



MASTER SERVICES AGREEMENT

This Master Services Agreement shall apply whenever an Order Form is executed.

1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation set out in Schedule 1 shall apply in this Agreement.

2. TERM

- 2.1 This Agreement shall, unless otherwise terminated as provided in clause 13, commence on the Commencement Date or as otherwise agreed between the parties and continue for the Minimum Term. Thereafter, unless terminated in accordance with clause 13, this Agreement shall be automatically renewed for successive periods of 12 months (each a “**Renewal Period**”).

For the purposes of this Agreement, the Minimum Term together with any subsequent Renewal Periods shall constitute the “**Subscription Term**”.

3. THE PLATFORM

- 3.1 The Provider will make available the Platform and will provide the Services to the Customer during the Term with effect from the Billing Date.

- 3.2 Subject to Clause 3.3, 3.4 and 3.5, the Provider hereby grants to the Customer a non-exclusive terminable licence (the “**Licence**”) to use the Platform for the Permitted Purpose in accordance with the Documentation during the Term.

- 3.3 The Licence shall be subject to the following limitations:

- (a) the Platform may only be used by the officers, employees, agents and sub- contractors of the Customer (each an “**Authorised Person**”);
- (b) the Customer shall at all times comply with the Acceptable Use Policy attached hereto as Schedule 5, and shall procure that all users of the Platform agree to comply with the Acceptable Use Policy and do in fact comply with the Acceptable Use Policy.

- 3.4 Except as expressly permitted in this Agreement, the Customer shall not:

- (a) grant any sub-license to access and/or use the Platform or otherwise allow any unauthorised person to access or use the Platform;
- (b) frame or otherwise re-publish or re-distribute the Platform or any part thereof;
- (c) alter, adapt or edit the Platform (including without limitation making any change or variation to the source code underlying the Platform) save as expressly permitted by the



Documentation;

- (d) use the Platform or Documentation to build a product or service which competes with the Platform (whether or not for commercial purposes);
- (e) reverse engineer, disassemble, decompile or otherwise attempt to reduce to human-perceivable form any part of the Platform; and
- (f) except to the extent expressly permitted by this Agreement, attempt to copy, duplicate, create derivative works or separately distribute any part of the Platform or Documentation in any form or media.

- 3.5 For the avoidance of doubt, the Customer has no right to access the source code of the Platform, either during or after the Term.
- 3.6 All Intellectual Property Rights in the Platform shall at all times remain the exclusive property of the Provider, and the Customer shall ensure this is made clear to any end user of any Customer Product which incorporates the Platform by adding an End User License Agreement statement as set out in Schedule 8 to this Agreement.
- 3.7 The Customer shall use all reasonable endeavours to ensure that no unauthorised person accesses the Platform using any account operated by or on behalf of the Customer. The Customer undertakes to immediately notify the Provider in the event that he becomes aware of any unauthorised use of its account.
- 3.8 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impair the availability or accessibility of the Platform, or any product, technology or service which makes use of or depends on the Platform..
- 3.9 The Customer must not use the Platform:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.10 The Customer shall at all times be liable for any fees, penalties or other costs incurred by the Provider as a result of any use of the Platform by any Authorised Person, or by any person making unauthorised use of the Platform using any account in the name of the Customer.
- 3.11 In the event either party becomes aware of a breach relating to the Platform the party becoming aware must immediately inform the other party of the facts, and assist in reasonable efforts to mitigate any loss or damage as a result of such a breach.
- 3.12 The total liability of the Customer as a result of any unauthorized use of the Platform shall be capped to a maximum of the total value of the Minimum Access Charges for the duration except where in the reasonable opinion of the Provider the unauthorized use of the Platform is as a result of gross negligence on the part of the Customer.



3.13 If either party to this Agreement becomes aware of any actual or potential litigation as a result of the use of the Platform (either authorized or unauthorized) they must immediately inform the other Party and provide all reasonable effort and assistance to the other party in resolving the issue in a mutually satisfactory manner.

3.14 If the Customer becomes aware of any potential bug, issue, security vulnerability or similar which could either lead to a breach relating to the Platform or impact on the functionality of the Platform, the Customer must immediately inform the Provider and provide all reasonable assistance necessary to identify and resolve the matter. The Customer must take all reasonable measures to ensure that information about any such issue remains confidential between the Customer and the Provider and is not publicly disclosed without the permission of the Provider.

