MAKE TIME COUNT today!

Platform Service Agreement

Government Security Classification	Official
Publication Scheme Y/N	Yes
Title	Platform Services Agreement
Summary	Make Time Count User App for managing Users
Client (name and SPOC	NAME AND SPOC
DOc Version Number	V1.0
Author	Make Time Count Today
Date Issued	
Review Date	

This Platform Service Agreement (the "**Agreement**") is dated {{DATE}};

PARTIES

(1) **Make Time Count Today Limited**, a private limited company incorporated and registered in England and Wales with company number 12515998, whose registered office is at 160 Kemp House, City Road, London, England, EC1V 2NX **("Supplier")**

(2) {{CLIENT NAME}}, a {{Company Type}} company incorporated and registered in {{COUNTRY OF REGISTRATION}}, with company number {{COMPANY NUMBER}}, whose registered office is at {{REGISTERED COMPANY ADDRESS}}, with its offices at {{OFFICE ADDRESS}} **("Client")**

each a "**Party**" and together the "**Parties**".

WHEREAS

(A) The Supplier owns and operates a web-based, multi-channel administration and user management platform referred to as the "Make Time Count Today Platform" as well as related 'user-facing' apps;

(B) The Client wishes to use in its business operations the Make Time Count Today Platform as well as related 'user-facing' apps in a Supplier branded format (jointly: the "**Platform**").

(C) In addition to the foregoing, the Client wishes its Staff to be entitled to use the Platform for their own operations;

(D) The Supplier will provide the Services, including a license and access to the Platform, to the Client and as applicable, to Clients' Staff;

(E) The Supplier agrees to provide the Services, and the Client agrees, or as applicable Client's Staff agree, to accept and, where applicable, pay for the Services, subject to the terms and conditions of this Agreement including its Schedules.

AGREED TERMS

1. **INTERPRETATION**

1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

Anti-Bribery Laws: any and all laws including without limitation statutes, statutory instruments, by-laws, orders, regulations, directives, treaties, decrees and decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including without limitation any judgment, order or decision of any court, regulator or tribunal) which relate to anti-bribery and/or anti-corruption, including without limitation the Bribery Act 2010.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the fees to be paid by the Client as set out in Clauses 3, 4, 5, 7, 11 and 16 and Schedules 1 and 3 of this Agreement.

Chat Module: the module of the Platform that allows the Client to receive, send, process, manage and store messages sent and received by End Users, using a Compatible Messaging Channel, via the Platform.

Client Data: all works and materials:

      a)   uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Client or a Client User or by an End User or any person or application or automated system using the Client's Platform account; and

      b)   otherwise provided by the Client to the Supplier in connection with this Agreement;

and shall include any profile information, data, and other content or information provided by the Client, directly or indirectly, to the Supplier in connection with the Client's use of the Platform, including without limitation personal data and such data, content, and information related to the Client's business, Vendors or any Users.

Client Users: those employees, agents, users and independent contractors of the Client who access and use the Platform via the Client's Platform account.

Confidential Information: all trade secrets, know-how, inventions, software and other financial, business and technical information and data disclosed by or for a Party in relation to the Agreement. The restrictions on use and disclosure of Confidential Information will not apply to any information or data the receiving Party can demonstrate (a) is rightfully furnished to it without restriction by a third party that is not itself subject to a restriction on disclosure of such information, (b) is generally available to the public without breach of the Agreement, (c) was independently developed by it (which independent development can be shown by written evidence) without reliance on what would otherwise be considered to be Confidential Information, or (d) was in the Party's lawful possession before any disclosure by the other Party. For clarity, all Client Data will be treated as the Client's Confidential Information.

Controller, processor, data subject, personal data, personal data breach, processing and **appropriate technical and organisational measures**: as defined in the UK Data Protection Legislation.

Data Protection Legislation: the legislation and regulatory requirements in force from time to time in the jurisdiction of the Client's registered office that relate to the use of personal data (including, without limitation, the privacy of electronic communications). Where such local data protection legislation affords fewer protections to data subjects than the UK Data Protection Legislation, the UK Data Protection Legislation shall apply.

