (or similar button or checkbox) or provide your signature or use or access Analytics, whichever is earlier (the “Effective Date”).
  - 1.5. These Terms do not have to be signed in order to be binding. You indicate your assent to these Terms by clicking “I agree” (or similar button or checkbox) at the time you register for Analytics, create a Analytics account, or place an Order. For No-Charge Products, you also indicate your assent to these Terms by accessing or using the applicable No-Charge Product.

## 2. DEFINITIONS

**Access Term** - The term, as further described in Section 3 below, for which YORBL has contractually agreed to provide the Customer with access to the SaaS Services in accordance with the Order.

**Billing Period** - The billing period for which the SaaS Access Fees shall be calculated and invoiced to the Customer in advance on a pro rata basis as follows: (i) annual billing period(s) for an Access Term for a SaaS Service, and (ii) for any add-on Order(s) for that SaaS Service, a proportionate period for the initial billing cycle to enable annual co-billing thereafter.

**Overage** - Measured monthly, any actual usage of the SaaS Service which exceeds the SaaS Access Rights subscribed to by the Customer under any Order(s) applicable to the SaaS Service.

**SaaS Services** - Any Cloud based Software Services including Yorbl Analytics, Yorbl’s SureMDM Mobile Device Management service, Yorbl’s FreshService online Service Management and Support System and any other online service or software that Yorbl may, from time to time, be offered by YORBL, as more fully described in the Documentation, and all SaaS Access Rights, each as specified on an Order.

**SaaS Access Fees** - The fees due to YORBL, as further specified in the Order,



for use of the SaaS Services to the extent of the SaaS Access Rights.

**SaaS Access Rights** - The type and quantity of SaaS access rights ordered by the Customer and granted to the Customer for use during the applicable Access Term.

**Scheduled Downtime** - Any downtime scheduled by Yorbl or a third (3<sup>rd</sup>) party provider to perform system maintenance, backup and upgrade functions for the Hosted Environment, and any other downtime incurred because of the Customer request.

**Service Levels** - The service level commitments from YORBL with respect to the maintenance and support of the Hosted Environment and SaaS Services; provided, Service Levels shall not apply to pilots, trials, development, test, sandbox, and other non-production offerings.

**Unscheduled Downtime** - Any time outside of the Scheduled Downtime when the Hosted Environment and/or is not available to perform operations. Unscheduled Downtime is measured in minutes.

**Uptime Percentage** - Total Time minus Unscheduled Downtime divided by Total Time.

### 3. ACCESS RIGHTS

- 3.1. During the Access Term, and solely for the Customer's internal business use (which may include external use of designated components by the Customer's customers), YORBL grants to the Customer a nonexclusive, non-transferable, non-assignable, personal right to use the SaaS Services specified in the Order through internet or mobile access, up to the extent of the SaaS Access Rights specified in the Order.
- 3.2. With regards to the on-premises components and related Documentation, YORBL grants to the Customer, and the Customer accepts, a nonexclusive, non-assignable, and non-transferable limited license during the Access Term, to use the on-premises components and related Documentation solely in conjunction with the SaaS Services for the Customer's internal business purposes, and subject to the terms and conditions of this Agreement.
- 3.3. With respect to the Documentation, the Customer may make a reasonable number of copies of the Documentation applicable to the SaaS Services solely as reasonably needed for the Customer's internal business use in accordance with the express use rights specified herein.
- 3.4. Without limiting the terms and conditions in Section 4 of the "General Terms and Conditions", the Customer acknowledges and agrees that no rights or any other interests are provided to the Customer with respect to:
  - 3.4.1. Rights in or to the Hosted Environment or SaaS Services beyond those rights specified in the Order.
  - 3.4.2. Rights to provide access to or use of the Hosted Environment, SaaS Services and on-premise components to any other party, including, without limitation, any uses in the nature of a service bureau or application services provider.
  - 3.4.3. Rights to obtain possession of copies of any component of the Hosted Environment or any software used to provide or perform the SaaS Services, except with respect to on-premise component(s) and then only as expressly provided for in this Section.





3.4.4. Representations, warranties or other third party beneficiary rights from any YORBL third party Solution Partner.

#### **4. ACCESS TERM**

Unless otherwise specified on the Order, an Access Term shall commence upon the date YORBL accepts the applicable Order and shall continue for the period specified in the Order. Each Access Term is non-cancellable, and upon expiration shall automatically renew for additional annual terms at YORBL's then current rates, unless either party provides the other with no less than thirty (30) days prior written notice of its intent to not renew. In the event the Customer (i) fails to pay YORBL any undisputed amounts past due, or (ii) is in breach of Section 5.1, YORBL shall have the right to immediately suspend without notice any or all related SaaS Services provided to the Customer hereunder.

