



# **TUCSON TECHNOLOGY**

**T2Cloud.app**

**Master Subscription Agreement**

**[www.tucsontechnology.com](http://www.tucsontechnology.com)**

This agreement is entered into between **Tucson Technologies Ltd**, a company registered in England number 11822305 (hereafter "**Provider**"), and **Adopter**, whose details are recorded on the Order Form.

## 1. Definitions – Interpretations

1.1 In this Master Subscription Agreement, unless otherwise stated or unless the context otherwise requires, each capitalised term will have the meaning set out below.

**"Adopter"** means the organization using the Services as recorded on the Order Form.

**"Adopter Data"** means any and all data, information and content which are uploaded, stored or installed by the Adopter onto the System or created, realised or developed by the Adopter while using the Services, including, without limitations, data, information, software, data-base, documents, pictures, images, photographs, text, files, music, video.

**"Carrier"** means any parcel carrier, freight forwarder or transportation service provider that the Adopter has requested that Provider integrate in order to provide the Services.

**"Confidential Information"** means any and all information or data, in whatever form or storage medium, whether tangible or intangible, and whether disclosed directly or indirectly before or after this Agreement by or on behalf of the disclosing Party (hereinafter, "Disclosing Party") to the receiving Party (hereinafter, "Receiving Party") in writing, orally, through visual means, or by the Receiving Party's evaluation, observation, analysis, inspection or other study of such information, data or knowledge, which is now or at any time after the Effective Date of this Agreement, owned or controlled by the Disclosing Party. Confidential Information shall include (i) the Adopter Data and the Derived Data; (ii) the Fee due for the Services and any applied discount, (iii) the trade secrets, discoveries, know how, designs, specifications, drawings, present or future products or services and markets, inventions, prototypes, algorithms, software of any kind or nature, object or machine codes, source codes, computer models and applications, developments, processes, formulae, technology, engineering, architectures, hardware configuration information, diagrams, data, computer programs, business activities and operations, Adopter lists, reports, studies and other technical and business information, and any other information which, by its nature, would reasonably be considered to be of a confidential nature either intrinsically or due to the context and circumstances in which it was disclosed, including, for the avoidance of doubt, information concerning the Parties' clients, which is of a confidential nature; (iv) all the information under points (iii) concerning or related to the Group of the Disclosing Party.

**"Controller"** or **"Data Controller"** means the natural or legal person, public authority, organisation, agency or any other body which alone or jointly with others determines the purposes and means of the processing of Personal Data.

**"Data Protection Laws and Regulations"** means The General Data Protection Regulation of the European Union, the Data Protection Act 2018 of the United Kingdom and/or the relevant data protection legislation of the country where the Adopter is established to conducts the business to which the Services are related and with respect to any other country, any applicable data protection or data privacy legislation.

**"Data Subject"** means an identified or identifiable person to whom the Personal Data relate.

**"Derived Data"** means any and all data derived from analysis of the operation of the System but specifically excluding Adopter Data.

**"Documentation"** means all and any user guides and operating or other similar manuals and/or documentation, provided in hard copy or soft copy, necessary to enable the Adopter to make full and proper use of the System or the Services.

**"Effective Date"** means the date ~~of enforcement of the Master Subscription Agreement, which is~~ set forth in the Order Form or, if later, the date on which the Adopter shall receive login credentials.

**"Fees"** means the charges due by the Adopter under Clause 6.

**"Force Majeure Event"** means any (i) fire, flood, earthquake or natural phenomena, (ii) war, embargo, riot, civil disorder, rebellion, revolution (iii) plague or pestilence, which is beyond a Party's control, or any other causes beyond a Party's control.

**"Group"** in relation to each Party, means that Party, its subsidiaries, its holding companies and every subsidiary of each such holding company from time to time.

**"Intellectual Property Rights"** means all vested and future intellectual property rights including but not limited to copyright, trade-marks, design rights, patents, know-how, trade secrets, inventions, semiconductor topography rights, and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world, and all other intellectual property rights protected by any applicable law.

**"Master Subscription Agreement"** means this agreement together with the Attachments listed in Clause 23 below and the Order Form signed by the Adopter.

**"Party"** means the Adopter or Provider.

**"Personal Data"** means any information relating to an identified or identifiable natural person (as defined under Data Protection Laws and Regulations). This includes information that can be linked, directly or indirectly, to a natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to a data number or reference.

**"Processing of Personal Data"** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

**"Processor"** or **"Data Processor"** means the legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller and according to its written instructions.

**"Provider Content"** means any and all content made available by Provider to the Adopter as a result of their use of the System, including, without limitations, data, information, software, data-base, documents, pictures, images, photographs, text, files, music, video.

**"Sales Tax"** means any applicable sales, use, value added, excise or similar tax, fee or surcharge legally applicable or by custom born by a purchaser of services.

**"Services"** means the services detailed in Attachment 1 to the Master Subscription Agreement and any additional services described in the Order Form.

**"Service Credits"** means an amount in Adopter's currency calculated each month in accordance with Attachment 2 in respect of a failure by the Provider to meet Service Level Objectives.

**"Service Levels"** means the characteristics of the Service defined on the Order Form.

**"Service Level Agreement"** means the Attachment 2 to the Master Subscription Agreement.

**"Service Level Objectives"** means the target numerical value of the Service Levels set out in the Order Form.

**"Subcontractor"** means any Third Party appointed by the Provider to perform some activities of the Services in accordance with Clause 16.1.

**"System"** means the electronic information systems comprising any one or more of hardware, equipment, software, peripherals and communications networks owned, controlled, operated and/or used by the Provider to supply the Services.

**"Term"** means the term of the Master Subscription Agreement as specified as specified on the Order Form.

**"Third Party"** means any company, natural person, body or organization different from the Provider, the Adopter and the relevant Group.

**"Third Party Content"** means any and all content owned by a Third Party made available or provided by the Provider to the Adopter onto the System including, without limitations, data, information, software (including open source software), data-base, documents, pictures, images, photographs, text, files, music, video.

**"Users"** means those employees, agents, subcontractors, consultants (including professional advisers) of the Adopter or other Third Parties authorized by the Adopter who are entitled to use the Service.

**"Working Days"** means any day which is not a bank or public holiday in the United Kingdom.

1.2 The following interpretation rules apply in this Master Subscription Agreement:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- the attachments form part of this Master Subscription Agreement and shall have effect as if set out in full in the body of this Master Subscription Agreement. Any reference to the Master Subscription Agreement includes the attachments;
- a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;

- unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- a reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Master Subscription Agreement;
- a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- a reference to writing or written includes e-mail;
- any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- a reference to this Master Subscription Agreement or to any other agreement or document referred to in this Master Subscription Agreement is a reference to this Master Subscription Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Master Subscription Agreement) from time to time;
- references to numbered Clauses and to Attachments are to the clauses and attachments of the Master Subscription Agreement or Order Form (as applicable); references to paragraphs are to paragraphs of the relevant attachments;
- any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the preceding phrase.

1.3 If and to the extent of any conflict or inconsistency between the terms of this Master Subscription Agreement, the order of priority for the purposes of construction is, in descending order:

- the Order Form
- the clauses of the Master Subscription Agreement;
- the Attachments under Clause 23 of the Master Subscription Agreement; and the Annexes to any Attachment, if any.

## **2. Provision of services**

2.1 The Provider shall make available the Services to the Adopter from the Effective Date, in accordance with the Service Level Agreement in Attachment 2 and the other terms and conditions of the Master Subscription Agreement.

2.2 The Adopter shall have the right to use the Services in accordance with the Acceptable Use Policy under Attachment 3 and the other terms and conditions of the Master Subscription Agreement.