Defect: a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Platform, but excluding any defect, error or bug caused by or arising as a result of:

      (a)   an act or omission of the Client in breach of this Agreement, or an act or omission of the Client Users or any suppliers or subcontractors of the Client in breach of this Agreement; or

      (b)   the Client's or Client Users' use of the Platform in a manner that is inconsistent with the Permitted Purpose and/or the Documentation; or

      (c)   changes to, or the availability of, any Vendors used by the Client, whether suggested by the Platform or entered manually into the Service Directory where such changes affect

the ability for the Client's services to be processed via the Platform;

(d)   any incompatibility between the Platform and any other system, application, program or software, except where the Supplier has an obligation as specified in Schedule 1 to make the Platform compatible with such other system, application, program or software.

Documentation: the document(s) made available to the Client by the Supplier from time to time which specifies how the Platform should be used.

Effective Date: the date of the last signature to this Agreement.

End Users: individual consumers, users and/or customers of the Client who make a Request, and/or send and receive messages to the Client using Chat, and where such Requests and/or messages are transmitted and processed via the Platform.

EEA: any references to EEA in Clauses relating to personal data shall be interpreted as meaning the European Economic Area including the United Kingdom, regardless of whether the United Kingdom continues to be an EU Member State or not at any time during the Term.

Force Majeure Event:
(a)   act of nature;
(b)   war, insurrection, riot, civil commotion, act or threat of terrorism;
(c)   lightning, earthquake, fire, flood, storm, or extreme weather condition;
(d)   pandemic;
(e)   order of government or competent regulatory authority; or
(f)   any other event or circumstance to the extent it is beyond the reasonable control of the relevant Party.

Good Industry Practice: the exercise of that degree of care, diligence and skill which would reasonably and ordinarily be expected from a skilled, professional and experienced person engaged in the same type of undertaking under the same or similar circumstances.

Insolvent: a Party is Insolvent where any of the following occur:
(a)   it makes any voluntary arrangement with its creditors or becomes subject to an administration order;
(b)   a receiver, administrative receiver, manager or administrator is appointed over all or part of its business;
(c)   it passes a resolution for its winding-up or is subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, restructure or other re-organisation without insolvency);
(d)   it ceases or threatens to cease to carry on its business for any reason or is unable to pay its debts within the meaning of the Insolvency Act 1986;
(e)   any similar event to those in (a) to (d) above occur in relation to it under the law of any applicable jurisdiction.

Intellectual Property Rights: means all patents, rights to inventions, copyright (including rights in software) and related rights, moral rights, rights of publicity, trademarks, trade dress and service mark rights, get up and trade names, internet domain names, trade secrets, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including

know-how) and any other intellectual property rights as may now exist or hereafter come into existence, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or shall subsist now or in the future in any part of the world.

Modules:

- User/Staff Management,
- Notification,
- Calendar,
- Interventions,
- Check-in,
- Chat,
- Information,

 and/or any further modules developed by the Supplier during the Term which are or may be incorporated into the Services.

Normal Business Hours: 09.00 to 17:30 local UK time, each Business Day

Permitted Purpose: for receiving, responding to, processing, tracking, managing and storing:

a) User and Staff information
b) Calendar and Intervention details
c) Attendance and feedback
d) Messages sent via Chat
e) Requests from the End Users via the Platform.

Platform Commencement Date: the date on which the Platform is accessible by the Client Users.

Property/Properties: affiliates**,** properties, entities or locations owned, leased or managed by the Client.

Services: the services set out in Schedule 1 and 3.

Supplier Staff: all persons employed or engaged by the Supplier in the provision of the Services, including officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of the Supplier in connection with this Agreement.

Term: the Initial Term (as defined in Clause 2.1) and any subsequent renewal periods in accordance with Clause 2.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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

Users: Client staff users and the End Users**.**

Vendors: third party service providers engaged by the Client to perform a service for an End User as a result of a Request. Such third parties may offer services such as (but not limited to) mentoring, face to face interventions, group intervention or training.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, (including worms, trojan horses, viruses etc) or devices.

1.2   Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4   A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5   Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6   Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7   A reference to a statute or statutory provision shall include all subordinate legislation under that statute or statutory provision and includes any modification or re-enactment thereof.