4. SUPPORT SERVICES AND UPGRADES

4.1 During the Term the Provider will provide the Support Services to the Customer, and may in its sole and absolute discretion apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 3.

4.2 The Provider may subcontract the provision of any of the Support Services without obtaining the consent of the Customer.

5. CUSTOMISATIONS

5.1 From time to time the Provider and the Customer may agree that the Provider will customise the Platform in accordance with a specification agreed in writing between the parties.

5.2 From the later of (i) the date when a Customisation is first made available to the Customer and (ii) the date of payment by the Customer to the Provider for any Customisation (to the extent that any payment has been agreed between the parties), the Customisation shall form part of the Platform under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 3.3.

5.3 All Intellectual Property Rights in any Customisation shall remain the exclusive property of the Provider.

6. MANAGEMENT

6.1 The Customer shall ensure that all instructions in relation to this Agreement are given by a Customer Representative to a Provider Representative, and the Provider:

(a) may treat all such instructions as the fully authorised instructions of the Customer;
and

(b) shall not be obliged to comply with any instructions unless given by a Customer



Representative.

6.2 From time to time, the parties may hold contract management meetings by telephone or via the internet at the reasonable request of either party.

7. CHARGES

7.1 The Provider shall charge the Customer the Charges based on the number of Active Devices, Active Installs or Active Users as set out in Schedule 4 or as otherwise agreed in the Order Form

7.2 Minimum Access Charges are calculated monthly in advance for the entire month (or other agreed billing period) and not on a pro-rata basis, although the Provider may choose to invoice for charges in arrears should they so wish.

7.3 The Provider shall issue invoices in arrears for any usage or overage Charges to the Customer in accordance with the provisions of Schedule 4.

7.4 Save for where the Customer has signed up to the Provider's self-service billing platform, the Customer shall pay the Charges to the Provider within 30 days of the date of issue of an invoice issued in accordance with Clause 4

7.5 Where the Customer has signed up to the Provider's self-service billing platform Charges shall be due immediately on generation of an invoice each month, and said charges shall be charged automatically to any payment method entered by the Customer onto the billing platform. It shall be the responsibility of the Customer to ensure that at all times there is a valid payment method active on the billing platform

7.6 All Charges stated in or in relation to this Agreement are stated exclusive of VAT (and any other applicable sales taxes). To the extent that VAT (or any other applicable sales tax) is chargeable on any invoice to the Customer it shall be payable by the Customer to the Provider in addition to the Charges.

7.7 Where the Customer is not signed up to the self-service billing platform charges (and any VAT or other sales tax) shall be paid by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time). The Customer shall be liable for any bank fees.

7.8 If the Customer does not pay any amount properly due to the Provider under or in connection with this Agreement, the Provider may:

- (a) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- (b) claim any reasonable costs of recovery under the Late Payment of Commercial Debts Regulations 2013.



7.9 The Provider may vary the Charges on and from any anniversary of the date of this Agreement by giving to the Customer not less than 30 days' written notice of the variation.

7.10 The Provider may suspend any permission to use the Platform and the provision of the Services if any amounts due to be paid by the Customer to the Provider under this Agreement are overdue by more than 14 days.

8. WARRANTIES

8.1 Each of the parties warrants to the other party that it has the legal right and authority to enter into and perform its obligations under this Agreement.

8.2 The Provider undertakes to the Customer:

- (a) that it will perform its obligations under this Agreement with reasonable care and skill;
- (b) that the Platform will perform substantially in accordance with the Documentation (subject to any Upgrades and Customisations); and
- (c) the Provider will use reasonable endeavours to ensure that the Platform remains free from viruses and other malicious software programs.

8.3 The Customer acknowledges that:

- (a) complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Platform will be wholly free from such defects, errors and bugs;
- (b) the Provider will not and does not purport to provide any legal, taxation or accountancy advice under this Agreement or in relation to the Platform and (except to the extent expressly provided otherwise) the Provider does not warrant or represent that the Platform will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

9. INDEMNITIES

9.1 The Customer hereby agrees to indemnify the Provider against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Provider arising out of or in connection with any breach of this Agreement by the Customer or any Authorised Person (a "**Customer Indemnity Event**").