2.3 The permitted use of the service is defined by the terms of the Order Form.

### **3. Service levels**

- 3.1 The Provider shall provide the Services in accordance with the Service Levels under Attachment 2 to this Master Subscription Agreement and shall provide quarterly Service Level Reports of its adherence to such Service Levels.
- 3.2 Where Provider fails to fulfil the Service Level Objectives during the Term of the Master Subscription Agreement, Clause 7 below shall apply.
- 3.3 Without prejudice to any possible rights, remedies and/or actions of the Adopter in accordance with applicable law or this Master Subscription Agreement, the Provider shall inform the Adopter, as soon as reasonably practicable, of any anticipated failure to meet any Service Level Objective and of the steps that the Provider will take (or has already taken) to prevent the failure from occurring.
- 3.4 During the Term of the Agreement and for a period of 3 (three) months following its termination or expiration, the Adopter has the right, at its expense, to have the Provider data and information relating the performance of the Services inspected by an independent auditor (the "Auditor") appointed by the Adopter, who shall be approved by the Provider (and such approval cannot be unreasonably withheld), so as to verify compliance by the Provider with the Reports provided or made available. The Provider shall render all necessary assistance and cooperation to facilitate such inspection and shall make available to the Auditor exclusively all relevant files, data and information used to determine the Service Levels and shall instruct its employees to act accordingly. The Auditor shall communicate promptly to the Adopter and Provider the findings and results of his audit. The Auditor shall not communicate to the Adopter any Confidential Information resulting from the performance of his audit but shall only notify the Parties, if or if not, his audit concludes to different Service Levels Objectives than the ones communicated in the Reports.
- 3.5 The Parties shall meet 30 (thirty) days before the end of each year during the Term to review the Service Levels and the Service Level Objectives. During the review, the Parties shall examine the Reports provided by the Provider during the year in accordance with above Clause 3.4.

### **4. Variation of the services**

- 4.1 Without prejudice of following Clause 4.2, the Provider shall be entitled to change the Services during the Term unless such changes determine, directly or indirectly, a reduction of the functionalities or characteristics of the Services as originally provided at the Effective Date. Save for the changes under Clause 4.2 of the Master Subscription Agreement, any change to the Services determining, directly or indirectly, a reduction of the functionalities or characteristics of the Services must be agreed in writing by the Parties.
- 4.2 The Provider shall be entitled at any time to improve or update the Services in case of: i) improvements or updates necessary to fix defects, bugs, malfunctioning or errors of the Services; and/or ii) to cure security vulnerabilities of the System; and/or iii) the application of any new laws, regulations acts or orders of the authorities. In case the changes under this Clause 4.2 determine, directly or indirectly, a reduction of the functionalities or

characteristics of the Services as originally provided at the Effective Date, the Parties shall agree a fair and proportionate reduction of the due Fees.

- 4.3 The Adopter shall have the right to request a change to the Service by notifying to the Provider the requested change ("Change Request"). The Provider shall respond to the Change Request in an expeditious and timely manner including a quotation for implementation of the Change Request and any potential impact on the Fees, the performance and use of the Services and on the Service Levels.
- 4.4 Changes to the Services under above Clause 4.3 shall only have validity where the authorised representatives of both Parties have agreed and signed a change order (hereinafter, "Change Order").

## **5. Obligations of the Adopter**

- 5.1 The Adopter shall use the Services in accordance with the Acceptable Use Policy under Attachment 3 to this Master Subscription Agreement.
- 5.2 The Adopter shall take all reasonable steps to ensure all the Users observe and fully comply with the terms of the Acceptable Use Policy when using the Services.
- 5.3 If any User breaches any of the terms and conditions of the Acceptable Use Policy ("AUP"), the Provider shall have the right to suspend the User's access to Service and to ask the User and/or the Adopter to remedy the breach within a reasonable timeframe. The Provider shall inform the Adopter of the above Users' breach as soon as it becomes aware of it. If the Users and/or the Adopter fail to remedy said breach within the applicable timeframe, the Provider shall have the right to (i) remove the Adopter Data infringing the AUP; and/or ii) immediately terminate the User's access to the Services without having to file a claim with the competent Court to that effect.
- 5.4 If the Provider has reasonable evidence of i) possible serious risks to the System or Services provoked by the Adopter Data, or ii) fraudulent or illegal activities of the Adopter, the Provider is entitled to a) immediately suspend or terminate the accesses of the Users involved and b) to remove the relevant Adopter Data. If the circumstances in points a) and b) are proven to be false, the Adopter shall be indemnified for the damages suffered for the immediate suspension of the Services.
- 5.5 The Adopter shall co-operate with the Provider to such extent as is reasonably practicable and necessary to enable the Provider to provide the Services.
- 5.6 The Adopter shall be responsible for maintaining, at its care and expenses, an appropriate and periodical back-up of the Adopter Data.
- 5.7 The Adopter shall be responsible for conducting tests and validation of all configuration and changes to the services, at its care and expenses prior to transferring those into production.

## **6. Fees**

- 6.1 As consideration for the Services, and all connected performance and obligations of the Provider under this Master Subscription Agreement, the Adopter shall pay the Provider the Fees as detailed under the Order Form, save for the application of service credits as provided in Clause 7 below.

- 6.2 The Adopter shall pay all undisputed invoices issued by the Provider in accordance with the requirements and the terms and conditions provided under Attachment 4.
- 6.3 All Fees due to the Provider under this Master Subscription Agreement are exclusive of Sales Tax which where applicable shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be paid by the Adopter against receipt from the Provider of a valid Sales Tax invoice in respect thereof.
- 6.4 If the Adopter fails to make payment in accordance with this Clause 6 then the Provider shall be entitled to charge interest on the overdue amount at a rate of ~~[to be inserted]~~ %five percentage points per year above the base LIBOR rate of [to be inserted]for the relevant currency from time to time in force from the date on which such amount fell due until payment, whether before or after judgment.
- 6.5 Save as otherwise expressly provided in this Master Subscription Agreement, all Fees set out in Attachment 4 shall be deemed as fixed charges for the entire Term and fully inclusive of any and all activities necessary to supply the Services and all direct and indirect costs, taxes, charges or expenses relating to the Services.

## **7. Service credits**

- 7.1 If at any time the Provider fails to meet any Service Level Objectives, the Provider shall pay the Adopter the appropriate Service Credits in accordance with the following Clauses 7.2 and 7.3.
- 7.2 The amount of any Service Credits payable under above Clause 7.1, will be calculated in accordance with Attachment 2. Service Credits may be recovered by the Adopter as a credit against the next invoice which may subsequently be due for issue under this Agreement in accordance with Clause 6 above or, if no such invoice is due, as a debt due by the Provider and payable within 30 (thirty) days after demand.
- 7.3 The payment of the Service Credits under Clause 7.1 states Provider's sole and entire obligation and liability, and Adopter's sole and exclusive right and remedy for any failure to meet the Service Levels under this Agreement.

## **8. Intellectual property**

- 8.1 The Parties acknowledge that all Intellectual Property Rights belonging to a Party prior to the execution of this Agreement or created by the Parties regardless of the execution of this Agreement shall remain vested in that Party.
- 8.2 The Provider shall own, or shall have the legitimate right of disposal, in all Intellectual Property Rights in the Service, the Provider Content, the System and the Documentation and nothing in this Agreement shall operate so as to transfer or assign any such Intellectual Property Rights in the Service, Provider Content, the System and the Documentation to the Adopter. The Provider hereby grants to the Adopter a non-exclusive, worldwide, royalty free, non-transferable and non-sub licensable licence to allow the Adopter to access the System and use the Provider Content as well as any Provider's software which could be required to use the Services for the Term of this Agreement.



- 8.3 The Adopter shall own all Intellectual Property Rights in the Adopter Data and nothing in this Agreement shall operate so as to transfer or assign any such Intellectual Property Rights in such Content to the Provider, save for the following Clause 8.4.
- 8.4 The Adopter hereby grants the Provider with a non-exclusive, worldwide, royalty free, non-transferable and non-sub licensable licence to use the Adopter Data solely and to the extent necessary to provide the Services, to the extent such access is required, without prejudice to the Intellectual Property Rights of the Adopter or any Third Party with respect to such Content.
- 8.5 In case the Provider installs on its System Third Party Content upon request of the Adopter, the Provider warrants and represents to own valid licenses on such Third Party Content and that it shall maintain the same licenses in full force for the all Term save otherwise agreed with the Adopter.
- 8.6 All Intellectual Property Rights related to Third Party Content installed on the System and used by the Adopter shall remain vested in such Third Party. The Adopter shall not be licensed or transferred with any right on such Third Party Content unless agreed by the Adopter with such Third Party.
- 8.7 The Adopter may upload in the System Third Party Content only upon prior authorisation of such Third Party.

## **9. Term and termination**

- 9.1 This Agreement shall commence on the Effective Date and shall continue in force for the Term set forth in the Order Form or until it is terminated in accordance with the Agreement.
- 9.2 Without prejudice to its other rights pursuant to law and this Agreement, if a Party is in material breach of one of its obligations under this Agreement, the other Party will have the right to terminate the Agreement by sending the other Party written notification via registered mail of any such breach, with the express invitation to remedy such breach within 30 (thirty) days of the date of receipt of the same notice. If such Party fails to remedy the material breach within such term, the Agreement shall be terminated.
- 9.3 To the extent permitted by the applicable law, either Party may by written notice to the other Party immediately terminate this Agreement where the other Party ceases to carry on business, is unable to pay its debts when they fall due, is declared bankrupt, or an order is made or a resolution passed for the winding up of that other Party or the appointment of an administrator, receiver, liquidator or manager of that other Party.