1.8   A reference to writing or written includes e-mail.

1.9   References to Clauses and Schedules are to the clauses and schedules of this Agreement; references to Paragraphs are to paragraphs of the relevant Schedule to this Agreement.

2.   THE TERM

2.1   This Agreement shall come into effect on the Effective Date and shall continue for a period of {{thirty-six (36) months}} (the "**Initial Term**").

2.2   During the Initial Term, either Party may terminate the Agreement in accordance with the termination provisions contained herein.

2.3   Following the expiry of the Initial Term, this Agreement shall automatically extend and continue in full effect for subsequent periods of one (1) year, unless and until terminated by either Party in accordance with the termination provisions contained herein, or by one Party

serving not less than three (3) months' written notice to the other.

3. THE SERVICES

3.1   The Services to be provided by the Supplier during the Term, are set out in Schedule 3.

3.2   Subject to the Client paying the Charges for the Services in accordance with Clause 11 and the other terms and conditions of this Agreement, the Supplier shall provide the Services for the duration of the Term.

3.3   From the Platform Commencement Date, the Supplier grants to the Client and Client Users a revocable, non-exclusive, non-transferable, non-sublicensable licence to access and use the Platform solely for the Permitted Purpose, and in accordance with the terms and conditions of this Agreement and the Documentation, during the Term.

3.4   The Supplier will provide the Client with the Supplier's standard support services in accordance with the services and service levels set forth in Schedule 4.

3.5   This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services to third parties which are similar to those provided under this Agreement.

3.6   In case a subsidiary of Client and Supplier have agreed through execution of a completed copy of Schedules 2 and 3 on the provision of Services to the subsidiary of Client by Supplier, the terms of this Agreement referring to "Client" shall be applicable to the subsidiary of Client as if such subsidiary of Client is Client.

4. ADDITIONAL STAFF

4.1   Subject to Clause 3.2, the Client may, at any time during the Term, request access to the Platform for additional Staff in excess of the number set out in Schedule 3.

4.2   Subject to Clause 3.2, the Supplier shall grant access to the Platform for such additional staff in accordance with the applicable provisions of this Agreement.

4.3   Where additional Staff are added, additional Platform Access Charges shall be payable in accordance with Schedule 1 on a pro-rata basis from the date of activation by the Supplier until the next annual invoicing period. For subsequent annual renewals, the provisions of Clause 11 shall apply.

4.4   If the Supplier is requested by the Client to undertake any implementation or training activities in order for additional Units and/or Client Users to access and use the Platform, such activities will be charged to the Client in accordance with the fees set out in Schedule 1 and invoices are payable in accordance with the timescales set out in Clause 11.2.

4.5   The Supplier reserves the right (acting reasonably), at any time during the Term, to limit the number of Client User accounts accessing the Platform.

5.   ADDITIONAL MODULES

5.1   The Client may, from time to time during the Term, request access to additional Modules within the Platform. The Parties shall agree the additional Modules and the additional Charges payable (including Platform Access Charges, Professional services fees, Implementation Charges and Hosting and Storage Charges where applicable), and the Schedules shall be updated accordingly, signed by both Parties and appended to this Agreement.

5.2   Where additional Modules are made available to the Client, Platform Access Charges for that Module are payable on a pro-rata basis from the date of activation by the Supplier until the next annual invoicing period. For subsequent annual renewals, the provisions of Clause 11 shall apply.

5.3   Implementation and/or training performed by the Supplier for Client Users to use the additional Modules are payable in accordance with the timescales set out in Clause 11.2.

6.   CLIENT DATA

6.1   The Client has sole responsibility for the legality, reliability, integrity, accuracy and quality of Client Data.

6.2   The Client expressly grants, represents and warrants that it has all rights necessary to grant to the Supplier, a royalty-free, non-exclusive, worldwide license to use, develop, transmit, distribute, reproduce, display, and create derivative works of any Client Data that is not personal data for the purposes of:
   a)   providing the Platform to the Client and the Client Users;
   b)   developing, maintaining, and improving the Platform;
   c)   marketing, promoting and advertising the Platform providing such promotion does not identify the Client or the Users;
   d)   compiling Vendor usage, performance and benchmarking data for analysis and reporting (which do not identify individual Users or contain personal data); and
   e)   creating and distributing such analysis and reports.

