

Terms of Service

Version updated: 19 March 2021

Please read the following important Terms carefully, and check that you agree with them, before signing up for an account with us.

You must be acting on behalf of a business, or if you are a consumer you must be at least 18 years old, to create an account with us and use the Subly Platform and Services. By submitting or signing an Order Form you confirm that you agree to these Terms, and enter into a legally binding agreement with us. If you do not agree to these Terms, do not sign up for an account with us.

If you are a consumer (for more on this see clause 2), please note that certain terms may not apply to you, or there may be additional terms that do apply to give you further protections. Please see Appendix 1 for full details of how the terms are altered for consumers.

About the Subly Services. The Subly Service is a cloud-based video and audio transcription software tool. It uses speech recognition technology to automatically add subtitles, in multiple languages, to your videos uploaded to or recorded with Subly. It enables you to edit and translate text, and download your video for sharing on a platform of your choice.

Plan Options. Subly is available under various Pricing Plans, as set out in our [Price List](#). The type of pricing plan you sign up to will determine Subly's features available to you and the fees you have to pay us, as listed on the Price List.

- 1. Who we are and how to contact us**
 - 1.1. **Who we are.** When we say **Subly, we, us** or **our**, we mean Subly UK Limited, a company registered in England and Wales under company number 12618425. We operate the getsubly.com website and subdomains and associated software platforms in order to provide the Service. Our registered office is at Kemp House, 160 City Road, London, England, EC1V 2NX.
 - 1.2. **How to contact us.** If you wish to contact us for any reason, including because you have any complaints, you think Subly is faulty or misdescribed, or wish to end your contract with us, you can contact us: by email at legal@getsubly.com; or post to the address set out in clause 1.1 above.
 - 1.3. **How we may contact you.** If we have to contact you, we will do so by email, text, or post, using the contact details you have provided to us.
- 2. If you are a consumer**
 - 2.1. **What terms apply to you.** In some areas you will have different rights under these Terms if you are a consumer. Additional provisions specific to consumers or provisions that are different or altered because you are a consumer are dealt with in Appendix 1. Otherwise all provisions apply to businesses and consumers
 - 2.2. **Are you a business customer or a consumer?** You are a consumer if you are an individual, and you are using Subly wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).
- 3. About these terms**
 - 3.1. **What these Terms cover.** These are the terms and conditions (**Terms**) under which we supply software services and subscription services to you through our Platform .
 - 3.2. **Why you should read these Terms.** These Terms set out your legal rights and responsibilities, our legal rights and responsibilities, and certain key information required by law. Please read these Terms carefully and make sure that you understand them, before signing up for an account with us and using our Platform. You should retain a copy of these Terms for future reference.

- 3.3. **Changes to these Terms.** We may amend these Terms from time to time, for example, to reflect changes in law or best practice, or to deal with changes we introduce to the Services. We will give you at least 30 days' notice (**Change of Terms Notice**) in advance of the renewal of your Subscription Plan, of any change by sending you an email with details of the change. We will ask you to accept or reject the new terms when you access your Account after expiry of that 30 days' Change of Terms Notice, and
- 3.3.1. **if you accept the new terms**, they will come into force when you log into your Account; or
- 3.3.2. **if you reject the new terms:** (i) our contract with you will end immediately, and you will not be permitted to continue to use Subly (save as described in this sub-clause (b)); (ii) we will refund to you any sums paid by you in respect of your use of Subly after the expiry of the Change of Terms Notice; and (iii) you will be able to access your Account for a limited period of time and a limited purpose, as described in clause 17.2 (Data export).
4. **Submitting an order form, your account and our contract with you to provide the services**
- 4.1. **Placing an Order.** Subject to agreement and acceptance of a relevant Order Form as approved by Subly, and receipt of the Fees in accordance with the payment terms, and the rest of the relevant conditions below, Subly will provide the Services in accordance with the relevant Pricing Plan and associated Plan Functionalities, and grants you a non-exclusive, non-transferable, royalty free right to access and use the Services and Platform, in accordance with the permissions, restrictions and other details, set out in the Order Form and these Terms.
- 4.2. **You must register to use Subly.** You must register for and create an account (**Account**) to use the Service. In order to create an Account, you must complete the relevant Order Form for sign-up form on our website or other relevant signature process, and complete the verification process. Your registration will be completed when you complete the Account verification process, at which point a legally binding contract will come into force between you and us.
- 4.3. **Duration of the contract.** You will gain access to and will be able to use the Service as soon as you register or sign up. The contract between you and us will continue to roll over for successive periods, unless you end it as described in clause 14 (*Your rights to cancel the subscription and end this contract*), or we end it as described in clause 16 (*Our rights to end the contract*).
- 4.4. **Use on behalf of an organisation.** If you use the Service or expressly agree to these Terms and conditions in the course of a business, then by so doing you bind both yourself, and the person, company or other legal entity that operates that business or entity to these Terms, and in these circumstances references to "you" in these Terms are to both the individual user and the relevant person, company or legal entity, unless the context requires otherwise.
- 4.5. **Managing your Account and Pricing Plan.** Once your Account is activated, you will be able to manage your Account and Pricing Plan via the Platform, including: signing up to a Pricing Plan; viewing your Pricing Plan and changing it to another Pricing Plan; updating your personal (or business) details and payment method details; enabling, disabling and deleting your Account; or managing your marketing preferences.
- 4.6. **Pricing Plans.** In order to use the Service, you must subscribe to one or more of [our Pricing Plans](#) as set out in our Price List and as further described in clause 5.2 (*When and how often you must pay us*). The type of the Pricing Plan you have signed up for will determine:
- 4.6.1. what functionalities of the Service you can use (for example, limited or unlimited storage capacity, single user or team use) For ease of reference, in these Terms we will call such functionality **Plan Functionality**; and
- 4.6.2. the maximum number of minutes of video content that you can upload to the Service (which includes videos recorded using the Service). For ease of reference, in these Terms we will call such minutes **Plan Minutes**.
- 4.7. **Choosing a Plan:** All Pricing Plans, Plan Functionalities, Plan Minutes and other subscription limitations are listed on our Pricing Page, so please review these details and test the options thoroughly (using free trials where offered, or our Free Plan) before making an informed