9.2 The Provider shall:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer reasonable assistance in relation to the Customer Indemnity



Event;

- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and
- (d) not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1 This clause 10 sets out the entire financial liability of the Provider (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Platform, Services and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Platform, Services and Documentation by the Customer and any Authorised Person, and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Provider by the Customer in connection with the Services, or any actions taken by the Provider at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Platform, Services and Documentation are provided to the Customer on an "as is" basis.

10.3 Nothing in this Agreement excludes the liability of the Provider:

- (a) for death or personal injury caused by the Provider's negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.2 and clause 10.3:

- (a) the Provider shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the Provider's total aggregate liability in contract, tort (including negligence or breach of



statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total value of the Minimum Access Charges for the life of this Agreement.

11. PROCESSING OF PERSONAL DATA

11.1 The Customer warrants 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 this Agreement and to authorise the Provider to temporarily store and process such Personal Data for the purposes of providing the Services.

11.2 The Provider undertakes to:

- (a) act only on instructions from the Customer in relation to the processing of any Personal Data necessarily performed by the Provider on behalf of the Customer in providing the Services;
- (b) maintain in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Provider on behalf of the Customer;
- (c) disclose to any person (or in the case of a minor, to such person's parent or guardian) whose Personal Data may be processed and/or temporarily stored by the Provider that the Provider may perform such activities and seek such person's prior written consent for such processing (or in the case of a minor, the consent of such person's parent or guardian).

11.3 The use of the Platform may generate metadata or other forms of anonymous summary information. The Provider may store, process or otherwise use anonymised versions of any such generated metadata for any purpose (subject to any restrictions imposed by UK law and in compliance with the Data Protection Act 1998) and the Customer hereby consents to such use.

11.4 If the Customer becomes aware of any request by any person to cease the processing of their Personal Data by the Customer, the Customer will promptly inform the Provider of the request, providing sufficient information to enable the Provider to confirm the validity of the request and identify the data in question.

11.5 Where the Provider receives such a request directly, the Provider will make reasonable efforts to inform the Customer of the request, subject to any confidentiality restrictions imposed by the Data Protection Act 1998 or other applicable legislation.

12. CONFIDENTIALITY AND PUBLICITY

12.1 The Provider will:

- (a) keep confidential and not disclose the Customer Confidential Information to any person save as expressly permitted by this Clause 12;
- (b) protect the Customer Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care; and



- (c) without prejudice to the generality of Clause 12.1(b) , deploy and maintain the security systems and technologies detailed in Schedule 2 in relation to the Customer Confidential Information held on the Platform.

12.2 The Customer will:

- (a) keep confidential and not disclose the Provider Confidential Information to any person save as expressly permitted by this Clause 12;
- (b) protect the Provider Confidential Information against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

12.3 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information disclosed.

12.4 The obligations set out in this Clause 12 shall not apply to:

- (a) Confidential Information that is publicly known (other than through a breach of an obligation of confidence);
- (b) Customer Confidential Information that is in possession of the Provider prior to disclosure by the Customer, and Provider Confidential Information that is in possession of the Customer prior to disclosure by the Provider;
- (c) Customer Confidential Information that is received by the Provider, and Provider Confidential Information that is received by the Customer, from an independent third party who has a right to disclose the relevant Confidential Information; or
- (d) Confidential Information that is required to be disclosed by law, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.

12.5 Both the Customer and the Provider agree that they can use the other party's name and logo for marketing purposes. The Provider may with the permission of the Customer publish or distribute a testimonial or reference, such consent not to be unreasonably withheld by the Customer.

13. TERMINATION

13.1 Either party may terminate this Agreement immediately by giving written notice to the other party if :

- (a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a



period of 30 days after being notified in writing to do so;

- (c) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (or applicable legislation in another jurisdiction);
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1 (d) to (j) inclusive; or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.2 Either party may terminate this Agreement on the last day of the Minimum Term or Renewed Term (as applicable) by giving at least 30 days' written notice of termination to the other party which notice shall expire no later than the last day of the Minimum Term or Renewed Term (as applicable).

13.3 In the event that the Provider ceases to provide the Services and/or the Platform on a commercial basis, the Provider may terminate this Agreement by giving no less than 30 days' written notice to the Customer.

