

THIS AGREEMENT is made the day of , 20 between (1) Blackburn IT Services (t/a bbits) a company registered in England under number 3699262 whose registered office is at 2 Upperton Gardens, Eastbourne, East Sussex BN21 2AH (“Service Provider”) and (2) \_\_\_\_\_, of \_\_\_\_\_ (“Customer”)

**BACKGROUND:** The Service Provider has developed and provides access to the Service (as defined below). On the terms set out below, the Customer: (i) wants to acquire and pay for a licence to access and use the Service; and (ii) may want to purchase certain other services from the Service Provider in connection with access to and use of the Service..

## AGREEMENT

### 1. Definitions and Interpretation

1.1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

DEFINED TERM	MEANING
“Additional Services”	services provided or to be provided by the Service Provider in addition to and in connection with the Service, including without limitation, training, consulting, software development, and other professional services but excluding Support & Maintenance Services;
“Applications”	the selected software applications provided by the ASP which shall be available to the Customer, as set out in SCHEDULE 2 - Specification of this Agreement;
“ASP Infrastructure”	the Service Provider’s computer hardware, firmware, software and communications infrastructure which is used to facilitate access to the Applications by the Customer;
“Authorised Limits”	the limits on Service usage set out in SCHEDULE 1- FEES
“Business Day”	any day other than Saturday or Sunday that is not a bank or public holiday;
“Business Hour”	any time between 9:00 and 18:00 on a Business Day, during which the Service Provider is open for business;
“Commencement Date”	_____;
“Confidential Information”	all business, technical, financial or other information created or exchanged between the Parties throughout the Term of this Agreement;
“Customer Computer Systems”	the Customer’s computer hardware, firmware, software and communications infrastructure through and on which the Applications are to be used;
“Customer Data”	any data belonging to the Customer or to third parties and used by the Customer under licence which is created using the Applications or otherwise stored in the ASP Infrastructure and the phrases “Personal Data” and “Customer Personal Data” shall have the same meaning;
“Downtime”	the non-availability of one or more parts of the Hosting Services as defined in Clause 29;
“Fees”	all sums payable by the Customer pursuant to this Agreement;
“Initial Term”	the period of three (3) years starting on the Commencement Date;
“Hosting Package”	the specification under which the Services and Fees shall be determined and provided as set out in SCHEDULE 2 - Specification;

<b>“Intellectual Property Rights”</b>	without limitation, all present and future rights title and interest (as the same may be extended or amended) throughout the world in to or arising out of all Inventions and all forms of intellectual property including: (i) any national or international patent and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask work registrations; and (iv) all trade names, logos, common law trademarks and service marks; trademark and service mark registrations, goodwill, business names and domain names; and (v) all so-called ‘sui generis’ rights (otherwise known as database rights); and (vi) all rights in registered and unregistered designs; and (vii) any other proprietary rights anywhere in the world and all rights or forms of protection having equivalent or similar effect to any of the foregoing; and (viii) applications for the grant of any of the foregoing anywhere in the world, and all other rights corresponding thereto throughout the world together with and all rights of registration, extension and renewal thereof; and (ix) the right to bring legal proceedings to enforce any of the foregoing rights.;
<b>“Inventions”</b>	without limitation, any software programs, systems design or subroutines, source or object code, algorithms, improvements, inventions, technology, formulae, discoveries, designs, ideas, processes, techniques, know-how, data, models, concepts methods and prototypes or other matter, whether or not patentable;
<b>“Non-Customer User”</b>	any individual that is not a full-time employee of the Customer;
<b>“Performance Monitor”</b>	the individual(s) appointed by the Service Provider to monitor the provision of the Hosting Services in accordance with the Service Levels under Clause 31;
<b>“Renewal Period”</b>	1 year
<b>“Scheduled Service Downtime”</b>	Downtime which is pre-planned by the Service Provider for maintenance, upgrades and similar activities in accordance with Clause 30;
<b>“Service”</b>	collectively, the Applications, ASP Infrastructure and the Support & Maintenance Services to be provided by the Service Provider to the Customer;
<b>“Service Levels”</b>	the service levels set out in SCHEDULE 4 – Service Levels
<b>“Statement of Work” or “SOW”</b>	a written statement of work and/or work products to be provided by the Service Provider to the Customer, subject to any additional terms and conditions, including as to payment, therein set out;
<b>“Support &amp; Maintenance Services”</b>	the services described in SCHEDULE 5 – Support & Maintenance to be provided by the Service Provider as part of the Service;
<b>“Term”</b>	collectively, the Initial Term and the successive periods referred to in clause 2.1 during which this Agreement subsists;
<b>“Training Fees”</b>	the sums payable by the Customer in return for training provided by the Service Provider in accordance with Clause 6 of this Agreement, specified in SCHEDULE 3 - Training;
<b>“Users”</b>	(i) an employee of the Customer; and (ii) any Non-Customer Users specifically deemed in writing by the Service Provider to be Users subject to any applicable conditions imposed by Service Provider for that purpose.
<b>“Work Product”</b>	the product of any Additional Services.