payment decision. Users who upgrade to a paid subscription acknowledge the Platform's stated limitations. Subly users are responsible for testing our Service fully before upgrading and for managing their subscriptions, including cancelations.

- 4.8. **Updating your details and keeping your Account credentials secure.** If your details change after registration, you must update them on the Platform. You must keep details of your Account secure and not share them with anyone else.

5. Charges and payments

- 5.1. **Our prices.** All our fees (**Fees**): are in the currency shown on our Price List; are net of VAT which will be added at the applicable rate; and are as shown on [our Price List](#) (as may be updated from time to time).

- 5.2. **When and how often you must pay us.** You must pay us the Fees applicable to the Pricing Plan you subscribe to. You can either: use our free of charge Pricing Plan (**Free Plan**); or subscribe to a fixed price Pricing Plan (**Subscription Plan**). In these Terms, the term Pricing Plans means together the Free Plan and/or the Subscription Plans. Further information can be found in our [FAQs](#).

- 5.3. **How you must pay.** Unless we agree otherwise and send you an invoice, we will use Stripe Payments (or other replacement payment gateway) to process payments through our Platform. and you will need to provide us with valid, up-to-date and complete billing information. Save as provided in clause 5.5 below, such information must include details of your payment card.

If you are using the payment gateway, you authorise us to bill the Fees due to us for your Pricing Plan to your payment card, during the term of your subscription, at the applicable intervals and at the applicable amounts as set out in clauses 5.1 and 5.2 above.

- 5.4. **Failed payments.** If, for any reason, the applicable Fees cannot be charged to your payment card in part or in full (for example, due to insufficient funds in the bank account linked to your payment card, or because your payment card has expired and you have not provided us with details of another payment card), will invoice you for the unpaid part of the Fees, and your access to the Service will be suspended immediately. You will need to enter valid payment card details the next time you login/access your Account, or choose to be downgraded to the Free Plan. For the avoidance of doubt, if you opt to downgrade to the Free Plan you will still need to pay any outstanding monies before access to your Account will be restored.

- 5.5. **Invoicing.** If we agree to issue invoices rather than require payment card payments via the payment gateway, we will issue to you our invoices in respect of our Fees, during the term of your Pricing Plan, at the applicable intervals and at the applicable amounts.

- 5.6. **We can charge interest if you pay late.** If you do not make any payment to us by the due date, we may (unless you are a consumer) charge interest to you on the overdue amount at the rate of 4% a year above the base rate of the Bank of England from time to time (but at 4% a year for any period when that base rate is below 0%). This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

- 5.7. **What to do if you think an invoice is wrong.** If you think an invoice or payment amount is wrong, please contact us within 7 days of receipt of the invoice or payment to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.

- 5.8. **Changes to our Fees.** Our Fees may change from time to time. We will give you at least 30 days' notice (**Change of Fees Notice**) of any change by sending you an email with details of the change.

- 5.8.1. **If you do not wish to pay the new price,** you may cancel your Pricing Plan as described in clause 14.3.

- 5.8.2. **If you do not cancel your subscription,** the new Fees will come into force on the expiry of the Change of Fees Notice, and will apply to you from your next billing date.