## **10. Consequences of termination and expiration**

- 10.1 The Parties acknowledge and agree that in case of the expiration or termination for any cause of the Agreement:
- 10.1.1 the Provider shall not delete the then existing Adopter Data until the Retrieval Period or the Transfer Period under Clauses 10.1.2 and 10.1.3 have expired;
- 10.1.2 upon request of the Adopter to be sent within 30 (thirty) days after the termination or the expiration date, the Adopter shall be entitled to retrieve the Adopter Data stored on the System in a structured and widely-used format, capable of ensuring

- portability of the Adopter Data, for a period of 90 (ninety) days after the expiration or termination date (hereinafter, "Retrieval Period");
- 10.1.3 upon request of the Adopter to be sent within 30 (thirty) days after the expiration or termination date, the Provider, at the Adopter's expense, shall transfer the Adopter Data in the format under Clause 10.1.2 to the Adopter or to any Third Party provided by the Adopter within the agreed timing (hereinafter "Transfer Period"). If the Master Subscription Agreement has been terminated due to breach of the Provider, the Provider shall reimburse the costs borne by the Adopter in relation to the above transfer of the Adopter Data;
- 10.1.4 once the Retrieval Period has expired, or upon completion of the Transfer Period, the Provider and its Subcontractors shall definitively destroy copies of, and erase, all Adopter Data stored in the System and all storage media and provides proof thereof to the Adopter within 120 (one hundred and twenty) days following the expiration of the Retrieval Period or the Transfer Period, as applicable. The Adopter has the right to ask the deletion of the Adopter Data without any retrieval or transfer of the Adopter Data;
- 10.1.5 at the Provider's request, the Adopter will return or erase any of the Provider Content, data or software delivered or licensed to the Adopter for the purposes of providing the Services;
- 10.1.6 the Parties may agree any other possible activities or services connected with the expiration or termination of the Agreement upon mutual agreement of the Parties on the terms and conditions of such activities;
- 10.1.7 the rights, remedies, obligations or liabilities of either Party which have accrued up to the date of termination or expiry, will not be affected, including the right to claim damages in respect of any breach of the Master Subscription Agreement which existed at or before the date of termination or expiry;
- 10.1.8 any provisions of this Master Subscription Agreement which expressly, or by implication, are intended to come into or remain in force on or after termination or expiry of this Agreement, shall remain in full force and effect, including without limitation, Clauses 8 (Intellectual Property Rights), 10 (Consequences of Termination), 11 (Confidentiality Obligations), 12.2 and 12.3 (Warranties and Liabilities), 13 (Indemnification), 14 (Insurance Obligations); 17 (Data Protection); 19 (Notices – Party's Team Leaders); 20 (Governing Law); 21 (Disputes – Jurisdiction); and, 22 (Final Provisions).

## **11. Confidentiality obligations**

- 11.1 During the Term, Confidential Information of the Disclosing Party may be learnt or otherwise acquired by Receiving Party.
- 11.2 The Receiving Party will treat and keep all Confidential Information of the Disclosing Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose (whether in writing or orally or in any other manner) Confidential Information to any other person other than in accordance with the terms of this Agreement.

- 11.3 Clause 11.2 shall not apply to the extent that the Receiving Party needs to disclose the Confidential Information of the Disclosing Party to any of its Group, or any Subcontractor in order to fulfil its obligations, exercise its rights under this Agreement or to receive the benefit of the Services, provided always that the Receiving Party shall ensure that every person to whom disclosure is made pursuant to this Clause 11 uses such Confidential Information solely for such purposes, and complies with this Clause 11 to the same extent as if it were a party to this Agreement.
- 11.4 Clause 11.2 shall not apply to any Confidential Information to the extent that:
- 11.4.1 such Confidential Information is in the domain at the Effective Date, or at a later date comes into the public domain, where such Confidential Information has come into the public domain other than as a result of breach of this Agreement;
  - 11.4.2 the Receiving Party can show that such Confidential Information was known to it before receipt pursuant to this Agreement, and had not public previously been obtained or otherwise learnt under an obligation of confidence;
  - 11.4.3 the Receiving Party obtains or has available to it, such Confidential Information from a source other than the Disclosing Party without breaching any obligation of confidence;
  - 11.4.4 such Confidential Information is required by applicable law, or any competent regulatory authority [or recognised stock exchange] to be disclosed by the Receiving Party provided that the Receiving Party shall, where not prohibited, give to the Disclosing Party prompt notice of such request and the opportunity to oppose such disclosure or obtain a protective order at its request;
  - 11.4.5 the Receiving Party can show such Confidential Information was independently developed or created by or on behalf of itself (or any member of its Group) otherwise than in connection with this Agreement, without the aid of any personnel who have or have had access to the Disclosing Party's Confidential Information; or
  - 11.4.6 information which the Disclosing Party confirms in writing is not required to be treated as Confidential Information.
- 11.5 If the Provider is the Receiving Party, the Receiving Party will use the Confidential Information of the other Party for the sole purpose of performing or complying with its obligations under this Agreement.
- 11.6 If the Provider is the Receiving Party, it agrees to implement and maintain the security measures under Attachment 6 to the Agreement.
- 11.7 If the Adopter is the Receiving Party, it agrees to implement and maintain to the Disclosing Party's reasonable satisfaction all reasonable security measures to safeguard the Disclosing Party's Confidential Information from unauthorised access, use or disclosure, and to ensure proper and secure storage of all Confidential Information and any copies thereof. Such measures shall be at least the same standard, whichever is the higher, as:
- 11.7.1 the Receiving Party keeps its own Confidential Information; or
  - 11.7.2 the standard reasonably accepted as in line with the practices practiced in the same market.
- 11.8 The Receiving Party shall not make any copies or reproduce in any form any Confidential Information except for the purpose of disclosure as permitted in accordance with this Agreement.

- 11.9 Upon the termination or expiration of this Agreement or otherwise at the request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all documents or materials in its control, custody or possession which contain, reflect, incorporate or are based on the Disclosing Party's Confidential Information and not retain any copies, extracts or other reproductions thereof or shall at the request of the Disclosing Party destroy all of the Disclosing Party's Confidential Information (erasing all Confidential Information from its computer systems or which is stored electronically) and certify in writing to the Disclosing Party that it has complied with the requirements of this Clause.
- 11.10 The obligations laid down in Clause 11 shall remain the responsibility of each of the Parties, even after the termination or expiration of the Agreement on any ground, for the period of 6 (six) years from the said termination or expiration. With reference to any Confidential Information expressly identified as a trade secret, the confidentiality obligations shall extend indefinitely until a time when such information ceases to be a trade secret.

## **12. Warranties and liability**

### **Warranties**

- 12.1 The Provider represents and warrants that:
- 12.1.1 the Services will be performed with reasonable skill and care in a timely and professional manner using appropriately qualified and experienced personnel and in accordance with good industry practice;
  - 12.1.2 the Services will be performed in accordance with the security requirements provided under Attachment 6 to this Agreement and in accordance with all applicable laws and regulation on security in the communications and in the provisions of information society services;
  - 12.1.3 it owns or has obtained valid licences of all Third Party Intellectual Property Rights relating Third Party Content or which are necessary for the performance of any of its obligations hereunder;
  - 12.1.4 by performing the Services under this Agreement, the Provider will not infringe any Intellectual Property Rights of any Third Party;
  - 12.1.5 it shall use its reasonable efforts to ensure that the Services, the Provider Content, the System and the relevant software are free from all viruses and other contaminants including any codes or instruction that may be used to access, modify, delete or damage any data files, or other computer programs used by the Adopter from time to time, and that for this purpose, the Provider warrants and represents that it shall use the most comprehensive and up to date available virus checker;
  - 12.1.6 it has the full capacity and authority and all necessary licenses, permits and consents from Third Parties to enable it to enter into this Agreement and perform all of the Providers' obligations hereunder;
  - 12.1.7 this Agreement is executed by a duly authorised representative of the Provider.
- 12.2 The Adopter represents and warrants that:
- 12.2.1 it owns or has obtained valid licences of all Intellectual Property Rights in relation to the Adopter Data uploaded on the System including possible software of Third Party installed, uploaded or developed on the System;

- 12.2.2 it has the full capacity and authority and all necessary licenses, permits and consents from Third Parties to enable it to enter into this Agreement and perform all of the Provider's obligations hereunder;
- 12.2.3 this Agreement is executed by a duly authorised representative of the Adopter.