- 1.2. Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1. “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.3. “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4. a Schedule is a schedule to this Agreement; and
- 1.2.5. a Clause, sub-Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

- 1.3. The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4. Words imparting the singular number shall include the plural and vice versa.
- 1.5. References to any gender shall include the other gender.

## 2. Term

- 2.1. This Agreement shall have effect from the Effective Date. Unless earlier terminated in accordance with its terms, immediately upon the expiry of the Initial Term this Agreement shall automatically renew for successive one year periods (each a “**Renewal Period**”) unless either party shall have provided to the other written notice of non-renewal not less than ninety (90) days prior to the end of the then current Renewal Period.

## 3. Service Licence

- 3.1. On condition that the Customer is current in the payment of all Fees due to the Service Provider and in compliance with terms of this Agreement, the Service Provider hereby grants to the Customer a revocable, time-limited, non-exclusive, non-transferable, non-sublicenseable licence from the Commencement Date until the end of the Term for its Users to:
  - 3.1.1. access and use the Service; and
  - 3.1.2. receive Support and Maintenance Services in connection with such access and use.
- 3.2. The Applications initially available to Customer as part of the Service are detailed in SCHEDULE 2 - Specification to this Agreement.
- 3.3. The Customer is permitted to modify its selection of available Applications on fourteen (14) days written notice. Such modification shall take effect from the start of the month following that in which such notice is received by Service Provider. In the event of such modification, the Fees shall be amended in accordance with Service Provider’s then prevailing Fees from the date each modification becomes effective.

Should the Customer want to increase the Authorised Limits it shall be permitted to do so only at the sole discretion of the Service Provider to be exercised as it sees fit. The Service Provider reserves the right to increase Fees proportionately, in accordance with SCHEDULE 1- FEES in the event of an increase in the Authorised Limits.

## 4. Restrictions

- 4.1. The licence granted under clause 3.1 is subject to the conditions and restrictions set out in this Agreement including, in particular, this clause 4:
- 4.2. Subject to clause 3.3, the Customer may only access the Applications detailed in SCHEDULE 2 - Specification to this Agreement. No access to other parts of the ASP Infrastructure shall be permitted in the absence of express written permission from the Service Provider;
- 4.3. The Customer shall use the Service exclusively for the purposes of carrying on its business of managing reports submitted to the service via mobile applications, the api or the public web site;
- 4.4. Customer’s licensed use is subject to the Authorised Limits;
- 4.5. Only Users shall be permitted to access the Applications and the ASP Infrastructure, and such access shall be controlled by means of username and password. Subject to Service Provider’s express written consent otherwise in respect of specified Non-Customer Users, use by Non-

Customer Users is expressly prohibited. As a condition of such consent, the Service Provider may require further information such as the reason why access by the Non-Customer User is required, details of the Non-Customer User and other information which may be specified from time to time.

- 4.6. The Customer is exclusively responsible for its use of the Service, including the conduct of individual Users and must ensure that all use is in accordance with this Agreement. The Customer shall notify the Service Provider immediately of any breaches of this Agreement by any Users or Non-Customer Users.
  - 4.7. Access to the Applications is only permitted through <http://admin.mediaklik.com>, the public website, and the API, via the ASP Infrastructure. Under no circumstances may the Customer download, store, reproduce or redistribute the Applications or any other part of the ASP Infrastructure, without first obtaining the express written permission of the Service Provider.
  - 4.8. The Customer’s use of the Applications and ASP Infrastructure may, from time to time, be governed by statutory or regulatory rules and requirements external to the terms and conditions of this Agreement. It shall be the Customer’s exclusive responsibility to ensure that their use of the Service is in compliance with any such laws.
  - 4.9. The Customer’s use of the Service shall be subject to the following limitations, any of which may be waived by the Service Provider giving their express written consent:
    - 4.9.1. The Customer may not use or redistribute the Applications or the ASP Infrastructure for the purpose of conducting the business of an Application Service Provider;
    - 4.9.2. The Customer may not redistribute or reproduce the Applications or the ASP Infrastructure through any network; and
    - 4.9.3. The Customer must not allow any unauthorised third party to access the Applications or the ASP Infrastructure.
    - 4.9.4. Neither the Customer, nor anyone on their behalf may, in the absence of written consent from the Service Provider:
      - a. Make changes of any kind to the Applications or the ASP Infrastructure; or
      - b. Attempt to correct any fault or perceived fault in the Applications or the ASP Infrastructure.
- ## 5. Additional Services
- 5.1. During the Term, the Customer may request the Service Provider to provide Additional Services. Service Provider shall not be obliged to provide any Additional Services to the Customer except on terms to be agreed, as set out in a Statement of Work fully executed by both Parties.
  - 5.2. The Service Provider shall provide training in accordance with the programme specified in SCHEDULE 3 - Training to all Users that require it.
  - 5.3. The cost of all training materials including, but not limited to, books, handouts and interactive resources which may be required shall be included in the Training Fees.
  - 5.4. Prior to the Commencement Date, the Customer shall determine the number of Users requiring training and shall inform the Service Provider.