6. **How you may use Subly. subject to the rules and restrictions set out in clause 8 (Rules and restrictions),**
 - 6.1. **If you are a consumer.** In return for your agreeing to comply with these Terms, and (where applicable) paying us our Fees, you may use the Service, in accordance with these Terms, for your own, private, non-commercial purposes.
 - 6.2. **If you are a business customer.** In return for your agreeing to comply with these Terms, and (where applicable) paying us our Fees, you may use the Service, in accordance with these Terms, for your internal business operations in accordance with these Terms (including as permitted in clause 7 (*Authorised Users*)).
7. **Authorised users**
 - 7.1. **Use of Subly by Authorised Users.** Subject to purchasing a Subscription Plan with team functionalities, the rules and restrictions set out in this clause 7 (*Authorised Users*), clause 8 (*Rules and Restrictions*), and other provisions of these Terms, you may permit your others including as applicable employees, agents and/or independent contractors to use the Service in accordance with these Terms solely for your own purposes allowed under these Terms (*Authorised Users*).
 - 7.2. **Authorised Users.** In relation to the Authorised Users:
 - 7.2.1. you remain responsible for all acts and omissions of your Authorised Users as if they were your own acts and omissions in all matters that arise under or in connection with their access to and use of the Service and with these Terms;
 - 7.2.2. you must remove an Authorised User's access to the Service as soon as they cease to act on your behalf;
 - 7.2.3. you must not authorise a greater number of Authorised Users to access and use the Service than the maximum number of users permitted under your selected Subscription Plan;
 - 7.2.4. if you wish to authorise additional Authorised Users in excess of the number permitted by your current Subscription Plan, you must upgrade you Subscription Plan to one which permits your required number of Authorised Users;
 - 7.2.5. you must ensure that each Authorised User keeps a secure password for their use of the Service, and keeps their users credentials (i.e. username and password) confidential;
 - 7.2.6. you must use our requested software reporting, or (no more frequently than once per year) permit us or our designated auditor to audit your use of the Service, to verify that your use of the Service does not exceed the number of maximum users permitted under your selected Subscription Plan; and
 - 7.2.7. if any of the audits referred to in clause 7.2(f) reveal that you underpaid our Fees to us, then, without prejudice to our other rights, you must pay us an amount equal to such underpayment.
 - 7.3. **Additional Authorised Users.** If:
 - 7.3.1. you wish to authorise additional Authorised Users in excess of the number permitted by your current Subscription Plan, you must upgrade your Subscription Plan to one which permits your required number of Authorised Users; or
 - 7.3.2. you exceed the maximum number of Authorised Users permitted under your current Subscription Plan without first upgrading your Subscription Plan, your Subscription Plan will be upgraded automatically to a Subscription Plan allowing the relevant number of users, and clause 14 (*Cancelling or change*) will apply as if the change to the Subscription Plan was executed by you.
 - 7.4. **Unauthorised sharing of credentials.**
 - 7.4.1. You must ensure that one Authorised User's credentials are not used by any other person, unless they have been reassigned in their entirety to another Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Service.

- 7.4.2. If we have reasonable grounds to believe that you are in breach of the obligation in clause 7.4(a) above then, without limiting or affecting any other right or remedy available to us, we reserve the right to charge you for the difference between the Fees payable under your Subscription Plan and a Subscription Plan that permits the number of users that have accessed the Service in the relevant period.

8. Rules and restrictions

- 8.1. **You must keep your device and Account secure.** You are responsible for keeping your device and Account safe and secure. You must promptly notify us of any unauthorised use or security breach of your Account or the Platform.
- 8.2. **You may not transfer your rights to Subly to someone else.** The rights provided under this agreement are granted to you only. You may not transfer your rights to use the Service to someone else or facilitate others' use, whether for money, for anything else or for free.
- 8.3. **You may not share Subly with other persons, entities, affiliates or companies.** The rights granted to you are not considered granted to or available for use by any *other persons, entities, affiliates*, subsidiaries or holding companies.
- 8.4. **Prohibited actions.** You must not (or permit or assist others to):
- 8.4.1. sell, resell, rent, lease, sub-license, loan, publish, distribute, redistribute, provide, or otherwise make the Service or the Platform available in any form, in whole or in part, to any person without prior written consent from us (save as authorised in clause 7 (*Authorised Users*));
 - 8.4.2. copy the Platform, except as part of the normal use of the software
 - 8.4.3. use the Service in conjunction with any stream-ripping, stream capture or similar software to record or create a copy of any content that is presented to you in streaming format;
 - 8.4.4. translate, merge, edit, adapt, vary, alter or modify, the whole or any part of the Service or Platform nor permit the Platform or any part of them to be combined with, or become incorporated in, any other programs, applications or digital content except as necessary to use the Service on devices as permitted in these Terms;
 - 8.4.5. disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of Service or Platform nor attempt to do any such things, except to the extent permitted by law,; is not used to create any software or service that is substantially similar in its expression to the Service or Platform;
 - 8.4.6. attempt to, or assist, authorise or encourage any person to circumvent, disable or defeat, interfere with or disrupt the safety, security or performance of the Service or Platform; or
 - 8.4.7. access or use the source code of the Platform.
- 8.5. **Harm to us or our users.** You must not (or permit or assist others to):
- 8.5.1. use the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, such as viruses, or harmful data, onto the Service or any operating system;
 - 8.5.2. breach any of the user content rules in clause 10 (Your Materials);
 - 8.5.3. use the Service in a way that could damage, disable, overburden, impair or compromise the Service, our systems or security or interfere with other users; or
 - 8.5.4. collect or harvest any information or data from the Service or our systems or attempt to decipher any transmissions to or from the servers running the Service.