## **Liability**

- 12.3 Neither Party limits or excludes its liability:
  - 12.3.1 for acts or omission due to wilful misconduct of either party;
  - 12.3.2 in respect of any deceit, theft, fraud, or fraudulent misrepresentation by its employees, consultants, or Subcontractors;
  - 12.3.3 for death or personal injury caused by its negligence or that of its employees, consultants, or subcontractors, as applicable;
  - 12.3.4 under Clause 8 (Intellectual Property Rights);
  - 12.3.5 for breach of Clause 11 (Confidentiality);
  - 12.3.6 for breach of Clause 17 (Data Protection);
  - 12.3.7 to the extent that such limitation or exclusion is not permitted by law.
- 12.4 Subject to Clause 12.3.1, the maximum aggregate liability of either Party arising under or in connection with this Agreement (whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise) shall be limited to the amount paid by the Adopter during the present term of the Agreement.
- 12.5 Service Credits shall be taken into account when assessing whether the liability caps set out in above Clause 12.4 have been met or exceeded.

## **13. Indemnification**

- 13.1 The Provider shall indemnify on demand the Adopter and the Adopter's assignees, directors, partners, officers, employees and agents against on demand against any and all losses, claims, damages, costs, expenses (including without limitation legal fees) and liabilities which the Adopter may sustain or incur or which may be brought or established against it by any Third Party in respect of any ascertained breach of the warranties set out in Clauses 8.2, 8.5, 12.1.1.2, 12.1.1.3 of the Master Subscription Agreement ("IPR Claim").
- 13.2 The Adopter agrees:
  - 13.2.1 it shall promptly, upon becoming aware of any IPR Claim, notify the Provider and provide to the Provider reasonable assistance, at the Provider's expense, which the Provider may reasonably request in connection with the defence of any such IPR Claim; and
  - 13.2.2 it shall not make any admission as to liability or compromise or agree to any settlement or any IPR Claim without the prior written consent of the Provider which consent shall not be unreasonably withheld or delayed.
- 13.3 If any IPR Claim is made, the Provider shall at its own expense and sole option either:
  - 13.3.1 obtain for the Adopter the right to continue using the Services, the Provider Content, and the Third Party Content in the manner permitted under this Agreement; or

- 13.3.2 modify or replace the infringing part of the Services, the Provider Content, or the Third Party Content so as to avoid the infringement or alleged infringement, without prejudice to the representations and warranties in Clause 13.1.
- 13.4 The Adopter shall defend, indemnify and hold harmless the Provider and the Provider's assignees, directors, partners, officers, employees and agents on demand from and against any and all losses, claims, damages, costs, expenses (including without limitation legal fees) and liabilities which the Adopter may sustain or incur or which may be brought or established against it by any Third Party in respect of any ascertained breach of the warranties set out in Clauses 5.2, 8.3, 12.1.2.1.
- 13.5 The Parties shall comply with the indemnification obligations provided by Clause 13 in accordance with the terms and conditions provided under above Clause 12.2.

#### **14. Insurance obligations**

- 14.1 The Provider shall maintain, during the Term of this Agreement appropriate insurance policies in relation to any liability connected with the execution of this Agreement with a reputable insurance company in respect of the Provider's performance of the Services, providing for the payment of a sum up to \$5m any claim or series of claims arising out of a single event occurring during such period.

#### **15. Suspension of services**

- 15.1 The Provider may suspend the provision of the Services, by giving the Adopter no less than 10 (ten) Working Days' notice, in circumstances where it is necessary for the Provider to update or maintain the System. The Provider shall, in its notice, inform the Adopter of the timing, the duration and the reasons for the proposed suspension.
- 15.2 The Adopter shall be entitled to request in writing a postponement of the suspension. The Provider shall not unreasonably deny its consent to the above request of the Adopter. Without limitations, the Provider may reject the postponement if it is not feasible for technical reasons

#### **16. Subcontracting**

- 16.1 Pursuant to this Clause 16, the Provider may subcontract any or all of the Services under this Agreement to Subcontractors by giving the Adopter prior notice which shall include the following information:
- 16.1.1 the identity of the Subcontractor;
- 16.1.2 an outline of the proposed subcontracted Services, including: the duration of the subcontract and the quantity or type of Services which will be sub-contracted to the Subcontractor.
- 16.2 Subject to Clause 16.1 above, the Provider shall:
- 16.2.1 remain the Adopter's sole point of contact regarding the Services, including with respect to payment of the Fees.
- 16.2.2 not disclose Confidential Information of the Adopter to a Subcontractor unless and until such Subcontractor has agreed in writing to protect the confidentiality of such

Confidential Information in a manner substantially equivalent to that required of the Provider under this Agreement.

16.2.3 not, by virtue of entering into any sub-contract, be relieved of its liability to the Adopter for breach of its obligations under or in connection with the Agreement or otherwise arising from any acts or defaults of its agents and/or subcontractors for which it would otherwise have been liable.

## **17. Data protection**

- 17.1 Under this Agreement, the Adopter qualifies as Data Controller of the set of Processing carried out by the Provider on his behalf. The Provider qualifies as Data Processor upon signature of this Agreement and will remain as such as long as it (i) complies with the Adopter's reasonable and legitimate instructions, including the instructions set out under Attachment 5 to this Agreement, (ii) provides adequate monitoring procedures regarding compliance with such instructions, (iii) does not go beyond the mandate given by the Adopter by acquiring a relevant role in determining the purposes or the essential means of Processing.
- 17.2 The Adopter is fully liable for data protection law compliance. Therefore, the Adopter must comply with the applicable Data Protection Laws and Regulations, especially, but not limited to, requirements to ensure that the Processing of Personal Data complies with the applicable legislation in relation to the nature of the Personal Data and formal requirements with the local data protection authorities in relation to the transfer of Personal Data.
- 17.3 The Provider acknowledges and agrees that it has appropriate experience and capabilities, and will implement appropriate technical and organizational measures, to ensure that the Processing of Personal Data by the Provider in the course of providing the Services will meet such requirements of the applicable Data Protection Laws and Regulations as apply to the Provider in its capacity as a Data Processor, provided always that the Adopter acknowledges and agrees that the Provider shall not be in breach of this Clause 17.3 where any failure to comply with Data Protection Laws and Regulations is caused by or results from the acts or omissions of the Adopter, its officers, employees or agents. The Provider acknowledges that failure to meet the obligation under this Clause will be deemed to be a material breach of this Agreement for the purposes of Clause 9.2.
- 17.4 The Adopter shall remain liable for the damage which a Data Subject may suffer as a result of the Processing of Personal Data which is under its control and is not resulting from a breach by the Provider of its obligations under this Clause 17.
- 17.5 The Adopter further acknowledges that the Provider is reliant on the Adopter for lawful direction and instructions as to the extent to which the Provider is entitled to process any Adopter Personal Data and, consequently, the Adopter agrees that the Provider will not be liable – and it will indemnify the Provider - for any claim brought by a Data Subject arising from any action or omission by the Provider, to the extent that such action or omission resulted directly from the Adopter's lawful instructions.
- 17.6 The Provider will remain fully liable in case of any breach of its direct obligations under this Agreement and the applicable Data Protection Legislations and Regulations with respect to the Processing of Personal Data validated under this Agreement, including failure to act

in accordance with lawful instructions of the Adopter and where any such breaches are caused by any subcontractor engaged in compliance with the requirements set forth under this Agreement.