6.3   The Supplier shall abide by its retention, archiving and deletion procedures for Client Data which is personal data as set out in its Privacy Policy (available upon request) and the {{Data Sharing Agreement (the "DSA")}} in place between the Parties, as such documents may be amended by the Supplier in its sole discretion from time to time.

6.4   In the event of any loss or damage to Client Data that is not personal data, the Client's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Supplier in accordance with the archiving procedure described in its Privacy Policy.

6.5   The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Client Data that is not personal data caused by any third party (except those third parties sub-contracted by the Supplier to perform activities related to the Services for which it shall remain liable under Schedule 5).

6.6 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 6 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation. The full arrangement for processing of any shared personal data between the Parties is outlined in the separate {{Data Sharing Agreement / DSA}}

6.7 In line with the separate {{Data Sharing Agreement / DSA}} the Client will ensure that it has all necessary appropriate consents and/or notices in place to enable lawful transfer of personal data to the Supplier (and its sub-processors) for the duration of the Term and for the purposes of this Agreement so that the Supplier may lawfully process (including transfer) the personal data in accordance with this Agreement on the Client's behalf.

6.8 In line with the separate {{Data Sharing Agreement / DSA}} , the Client warrants that its own and/or the Supplier's processing (including transfers) of personal data for the purposes of this Agreement does not violate any laws or rights of any third party, including without limitation any Intellectual Property Rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies for the Parties to this Agreement.

6.9 The Parties agree that the Data Processing Terms as set forth in {{Data Sharing Agreement / DSA}} shall be applicable to the processing of personal data on behalf of Client by Supplier.

6.10 Under no circumstances will any Party to this Agreement, Supplier, Client or associated agents or third parties, sell any personal data that resides in, or is collected by, the platform, or that is outlined and covered by the {{Data Sharing Agreement / DSA}} between the Parties.

7. VENDORS

7.1 The Client acknowledges that although the Intervention Module may suggest suitable providers to fulfil Requests, the Client is solely responsible for ensuring the suitability and quality of any Vendors it engages.

7.2 The Client will make best business endeavours to maintain and update Vendor information, details including the services offered, points of contact, location and any other pertinent information relating to any Vendor they appoint, and will retain the ownership and accountability of said Vendor. This includes the extension of any obligations, accountability and restrictions relating to personal data that are contained within the {{Data Sharing Agreement / DSA between the Parties.

7.3 The Supplier expressly excludes any liability arising directly or indirectly from the Client's or any Users' use of a Vendor selected by the Client to fulfil the Requests, or any payments made to Vendors or charges to Users.

7.4 The Client is responsible for negotiating prices with Vendors, engaging or contracting with Vendors (including conducting due diligence on them for the purposes of Vendor cascaded responsibilities and accountability under the {{Data Sharing Agreement / DSA}} between the Parties), making payments to Vendors and charging Users (where applicable) for the fulfilment of Requests. The Platform does not facilitate payments to Vendors or charges to the Client or any User, and the Supplier is not responsible or liable for any payments to Vendors or charges to End Users.

8. WARRANTIES

8.1 The Client warrants to the Supplier that it has the legal right and authority to enter into and perform its obligations under this Agreement.

8.2 The Supplier warrants to the Client:
   a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
   b) that the Platform (excluding, for the avoidance of doubt, any Client Data or personal data of Users) does not and will not:
      i) breach any laws, statutes, regulations or legally-binding codes; or
      ii) infringe any third party's Intellectual Property Rights or other legal rights;
   c) that the Services will be provided in a professional manner and in accordance with Good Industry Practice and that the Supplier will use commercially reasonable efforts to maintain Platform availability, subject to downtimes for scheduled Platform maintenance, Upgrades and repairs and for security issues and emergency outages. In such circumstances the Supplier shall make the Platform available as soon as possible following resolution of the issue or outage;
   d) that the Supplier will comply with all applicable laws, regulations and rules for the provision of the Services;
   e) that the Client's and Client Users' use of the Services and the Platform in accordance with the Permitted Purpose and the Documentation will not put the Client in breach of any applicable law, regulation or rule;
   f) that the Supplier has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
   g) that the Supplier has taken reasonably commercial steps to prevent, now and in the future, the introduction, creation or propagation of any disruptive elements (including any Virus):
      i) in the provision of the Platform; and/or
      ii) in relation to the Client's Confidential Information held in electronic form;
   h) that the Supplier will frequently screen the Platform for Viruses during the Term of this Agreement using suitable anti-virus software; and
   i) that the Supplier and its subcontractors will not wilfully or negligently introduce a Virus into any hardware or software used by the Client.