9. Our intellectual property rights

- 9.1. **You do not acquire any rights in Subly.** All intellectual property rights in the Service, Platform and Platform Data throughout the world belong to us (or our licensors) and any rights are licensed (not sold) to you. Any goodwill derived from the use by you of our intellectual property rights will accrue to us (or our licensors). All rights not expressly granted are reserved.

- 9.2. **Proprietary marks and notices.** You must not remove any trade marks, service marks, labels or other legal or proprietary notices included in the Service.
- 9.3. **Warranties from Subly – non-infringement:** Subly warrants and promises that it has full right, power and authority to enter into this agreement and that your use of the Services and Platform (save in relation to your Materials) in accordance with these Terms, will not infringe any third party’s legal rights (including copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights).
- 10. Your materials**
- 10.1. **Meaning of “your Materials”.** In these Terms, “your Materials” means all content, data, works and materials (including text, graphics, images, audio material, video material, audio-visual material, and data) which you upload, submit, send to or store via the Service, transmit using the Service, supply to us for uploading to, transmission by or storage on the Service, or generated as a result of your use of the Service (but excluding Platform Data).
- 10.2. **You must have the right to submit your Materials to us.** You must have the necessary rights to submit your Materials to us. You must also have the right to give us the permission to use your Materials as necessary for us to provide the Services.
- 10.3. **Data protection.** Without limiting the generality of clause 10.2 above you must ensure that your Materials do not breach any person’s rights in relation to their personal data or privacy.
- 10.4. **Your ownership and responsibility for your Materials.** You will own all intellectual property rights, title and interest in and to all of your Materials. You will have the sole responsibility for the legality, reliability, integrity, accuracy and quality of your Materials.
- 10.5. **Permissions you give us to your Materials.** You grant us a worldwide, non-exclusive, royalty-free, licence to use, copy, reproduce, store and distribute your Materials solely to the extent reasonably required for the performance of our obligations under these Terms
- 10.6. **Confidentiality of your Materials.** We will treat your Materials, which comes into our possession or control in the course of your use of the Service in accordance with these Terms as confidential. In particular, we will not use or reproduce such content in whole or in part in any form except as may be required by this contract; nor disclose such content to any third party or persons not authorised by you to receive it, except with your prior consent.
- 10.7. **No back-ups of your Materials.** We will not back-up your Materials. You retain the sole responsibility for backing-up your Materials whenever you require a back-up of it.
- 10.8. **How to delete your Materials.** You can delete items of your Materials individually by using the Delete icon for the specific content on the dashboard of the Platform. You can download a copy of your data at any time before deleting your account by emailing us to request the copy of data for download via support@getsubly.com]. When you delete your Materials:
- 10.8.1. it may continue to be stored on our systems for up to 90 days after you deleted it; or
- 10.8.2. it may continue to be processed by us where we require to keep your Materials in order to comply with our legal obligation; comply with a request of a judicial or administrative authority, law enforcement or a government agency; investigate your breaches of these Terms; to enforce these Terms; or for the establishment, exercise or defence of legal claims.
- 11. Warranties**
- 11.1. Your Materials must not breach any laws, be inappropriate or otherwise cause us any loss.
- 11.2. You warrant (or promise) that you have full right, power and authority to enter into this agreement and that your Materials, and the use of your Materials by us in accordance with these Terms, will not:
- 11.2.1. be illegal or unlawful (including being in contempt of any court, in breach of any court order, in breach of racial or religious hatred or discrimination legislation, or in breach of official secrets legislation);
- 11.2.2. infringe any third party’s legal rights (including copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights);

- 11.2.3. infringe any right of confidence, right of privacy or right under data protection legislation;
- 11.2.4. be in breach of any contractual obligation owed to any person;
- 11.2.5. be libellous or maliciously false, obscene, indecent, pornographic, lewd, suggestive or sexually explicit, blasphemous, offensive, deceptive, harmful, fraudulent, threatening, intimidating, abusive, harassing, anti-social, menacing, hateful, racially or ethnically offensive, discriminatory or inflammatory, depict violence in an explicit, graphic or gratuitous manner, constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity; or
- 11.2.6. otherwise bring us into disrepute.

12. Updates and support (See additional provisions in the Appendix if you are a consumer)

- 12.1. **Updates to Subly.** From time to time, we may automatically update the Platform to improve performance, enhance functionality, reflect changes to the operating system, address security issues or implement new versions of the Platform.
- 12.2. **Support for Subly.** If you want to learn more about Subly or have any problems using the Service, please contact us using the support@getsubly.com. We may provide you with reasonable support in relation to your use of the Service, but have no obligation to do so under these Terms. We will have no obligation to provide support in respect of issues caused by the improper use of the Service made without our prior consent.
- 12.3. **How to contact us if there is a problem with Subly.** If there is a problem with the Service, you have a complaint, or wish to contact us for any other reason please contact us using one of the contact methods in clause 1.2 (*How to contact us*).