- 17.7 Each of the Parties acknowledges and agrees that, where the Adopter or the Provider has paid full compensation for the damages suffered by a Data Subject, where a joint liability has been ascertained in the course of a proceeding, the Party that fully indemnified the Data Subject is entitled to claim back from the other Party that pro rata of the compensation corresponding to the its part of responsibility for the damage as resulting from the final court decision.
- 17.8 In case of any Personal Data related to the Adopter, its officers, employees or agents, if applicable, the Provider and its staff will hold and Process using electronic devices, their Personal Data to execute and perform this Agreement (including management of administrative related matters, maintaining records, administering accounts receivable, fulfilling social security and tax obligations. The Provider will implement appropriate security measures in line with those specified under Attachment 6 to this Agreement. The Adopter acknowledges that providing those Personal Data is necessary for the execution and administrative management of this Agreement and that the Personal Data may be shared by the provider. Where necessary for the purposes above, Personal Data may be transferred to a country or territory outside the European Economic Area, in accordance with the applicable Data Protection Laws and Regulations. Upon request, the Adopter, its officers, employees and agents are entitled to obtain access to and to supplement and rectify their Personal Data with the Provider and, on legitimate grounds, to object in writing to the processing of their Personal Data, emailing or contacting the Provider at the contact addresses under Clause 19 below. If so required under the applicable Data Protection Laws and Regulations, by signing this Agreement the Adopter (i) consents, and warrants that it has the authority to consent, to the Provider collecting, using and disclosing the Adopter's, and (ii) warrants that it has obtained all necessary consents from the relevant Data Subjects, including its officers, employees and agents, and is entitled to transfer the relevant Personal Data to the Provider so that the Provider may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Adopter's behalf.

## **18. Force majeure**

- 18.1 If a Force Majeure Event occurs which prevents a Party (the "Affected Party") performing any of its obligations hereunder or causes a delay in performance, the Affected Party shall not be liable to the other Party and shall be released from its obligation to fulfil its obligations under this Agreement to the extent that its ability to fulfil such obligations has been directly affected by the Force Majeure Event, provided that:
- 18.1.1 the Affected Party notifies the other Party in writing as soon as reasonably practicable of the occurrence of the Force Majeure Event and the nature and likely duration of its impact upon the other Party;
- 18.1.2 the Affected Party takes all reasonable steps to mitigate the impact of the Force Majeure Event on the other Party, and in particular continues to perform those obligations affected by the Force Majeure Event but whose performance has not



been rendered impossible to the highest standard reasonably practicable in the circumstances;

- 18.1.3 the Affected Party continues to perform all its obligations which have not been affected by the Force Majeure Event; and
  - 18.1.4 the Affected Party resumes normal performance of all affected obligations as soon as the impact of the Force Majeure Event ceases and notifies the other Party in writing promptly of such resumption.
- 18.2 If the impact of the Force Majeure Event upon the Affected Party continues for a period of no less than 30 consecutive days the Affected Party may, without incurring liability, terminate this Agreement either in whole or in part with immediate effect by providing written notice to other Party, without having to file a claim with the competent Court to that effect.
- 18.3 The Parties agree that, if the Affected Party is the Provider, in respect of the period during which any Force Majeure Event subsists, the Adopter shall not be required to pay the Fees relating to those Services which cannot be performed as a result of the Force Majeure Event, and in respect of those Services which are affected by the Force Majeure Event but can be performed, shall be required to pay an amount which reasonably reflects the standard to which those Services were provided during such period.

## **19. Notices – Parties’ representatives**

- 19.1 Except as expressly provided elsewhere in this Agreement, any notice to be given under this Agreement, refer to the Agreement and to the respective representatives.
- 19.2 The Parties' respective representatives for the receipt of notices in relation to the Agreement are, until changed by notice given in accordance with this Clause, as set out on the Order Form.
- 19.3 The Provider's Representative and the Adopter's Representative, as identified on the Order Form, shall be responsible for the co-ordination of all matters relating to the Services and the execution of this Agreement.
- 19.4 Any change of the Provider's Representative or the Adopter's Representative shall be previously communicated in writing to the other Party to be effective.
- 19.5 Any notice shall be deemed to have been served:
- if delivered by hand or by international courier, at the time and date of delivery;
  - if sent by recorded delivery or registered post, forty-eight (48) hours from the date of posting (such date as evidenced by postal receipt etc.);
  - if sent by e-mail, at the time and date certified by the delivery confirmation; and
  - if sent by registered airmail, five days from the date of posting.

## **20. Governing law**

- 20.1 This Master Subscription Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (whether contractual or non-contractual, including tort, breach of statute or regulation or otherwise) shall be governed by and construed in accordance with the legislation of England and Wales. Clause 20.1 shall apply without prejudice to the mandatory applicable data protection legislation.

20.2 The parties expressly reject any application to this Master Subscription Agreement of (a) the United Nations Convention on Contracts for the International Sale of Goods, and (b) the 1974 Convention on the Limitation Period in the International Sale of Goods, as amended.

## 21. Disputes – jurisdiction

21.1 Without prejudice of Clause 21.2, if any dispute should arise between the Parties relating to or deriving from this Master Subscription Agreement, it may be settled in the first instance in accordance with the following procedure:

21.2 when a dispute arises, one Party may request the other in writing to start the settlement procedure;

21.3 the Parties undertake to appoint their own representative, holding suitable powers, selected from persons who are not directly involved in the performance or management of this Master Subscription Agreement and the corresponding activities; the said Parties' representatives shall meet with the aim of settling the dispute amicably, having regard above all to the primary need to maintain the continuity of the Services forming the subject of this Master Subscription Agreement;

21.4 if, after making all reasonable attempts at a settlement, the said representatives are unable to settle the dispute within 30 (thirty) days of the date of the request to initiate the settlement procedure, either Party may refer the dispute to the court as stated in Clause 21.2 hereof.

21.5 The procedure of Clause 21.1 shall not prevent either Party from taking such action as it deems appropriate (including any application to a relevant court) for injunctive or other emergency or interim relief.

21.6 The Parties irrevocably agree that the Courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Master Subscription Agreement or its subject matter or formation (including non-contractual disputes or claims).

## 22. Final provisions

22.1 **Assignment:** Neither Party may assign to Third Parties the present Master Subscription Agreement without prior consent of the other Party. The consent of the Party will not be unreasonably withheld. Either Party shall have the right to assign any or all of its rights and obligations under this Master Subscription Agreement in whole or in part to its Group or to the successor to the whole or a part of Party's business, subject to such entity or successor undertaking in writing to the other Party that it will perform all assigning Party's obligations under this Master Subscription Agreement.

22.2 **Entire Agreement:** This Master Subscription Agreement (together with all other documents to be entered into pursuant to it) sets out the entire agreement and understanding between the Parties, and supersedes all proposals and prior agreements, arrangements and understandings between the Parties, relating to its subject matter.

22.3 **Language:** In case of discrepancy between the English language original text of the Agreement and other language translation, the English text shall prevail.

- 22.4 **No partnership or agency:** Nothing in this Master Subscription Agreement shall be deemed to constitute a partnership between the Parties, nor constitute either Party the agent of the other party for any purpose.
- 22.5 **Third Party:** A person who is not a Party to this Master Subscription Agreement shall not have any rights to enforce any term of this Master Subscription Agreement, but this does not affect any right or remedy of a Third Party which exists, or is available, apart from that Master Subscription Agreement.
- 22.6 **Severability:** If any term of this Master Subscription Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- 22.7 the legality, validity or enforceability in that jurisdiction of any other term of this Master Subscription Agreement; or
- 22.8 the legality, validity or enforceability in other jurisdictions of that or any other provision of this Master Subscription Agreement.
- 22.9 **Amendments:** Any amendment of this Master Subscription Agreement shall not be binding on the Parties unless set out in writing, expressed to amend this Master Subscription Agreement and signed by authorised representatives of each of the Parties.
- 22.10 **Waiver:** Delay in exercising, or failure to exercise, any right or remedy in connection with this Master Subscription Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Master Subscription Agreement in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Master Subscription Agreement shall, in any event, be effective unless it is in writing, refers expressly to this Clause, is duly signed by or on behalf of the party granting it and is communicated to the other party.

### 23. Attachments list

- Attachment 1: Service Description;
- Attachment 2: Service Level Agreement;
- Attachment 3: Acceptable Use Policy;
- Attachment 4: Fees;
- Attachment 5: Data Protection
- Attachment 6: Security.

## Attachment 1: Service Description

T2cloud.app is a Cloud provided service designed to facilitate integrations between shippers and shipping services providers.

Features available to the Adopter are limited to those specifically subscribed in a valid Order Form and that have been configured according to Adopter's specifications based on the content of a valid Statement of Work.