8.3 Notwithstanding the foregoing Clause 8.2, the Supplier:
   a) does not warrant that the Client's use of the Platform will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements;
   b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from third party hosting services (whether the Client's or Supplier's chosen hosting partner), or transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services, Platform and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4 The Client acknowledges that the complexity of the software underpinning and supporting the Platform is such that the Supplier cannot, and does not, warrant or represent that the Platform is free from Defects.

8.5   The Supplier shall respond to the notification of any Defect in accordance with the response times set out Schedule 4. The Supplier shall use commercially reasonable endeavours to remedy any Defects.

8.6   The warranties in Clause 8.2 shall not apply to any non-conformance which is caused by modification or alteration of the Platform by any party other than the Supplier.

8.7   The foregoing warranties are in lieu of all other warranties, representations, conditions and all other terms of any kind on the part of the Supplier, either express or implied, statutory or otherwise as to any matter whatsoever arising in connection with the Services, including, without limitation, the condition of the Platform or its fitness for any particular purpose, all of which are, to the fullest extent permitted by applicable law, hereby expressly excluded. No oral or written information or advice given by the Supplier shall create a warranty or representation or in any way increase the scope of the above warranties.

9.   CLIENT'S OBLIGATIONS

9.1   The Client is responsible for ensuring that neither the Client nor any Users shall access, store, distribute or transmit any Viruses through the Platform.

9.2   The Client shall not, and shall ensure that their Staff and Users do not, use the Platform, or upload, process, access, collect, store, distribute, disclose, send or transmit any material from or through the Platform, in a way that:
   a)   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
   b)   facilitates illegal activity;
   c)   depicts sexually explicit images;
   d)   promotes unlawful violence;
   e)   is discriminatory based on age, disability, gender (including gender reassignment), sexual orientation, race, ethnicity or religious belief, or any other reasonably protected characteristics as outlined in law;
   f)   contravenes Data Protection Legislation;
   g)   is otherwise illegal or fraudulent; or
   h)   causes, or is designed to cause, damage, injury or harm to any person or property;
   and the Supplier reserves the right, without liability or prejudice to its other rights and remedies, to disable the Client's and/or the Users' access to the Platform or any material on the Platform that breaches the provisions of this Clause 9.2.

9.3   The Client shall not, and shall ensure that Users shall not:
   a)   attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform or the data it contains in any form or media or by any means, including without limitation by any automated or non-automated "scraping";
   b)   using any automated system, including without limitation "robots," "spiders," "offline readers," or similar functionality, access the Platform in a manner that sends more messages to the Platform or its servers than a human can reasonably produce in the same period of time by using a conventional online web browser;
   c)   transmit spam, chain letters, or other unsolicited email, including to any party who has

not clearly provided their unambiguous and informed consent to receive such communications;

 d) attempt to interfere with, compromise the system integrity or security of, or decipher any transmissions to or from the servers running the Platform;

 e) take any action that imposes, or may impose (such imposition to be decided by the Supplier in its sole discretion) an unreasonable or disproportionately large load on the Supplier's infrastructure;

 f) collect or harvest any personal data, including account names or other information relating to Users or any other individuals (including associates, family members or other connected parties), from the Platform;

 g) impersonate another person or otherwise misrepresent an affiliation with a person or entity for the purposes of deception or fraud, or hide or attempt to hide their true identity;

 h) interfere in any way, whether wilfully or negligently, whether by action or omission, with the functionality or accessibility of the Platform;

 i) use the Platform in any way other than its Permitted Purpose;

 j) access any content on the Platform through any technology or means other than those provided or authorised by the Platform;

 k) bypass the measures used by the Supplier to prevent or restrict access to the Platform, including without limitation features aimed at increasing or ensuring security (such as passwords or multifactor authentication) that prevent, or restrict use or copying of, any content or enforce limitations on the use of the Platform or its content; or

 l) de-compile, reverse compile, disassemble, reverse engineer, extract the source code from, or otherwise reduce to human-perceivable form, all or any part or module of, or data (including personal data) contained within the Platform, nor attempt any of the above.