13. External products

- 13.1. **Your access to third party products.** The Service may allow you to access, use or interact with third party apps, websites, content or other products or services (**External Products**). For example, [you may choose to use third party data backup services integrated with the Service or interact with a share button in the Service that enables you to send your Materials to an External Product]. Please note that: these Terms only apply to the Service, and that your use of any External Products will be governed by the terms and conditions and privacy policies of the third party providers of such External Products; and you will need to make your own independent judgement about whether to use any External Products (even if they are recommended by us).
- 13.2. **You are responsible for third party fees.** You are responsible for: any access or data fees incurred from third parties (such as your internet provider or mobile carrier and other fees and taxes) in connection with your use of the Service on your device; and any fees incurred from third parties in relation to your use of the External Products.
- 13.3. **No warranty or endorsement.** We do not make any warranties about any External Products, nor give any endorsement. We do not warrant that your use of any External Products will be uninterrupted, error-free or secure.

14. Your rights to cancel or change your subscription and terminate the contract (See additional provisions in the Appendix if you are a consumer)

- 14.1. **Cancelling or changing your Pricing Plan.** If you wish to cancel your current Pricing Plan or change to a different Pricing Plan, you can do that any time using the functionality within your Account area. Further information can be found in our [FAQs](#).
- 14.2. **If you do not agree to changes to these Terms.** You may end this contract if you do not agree to changes we introduce to these Terms, as set out in clause 3.3 (*Changes to these Terms*).
- 14.3. **If you do not agree to changes to our Fees.** You may end this contract if you do not agree to changes we introduce to our Fees. For details, please see clause 5.8 (*Changes to our Fees*).
- 14.4. **If we suspend Subly.** You may be able to end this contract if we suspend the Service, or tell you that we are going to suspend it, as described in clause 15.2 (*Your rights if we suspend your access to Subly if you are not at fault*).

- 14.5. ***If our performance is delayed due to an event outside our control.*** You may end this contract if our performance is delayed due to an event outside our control, as set out in clause 22.1 (*Events outside our control*).
- 14.6. ***You may end this contract if we breach it.*** You may end this contract at any time by contacting us using one of the methods set out in clause 1.2 (*How to contact us*) if we breach these Terms materially or repeatedly, and, do not remedy the breach within 14 days of your notice. If you end this contract in this way, the contract will end immediately, and we will refund to you any sums paid by you for subscription services not provided to you in that billing period.
- 15. Our rights to suspend Subly**
- 15.1. ***We may suspend Subly.*** We may have to suspend your access to the Service to: deal with technical problems or make minor technical changes; update the Service to reflect changes in relevant laws and regulatory requirements; make changes to the Service.
- 15.2. ***Your rights if we suspend your access to Subly if you are not at fault.*** We will contact you in advance to tell you we will be suspending the Service under clause 15.1 above, unless the problem is urgent or an emergency. If we have to suspend the Service for longer than 30 days in any 12 months and you are not using a free version of the Service, we will adjust the price so that you do not pay for your access while it is suspended. You may contact us to end this contract if we suspend the Service, or tell you we are going to suspend it, in each case for a period of more than [30 days] and we will refund any sums you have paid in advance for your access to the Service in respect of the period after you end the contract.
- 15.3. ***We may suspend your access to Subly if you are at fault.*** Without limiting or affecting any other right or remedy available to us, we may suspend your access to the Service if:
- 15.3.1. you do not pay us our Fees when you are supposed to. We may do so until you have paid us the outstanding amounts; and/or
- 15.3.2. you breach other provisions of these Terms or we reasonably suspect that you have breached other provisions of these Terms in any way. We may send you one or more formal warnings before suspending your access to the Service.
- 16. Our rights to terminate the contract**
- 16.1. ***When we may end this contract if you breach the Terms.*** We may end your rights to access and use the Service and end this contract at any time by contacting you if you breach these Terms materially or repeatedly, and you do not remedy the breach within 14 days of our notice. If we end this contract in this way, it will end immediately, and you may have to pay us compensation for the loss we incur as a result of your breaking the contract.
- 16.2. ***We may end this contract if you fail to pay.*** Without limiting the generality of clause 16.1 above, we may end this contract if you do not pay us our Fees when you are supposed to and you still do not make payment within 14 days of us reminding you that payment is due.
- 16.3. ***We may withdraw Subly.*** We may write to you to let you know that we are going to stop supplying the Service and end this contract. We will let you know at least three months before we end this contract, unless it is not possible (for example, because we have to discontinue providing the Service for security or legal reasons). We will refund to you any sums you have paid in advance for any digital content or services, which will not be provided to you after the contract ends.
- 17. Consequences of termination**
- 17.1. ***Consequences of ending this contract.*** When this contract ends for any reason, then, in addition to the consequences set out elsewhere (as applicable),
- 17.1.1. you must stop all activities authorised by these Terms, including your use of the Service except as provided in clause 17.2 below; and
- 17.1.2. you must immediately pay us all of our outstanding unpaid fees and interest and, in respect of digital content and services supplied but for which no payment request or invoice has been submitted, we may submit a request or invoice, which will be payable by you immediately on receipt.
- 17.2. ***Data export.*** You may continue to access your Account for a limited 30 day period but you will not be able to use any functionality of the Service, save for viewing and updating the 'Account

Details', and downloading and deleting your existing videos and other items of your Materials. Following the expiry of the 30 days, we will be entitled to destroy the data..