- 5.5. All Training Fees, as specified in SCHEDULE 3 - Training, shall be paid by the Customer at the same time as the first instalment of Fees payable under Clause 4. In the event that subsequent training of new Users is required, additional Training Fees shall be charged on an ad-hoc basis with payment due prior to the commencement of such training.
- 5.6. Further training may be required in the event of significant alterations or upgrades to the Applications and the ASP Infrastructure. The Service Provider shall inform the Customer of such recommended training in advance and shall supply details of all required Training Fees.
- 5.7. Notwithstanding the provisions of this Clause, the Customer is not bound to utilise the Service Provider's training services and is free to procure training from alternative sources.

## **6. Fees and Payment**

The Fees due for the Service are specified in SCHEDULE 1-FEES to this Agreement.

- 6.1. The Customer shall pay to the Service Provider all Fees due within 30 days of receipt of an invoice from the Service Provider for the same.
- 6.2. In the event that the Customer does not pay all Fees due within the time period specified in sub-Clause 6.2 above, the Service Provider shall suspend the Customer's use of the Service by whatever means it deems appropriate, subject to the requirement that such shall not disrupt any other of the Customer's operations.
- 6.3. In the event that the Customer fails to pay Fees when due then, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at 5% per annum over the Bank of England base rate obtaining at the time.
- 6.4. The Service Provider reserves the right to vary the Fees from time to time as it may deem appropriate. The Customer shall receive thirty (30) days' written notice of any such variation. Such variations shall take effect upon expiry of such notice, subject to the Customer's right to terminate this Agreement in accordance with its terms.

## **7. Customer Computer Systems**

- 7.1. Prior to commencement of the Service the Service Provider shall be entitled to conduct a full inspection and inventory of the Customer Computer Systems to ensure compatibility with the Applications and ASP Infrastructure and the Customer shall grant access to this end upon receipt of reasonable notice from the Service Provider. Where appropriate, the Service Provider may offer recommendations for upgrades and other alterations. Any such recommendations shall be presented in a written report to the Customer.
- 7.2. The Service Provider may from time to time require physical access to the Customer Computer Systems for the purposes of inspecting, testing and upgrading the Customer Computer Systems to ensure their compatibility with the Applications and ASP Infrastructure. Such access shall be granted by the Customer only upon receipt of reasonable notice from the Service Provider.
- 7.3. The Service Provider shall be entitled to reasonable access at all times to be agreed by the Parties during the terms of this Agreement to the Customer Computer Systems remotely for the purposes of ensuring continued

and uninterrupted service within the Applications and ASP Infrastructure.

- 7.4. Where, in the opinion of the Service Provider, Customer Computer Systems are likely to cause disruption to the ASP Infrastructure, the Service Provider may request that the Customer disconnects from the ASP Infrastructure until advised that reconnection is possible. The Service Provider may require changes such as upgrades or equipment replacement to be made to the Customer Computer Systems prior to reconnection.
- 7.5. In the event of any unauthorised access by the Customer of Applications or the ASP Infrastructure, the Service Provider shall be entitled to terminate access indefinitely or temporarily as it deems appropriate and to terminate this Agreement.
- 7.6. The Customer shall ensure that no Customer Computer Systems are connected to a third-party ASP system or other service, communications system or network in such a way that the Service may be accessed by unauthorised third parties.

## **8. Customer Data**

- 8.1. Subject to sub-Clause 8.2 all Intellectual Property Rights subsisting in Customer Data are and shall remain the property of the Customer.
- 8.2. Certain Customer Data may belong to third parties. In such cases, the Customer warrants that all such Customer Data is used with the consent of relevant third parties and shall indemnify and hold harmless the Service Provider against all costs, expenses, liabilities, losses, damages and judgments that the Service Provider may incur or be subject to as a result of or in connection with the handling of such third party Customer Data.