9.4 The Client warrants that it shall not access or use all or any part of the Services, the Platform and/or Documentation in order to, directly or indirectly, build a product or service which competes with the Services or Platform.

9.5 Subject to Clause 26, the Client shall not:

 a) license, sell, rent, lease, transfer, assign, distribute, display, disclose, copy or otherwise commercially exploit, or otherwise make the Platform, the Services, the data contained (including personal data, and/or Documentation available to any third party except the Client Users; or

 b) attempt to obtain, or assist third parties in obtaining, access to the Platform or the data contained (including personal data) other than as provided under Clause 3.

9.6 The Client shall use all reasonable endeavours to prevent any unauthorised access to the Platform and, in the event of any such unauthorised access or use, promptly notify the Supplier in line with the obligations included in the {{Data Sharing Agreement / DSA}} between the parties. In the event of such unauthorised access, the Supplier expressly reserves the right to remove access to the Platform for the Client and the Client Users, either temporarily or permanently.

9.7 The Client shall enter into an end user license agreement with, or provide terms of service to, the Users, as a condition of such Users' engagement with the Client through the Platform, that contains terms that are materially similar to this Clause 10, and that include the requisite

privacy notices in line with the Data Protection Legislation.

9.8 The Client shall:
a) provide the Supplier with:
   i) all necessary cooperation, including the provision of access to all modules or other systems that the Platform is required to integrate or interoperate with; and
   ii) all necessary access to such information as may be required by the Supplier;
   in order to provide the Services, including but not limited to Client Data or User Data;
b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement and the separate {{Data Sharing Agreement / DSA}} between the Parties;
c) carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance, the Supplier may adjust any agreed timetable or delivery schedule as the Supplier, acting reasonably, deems necessary;
d) ensure that the Client Users use the Platform in accordance with the terms and conditions of this Agreement and the separate {{Data Sharing Agreement / DSA}} and shall be responsible for any User's breach of either Agreement;
e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation performance of the Services;
f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
g) to the extent permitted by law and except as otherwise expressly provided in this Agreement, be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems, and the links to any Vendor or Compatible Messaging Channel(s) with which it has contracted, to the Platform, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

10. CHARGES AND PAYMENT

10.1 All Charges payable under this Agreement:
a) are payable in the currency stated in Schedules 1 and 3;
b) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) and/or the amounts that the Supplier shall take by credit card (as appropriate), at the then current prevailing rate;
c) are exclusive of any withholding taxes (as may be applicable); and
d) are exclusive of any bank or international transfer charges, or any currency conversion costs which are the responsibility of the Client.

10.2 Any Charges for scoping, implementation, consulting, integration or training to be paid by the Client shall be as set out in Schedule 1 and 3. The invoice for such fees will be issued by the Supplier on the Effective Date and is payable by the Client within thirty (30) days of receipt of invoice. Where additional implementation, integration, specialist consulting or training services are required during the Term, these will be charged in accordance with Schedule 1 and are payable within thirty (30) days of invoice.

10.3   The Platform Access Charges for all Modules, to be paid by the Client, and the method of payment, shall be as set out in Schedule 1.

10.4   The Platform Access Charges may be adjusted during the Term in line with Clauses 10.10, 11.2, 11.3 and this Clause 10.4.

10.5   Platform Access Charges for all Modules are, without exception and regardless of the payment method being used, payable annually in advance.

10.6   Where the Platform Access Charges for any Modules are paid by invoice, the first invoice will be issued by the Supplier on the Platform Commencement Date for the first year of access and is payable by the Client within thirty (30) days of receipt of invoice. For each successive annual period during the Term, the Client agrees to pay the Platform Access Charges for the Modules in accordance with Schedule 1 annually in advance within thirty (30) days of receipt of the Supplier's invoice.