18. Disclaimers, availability, and accuracy

- 18.1. ***We do not guarantee the availability of Subly.*** We will use reasonable skill and care to provide the Service to you and to keep it safe, secure and error-free but we do not promise that your use of the Service will be safe, secure, uninterrupted or error-free. We will use reasonable endeavours to maintain the availability of the Service to you but we do not guarantee 100% availability. For example, the Service may become temporarily unavailable for maintenance, repairs, updates, upgrades, or due to internet, network or equipment failures.
- 18.2. ***Exclusion of implied warranties:*** We make no warranties or other assurances as to the fitness for purpose of the Platform or Services nor that they will meet your requirements or produce any specific business benefits, have any particular effectiveness nor create any revenue or other benefits. Subject to any express warranties, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement whether by statute, common law or otherwise, are excluded to the fullest extent permitted by law.
- 18.3. ***Accuracy and Editorial Control:*** Subly is not guaranteeing the linguistic or editorial accuracy, sense or quality of the output of the Services or that the meaning or interpretation will not be changed from that in the Customer Materials. Subly does not guarantee any editorial, quality or compliance review of the output of the Services and has no responsibility or liability for the editorial output created. As between the you and Subly, you are deemed to have editorial control over and be the publisher of the output of the Services.

19. Indemnities

- 19.1. ***We will indemnify you*** from and against any and all losses, damages, claims, costs and expenses (including reasonable external legal expenses) suffered or incurred by or awarded against you arising from any third party claims or actions or as a result of or in connection with any breach by Subly of clause 9.3 (warranties).
- 19.2. ***You will indemnify Subly*** from and against any and all losses, damages, claims, costs and expenses (including reasonable external legal expenses) suffered or incurred by or awarded against Subly arising from any third party claims or actions or as a result of or in connection with any breach by you of clauses 11.2 (warranties).
- 19.3. In all cases the indemnified party agrees to:
- 19.3.1. promptly notify the indemnifying party of any allegation of infringement which comes to its attention and give the indemnifying party all reasonable assistance;
 - 19.3.2. make no admission relating to any infringement or alleged infringement; and
 - 19.3.3. allow the indemnifying party to conduct and settle all negotiations and proceedings, save that the indemnifying party may not conclude settlement of any negotiations and proceedings which may have a material effect (whether financial, practical or in terms of reputation) on the indemnified party without the indemnified party's prior written consent which will not be unreasonably withheld.

20. Limit on our responsibility to you (See additional provisions in the appendix if you are a consumer)

- 20.1. ***We do not exclude or limit*** in any way our liability to you where it would be unlawful to do so. Nothing in these Terms shall limit or exclude our liability for:
- 20.1.1. death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
 - 20.1.2. fraud or fraudulent misrepresentation;
 - 20.1.3. defective products under the Consumer Protection Act 1987, or any other consumer rights if applicable;
 - 20.1.4. any matter in respect of which it would be unlawful for us to exclude or restrict liability.

- 20.2. **Exclusions.** Subject to clause 20.1 above, and only to extent allowable under applicable law, we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- 20.2.1. any damage to software, damage to or loss of data;
 - 20.2.2. any loss of profit, business, revenue, goodwill or anticipated savings;
 - 20.2.3. any indirect or consequential loss or damage (including, but not limited to, any indirect or consequential losses which result in loss of profit, business, revenue, goodwill, anticipated savings or business opportunity, loss or corruption of data); or
 - 20.2.4. any liability arising as a result of any term implied by common law or statute, order, regulation or any other enactment.
- 20.3. **Liability cap.** Subject to clause 20.1 above, and only to extent allowable under applicable law, our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:
- 20.3.1. a sum equal to the total amount of Fees paid by you to us under this contract during the preceding 12 months immediately prior to the act or omission giving rise to the loss; or
 - 20.3.2. if the event giving rise to the loss occurs during the first 12 months of this contract, the amount of Fees paid by you to us under this contract during that period.
21. **Your privacy**
1. **Our Privacy Notice.** Under data protection legislation, we are the data controller of your personal data processed through our Platform, and are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided in our [Privacy Notice](#). It is important that you read that information.
22. **Other important terms**
- 22.1. **Events outside our control.** If we are unable to provide you with access to the Service because of an event outside our control, we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this, we will not be liable for delays caused by the event, but if the delay continues for more than 30 days, you may contact us to end your contract with us and receive a refund for anything you have paid for but not received.
- 22.2. **We may transfer this contract to someone else.** We may transfer our rights and obligations under these Terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the contract.
- 22.3. **You need our consent to transfer your rights to someone else.** You may only transfer your rights or your obligations under these Terms to another person if we agree to this in writing.
- 22.4. **Nobody else has any rights under this contract.** This contract is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need to get the agreement of any other person in order to end the contract or make any changes to these Terms.
- 22.5. **If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 22.6. **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the Service to you, we can still require you to make the payment at a later date.
- 22.7. **This is our entire agreement with you.** If Save to the extent any consumer laws apply if applicable to consumers, these Terms constitute the entire agreement between us in relation

to your purchase. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these Terms and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

22.8. **Publicity.** We may use your name and the fact you are a customer for our own promotional purposes in order to communicate to third parties in a factual and non-endorsing way that you are or were our customer, on our website, social media and other electronic and hard copy promotional materials including samples of your videos processed using the Service.