14. EFFECTS OF TERMINATION

14.1 On termination or expiry of this Agreement, the following clauses shall continue in force: clauses 1, 9,



10, 12.1 to 12.4, 14 and 17.

- 14.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 14.3 Subject to Clause 14.4, within 30 days following the termination of this Agreement, the Customer will:
- (a) return to the Provider (or dispose of as the Provider may instruct) all documents and materials containing Provider Confidential Information; and
 - (b) irrevocably delete from its computer systems all Provider Confidential Information.
- 14.4 A party may only retain any document (including any electronic document) containing the Confidential Information of the other party after the termination of this Agreement to the extent that party is obliged to retain such document by any law or regulation or other rule enforceable against that party.

15. NOTICES

- 15.1 Any notice given under this Agreement must be in writing (whether or not described as “written notice” in this Agreement) and must be delivered personally, sent by post, or sent by fax or email, for the attention of the relevant person, and to the registered office address or fax number or email address found on the website of the relevant party, or as notified by one party to the other in accordance with this Clause.
- 15.2 Where the Customer is making use of the Provider’s self-service billing portal the Provider may satisfy Clause 15.1 by posting a message on the self-service billing portal. When wishing to terminate this agreement as per clause 13 the Customer may satisfy Clause 15.1 by making use of any termination mechanism made available by the Provider on the self-service billing portal
- 15.3 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by post, 48 hours after posting; and
 - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

16. FORCE MAJEURE EVENT

If a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the “**Affected Party**”), the Affected Party shall not be in



breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.1 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

16.2 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving 14 days' written notice to the Affected Party.

17. **ASSIGNMENT**

17.1 The Customer hereby agrees that the Provider may freely assign any or all of its contractual rights and/or obligations under this Agreement.

17.2 The Customer may not without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any contractual rights or obligations under this Agreement.

18. **GENERAL**

18.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.2 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

18.3 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent



possible, achieves the intended commercial result of the original provision.

- 18.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 18.5 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 18.6 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 18.7 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 18.8 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 18.9 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 18.10 No one other than a party to this Agreement shall have any right to enforce any of its terms.
- 18.11 This Agreement and any dispute or claim arising out of or in connection with it 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.
- 18.12 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



SCHEDULE 1

Capitalised terms used in this Agreement shall have the following meanings:

- “**Affiliate**” means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;
- “**Account**” means a service account or device running the Customer’s software identified by an email address and password or other appropriate unique identifier;
- “**Active Account**” means the number of Accounts for which use of the Platform has been made by the Customer;
- “**Active Devices**” means the number of Devices for which use of the Platform has been made by the Customer;
- “**Agreement**” means this software as a service agreement (including the Schedules) and any amendments to it from time to time;
- “**Billing Date**” means the lesser of either 30 days past the date when the first applicable Order Form is executed and in relation to any subsequent Order Form, the date upon which the applicable Order Form is executed, or a date as specified on the Order Form or agreed between the parties
- “**Business Day**” means any week day (other than a bank or public holiday in England) in which the banks in the City of London are open for business;
- “**Business Hours**” means between 0930 and 1800 London time on a Business Day;
- “**Charges**” means the amounts payable by the Customer to the Provider under or in relation to this Agreement (as set out in Schedule 3);
- “**Commencement Date**” means, in relation to the Contract, the date of this Agreement
- “**Committed Devices**” means the agreed minimum number of Devices for which use of the Platform can be made by the Customer within a given calendar month (or other agreed Billing Period);
- “**Confidential Information**” means the Customer Confidential Information and the Provider Confidential Information;
- “**Contract**” means the contract between the Provider and the Customer for the use of the Platform which consists of this Master Services Agreement including any addenda or supplements thereto
- “**Control**” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls, controlled** and the expression **change of control** shall be construed accordingly;
- “**Customer**” means the individual or company entering into a Contract with the Provider for the provision of Services
- “**Customer Indemnity Event**” has the meaning given to it in Clause 9.1;
- “**Customer Representatives**” means the person or persons identified as such in the Order Form;
- “**Customisations**” means customisations to the Platform that the Provider and Customer agree the Provider will



produce on behalf of the Customer;

“Device” means a unique piece of hardware which can be identified by a unique device hardware identifier, serial number or other appropriate identifier;

“Device Subscription Period” means the period of time for which the Client desires the ability for a Device to be able to access the Platform;

“Documentation” means the documentation produced by the Provider and made available to the Customer specifying how the Platform should be used;

“Force Majeure Event” means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts; and
- (h) interruption or failure of utility service;

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Minimum Term” means the period specified as such in the Order Form;

“Order Form” means the ordering document as attached hereto at Schedule 6 or as otherwise made available by the Provider to the Customer, requesting use of the Platform by the Customer, including any addenda or supplements thereto.