#### **5. YORBL RESPONSIBILITIES**

- 5.1. As part of the SaaS Services, during any Access Term and subject to payment of all fees, YORBL shall, either directly, or through its applicable Solution Partner, provide support for the Hosted Environment and SaaS Services in accordance with the terms and conditions of this Section.
- 5.2. In addition to establishing and maintaining the Hosted Environment, YORBL shall maintain the components of the Hosted Environment with all current Updates that YORBL deems necessary for the SaaS Services.
- 5.3. YORBL shall use commercially reasonable efforts to implement any required Error Corrections.
- 5.4. Access to the SaaS Services and maintenance of the Hosted Environment shall be in accordance with the Service Levels specified in this Section 5.
- 5.5. The Customer's Designated Employees and Users shall have access to YORBL technical support personnel through YORBL's online Service Desk located at [yorbl.freshservice.com](https://yorbl.freshservice.com) and also via telephone and/or email during the support hours applicable to the specific SaaS Services subscribed to by the Customer provided only that the SaaS Services have been purchased directly from YORBL.
- 5.6. Where the Customer has purchased the SaaS Services through an authorised YORBL Solution Partner, the Customer's Designated Employees and Users shall have access to YORBL Solution Partner technical support Personnel through the YORBL Solution Partner's contact channels.
- 5.7. With respect to any on-premises components, the Customer shall be responsible for the installation and configuration of the on-premises components in the Customer Environment. YORBL shall provide technical support for on-premises components through YORBL's online Service Desk located at <https://yorbl.freshservice.com> and also via telephone and/or email during the support hours specified, provided only that the on-premises components have been purchased directly from Yorbl.
- 5.8. Where the Customer has purchased the SaaS Service on-premises components through an authorised YORBL Solution Partner, the Customer's Designated Employees and Users shall have access to YORBL Solution Partner technical support pPersonnel through the YORBL Solution Partner's contact channels.



5.9. Uptime. YORBL will use commercially reasonable efforts to ensure that the Hosted Environment will be available 24 hours per day, 7 days per week, excluding any Scheduled Downtime.

5.9.1. Daily system logs will be used to track Scheduled Downtime and any other Hosted Environment outages. YORBL will provide the Customer with a minimum of five (5) days advance notice of Scheduled Downtime and post a notice on the application log-in screen to notify the Customer administrator of any Scheduled Downtime that will exceed two (2) hours.

5.9.2. The duration of any downtime is measured, in minutes, as the amount of elapsed time from when the Hosted Environment is not accessible or does not permit the Customer to log on, to when the SaaS Services permits the Customer to log on and access the Hosted Environment.

5.10. Backup and Recovery of Data. As a part of the SaaS Services, YORBL shall maintain a backup of all Customer Data that YORBL is required to retain as a part of the SaaS Services. In the event the Customer Data becomes destroyed or corrupt, YORBL shall use all commercially reasonable efforts to restore all available data from backup and remediate and recover such corrupt data.

## **6. CUSTOMER RESPONSIBILITIES**

6.1. Use of SaaS Services. the Customer shall be solely responsible for the actions of its Personnel and Data Subjects while using the SaaS Services and the contents of its and their transmissions through the SaaS Services (including, without limitation, Customer Data).

6.2. The Customer agrees to:

6.2.1. Abide by all laws and regulations applicable to the Customer's use of the SaaS Services, including without limitation all laws and administrative regulations (including, all UK and applicable foreign) relating to the control of exports of commodities and technical and/or Personal Data, and shall not allow any of its Personnel or Data Subjects to access or use the SaaS Service in violation of any export embargo, prohibition or restriction, including but not limited to any party on a UK government restricted party list.

6.2.2. Provide any required notifications to Data Subjects, and obtain all rights and requisite consents from Data Subjects in accordance with all applicable Privacy Laws and other laws in relation to the collection, use, disclosure, creation and processing of Personal Data in connection with this Agreement and the use and delivery of the SaaS Services.

6.2.3. Not use the SaaS Services for illegal purposes.

6.2.4. Not knowingly upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Hosted Environment, SaaS Services or another's computer.

6.2.5. Not knowingly interfere with another customer's use and enjoyment of the SaaS Services or another entity's use and enjoyment of similar services.



- 6.2.6. Not to post, promote or transmit through the SaaS Services any unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, harmful, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information or content of any kind or nature.
- 6.2.7. Not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability.
- 6.3. Passwords. All ID access codes and passwords are personal to the individual to which it is issued. the Customer and the Customer's Personnel are responsible for maintaining the confidentiality and security of all access codes and passwords issued including but not limited to those of Data Subjects and ensuring that each access code and password is only used by the individual authorised. To the extent YORBL assigned the Customer with administrative rights to create access codes and passwords for the Customer's Personnel or Data Subjects, the Customer shall be responsible for issuing such access codes and passwords.