10.7   Where the Platform Access Charges for any Modules are paid by credit card, the Client shall, prior to the Platform Commencement Date, provide to the Supplier valid, up-to-date and complete credit card details and the Client hereby authorises the Supplier to take payment on the Platform Commencement Date for the first year of access from the credit card provided. For each successive annual period during the Term, the Client hereby authorises the Supplier to take payment from such credit card for the Platform Access Charges for the Modules in accordance with Schedule 1 annually in advance. The Client is responsible for ensuring the Supplier has valid, up-to-date and complete credit card details for each successive renewal.

10.8   Where the Parties have agreed that the Supplier shall host the Platform on behalf of the Client, the Client shall pay the Hosting and Storage Charges as set out in Schedule 1. Unless stated otherwise in Schedule 1, the Hosting and Storage Charges shall become payable on the Effective Date for the first year's fees and annually in advance for each successive annual period thereafter.

10.9   Where the Platform is hosted by the Supplier, if at any time during the Term, the Client exceeds the amount of storage space specified in Schedule 1, the Supplier shall charge the Client, and the Client shall pay, the Supplier's then current excess data storage fees within thirty (30) days of receipt of the Supplier's invoice.

10.10   The Supplier reserves the right to review, on an annual basis after the Initial Term, the:
   a)   Platform Access Charges for all Modules;
   b)   Consulting Day Rate;
   c)   Training Day Rate; and/or
   d)   Hosting and Storage Charges.
   Any increase in the fees and/or rates shall not exceed 5% and shall be notified to the Client in writing at least thirty (30) days in advance of such increase. The Supplier's right to review the Charges in accordance with this Clause 10.10 is in addition to the provisions of Clauses 10.4,11.2 and 11.3.

10.11   Where the Client fails to make payment of any Charges in accordance with this Clause 11:
   a)   the Supplier may, without liability to the Client, disable the Client User's passwords, accounts and access to all or part of the Services and the Supplier shall be under no

obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of the Bank of England base rate at the time of the invoice due date, commencing on the due date and continuing until payment of the Charges is received by the Supplier.

11. UPGRADES

11.1 The Client acknowledges that from time to time during the Term, the Supplier may apply Upgrades to the Platform, and that such Upgrades may result in changes to the appearance and/or functionality of the Platform.

11.2 The Client shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:
a) the Upgrade introduces new functionality or Modules to the Platform; and
b) that new functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade; and/or
c) access to or use of the new functionality or Module is chargeable to other customers using the Platform.

11.3 Where Upgrades incur additional Charges or result in a material change to the functionality of the Platform that will adversely affect the Client's use of the Services or the Platform, the Client has the right to terminate the Agreement on thirty (30) days' notice without penalty. No refunds for Charges that are pre-paid shall be applicable.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 The Supplier exclusively owns all rights, title and interest in and to the Platform, the Services and the Documentation, including without limitation any Upgrades thereto and including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, and copyrights (the "**Content**"), and all Intellectual Property Rights related thereto and derivative works of the foregoing, but excluding in all cases the Client Data.

12.2 Except as expressly provided herein, nothing in this Agreement shall be deemed to transfer or assign any Party's Intellectual Property Rights, nor create a licence in or under any such Intellectual Property Rights, and the Client agrees not to duplicate functionality, sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, copy or create derivative works from any materials or content accessible in the Services, on the Platform or in the Documentation. Use of the Content or materials on the Platform for any purpose other than the Permitted Purpose is strictly prohibited.

12.3 The Client agrees to defend, indemnify and hold harmless the Supplier and its successors and their respective affiliates, officers, directors and employees against and from all claims, actions, demands, damages, liability and expenses (including, without limitation, court costs, fines (whether imposed by a court or a regulator) and reasonable legal fees) relating to the Client's breach of Clause 12.2.

12.4   The Supplier confirms that it has all the rights in relation to the Services, the Platform and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

13.   CONFIDENTIALITY

13.1   Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. This is separate to personal data, as covered by the separate {{Data Sharing Agreement / DSA}} between the Parties.

13.2   Subject to Clause 13.4, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

13.3   Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents or service users in violation of the terms of this Agreement.