## **9. Intellectual Property**

- 9.1. Save as expressly provided otherwise in this Agreement, all Intellectual Property Rights in to and under the Service, Additional Services and any Work Product including, without limitation, the Applications and the ASP Infrastructure, and any related software and documentation are and shall remain the sole and exclusive property of the Service Provider and Customer shall not acquire any right title or interest in or to the same. All rights not expressly granted under this Agreement are hereby reserved to the Service Provider. For the purposes of this Clause, 'Applications' and 'ASP Infrastructure' along with supporting software and documentation are taken to include the manner in which all such material is compiled and presented.
- 9.2. Certain Applications including any supporting software and documentation may be the intellectual property of named third parties in respect of which Service Provider controls the rights necessary to grant to the Customer the rights set out in this Agreement
- 9.3. The Customer shall not either during the term or after the expiry of this Agreement permit or cause to occur any infringement of any Intellectual Property Rights covered by this Agreement.
- 9.4. Except as permitted under applicable law, the Customer shall not, in the absence of the Service Provider's written consent, reproduce, adapt, translate, reverse-engineer, or make available to any third party any of the Applications, any part of the ASP Infrastructure, or any other material associated with this Agreement where such activity goes beyond the scope of actions permitted by the terms and conditions of this Agreement.

9.5. Where the Customer either suspects or is aware of any breach of Intellectual Property Rights covered by this Agreement it shall inform the Service Provider of such breach immediately.

## **10. Confidentiality**

10.1. During the Term of this Agreement and after the termination or expiration of this Agreement for any reason, the Service Provider shall use its best and reasonable endeavours to ensure that all Customer Data is kept secure and confidential. The Service Provider shall not, in the absence of express written consent from the Customer, disclose Customer Data to any third party unless such disclosure is required by law in which case the Customer shall be notified in writing of the disclosure.

10.2. During the Term of this Agreement and for a period of three (3) years following its expiry or earlier termination the following obligations shall apply to the Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party").

10.3. The Receiving Party:

10.3.1. may not use any Confidential Information for any purpose other than the performance of their obligations under this Agreement;

10.3.2. may not disclose any Confidential Information to any third party except with the prior written consent of the Disclosing Party; and

10.3.3. shall make every effort to prevent the unauthorised use or disclosure of the Confidential Information.

10.4. The obligations of confidence referred to in this Clause shall not apply to any Confidential Information that:

10.4.1. is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;

10.4.2. is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

10.4.3. is required to be disclosed by any applicable law or regulation; or

10.4.4. is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect thereof and who imposes no obligations of confidence upon the Receiving Party.

10.5. Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this Clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which they may be entitled.

10.6. The provisions of this Clause shall survive the expiry or the termination of this Agreement irrespective of the reason for such expiry or termination.

## **11. Warranties**

11.1. Each of the Parties represent and warrant for themselves that:

11.1.1. they have the full corporate right, power and authority to enter into this Agreement and to perform their obligations under it;

11.1.2. their execution and performance of this Agreement shall not violate any agreement to which they are otherwise bound;

11.1.3. when executed and delivered by them, this Agreement will constitute the legal, valid and binding obligation of each of them, enforceable against the other in accordance with its terms.

11.2. Service Provider warrants to Customer only that during the Term, the Service, any third party software provided as part of the Service and any Work Product will perform in all material respects in accordance with its Specification. Customer's exclusive remedy and Service Provider's sole obligation for any failure to comply with the foregoing warranty, will be for Service Provider to use its commercially reasonable efforts to correct such non-compliance, or in the event that Service Provider is unable to correct such non-compliance in a reasonable period of time, refund to Customer any pre-paid, unused fees paid by Customer to Service Provider for the applicable non-conforming component. Such warranties do not apply to any defect resulting from misuse, use or combination with any products, goods, services or other items furnished by anyone other than Service Provider (unless recommended by Service Provider in writing), any modification not made by or for Service Provider, nor any use contrary to the terms of this Agreement.

11.3. Service Provider warrants that it will perform the Additional Services in a workmanlike manner consistent with generally accepted industry standards, and that for a period of thirty (30) days from completion thereof, any Work Product will perform in all material respects in accordance with any specifications therefore set forth in an applicable Statement of Work. In the event of a breach of the foregoing warranty, Service Provider's sole obligation, and Customer's exclusive remedy shall be for Service Provider to re-perform the applicable Additional Services to correct the applicable non-conformity.