22.9. **Which laws apply to this contract and where you may bring legal proceedings.** Any dispute or claim arising out of or in connection with a contract between us or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim. This is without prejudice to any rights a consumer may have to bring a claim in another jurisdiction.

23. List of defined terms

23.1. In these Terms:

23.1.1. **Account** has the meaning given in clause 4.2 (*You must register to use Subly*);

23.1.2. **Authorised Users** has the meaning given in clause 7.1 (*Use of Subly by Authorised Users*);

23.1.3. **Change of Fees Notice** has the meaning given in clause 5.8 (*Changes to our Fees*);

23.1.4. **Change of Terms Notice** has the meaning given in clause 3.3 (*Changes to these Terms*);

23.1.5. **consumer** has the meaning given in clause 2.2 (*Are you a business customer or a consumer?*);

23.1.6. **External Products** has the meaning given in clause 13.1 (*Your access to third party products*);

23.1.7. **Fees** has the meaning given in clause 5.1 (*Our prices*);

23.1.8. **Free Plan** means our free of charge Pricing Plan, as detailed in our Pricing List, and as further described in clause 5.2 (*When and how often you must pay us*);

23.1.9. **Order Form** means the specific order for Services confirming details of the required Pricing Plan as submitted via the website or as signed by the parties;

23.1.10. **Plan Functionalities** has the meaning given in clause 4.6(a) (*Pricing Plans*);

23.1.11. **Plan Minutes** has the meaning given in clause 4.6(b) (*Pricing Plans*);

23.1.12. **Platform** means the Subly website and software platform via which the Services are made available and all versions, amendments and improvements to it;

23.1.13. **Platform Data** means all usage and/or statistical or other data, information, learnings or know how related to and/or derived from the use of the Services and Platform by customers and users, only in anonymised and aggregated form, and at all times not including your confidential information;

23.1.14. **Price List** means the list available at [this pricing page](#) which sets out our Pricing Plans, including the cost of each Pricing Plan and the Plan Minutes and Plan Functionalities available to you under each Pricing Plan. Please see clause 4.6 (*Pricing Plans*) for further details;

23.1.15. **Pricing Plans** means together the Free Plan and/or the Subscription Plans, as set out in our Price List, and as further described in clause 5.2 (*When and how often you must pay us*);

23.1.16. **Service(s)** means software services, subscription services other services provided by Subly via the Platform including as described in the “**About the Subly Services**” section above and the Pricing Plans;

- 23.1.17. **Subscription Billing Period** is the frequency at which you have to pay our Fee if you subscribe to one of our Subscription Plans, as shown on [our Price List](#). Please see clause 5.2(b) (*When and how often you must pay us*);
- 23.1.18. **Subscription Plan** means one of our fixed price subscription Pricing Plans as detailed in our Price List, and as further described in clause 5.2 (*When and how often you must pay us*);
- 23.1.19. **Terms** has the meaning given in clause 3.1 (*What these Terms cover*);
- 23.1.20. **we, us** and **our** have the meanings given in clause 1.1 (*Who we are*);
- 23.1.21. **you** means the person who holds an Account on the Platform, or that person and the business customer on whose behalf that person holds an Account, as further explained in clause 4.5 (*Use on behalf of an organisation*); and
- 23.1.22. **your Materials** has the meaning given in clause 10.1 (*Meaning of "your Materials"*).

APPENDIX 1 Additional consumer terms

In addition any elements already noted in the Terms above that apply, or apply differently, to consumers, there are certain key areas where you will have different rights under these Terms if you are a consumer. The following sections cover those key additional provisions specific to consumers or other provisions that are different or altered because you are a consumer.

Additional reference sites - that may be of use to you to help interpret these Terms and your rights

- (a) For information about copyright, please see the government advice at: <https://www.gov.uk/copyright>.
- (b) For information on when and how someone can lawfully process personal data, please see the Information Commissioner's Office's [Guide to the General Data Protection Regulation](#).
- (c) For Citizens Advice please visit www.citizensadvice.org.uk or call +44 (0)3454 04 05 06

HOW YOU MAY USE SUBLY. subject to the rules and restrictions set out in clause 8 (*Rules and restrictions*),

If you are a consumer. In return for your agreeing to comply with these Terms, and (where applicable) paying us our Fees, you may use the Service, in accordance with these Terms, for your own, private, non-commercial purposes.

Updates and support – in addition to clause 12 above.

