TERMS AND CONDITIONS V0.1

ALTOCAPA DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING THE SERVICES, EXCEPT WITH ALTOCAPA'S PRIOR WRITTEN CONSENT.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. ALL CONTRACTS THAT THE PROVIDER MAY ENTER INTO FROM TIME TO TIME FOR THE PROVISION OF THE HOSTED SERVICES SHALL BE GOVERNED BY THESE TERMS AND CONDITIONS.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

1. Definitions

1.1 In these Terms and Conditions:

"**Access Credentials**" means the usernames, passwords and other credentials enabling access to the Hosted Services, including access credentials for the User Interface;

"**Platform Credentials**" means the secure keys enabling access to the Cloud Platform;

"**Cloud Platform**" Amazon Web Services, Microsoft Azure or Google Cloud Platform;

"**Agreement**" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"**Enterprise**" means a subscription model where the Customer agrees an annual fee and pays this as monthly or annual subscription Charges for services.

"**Payments**" means subscription service charge payments

"**Customer**" means the individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity registered address for which such individual is accepting this Agreement as entered on the Signup Form;

"**Customer Confidential Information**" means:

(a) any information disclosed by or on behalf of the Customer to the Provider during the Term OR at any time before the termination of the Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

    (i) was marked or described as "confidential"; or

    (ii) should have been reasonably understood by the Provider to be confidential; and

(b) the Customer Data;

(c) any information relation to the performance of the service for the Customer

"**Customer Data**" means all data uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; recorded through monitoring of the Cloud Platform by the Provider Platform; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"**Customer Personal Data**" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

"**Data Protection Laws**" means the EU GDPR and the UK GDPR and all other applicable laws relating to the processing of Personal Data;

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"**Effective Date**" means the date upon which the parties execute a hard-copy Services Signup Form; or, following the Customer completing and submitting the online Services Signup Form, the date upon which the Provider sends to the Customer a signup confirmation email;

"**EU GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means Altocapa Cloud Optimization services which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

"**Hosted Services Defect**" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

(a)   any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;

(b)   any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;

(c)   an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"**Hosted Services Specification**" means the Altocapa SaaS service designed to provide efficiency guidance for the Customer Cloud Platforms as set out in the Services Signup Form and in the Documentation;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Personal Data**" means personal data under any of the Data Protection Laws;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services;

"**Provider**" means Altocapa Ltd a company incorporated in England and Wales (registration number 13052038) having its registered office at Little Garth, Sevenoaks TN13 3YE;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"**Services Signup Form**" means an online signup pages published by the Provider and completed and submitted by the Customer in each case incorporating these Terms and Conditions by reference;

"**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"**Supported Web Browser**" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari;

"**Term**" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"**Terms and Conditions**" means all the documentation containing the provisions of the Agreement, namely the Services Signup Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

"**UK GDPR**" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time; and

"**User Interface**" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

2.   Term

2.1   The Agreement shall come into force upon the Effective Date.

2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 15 or any other provision of these Terms and Conditions.

2.3 Unless the parties expressly agree otherwise in writing, each Services Signup Form shall create a distinct contract under these Terms and Conditions.

3. Hosted Services

3.1 The Provider shall ensure that the Platform is available, to the Customer upon the Effective Date to enable the Customer to complete their setup of the Hosted Services.

3.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of the User Interface for the internal business purposes of the Customer in accordance with the Documentation during the Term.

3.3 The license granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:

(a) the User Interface may only be used through a Supported Web Browse;

(b) the User Interface may only be used by the officers, employees, agents and subcontractors of the Customer;

3.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:

(a) the Customer must not sub-license its right to access and use the Hosted Services;

(b) the Customer must not permit any unauthorised person or application to access or use the Hosted Services;

(c) the Customer must not use the Hosted Services to provide services to third parties;

(d) the Customer must not republish or redistribute any content or material from the Hosted Services;

(e) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

3.5 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.

3.6 The Provider shall use reasonable endeavors to maintain the availability of the Hosted Services to the Customer but does not guarantee 100% availability.

3.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of the Agreement:

(a) a Force Majeure Event;

(b) a fault or failure of the internet or any public infrastructure network;

(c) a fault or failure of the Customer's computer systems or networks;

(d) any breach by the Customer of the Agreement; or

(e) scheduled maintenance carried out in accordance with the Agreement.

3.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

3.9 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

3.10 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

4. Scheduled maintenance

4.1 The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform

4.2 The Provider shall where practicable give to the Customer at least 48 hours prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the Hosted Services

5. Support Services

5.1 Apart from comprehensive application usage help files, the service shall include a help form.

5.2 The Customer may use the help form for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the help form for any other purpose.