11.4. Except as set forth in this agreement, the service additional services, any work product, and any related documentation are provided "as is" without warranty of any kind, and service provider makes no warranties whether expressed, implied or statutory regarding or relating thereto under this agreement. To the maximum extent permitted under applicable law, service provider specifically disclaims all implied warranties of merchantability, fitness for a particular purpose and non-infringement with respect thereto and with respect to the use of the foregoing. Further, service provider does not warrant results of use or that the foregoing will be error free or that the customer's use thereof will be uninterrupted.

## **12. Liability**

12.1. Nothing in this Agreement shall operate or have effect so as to limit or exclude a party's liability for fraud (including fraudulent misrepresentation) or for death or personal injury caused by negligence.

12.2. Subject to clause 12.1 in no event shall customer or service provider be liable for any loss of profits, loss of

use, business interruption, loss of data, cost of substitute goods or services, or for any indirect, special, incidental or consequential damages of any kind in connection with or arising out of the use of or inability to use the service, additional services or work product or the performance of or failure to perform this agreement, whether alleged as a breach of contract or tortious conduct, including negligence, even if a party has been advised of the possibility of such damages.

12.3. Subject to section 12.1 and except as otherwise expressly provided in this agreement, in no event shall customer's, or service provider's or its licensors' aggregate, cumulative liability under this agreement exceed the lower of: (i) £1,000,000 (one million pounds) or (ii) one hundred and fifty per cent (150%) of the amounts customer was required to pay service provider under this agreement for the service, additional services or work product giving rise to such liability, in the twelve (12) months immediately prior to the event giving rise to such liability, provided that in the event that customer has paid in advance for the service with a term that is longer than twelve (12) months, the foregoing limitation shall be equal to the fees paid by customer for such service, divided by the number of years in the term. The parties agree that the foregoing limitations, exclusions and disclaimers are a reasonable allocation of the risk between the parties and will apply to the maximum extent permitted by applicable law, even if any remedy fails in its essential purpose.

12.4. The exclusions and limitations of liability set forth in this agreement shall not apply to amounts owing by customer to service provider a breach by customer of the scope of the license granted under this agreement through gross negligence or intentional misconduct or a breach by either party of its obligations of confidence under this agreement or any indemnity given by a party under this agreement.

### **13. Indemnity**

13.1. The Customer will fully indemnify the Service Provider against all costs, expenses, liabilities, losses, damages and judgments that the Service Provider may incur or be subject to as a result of any of the following:

13.1.1. The Customer's misuse of the Applications, ASP Infrastructure or any other element of the Service;

13.1.2. The Customer's breach of this Agreement; or

13.1.3. The Customer's negligence or other act of default.

13.2. Subject to the other provisions of this Agreement, Service Provider hereby indemnifies the Customer and shall defend and hold it harmless from any damages, costs or expenses (and in the case of the fees of professional advisors limited to their reasonable fees reasonably incurred) awarded against the Customer by a court of competent jurisdiction and not capable of further appeal in satisfaction of a claim by a third party that Customer's authorised use of the Service, Additional Services and/or Work Product infringes the Intellectual Property Rights of that third party.

13.3. The indemnities given under this clause shall only apply on condition that the Customer:

13.3.1. immediately notifies the Service Provider in writing of such claim upon becoming aware of it; and

13.3.2. promptly at the request of the Service Provider permits the Service Provider to defend any such claim and gives it sole control in respect of the defence and settlement thereof;

13.3.3. promptly when requested gives the Service Provider such authority, information, and assistance reasonably requested and necessary to settle or defend such claim; and

13.3.4. does not make any prejudicial statement or admission in relation to such claim.

13.4. The indemnity given under this clause shall not apply if the alleged infringement arises from:

13.4.1. unauthorised use of the Service by or on behalf of Customer or its representatives, agents or contractors; or

13.4.2. (a) a modification of Work Product that is not performed by Service Provider; (b) the combination, operation, or use of Work Product with any other products, services or equipment not provided by Service Provider; (c) specifications Customer provides to Service Provider for any Work Product; or (d) any third party software.

13.5. If the use of the Service or Work Product infringes the intellectual property rights of a third or Service Provider believes it is likely to infringe such rights, it may, at its sole option:

13.5.1. procure for the Customer the right to continue use of the affected Service/Work Product as furnished;

13.5.2. replace the part of the Service/Work Product with another of equal utility;

13.5.3. modify the Service/Work Product to make it non-infringing, provided that it still substantially conforms to the applicable description; or

13.5.4. if unable to accomplish the foregoing remedies after using all commercially reasonable efforts, terminate the supply of the affected Service/Work Product and refund: (a) the consideration paid for just the part affected, less an equitable pro rata reduction for the time that it was used by the Customer.