“Permitted Purpose” means the use of the Platform by the Customer in accordance with this Agreement

“Personal Data” has the meaning given to it in the Data Protection Act 1998;

“Platform” means the Reincubate Camo Software Development Kit or other appropriate technologies provided by the Provider, and that will be made available to the Customer under this Agreement;

“Provider” means Reincubate Limited (company number 05189175) whose registered office is at Unit 5 St Saviour's Wharf, 23 Mill Street, London, SE1 2BE;

“Provider Confidential Information” means:

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Provider to the Customer during the Term that is marked as “confidential”, described as “confidential” or



- should have been understood by the Customer at the time of disclosure to be confidential;
- (b) the terms and conditions of this Agreement; and
 - (c) Any information relating to the Platform that is not already in the public domain at the time of the signing of this contract

"Provider Representatives" means the person or persons identified as such in the Order Form;

"Representatives" means the Customer Representatives and the Provider Representatives; **"Renewal Period"** means the period described in clause 2;

"Schedule" means a schedule attached to this Agreement;

"Services" means all the services provided or to be provided by the Provider to the Customer under this Agreement, including the Support Services;

"Subscription Term" means the period of both the Minimum Term plus any Renewal Periods as described in clause 2;

"Term" means the term of this Agreement; and

"Upgrades" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

In this Agreement, a reference to a statute or statutory provision includes a reference to:

- that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- any subordinate legislation made under that statute or statutory provision. The Clause headings do not affect the interpretation of this Agreement.



SCHEDULE 2 MISCELLANEOUS

Minimum Term

Unless otherwise stated in the Order Form the Minimum Term shall be the period of 12 months following the date of this Agreement.

Customer Product Limitation

The Customer may only use the Platform on behalf of the specific Customer product as detailed on the Order Form.



SCHEDULE 3 SERVICE LEVEL AGREEMENT

1. Introduction

1.1 In this Schedule:

"New Functionality" means new functionality that is introduced to the Platform by an Upgrade.

"Existing Functionality" means existing functionality on the Platform which has been agreed between the parties to be included either on the Order Form or by other written agreement

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Helpdesk

2.1 The Provider will make available, during Business Hours, an email or other online helpdesk facility for the purposes of:

- (a) assisting the Customer with the configuration of the Platform and the integration of the Platform with the Customer's other applications;
- (b) assisting the Customer with the proper use of the Platform; and/or
- (c) determining the causes of errors and fixing errors in the Platform.

2.2 Subject to Paragraph 2.3, the Customer must make all requests for Support Services through the helpdesk, and all such requests must include at least the following information: Brief details of issue, including any error messages and contact details for the reporter of the issue

2.3 The Provider will use reasonable endeavours to ensure that a member of its support staff can be reached outside Business Hours in the case of an emergency.

3. Response and resolution times

3.1 The Provider will:

- (a) use reasonable endeavours to respond to requests for Support Services made through the helpdesk; and
- (b) use reasonable endeavours to resolve issues raised by the Customer, in accordance with the following response time matrix.

Severity	Example	Response time	Resolution
Configuration	Unable to use the Platform where the fault lies with the Customer	4 working hours	n/a
Integration	Loss of compatibility with video-consuming desktop app	8 working hours	Next scheduled release of the Platform (subject to co-operation from app vendor)



Major defect	Unable to use the Platform where the fault lies with the Provider	4 working hours	Patch made available within 2 working days
Minor defect	Minor loss of functionality in the Platform	8 working hours	Next scheduled release of the Platform

3.2 The Provider will determine, acting reasonably, into which severity category an issue raised through the Support Services falls.