5.3 The Provider shall respond promptly to all requests for Support Services made by the Customer through the help form.

5.5 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis or the Customer Credits have expired;

6. Customer Data

6.1 The Customer hereby grants to the Provider a non-exclusive licence to use the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.

6.2 The Provider shall retain backup copies of the Customer Data and shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.

7. No assignment of Intellectual Property Rights

7.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

8. Charges

8.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.

8.2 Charges for the subscription will be quoted annually

8.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

9. Refunds

9.1 The Customer is encouraged to run the free trial service before purchasing a subscription. This will analyze and make available the extent of available savings at no cost. If the customer subsequently purchases a subscription and at the end of the first-year, savings exceeding the annual subscription charge have not been validated by the service and the customer has completed the workflow for each recommendation then the Customer can request an extension of the service (at no cost) for up to 3 years or until the validated savings exceed the annual subscription charge. Refunds for reasons other than the performance of the service detailed above are at the Providers discretion.

10. Provider's confidentiality obligations

10.1 The Provider must:

(a) keep the Customer Confidential Information strictly confidential;

(b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;

10.2 Notwithstanding Clause 10.1, the Provider may disclose the Customer Confidential Information to the Provider's employees and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

10.3 This Clause 10 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

(a) is known to the Provider before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;

(b)   is or becomes publicly known through no act or default of the Provider; or

(c)   is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

10.4   The restrictions in this Clause 10 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

10.5   The provisions of this Clause 10 shall continue in force indefinitely following the termination of the Agreement.

11.   Data protection

11.1   The Provider shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

11.2   The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

11.3   The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement:

(a)   the Personal Data of data of subjects including company email address, first name, surname and position (Data processing information)

11.4   The Provider shall only process the Customer Personal Data for the purposes including system notifications and availability

11.5   The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

11.6   The Provider shall implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data;

11.7   The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

11.8   The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.8.

11.9   The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 11 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.19, providing that no such charges shall be levied with respect to the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.

11.10   The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.

11.11   The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 11. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.11, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of the Agreement or any security breach affecting the systems of the Provider.

12.   Warranties

12.1   The Provider warrants to the Customer that:

(a)   the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;

(b)   the Platform will incorporate security features reflecting the requirements of good industry practice

(c)   any Customer provided secret keys for Cloud Platform monitoring access will be encrypted and stored in secure Key vault

(d)   for any Customer opting for Single Sign On to control access for their organization, the Platform will retain only the users email address encrypted in the Provider database

(e)   For Customers opting for Username and Password signup, the Platform will retain email address and a one way hashed password encrypted in the Provider database

12.2   The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

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

13.   Acknowledgements and warranty limitations

13.1   The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

13.2   The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

14.   Limitations and exclusions of liability

14.1   Nothing in these Terms and Conditions will:

(a)   limit or exclude any liability for death or personal injury resulting from negligence;

(b)   limit or exclude any liability for fraud or fraudulent misrepresentation;

(c)   limit any liabilities in any way that is not permitted under applicable law; or

(d)   exclude any liabilities that may not be excluded under applicable law.

14.2   Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

14.3   The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

14.4   Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this Clause 14.4 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 6.2.

15.   Termination

15.1   Enterprise subscription Customers and the Provider may terminate this Agreement by giving to the other party written notice of termination.

15.2   Subject to applicable law, either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

(a)   the other party:

(i)   is dissolved;

(ii)   ceases to conduct all (or substantially all) of its business;

(iii)   is or becomes unable to pay its debts as they fall due;

16.   Effects of termination

16.1   Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.9, 9.2, 9.4, 10, 11, 14, 16, and 17.

16.2   Except to the extent expressly provided otherwise in these Terms and Conditions, the termination of the Agreement shall not affect the accrued rights of either party.

17. General

17.1 Altocapa may revise this agreement from time to time. Continued use after the anniversary of acceptance of the original agreement will constitute acceptance of those changes.

17.2 The Customer hereby agrees that the Provider may assign the Provider's contractual rights and obligations under the Agreement to any successor to all or a substantial part of the business of the Provider from time to time.

17.3 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

17.4 Subject to Clause 14.1, a Services Signup Form, together with these Terms and Conditions and any Schedules, shall constitute the entire agreement between the parties in relation to the subject matter of that Services Signup Form, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

17.5 The Agreement shall be governed by and construed in accordance with English law.