### **14. Force Majeure**

14.1. Neither the Service Provider nor the Customer shall be liable for breaching this Agreement where that breach results from Force Majeure.

14.2. Force Majeure refers to any event that is beyond the reasonable control of the parties and includes, but is not limited to: power failure, internet service provider failure, industrial action, civil unrest, theft, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

### **15. Termination**

15.1. Either party shall be entitled to terminate this Agreement if the other:

15.1.1. is in material breach (which in the case of Customer shall be deemed to include failure to pay any Fees when due) or repeated immaterial breach of the terms of this Agreement;

15.1.2. becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;

- 15.1.3. is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
- 15.1.4. has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.
- 15.2. In the event that Service Provider is entitled to terminate this Agreement, it shall have the additional right to suspend performance of its obligations and Customer's licence under this Agreement for such period as it thinks fit not to exceed the period during which the event giving rise to such right subsists. The exercise or non-exercise of such right of suspension shall be additional and without prejudice to all other rights and remedies of Service Provider.
- 15.3. The Customer shall be entitled to terminate this Contract or any other contract if the Service Provider shall have offered or given or agreed to give to any person, or if the Service Provider's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Service Provider's behalf, shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or having forborne to do any action in relation to the obtaining or execution of this or any other contract with the Customer, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Customer, or if the like acts shall have been done by any person employed by the Service Provider or acting on its behalf (whether with or without the knowledge of the Service Provider), or if in relation to this or any other contract with the Customer the Service Provider or any other person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under subsection (2) of Section 117 of the Local Government Act 1972 or any re-enactment thereof.
- 15.4. Within 7 Business Days of the termination of this Agreement in accordance with this Clause or the expiry of this Agreement, the Customer shall uninstall or otherwise remove any means of access to the Applications and ASP Infrastructure including, but not limited to, client software supplied by the Service Provider for that sole purpose. Immediately following taking such action, the Customer shall inform the Service Provider in writing that such action has been taken. The Service Provider shall have the right to dispatch a representative to the Customer's premises for verification purposes.

## 16. Protection of Personal Data

- 16.1. With respect to the parties' rights and obligations under this Contract, the parties agree that in respect of Customer's Personal Data, the Service Provider is both the Data Controller as well as the Data Processor (as those phrases are defined in the UK's Data Protection

Act 2018 and any related applicable regulations including the EU General Data Protection Regulation 2016/679 or "GDPR" ("Data Protection Legislation").

### 16.2. The Service Provider shall:

- 16.2.1. Process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Service Provider during the Term);
- 16.2.2. process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;
- 16.2.3. implement appropriate technical and organisational measures to protect the Customer's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;
- 16.2.4. take reasonable steps to ensure the reliability of any Service Provider personnel who have access to the Customer's Personal Data;
- 16.2.5. obtain prior written consent from the Customer in order to transfer the Customer's Personal Data to any third parties for the provision of the Services;
- 16.2.6. ensure that all the Service Provider personnel required to access the Customer's Personal Data are informed of the confidential nature of the Customer's Personal Data and comply with the obligations set out in this Clause;
- 16.2.7. ensure that none of the Service Provider's personnel publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
- 16.2.8. notify the Customer (within 5 Days) if it receives:
  - a) a request from a Data Subject (as defined in the Data Protection Legislation) to have access to that person's Personal Data; or
  - b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 16.2.9. provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
  - a) providing the Customer with full details of the complaint or request;
  - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - d) providing the Customer with any information requested by the Customer;



16.2.10. permit the Customer or the Customer's appointed representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the provisions of this Agreement, the Service Provider's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Service Provider is in full compliance with its Data Protection Legislation obligations under this Agreement;

16.2.11. provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the Customer); and

16.2.12. not Process Personal Data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to a transfer, to comply with:

- a) the obligations of a Data Controller under the Data Protection Act 2018 by providing an adequate level of protection to any Personal Data that is transferred; and
- b) any reasonable instructions notified to it by the Customer

16.3. The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

16.4. Right of Access - the Customer may access its Customer Data at any time to view or amend it. The Customer may need to modify or update the Customer Data if the Customer's circumstances change. The Customer has the right to obtain from the Service Provider confirmation as to whether or not personal data concerning the Customer is being processed by the Service Provider, and, where that is the case, be provided with a copy of that personal data. Requests for Right of Access should be made via support@lovecleanstreets.com. The Service Provider undertakes to provide that information within ONE month of receipt of the request or provide a reason why it cannot do so within ONE month. Where the request is excessive, repetitive or more than one copy is requested the Service Provider reserves the right to make a charge commensurate with the resources required to meet the request. The right to obtain a copy referred to above shall not adversely affect the rights and freedoms of others.