3.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

4. **Limits on Support Services**

4.1 The Provider shall have no obligation under this Agreement to provide Support Services in respect of any fault or error caused by:

- (a) the improper use of the Platform; or
- (b) the use of the Platform otherwise than in accordance with the Documentation.
- (c) a third party not directly bound by this Agreement

5. **Upgrades**

5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may result in changes to the appearance and/or functionality of the Platform. It will be the choice of the Customer whether to request and incorporate any Upgrades to the Platform into their own software. The Customer acknowledges that in some circumstances if they do not apply an Upgrade this may limit or cease certain functionality of the Platform.

5.2 The Provider will give to the Customer reasonable prior written notice (a minimum of 4 weeks) of the application of any Upgrade to the Platform which is likely to result in a breaking change. Such notice shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.

5.3 The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:

- (a) the Upgrade introduces New Functionality to the Platform;
- (b) that New Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;
- (c) access to or use of the New Functionality is chargeable to the customers of the Provider using the Platform generally; and
- (d) any decision by the Customer not to pay the Charges for the New Functionality will not prejudice the Customer's access to and use of the rest of the Platform.

6. **Downgrades and other service-impacting events**

6.1 The Customer acknowledges that there may be times at which the Provider is unable to provide some element of Existing Functionality due to circumstances outside the control of the Provider.



6.2 Where the Provider becomes aware this is likely to be the case, the Provider will make all reasonable efforts to notify the Customer in advance. The Customer acknowledges that it may not be possible to receive advance notification in all circumstances



SCHEDULE 4 CHARGES

1. Introduction

1.1 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

1.2 The Charges under the Agreement will consist of the following elements:

- (a) usage Charges, in respect of access to and use of the Platform;
- (b) other Charges.

2. Access Charges

2.1 The Charges in respect of access to and use of the Platform shall be made up of a Charge as set out on the Order Form

2.2 Access Charges shall be billed based on usage in the previous month as reported by the Customer to the Provider

2.3 The Customer commits to providing sufficient information in order to satisfy the billing requirements under Clause 2.2 above and warrants that such information is accurate to the best of the Customer's knowledge

2.4 Usage may be calculated based on the number of devices or users which access or take advantage of functionality provided by the Platform during the period.. The specific calculation method shall be set out on the Order Form

2.5 No refund will be given for unused Access Charges

2.6 All variable charges exclude VAT (and other applicable sales taxes)

3. Other Charges

3.1 In addition to the Charges detailed in Paragraph 2 above, the Provider will invoice in respect of, and the Customer shall pay to the Provider:

- (a) a Charge to license use of the Platform from the Provider and provide the support services in Schedule 3 of this Agreement
- (b) any Charges for Customisations made under Clause 5 of this Agreement
- (c) any Charges for professional services as specified on the Order Form, as set out in Schedule 8, as set out in any additional schedules thereof or as agreed between the parties
- (d) all other Charges that are agreed between the parties in writing from time to time.



SCHEDULE 5 ACCEPTABLE USE POLICY

(1) This Policy

This Acceptable Use Policy (the “**Policy**”) sets out the rules governing the use of our services (the “**Platform**”)

By using the Service, you agree to the rules set out in this Policy.

(2) General restrictions

You must not use the Platform in any way that causes, or may cause, damage to the Platform , any software or hardware that incorporates the Platform or that makes use of the Platform..

You must not use the Platform:

- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- (c) in connection with any covert monitoring tools (“spyware”) or systems that are not explicitly permitted under the Communications Act 2003, the Computer Misuse Act 1990 or the Data Protection Act 1998 unless You are a Relevant Authority under Schedule 1 of the Regulation of Investigatory Power Act 2000 or we have explicitly permitted such use of the Platform in writing with You.

(3) Rate limits and concurrency

We reserve the right to monitor usage of the Platform. Where we determine usage is excessive we may any or all of the following:

- a) Contact you to discuss your usage and determine a more appropriate way of accessing the Platform
- b) Impose additional charges to cover the additional cost to us of servicing the requests we deem to be over and above what is necessary for normal use of the Platform
- c) Terminate your contract

(4) Access to data

You agree that you will only use the Platform in a way which is compatible with UK law.

You further agree that any use of the Platform will be in accordance with the Data Protection Act 2018 (or any successor legislation) in so far as it must be reasonable and proportionate.

You furthermore agree to take all reasonable measures to prevent unauthorised access or use of the Platform.