The T2cloud.app platform can provide (not limited to):

1. Shipper integration endpoints, allowing:
  - 1.1. Upload order data to the T2cloud.app platform
  - 1.2. Conversion of orders to shipments taking account of Adopter's business rules
  - 1.3. Configuration scripts
2. Download of shipment information for presentation in shipper's systems
  - 2.1. A generic Carrier Service Integration Engine allowing T2cloud.app to:
  - 2.2. Comply with any shipping service interface definition and communication protocols
  - 2.3. Production of shipping labels, manifests and other shipping documentation
  - 2.4. Retrieval of delivery events from carriers
  - 2.5. Import of carrier invoices
3. A Configuration Engine designed to:
  - 3.1. Provide service options including costs and time in transit based on criteria established by the Adopter
  - 3.2. Configure Adopter's business rules to select any designated Carrier Service
4. Additional features such as:
  - 4.1. Business Intelligence, that can be delivered with a set of reports
  - 4.2. Platform management, including carrier rate maintenance

The T2cloud.app is provided as a Master Subscription that include Hosting Services, Software Maintenance, Technical Upgrades and Customer Support. The terms and Service Levels are defined as described in the Order Form.

## Attachment 2: Service Level Agreement

The Provider shall, during Term, fulfil the Service Level Agreements detailed under the present agreement, in accordance with Clause 3 of the Agreement.

### Availability SLA

Provider will provide all reasonable efforts to ensure that the Monthly Uptime Percentage of the Master Subscription subscribed by the Adopter will be at least to the percentage ~~XX%~~ presented on the Order Form.

The calculation of the availability is done using the following formula for each individual month:

Minimum availability (in minutes) = number of minutes in the month x XX / 100

Example: for an availability percentage of 95%, Provider will ensure that the platform will be available for at least (number of minutes in the month x 95 / 100) minutes.

The periods during which the Master Subscription will not be available for technical maintenance reasons, either at the request of the Adopter or the Provider, are not considered in this calculation.

### Support SLA

Support is available for the contracted support hours each day and for the contracted days each week as described on the Order Form.

*Example:*

5 x 12 = From 8am to 8pm Monday to Friday in the Customer's time zone

### Support contacts

Adopter support contact methods available are listed on Provider's website: [www.tucsontechnology.com/support](http://www.tucsontechnology.com/support). Availability of contact methods depends on subscribed Support SLA.

## Severity levels

Support cases will be categorized and handled according to the assigned severity levels as set forth below. T2 Engineers will handle cases with Severity Levels 1 and 2 and Premier Success Plan representatives will handle Severity Levels 3 and 4. The case severity level will be determined at the time of case submission, and will be categorized by Provider Technology support personnel as follows:

<b>Severity Level</b>	<b>Description</b>	<b>Initial Response Time</b>	<b>Resolution / workaround</b>
Priority 1 - Critical	A critical system feature is impaired or access is impossible	1 hour	2 hours
Priority 2 - Urgent	A system performance issue is identified or a major system feature is not working as designed	4 hours	12 hours
Priority 3 - High	A system issue is affecting some users or features	8 hours	24 hours
Priority 4 - Medium	Technical issue or system behaving abnormally without a major business impact	As soon as possible	As soon as possible

## **Attachment 3: Acceptable Use Policy**

In accordance with Clause 5 of the Agreement, the Adopter shall comply with the following terms of use of the Services:

### **1. While using the Services, the Adopter SHALL NOT:**

- Infringe any Third Party's Intellectual Property Rights;
- Infringe Providers' Intellectual Property Rights;
- Breach any applicable law, regulations and order of the authorities;
- Process Third Party's Personal Data illegally;
- Breach any other Third Party's rights which are different from above points 1) and 4);
- Upload or introduce malicious code, viruses, trojan horses, e-mail bombs, spyware, malware, and other similar software;
- Allow Third-Parties external to the Adopter's organization to use the Services unless authorised in writing by the Provider;
- Send unsolicited e-mail or communications of any kind;
- Support in any way illegal activities;
- Misrepresent or obscure the identity of the Adopter's users;
- Upload illegal Contents on the System;
- Violate any applicable export and re-export control legislation and regulations;
- Upload or introduce encryption software in violation of national and international exporting legislation;
- Use means which can cause a breach of security of the Provider's equipment;
- Use means which can cause a disruption of the Services.

### **2. While using the Services, the Adopter SHALL:**

- Adopt secure id and passwords in relation to the access to the System in line with any possible instructions provided by the Provider;
- Inform the Provider in case of loss of the id and passwords for accessing the Services not later than 3 (three) Working Days from the discovery;
- Inform the all Adopter's Users (employees, officers, consultants) of the terms and conditions of the AUP;
- Process Personal Data of Third-Parties in accordance with the applicable legislation (e.g. , if so required under the applicable law, provide full notice to the Data Subjects and obtain their valid consent, notify the Processing of Personal Data with the competent data protection authority, implement any security measures on its side of the Service to ensure full compliance with the legislation, monitor the Services);
- Obtain the consent of the owners of the Intellectual Property Rights to use their works on or through the Services.

## **Attachment 4: Fees**

All fees are defined in the Order Form referring to this agreement.

In accordance with Clause 6 of the Agreement, the Adopter shall pay to the Provider the amounts detailed under one or several Order Forms referring to this agreement in accordance with the cumulative terms and conditions.



## Attachment 5: Data Protection

This Data Processing Attachment (“DPA”) is made a part of the Master Subscription Agreement between the Adopter and the Provider to reflect the Parties’ agreement with regard to the Processing of Personal Data as specified under the Master Subscription Agreement and all documents, attachments and exhibits incorporated therein, in accordance with the requirements of the applicable Data Protection Legislation and Regulations, and especially for the purpose of Section 17 of Directive 95/46/EC, as amended or replaced from time to time, as applicable.

This DPA is subject to the terms of the Master Subscription Agreement and is annexed as an attachment to the Master Subscription Agreement. In the event of any conflict between the terms of the Master Subscription Agreement and the terms of this DPA, the relevant terms of this DPA shall prevail, by way of exception to Clause 1.3 of the Master Subscription Agreement.

### 1. DEFINITIONS

- 1.1 All capitalized terms not defined herein shall have the meanings set forth in the Master Subscription Agreement.

For the purposes of this DPA,

“**Controller**” means the Adopter;

“**Model Clauses**” means the standard contractual clauses annexed to EU Commission Decision 2010/87/EU of 5 February 2010 for the Transfer of Personal Data to Processors established in Third Countries under Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995, as amended, on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data;

“**Processor**” means the Provider.

### 2. DESIGNATION OF PROVIDER AS PROCESSOR

- 2.1 By signing the Master Subscription Agreement the Adopter designates the Provider as Data Processor with regard to the Adopter’s Personal Data within the scope of the Master Subscription Agreement as specified under Clause 2.1 of the Master Subscription Agreement, and the Provider agrees to act as Data Processor in accordance with the terms of the Master Subscription Agreement and this DPA.
- 2.2 If the Processor is based outside the European Union, in a country that has not been subject to an adequacy (or equivalent) finding by the European Commission, its Personal Data Processing shall also be governed by the terms of the Model Clauses and this Data Processing Attachment applies insofar as it does not contradict the Model Clauses.

### 3. DURATION

- 3.1 This DPA shall be effective as from the Effective Date and shall remain in force for the entire duration of the Agreement unless terminated in advance on any ground.

3.2 Upon termination of this DPA, the Provider shall return or otherwise make available for retrieval the Personal Data, or destroy all Personal Data (and certify that such Personal Data has been destroyed on the Systems and all storage media, including media of any Subcontractors) as specified under Clause 10 of the Master Subscription Agreement, except as otherwise required by the applicable Data Protection Legislation and Regulations.

#### **4. TYPES AND CATEGORIES OF PERSONAL DATA AND PURPOSES OF PROCESSING**

4.1 In order to execute the Master Subscription Agreement and to perform the Services on behalf of the Adopter, the Controller authorizes and requests the Processor to Process the following Personal Data:

- **Categories of Personal Data:** Personal Data may include, among other information, Name, address, email and phone number.
- **Categories of Data Subjects:** Data Subjects include: Adopter's consignees: either business representatives or consumers.

4.2 The Provider shall Process Personal Data solely for the purpose of the provision of the Services under the Master Subscription Agreement as described in details in Attachment 1 to the Master Subscription Agreement.

#### **5. ADOPTER'S RESPONSIBILITY**

5.1 The Adopter, as Controller of the Personal Data, is fully responsible for abiding by Data Protection Laws and Regulations and for compliance with its obligations, including providing legal basis for the Adopter's and Provider's lawful Processing of Personal Data under the Master Subscription Agreement, e.g. filing any required notifications or authorization, providing notices to and obtaining consent (as applicable) from the Data Subject.

5.2 For any Carrier service specified by the Adopter, it shall be the Adopter's exclusive responsibility to ensure that the specified Carrier shall enable the Provider to securely transmit the Adopter's data to the Carrier.