If there is a problem with Subly.

If you are a consumer, we are under a legal duty to supply products (in this case digital content, software services and subscription services) that are in conformity with our contract with you. See the box below for a summary of your key legal rights. Nothing in these Terms will affect your legal rights.

The Consumer Rights Act 2015 says that the following rights apply to digital content supplied to consumers for a price:

- (a) digital content must be as described, fit for purpose and of satisfactory quality;
- (b) if your digital content is faulty, you are entitled to a repair or a replacement;
- (c) if the fault cannot be fixed, or if it has not been fixed within a reasonable time and without significant inconvenience, you can get some or all of your money back; and
- (d) if you can show the fault has damaged your device and we haven't used reasonable care and skill, you may be entitled to a repair or compensation.

The Consumer Rights Act 2015 says that the following rights apply to services supplied to consumers for a price:

- (a) you can ask us to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it;
- (b) if you haven't agreed a price beforehand, what you're asked to pay must be reasonable; and
- (c) if you haven't agreed a time beforehand, it must be carried out within a reasonable time.

This is a summary of some of your key rights. For detailed information from Citizens Advice please visit www.citizensadvice.org.uk or call +44 (0)3454 04 05 06.

Your rights to cancel – in addition to clause 14 above.

Statutory consumer "cooling-off" period cancellation rights.

If you are a consumer then, in addition to other rights set out in clause 14 you may have the right to cancel the contract with us during the first 14 days' after placing the order.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 say that, *within the period of 14 days from buying a service online, you can change your mind, cancel your purchase and receive a refund.*

We must not begin the supply of digital services before the end of that 14 days' cancellation period, unless you have agreed to us starting the supply during the cancellation period. Once the supply of the digital service is started, the right to cancel may be lost, or you may have to pay for what you have used, whether or not the 14 days' cancellation period has lapsed. To meet the cancellation deadline, you must communicate your cancellation to us before the 14 days' period has expired using one of the contact methods in clause 1.2 (How to contact us). If you wish, you can but do not have to use the model cancellation form below:

Model Cancellation Form

To Subly Limited, Kemp House, 160 City Road, London, England, EC1V 2NX,
[support@getsubly.com]

I hereby give notice that I cancel my contract for the supply of my Subly subscription Ordered on [*] / received on [*]

Name of consumer(s), Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate

This is a summary of some of your key rights. For detailed information from Citizens Advice please visit www.citizensadvice.org.uk or call +44 (0)3454 04 05 06.

We will start supplying Subly immediately - during the "cooling off" cancellation period.

If you are a consumer, you acknowledge that your Pricing Plan will start immediately – ie before the end of the statutory 14 days' cancellation period and acknowledge that you may lose your cancellation right if you start to use the service, even partially.

Once your order has been accepted, we will grant you access to your Pricing Plan immediately. You may cancel your Pricing Plan within 14 days after that date. If you do, we will make a refund to you in respect of the services that will not be provided to you after the day of cancellation, ***but you must pay us for the services provided up until the time of cancellation.*** The amount will be in proportion to what has been supplied, in comparison with the full coverage of your Pricing Plan.

How and when your refund will be made.

When you are due a refund as a result of exercising your statutory cancellation rights, we will make such refund to you without undue delay and no later than 14 days from the day on which we receive your cancellation notice. We will use the same means of payment as you used for the transaction, and you will not incur any charges for such reimbursement.

Closing your Account.

You can close your Account and end the contract with us any time by notifying us using one of the contact methods set out in clause 1.2 (*How to contact us*). If you wish to do so when:

- (a) you are not on one of our Subscription Plans and do not have any unused active Plan Minutes or Plan Functionalities, your contract will end immediately on the day when we receive your notification;

- (b) you subscribe to one of our **Subscription Plans**: (i) your contract will end on the day before your next billing day; (ii) you can continue using the Service until that date; (iii) we will not charge you for any services, which will not be provided to you after your contract end date, but we will not refund any payments made in respect of the Subscription Billing Period in which your contract ends;

Limit on our responsibility to you - In place of clause 20 above.

We are responsible to you for foreseeable loss and damage caused by us.

If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.

We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability:

- (a) for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;
- (b) for fraud or fraudulent misrepresentation;
- (c) for breach of your legal rights in relation to the products as summarised above (*If there is a problem with Subly*);
- (d) for defective products under the Consumer Protection Act 1987 or any other consumer rights if applicable;
- (e) arising under applicable laws relating to the protection of your personal information; or
- (f) any other any matter in respect of which it would be unlawful for us to exclude or restrict liability.

When we are liable for damage caused by defective digital content.

If defective digital content which we have supplied damages a device or digital content belonging to you and this is caused by our failure to use reasonable care and skill, we will either repair the damage or pay you compensation. However, we will not be liable for damage which you could have avoided by following our advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.

Events outside our control. We will not be liable for delays caused by events outside our control, as set out in clause 22.1 (*Events outside our control*).

We are not liable for business losses. If you are a consumer, we only supply the Service to you for domestic and private use. We will not be responsible for any business losses.