You agree that you are responsible for ensuring that any data accessed through the Platform is kept in accordance with appropriate Data Protection legislation and/or local legislation applicable to your jurisdiction.

(5) Unlawful and illegal material

You must not use the Platform to retrieve, store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party (in each case in any jurisdiction and under any



applicable law).

(6) Breaches of this Policy

Without prejudice to this general right and our other legal rights, if you breach this Policy in any way, or if we reasonably suspect that you have breached this Policy in any way, we may:

- (a) send you one or more formal warnings;
- (b) temporarily suspend your access to a part or all of the Service; and/or
- (c) permanently prohibit you from using a part or all of the Service.
- (d) terminate your access to the Service.



**SCHEDULE 6
ORDER FORM**



SCHEDULE 7 SOFTWARE LICENSE AGREEMENT

DEFINITIONS

The “**Software**” means any file, binary or source code made available by the Provider as part of the Platform.

SOFTWARE LICENSE AGREEMENT

The Provider is willing to license the Software to the Client, on the condition that the Client accepts and agrees to be bound by all of the terms contained in the following agreement.

1. **Ownership and Licence.** Your non-exclusive rights to use the Software are specified in this Agreement, and we (or our licensors) retain all rights including but not limited to all copyright and other intellectual property rights, anywhere in the world, in the Software not expressly granted to you in this Agreement.
2. **Permitted Uses.** You are granted the following non-exclusive, non-transferable rights in respect of the Software:
 - (a) You may incorporate the Software into the Customer Product in accordance with Clause 2 (b) of this Schedule provided that you ensure that the Software is not accessible by other users outside of the Customer Product unless they have themselves accepted the terms of this licence agreement.
 - (b) You may use the Software solely as part of the Platform and only in accordance with the terms of this Agreement.
 - (c) **Right to Copy.** You may copy the Software once for back-up and archival purposes, provided that the copy is kept in your possession and provided you reproduce our copyright notice on any copy. Your use of any copy of the Software is bound by this agreement as if it were the original copy.
 - (d) **Transfer and sub-licensing.** You may not rent, lend, or lease the Software and you may not transfer or sub-license this licence to use the Software or any of your rights or obligations under this Agreement to another party.
 - (e) **Identity of Licensee.** The licence granted herein is personal to you. You shall not permit any third party to access, modify or otherwise use the Software nor shall you access, modify or otherwise use the Software on behalf of any third party.
 - (f) **Confidentiality and Security.** You must take all reasonable steps to ensure the confidentiality and security of the Software. In particular you agree that access to the Software will be limited within your organisation to those individuals that have a legitimate business need to access the Software. Any individuals that have access to the Software must be made aware of their responsibilities and obligations under this Agreement.
 - (g) **Subcontracting.** If you subcontract any part of your service in such a way that any agents, subcontractors or other third parties have access to the Software then you must ensure that suitable non-disclosure agreements are in place with any such agents, subcontractors or third parties and that they are made aware of their obligations and responsibilities under this Agreement.
3. **Prohibited Uses.** You may not, without explicit written permission from us:
 - (a) Use, copy, modify, merge, or transfer copies of the Software or any documentation provided by us which relates to the Software except as provided in this Agreement;
 - (b) Use any back-up or archival copies of the Software (or allow anyone else to use such copies) for any purpose other than to replace the original copy in the event it is destroyed or becomes defective; or



(c) Disassemble, decompile or "unlock", reverse translate, or in any manner decode the Software for any reason. If you acquired the Software within the EU, information necessary to achieve interoperability of the Software with other independently created programs, within the meaning of Article 6 of the Directive on the Legal Protection of Computer Programs (91/250/EEC), is available from us on request.

4. Warranty Disclaimer

(a) Disclaimer. The Software has been developed to assist your access to the Platform. You acknowledge that we are providing the Software to you on condition that the disclaimer set out below shall apply. We do not warrant that the Software will meet your requirements or that its operation will be uninterrupted or error-free. You acknowledge that you have reviewed and evaluated the Software to determine that it meets your needs and that you assume all responsibility and liability for determining the suitability of the Software as fit for your particular purposes and requirements. Subject to Clause 4(b), we exclude and expressly disclaim all express and implied representations, warranties, conditions and terms not stated herein (including the implied conditions or warranties of satisfactory quality, merchantable quality, merchantability and fitness for purpose).