16.5. Right to Rectification – the Customer has the right to request from the Service Provider the rectification of any of its personal data that is inaccurate. Requests for Right to Rectification should be made via support@lovecleanstreets.com. The Service Provider undertakes to rectify the information within ONE month of receipt of the request or provide a reason why it cannot do so within ONE month.

Right to Erasure ('Right to be forgotten') – The Customer has the right to request from the Service Provider the deletion of the Customer's Personal Data. Requests for the Right to

Erasure should be made via support@lovecleanstreets.com. The Service Provider will ensure removal of all Customer Personal Data held within ONE month of receipt of the request or provide a reason why it cannot do so within ONE month. The Service Provider will make all reasonable effort to make the request on the Customer's behalf to the organisations the Service Provider may have passed on the Customer's Personal Data to have them remove it too.

Right to Restriction of Processing – the Customer has the right to request from the Service Provider that its Personal Data is not processed when any one of the following applies:

1. the accuracy of the Personal Data is contested by the Customer, for a period enabling us (the Controller) to verify the accuracy of the Personal Data;
2. the processing is unlawful and the Customer opposes the erasure of its Personal Data and requests the restriction of its use instead;
3. the Service Provider no longer needs the Personal Data for the purposes of the processing, but it is required by the Customer for the establishment, exercise or defence of legal claims;

Requests for the Right to Restriction of Processing should be made via support@lovecleanstreets.com. The Service Provider undertakes to make all reasonable effort to make the request on the Customer's behalf to the organisations that the Service Provider may have passed on Personal Data to, to have them restrict processing too.

Right to Withdraw Consent – the Customer shall have the right to request from the Service Provider that its Personal Data is removed and no longer consent to it being processed. Requests for the Right to withdraw Consent should be made via support@lovecleanstreets.com. The Service Provider undertakes to remove all such Personal Data held within ONE month of receipt of the request or provide a reason as to why it cannot do so within ONE month and will not process further any data already held. The Service Provider undertakes to make all reasonable effort to make the request on the Customer's behalf to the organisations that the Service Provider may have passed on Customer Personal Data to, that you have withdrawn your consent to have your personal data processed. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.

Right to Complain to the Supervisory Authority – The Customer shall have the right to complain to the Supervisory Authority if it feels its rights under the General Data Protection Regulations have been infringed. Complaints should be made to the UK Supervisory Authority which is the Information Commissioners Office (ICO) and you can find more information about raising a concern or complaint here <https://ico.org.uk/concerns/>

Changes of Business Ownership and Control:

The Service Provider may, from time to time, expand or reduce its business and this may involve the sale of certain divisions or the transfer of control of certain divisions to other parties. Customer Data will, where it is relevant to any



division so transferred, be transferred along with that division and the new owner or newly controlling party will, under the terms of this agreement, be permitted to use the Customer Data only for the purposes for which it was supplied by the Customer to the Service Provider.

In the event that any Customer Data submitted by Customers is to be transferred in such a manner, the Customer concerned will be contacted in advance and informed of the changes. When contacted, the Customer will be given the choice to have its Personal Data deleted or withheld from the new owner or controller.

## Security

Data security is of great importance to the Service Provider and it has put in place suitable physical, electronic and managerial procedures to safeguard and secure Customer Data.

## 17. Malicious Software

17.1. The Service Provider shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete malicious software from the Service (“Malicious Software”)

17.2. Notwithstanding Clause 17.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

17.3. Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 17.2 shall be borne by the parties as follows:

17.3.1. by the Service Provider where the Malicious Software originates from the Service Provider Software, third party software or the Customer Data (whilst the Customer Data was under the control of the Service Provider); and

17.3.2. by the Customer if the Malicious Software originates from the Customer Data (whilst the Customer Data was under the control of the Customer).

## 18. Insurance

18.1. The Service Provider will have in place appropriate insurances to indemnify the Customer against actions by the Service Provider that may result in a claim by a third party. Such insurances are as follows:

18.2. public liability insurance that covers the Service Provider’s liabilities under this Contract in a sum of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event;

18.3. employer’s liability insurance in a sum of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event and which complies with the Employers’ Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1972.

18.4. professional indemnity insurance that covers the risk of professional negligence on the part of the Service

Provider and persons engaged by it in a sum of not less than £1,000,000 (one million pounds) for any one occurrence or series of occurrences arising out of any one event.

## 19. Notices

19.1. All notices under this Agreement shall be in writing.

19.2. Notices shall be deemed to have been duly given:

19.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

19.2.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

19.2.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

19.2.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.