5.3 The Provider will inform the Adopter where, in the Provider's opinion and without any obligation to perform any legal assessment, the Provider's selected Carrier's mechanisms do not meet the required standards for data transmission.

#### **6. ADOPTER'S INSTRUCTIONS**

6.1 To comply with the Data Protection Laws and Regulations, during the term of the Services the Adopter may, if necessary, provide instructions to the Provider in addition to those specified in the Master Subscription Agreement.

6.2 The Provider will comply with all instructions provided by the Adopter to the extent necessary for the Provider to comply with laws applicable to its performance of the Services as Data Processor.

- 6.3 The Provider will inform the Adopter if, in the Provider's opinion and without any obligation to perform any legal assessment, an instruction breaches Data Protection Laws and Regulations.
- 6.4 The Adopter and the Data Processor will negotiate in good faith with respect to any other change in the Services and/or fees resulting from such instructions.

## **7. PROVIDER'S OBLIGATIONS**

- 7.1 The Provider shall not Process or use Personal Data for purposes other than those set forth in the Master Subscription Agreement or as instructed by the Adopter and shall not disclose, or otherwise share the Personal Data with Third-Parties other than its Subcontractors for the aforementioned purposes or as required by European Union or EU Member State law to which the Processor is subject.
- 7.2 If the Processor is required by European Union or EU Member State law to process or disclose Personal Data for purposes other than set forth in the Master Subscription Agreement, the Provider shall promptly inform the Adopter of that legal requirement before Processing the Personal Data, unless that law prohibits such information on important grounds of public interest (e.g. secrecy duties related to criminal investigations).
- 7.3 The Provider will ensure that access to Personal Data will be limited solely to those of its staff, employees and representatives, under strict confidentiality provisions, who require access to the Personal Data as necessary for the provision of the Services and suitably trained in the Processing of Personal Data and in the technical and organizational security measures to apply.
- 7.4 The Personal Data will be erased from the System and any storage media no later than 30 days after the termination of any retention period specifically agreed with the Adopter and in any case upon deletion of the Personal Data by the Adopter. The erasure will be carried out according to the procedure defined under Clause 10 of the Master Subscription Agreement or any alternative procedure mutually agreed in writing by the parties.
- 7.5 The Provider will promptly inform the Adopter of any demand from an executive or administrative agency or other governmental authority that it receives and relates to the Personal Data under the Master Subscription Agreement. At request of the Adopter, the Provider will provide the Adopter with reasonable information required for the response to the demand and any assistance reasonably required for the Adopter to respond to the demand in a timely manner, being excluded any responsibility of the Processor to liaise directly with the relevant authority unless otherwise required under the applicable Data Protection Laws and Regulations.
- 7.6 In addition, the Processor will provide reasonable cooperation to the Adopter, at the Adopter's reasonable request and within the timescales reasonably specified by the Controller, to provide all information, at its hand and strictly relevant to the Services, necessary to the Adopter (i) to make the processing notification with the competent data protection authority, (ii) to comply with any authorization or privacy assessment procedure to comply with the Data Protection Laws and Regulations, (iii) to allow the Adopter to comply with the rights of Data Subjects, including subject-access rights, or with notices served by any law enforcement authority and (iv) to demonstrate compliance with the Adopter's obligations under the Data Protection Laws and Regulations.

## **8. SUBCONTRACTING**

- 8.1 In the event of any subcontracting enlisted by the Provider in accordance with the relevant provision of the Master Subscription Agreement of any Processing operations of the Personal Data, the Provider will timely inform the Adopter of any intended subcontracting and of the Processing operations to be enlisted to the Subcontractor.
- 8.2 The Adopter may request the Provider (i) to provide the Adopter with copies of the relevant terms of subcontracting agreement with Subcontractors (with omission of any confidential information, if any) and (ii) to audit, at least once per year, the Subcontractors in relation to their compliance with the security measures and the Processing of Personal Data in accordance with the instructions of the Adopter under Paragraph 6 to this DPA, or confirm that such an audit has occurred (or, where available, obtain or assist the Adopter in obtaining a Third-Party audit report concerning the Subcontractor's operations), providing a copy of such report according to Paragraph 12 below.
- 8.3 Where the Provider engages any Subcontractor for the processing of Personal Data, the Provider will ensure that the subcontracting agreement includes (i) an explicit designation – in the name, and on behalf, of the Adopter – of the Subcontractor as Adopter's Data Processor or any other legal act valid under the European Union or the EU Member State law, (ii) obligations upon the Subcontractors in relation to the Processing of Personal Data, including implementation of security measures, at least equivalent to those set forth under the Master Subscription Agreement (especially, but not limited to those set forth under Attachment 6) and (iii) the Subcontractors' liability towards the Provider and the Adopter.
- 8.4 Where any of the Subcontractors fails to fulfil its data protection obligations, the Provider shall remain fully liable to the Adopter for the performance of that Subcontractor's obligations.

## **9. TRANSFER OF DATA**

- 9.1 The Provider represents, and the Adopter agrees, that Personal Data may be transmitted to Logistics Services Providers selected by Adopter. The Provider shall not be responsible for data transmitted to any Logistics Service Provider that the Adopter selects.

## **10. RIGHTS OF THE DATA SUBJECTS**

- 10.1 To the extent legally permitted, the Provider agrees to promptly notify the Adopter if it receives any requests, notices or other communication from Data Subjects for the Adopter for access to, correction, amendment, blocking, deletion of that Data Subject's Personal Data or objection to the Processing Personal Data of that Data Subject.
- 10.2 Upon written request of the Adopter [and at no additional cost/ upon payment of reasonable fees associated with the performance of any such operation], the Adopter will be granted electronic access to the Adopter's Service environment that holds Personal Data to permit the Adopter to extract, access, correct, amend, block access or delete specific Personal Data. If that is not practicable and to the extent permitted by Data Protection Laws and Regulations, the Provider will perform such operations upon the Adopter's detailed written instructions.

- 10.3 The Provider shall not respond to any such Data Subjects' request without the Adopter's prior written consent.

## **11. SECURITY**

- 11.1 When Processing Personal Data on behalf of the Adopter in connection with the provision of the Services, the Provider have in place appropriate physical, technical and organizational security measures for the Processing of such data in compliance with the security requirements set forth under the applicable law, including Data Protection Laws and Regulations, as applicable, to protect Adopter Personal Data against accidental or unauthorized loss, destruction, alteration, disclosure or access, and against all other unlawful forms of processing.
- 11.2 Among others, the Provider agrees to maintain for the entire Duration of the Agreement, the physical, organizational and technical security measures specified in Attachment 6 to the Agreement to ensure the availability, integrity and confidentiality of the Personal Data, including monitoring use of the System by any "administrator".
- 11.3 The Provider will not materially decrease the overall security of the Services during the term of the Master Subscription Agreement.
- 11.4 In the event that the Provider becomes aware of any confirmed or suspected security breaches or breaches of any provision of the DPA and/or any irregularity in the processing of the Personal Data, or in the event that the Provider is contacted by a supervisory authority for data protection violation, the Provider will promptly notify the Adopter. In the event of a security breach triggering notification obligations for the Adopter under applicable Data Protection Laws and Regulations, the Provider shall cooperate with the Adopter to identify and remediate the cause of such breach. The Provider will maintain security incident management policies and procedures as described in Attachment 6 (as amended from time to time, provided that the overall efficacy of the procedure will not decrease).

## **12. REPORTING AND AUDIT**

- 12.1 On an annual basis (starting from the end of the first annual year of duration of the Master Subscription Agreement) and occasionally, upon a reasonable and motivated request of the Adopter, the Provider will monitor its compliance with its data protection obligations in connection with the Services provided to the Adopter and will provide the Adopter with a written report on the results of such controls.
- 12.2 The Adopter may audit, at its expenses, the Provider's compliance with the terms of the Master Subscription Agreement and this DPA up to once per year. The Data Controller may perform more frequent audits of the Systems that Process Personal Data to the extent required by laws applicable to Data Controller or, at the Provider's expenses, based on a valid reason (e.g. actual or reasonably suspected unauthorized disclosure of Personal Data). If the audit is to be conducted by a Third-Party, the Adopter and the Provider will identify, by mutual agreement, this Third-Party. The Third-Party will sign a written confidentiality agreement before conducting the audit.