(b) Savings. Some jurisdictions may imply warranties, conditions or terms or impose obligations upon us which cannot, in whole or in part, be excluded, restricted or modified or otherwise do not allow the exclusion of implied warranties, conditions or terms, in which case the above warranty disclaimer and exclusion will only apply to you to the extent permitted in the relevant jurisdiction and does not in any event exclude any implied warranties, conditions or terms which may not under applicable law be excluded.

5. Limitation of Liability

(a) You acknowledge that we are providing the Software to you under this licence agreement free of charge and on condition that the limitation of liability set out below shall apply. Accordingly, subject to Clause 5(b), we exclude all liability whether in contract, tort, negligence or otherwise, in respect of the Software and/or any related documentation provided to you by us including, but not limited to, liability for loss or corruption of data, loss of contracts, loss of income, loss of profits, loss of cover and any consequential or indirect loss or damage of any kind arising out of or in connection with this licence agreement, however caused. This exclusion shall apply even if we have been advised of the possibility of such loss or damage.

(b) Nothing in this Agreement shall have the effect of excluding or limiting our liability for death or personal injury caused by our own negligence. This licence does not permit you to use the Software for, or in relation to, any safety-critical activity.

(c) Some jurisdictions do not allow these limitations or exclusions either wholly or in part, and, to that extent, they may not apply to you. Nothing in this licence agreement will affect your statutory rights or other relevant statutory provisions which cannot be excluded, restricted or modified, and its terms and conditions must be read and construed subject to any such statutory rights and/or provisions.

6. Confidentiality. You agree not to disclose any confidential information provided to you by us pursuant to this Agreement to any third party without our prior written consent. The obligations in this Clause 6 shall survive the termination of this Agreement for any reason.

7. Termination.

(a) We may terminate this licence agreement and your right to use the Software at any time with immediate effect upon written notice to you.

(b) This licence agreement and your right to use the Software automatically terminate if you:

(i) fail to comply with any provisions of this Agreement; or



- (i) destroy the copies of the Software in your possession, or voluntarily return the Software to us; or
 - (ii) the Original Agreement between you and us terminates for any reason
- (c) Upon termination you will destroy all copies of the Software
- (d) Otherwise, the restrictions on your rights to use the Software will expire upon expiration of the copyright to the Software.

8. Miscellaneous Provisions.

- (a) This Agreement will be governed by and construed in accordance with the substantive laws of England whose courts shall have exclusive jurisdiction over all disputes which may arise between us.
- (b) This is the entire agreement between us relating to the Software, and supersedes any prior purchase order, communications, advertising or representations concerning the Software.
- (c) No change or modification of this Agreement will be valid unless it is in writing, and is signed by us.
- (d) The unenforceability or invalidity of any part of this Agreement will not affect the enforceability or validity of the remaining parts.



SCHEDULE 8 PROFESSIONAL SERVICES

The Customer may, from time to time, ask the Provider to provide additional services related to the Platform or the Customer's use thereof. These may include (but are not limited to):

- Providing advice, information and support on accessing and utilizing the Platform
- Bespoke development services
- Other Consultancy services

Any such work will be agreed between the parties and subject to time-based charges as set out in the Order Form or, where not explicitly stated, as follows:

Day rate - \$2,000 per day

The Customer will also be liable for all reasonable expenses including travel, accommodation and subsistence where applicable.

The Provider may agree a fixed fee for certain projects. This will be on the basis that the Customer has correctly and accurately stated the scope of the work. Should the scope of the work change or the Provider determines that the facts are not as materially stated by the Customer, the Provider may opt to:

- Reduce the scope of the work
- Cease work
- Increase the fixed fee

Where the fixed fee is likely to exceed \$1,000 the Provider may require a deposit to be paid up front.

Where a project lasts for longer than one month the Provider may invoice on a monthly basis for work done so far.



SCHEDULE 8 END USER LICENSE AGREEMENT

The following wording must be included in the Customer Product in a prominent position such as a dedicated stage during the install process or on a Help or About screen or suchlike.

This product includes technology which is copyright © Reincubate Ltd. and is used under license. All Rights Reserved. This product incorporates intellectual property which is under the sole ownership of Reincubate Ltd. and is used under license. Reincubate and Camo are registered trademarks of Reincubate Ltd. and are used under license.