19.3. In each case notices should be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 20. Relationship of Parties

20.1. Nothing in this Agreement shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between the Service Provider and the Customer.

## 21. Assignment

21.1. Except in respect of a merging, acquiring or acquired entity, neither Party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.

## 22. Severance

22.1. The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

## 23. Entire Agreement

23.1. This Agreement embodies and sets forth the entire agreement and understanding between the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement, save for any representation made fraudulently.

23.2. Unless otherwise expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both of the Parties.

## 24. No Waiver

24.1. The Parties agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

## 25. Non-Exclusivity

25.1. The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both

parties are free to enter into similar relationships with other parties.

**26. Law and Jurisdiction**

26.1. This Agreement shall be governed by the laws of England and Wales.

26.2. Any dispute between the Parties relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales.

Signed on behalf of Blackburn IT Services Limited:

.....(Director)

Signed on behalf of \_\_\_\_\_:

.....(Director)

## **1. SCHEDULE 1 - FEES**

### **Authorized Limits**

Unlimited use of the service during the term of the contract

### **Fees**

#### **Service Fees**

Please see separate quote for full fees and specification

#### **License Fees**

Mobile Applications are provided as free downloads available to the public via the appropriate App Stores and Marketplaces

#### **Fee Increases**

Fees will be increased annually at inflationary rates only in line with RPIX

#### **Additional Support Charges**

None

#### **Additional Costs**

Overage Pricing:

Data Transfer: no charge

API Transactions: no charge

## **2. SCHEDULE 2 - SPECIFICATION**

### **Applications**

**Please see separate quote for full specification.**

### **3. SCHEDULE 3 - TRAINING**

#### **Training**

Please see separate quote for full fees and specification

### **4. SCHEDULE 4 – SERVICE LEVELS**

1. The Service Provider shall, throughout the term of this Agreement, provide the Hosting Services to the Client in accordance with the terms and conditions of this Agreement, the provisions of the Service and the Service Levels.
2. The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Service.
3. The Service Provider may alter, improve or otherwise modify the Service provided that any such change will not significantly alter the provision of the Hosting Services or result in the removal of any features or services that form part of the Service. The Client will be notified no later than 30 Business Days in advance of any planned changes and will receive full documentation of any action required on their part. No alterations under this sub-Clause 28.3 shall affect the Fees payable by the Client.
4. The Service Provider shall use all due and proper care to ensure that the manner in which it provides the Service does not have any adverse effect on the name, reputation, image or business of the Client.
5. The Service Provider shall ensure that at all times the ASP Infrastructure includes fully patched servers hosted securely in Microsoft Windows Azure data centres.
6. The Service Provider shall make daily backups of all data on the ASP server.

## **5. SCHEDULE 5 – SUPPORT & MAINTENANCE**

1. The Service Provider shall provide access to the Applications through the ASP Infrastructure and shall use its best and reasonable endeavours to ensure that such access is available, without interruption, 24 hours a day, 7 days a week, 365 days a year. This undertaking shall be subject to the exceptions contained in Clauses 4, 12, 18 and 19 of this Agreement.
2. The Service Provider shall provide support services during their normal business hours of 9:00 until 17:00, such business hours to exclude public holidays. The support provided by the Service Provider shall relate only to the Applications and ASP Infrastructure. Any problems which are related to Customer Computer Systems must be resolved by the Customer's own support staff.
3. When seeking support the Customer shall use its best and reasonable endeavours to provide the fullest information possible to aid the Service Provider in diagnosing any faults in either the Applications or the ASP Infrastructure.
4. The Service Provider shall aim to resolve all support problems within 4 Business Hours or as soon as possible thereafter where resolution in that time is not possible.
5. Whenever possible, when a resolution is not available within the timelines above, the Service Provider shall provide a workaround solution to the Customer to enable the Customer's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.
6. The Service Provider shall be responsible for all maintenance and upgrades to the ASP Infrastructure which may from time to time be required.
7. Subject to the provisions of Clause 12, the Customer shall be responsible for all maintenance and upgrades to the Customer Computer Systems which may from time to time be required.
8. Whenever possible, the Service Provider shall use its best and reasonable endeavours to undertake maintenance work outside of the Customer's business hours.
9. Unless maintenance is corrective in nature, the Service Provider shall provide at least 10 Business Days' notice of any maintenance which may affect the Customer's use of the Service. The Service Provider shall use its best and reasonable endeavours to provide as much notice as possible in the case of corrective maintenance, however advance notice may not always be possible.
10. Where maintenance will disrupt the Service, the Service Provider shall aim to complete all necessary work within 3 Business Hours or as soon as possible thereafter where resolution in that time is not possible.