- 12.3 Any request of audit is submitted with appropriate notice (at least four weeks in advance of the audit).
- 12.4 The audit will be conducted during regular business hours at the applicable facility, subject to the Provider's policies and may not unreasonably interfere with its business activities.
- 12.5 A copy of the audit report will be provided by the Adopter to the Provider, unless prohibited by law. The Provider will submit to the Adopter an action plan to remedy any non-conformity identified during the audit and will put in place adequate measures to remedy within the timescale agreed with the Adopter.
- 12.6 Audit reports can only be used by the Parties to achieve their regulatory requirements and/or confirming compliance with the requirements of the Master Subscription Agreement.

### **13. GOVERNING LAW**

- 13.1 This DPA shall be governed by, and construed in accordance with, the Data Protection Laws and Regulations of England and Wales.

## Attachment 6: Security

This Attachment outlines the logical and physical security requirements that Provider shall maintain as part of the Services ("Security Requirements").

Provider has implemented and maintains a comprehensive written information security programme complying with Applicable Law and Applicable Industry Standards and including appropriate administrative, logical, technical, and physical safeguards designed to achieve the following objectives:

- To ensure the security and the confidentiality, integrity, and availability of Adopter's Data;
- To protect against any threats or hazards to the security and integrity or availability of Adopter's systems; and
- To prevent unauthorized or accidental access, acquisition, destruction, loss, deletion, disclosure, or alteration or use of Adopter's Data or Systems.

Provider uses third party hosting facilities to deploy its Cloud solution and shall disclose on request such third party facilities as may hold Adopter's Data or to which Adopter's Systems may connect.

### 1. POLICIES, AWARENESS AND TRAINING

- 1.1 Provider maintains and enforces, and will make available to Adopter upon request, written policies addressing core information security concepts including, but not limited to, "acceptable use," "physical asset management," "encryption," "password management," "security incident and data breach response," "physical security," "disaster recovery," and "background checks."
- 1.2 Provider provides training on a general range of information security topics, including, but not limited to phishing and social engineering, strong passwords, and removable media to all Provider personnel in order to educate such personnel about information security industry standards and best practices and emerging threats and trends. For Provider personnel who are considered Privileged Users, role-specific training is mandatory.

### 2. ACCESS MANAGEMENT AND IDENTIFICATION

- 2.1 Provider will permit only those Provider personnel and third parties who are authorized pursuant to the Agreement to access Adopter Data or Systems. Authorized Provider Personnel and authorized third parties will use Adopter Data or Systems only as necessary to perform their obligations under the Agreement.
- 2.2 Provider will follow Applicable Law and applicable industry standards and accounting rules to authenticate and authorize users. Multi-factor authentication will be used for remote access to Provider's systems.
- 2.3 Provider will not use shared or generic identification credentials to access Adopter Data or Systems.
- 2.4 Provider will provide and revoke identification credentials via documented technical and logical control procedures and will periodically review and revoke access rights of users,

as needed, and will log, monitor, and report on identification credentials used to access Adopter Data or Systems.

### **3. SECURE DATA HANDLING**

- 3.1 Provider will encrypt Adopter's data at rest, in transit, and in use via AES minimum 128-bit encryption and 1024-bit cipher key length.
- 3.2 Provider will apply and maintain full disk encryption to any Adopter Data at rest on Provider's systems and all such data is encrypted prior to being backed up.
- 3.3 All encryption used by Provider shall meet recognised industry standards and when transferring Adopter Data over the Internet, Provider will use TLS or equivalent with the highest feasible encryption.
- 3.4 Provider will follow industry standards to generate, store, and manage cryptographic keys used to encrypt Adopter Data.
- 3.5 Provider will follow industry standards to maintain secure data disposal procedures, including but not limited to using secure erase commands, degaussing, and "crypto-shredding" when needed.
- 3.6 Provider will have the capability to perform a remote wipe of any Adopter Data on any mobile devices, including, but not limited to a smartphone, tablet, and laptop belong to Provider's personnel.
- 3.7 Provider will implement policies prohibiting the transfer of Adopter Data to unauthorized email accounts or via portable storage media.

### **4. ENDPOINT & NETWORK SECURITY**

- 4.1 Provider will install, configure, and maintain perimeter and network security controls to prevent unauthorized access to Adopter's Data and Systems.
- 4.2 Provider will maintain and configure endpoint security software and hardware including updated anti-virus software, encryption software, incident detection systems, incident prevention systems, and anti-malware software, in accordance with industry standards. Provider will ensure such configurations generate alerts to Provider and logs accessible by Provider and on request by Adopter.
- 4.3 Adopter Data will be logically separated from that of other customers via data segmentation and containerization.
- 4.4 Provider will implement and maintain security and hardening standards for network devices, including, but not limited to, baseline configurations, patching, passwords, access control, and multi-factor authentication with automatic system logout after 15 minutes of inactivity.
- 4.5 Provider will use defence-in-depth techniques, including deep packet analysis, traffic throttling, and packet black-holing, for the detection of and timely response to network-based attacks associated with anomalous traffic patterns and/or distributed denial-of-service (DDoS) attacks.



## **5. APPLICATION SECURITY**

- 5.1 Provider follows secure software development life cycle (“SDLC”) secure coding practices, such as those developed by the Open Web Application Security Project (“OWASP”) ~~Top 10-2017 (found at <https://www.owasp.org/>)~~ and ~~Common Weakness Enumeration (“CWE”) SANS Top 25 Most Dangerous Software Errors (found at <https://www.sans.org/>)~~, to ensure harmful code is not delivered and best practices are followed.
- 5.2 Coding practices include (i) separate development, test, and production environments; (ii) regular security code reviews; (iii) static and dynamic scanning of all software and/or applications; and (iv) use of only non-production, obfuscated, or de-identified data used in non-production environments (e.g., development or test).

## **6. RISK MANAGEMENT**

- 6.1 Provider maintains a third-party risk management programme. This includes (i) maintenance of information security agreements to ensure that Provider’s third parties are bound to the terms of this Attachment; and (ii) monitoring and auditing of third parties. Provider will make available to Audit upon request, audit and monitoring reports, information security agreements, and other artifacts of Provider’s third parties.
- 6.2 Provider maintains a risk assessment program with defined roles and responsibilities for performing risk assessments and responding to results. Provider will perform an annual risk assessment to verify the design of controls that protect business operations and information technology.

## **7. VULNERABILITY AND PATCH MANAGEMENT**

- 7.1 Provider performs regular network and application-level scans for vulnerabilities, intrusions, and unauthorized changes (each a “Vulnerability Scan”) and employs an independent third-party cybersecurity firm to test a potential unauthorized user’s ability to penetrate the Provider’s network (“Penetration Test”).
- 7.2 The results of Provider’s Vulnerability Scans and Penetration Tests will be made available in request.
- 7.3 Provider will triage and document vulnerabilities and threats to Adopter Data and Systems as identified by anti-virus scans, firewall reports, IPS or IDS alerts, vulnerability scans, penetration tests, or other security data. Provider will determine the severity of each vulnerability.
- 7.4 Provider will apply security patches and system updates to its software and applications, appliances, and operating systems in a reasonable time frame based on the criticality of an identified vulnerability, availability of the patch, and sensitivity of the underlying data in line with the following schedule: (i) Critical: within 3-5 days; (ii) High: within 10 days; and (iii) Other: within 30 days.

## **8. BUSINESS CONTINUITY AND DISASTER RECOVERY**

- 8.1 Provider maintains a documented and operational Business Continuity and Disaster Recovery (BC&DR) Plan and reviews this plan annually.

## **9. SECURITY BREACH NOTIFICATION**

- 9.1 Provider maintains and annually updates a documented data breach action and response plan.
- 9.2 If Provider discovers or is notified of a breach of security, which results in unauthorized access, acquisition, disclosure, or use relating to Adopter Data or Systems or any violation of these Security Requirements ("Data Breach"), Provider commits to promptly: (i) notify Adopter within 72 hours of becoming aware of the Data Breach; (ii) investigate the Data Breach; (iii) mitigate the effects of the Data Breach; and (iv) conduct post-incident assessments.

## **10. REPORTING AND RIGHT TO AUDIT**

- 10.1 Provider will perform continuous monitoring, logging, review, and mitigation of attempted and successful access, and security event logs for vulnerabilities, intrusions, and unauthorized changes on endpoints, network devices, and systems that contain Adopter Data. All logs shall be provided to Adopter upon request.
- 10.2 Subject to receiving reasonable notice, Provider shall co-operate with Adopter request to perform an annual information security assurance audit. The audit may be on-site at Provider's facility, via questionnaire, or through a third party. Provider will respond to all questionnaires and resulting recommendations within 30 days or as otherwise agreed by the parties.