13.4   A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.4, it takes into account the reasonable requests of the other Party and any governing legislation or case law in respect of data privacy in relation to the content of such disclosure.

13.5   Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information (excluding personal data) caused by any third party.

13.6   The Client acknowledges that details of the Services constitute the Supplier's Confidential Information. This is separate to personal data and the obligations and liabilities of the Parties, as covered by the separate {{Data Sharing Agreement / DSA}} between the Parties.

13.7   The Supplier acknowledges that the Client Data is the Confidential Information of the Client.

13.8   The Client hereby consents to inclusion of its name and logo in the Supplier's customer lists provided the Client's name is no more prominent than the citation of the Supplier's other customers in the list. From time to time upon request, the Client agrees to provide the Supplier with individual references regarding the subject matter of this Agreement to potential customers of the Supplier.

13.9   Promptly after receiving notice of termination of this Agreement (howsoever arising), or at one Party's request at any other time, each Party shall return all of the other's Confidential Information, permanently erase all Confidential Information from any storage media and destroy all information, records and materials developed therefrom (except Confidential Information stored in accordance with automated backup procedures in the ordinary course of business). Such destruction shall be in line with the terms of the separate {{Data Sharing Agreement / DSA}} , and confirmed in writing to the Party requesting deletion provided,

however, that any information stored in electronic form, including but not limited to, information stored in backup media or other electronic data storage systems, latent data and metadata shall not be required to be destroyed but shall remain subject to the confidentiality obligations hereunder and as outlined in the Parties' respective data retention schedules, as covered by the separate {{Data Sharing Agreement / DSA}} between the parties.

14. INDEMNITY

14.1 The Supplier will defend, indemnify and hold harmless the Client and its successors and their respective affiliates, officers, directors and employees against and from all direct claims, actions, demands, damages, liability and expenses including court costs, fines (whether imposed by a court or a regulator) and reasonable legal fees (together, "**Claims**") made by a third party claiming that the possession, supply of all or part of the Platform and/or receipt of the Services infringes the Intellectual Property Rights of that third party.

14.2 The indemnification in Clause 14.1 is subject to:
   a) the Supplier being given prompt notice of any such Claim;
   b) the Client providing reasonable co-operation to the Supplier in the defence and settlement of such Claim, at the Supplier's expense; and
   c) the Supplier being given sole authority to defend or settle the Claim.

14.3 In the defence or settlement of any Claim, the Supplier may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, the Supplier may terminate this Agreement on ten (10) days' notice to the Client without any additional liability or obligation to pay other additional costs to the Client.

14.4 In no event shall the Supplier or Supplier Staff be liable to the Client to the extent that the alleged infringement is based on:
   a) a modification of the Platform or the Services by anyone other than the Supplier; or
   b) the Client's use of the Services and the data contained within the Platform in a manner contrary to the Permitted Purpose, the Documentation, or any other instructions given to the Client by the Supplier or covered by the relevant clauses of the separate {{Data Sharing Agreement / DSA}} ; or
   c) the Client's use of the Services after notice of the alleged or actual infringement from the Supplier, a third party or any appropriate authority.

14.5 The foregoing states the Client's sole and exclusive rights and remedies, and the Supplier's (including the Supplier Staff's) entire obligations and liability, for infringement of any third-party Intellectual Property Rights.

15. LIMITATION OF LIABILITY

15.1 Except as expressly and specifically provided in this Agreement:
   a) the Client assumes sole responsibility for results obtained from the use of the Platform, the data contained within the Platform, the Services and the Documentation by the Client and Client Users, and for conclusions drawn from such use.
   b) The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection

with the Services, or any actions taken by the Supplier at the Client's direction; and the Services and the Documentation are provided to the Client on an "as is" basis.

15.2   Nothing in this Agreement limits either Party's liability for death or personal detriment or injury caused by its negligence (including its employees', agents' or subcontractors' negligence) or for fraud or fraudulent misrepresentation, wilful default or any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

15.3   Subject to Clause 15.2:
a)   the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of revenue, profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
b)   the Supplier's total aggregate liability in contract (including all indemnities), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to a sum equal to the most recent annual Platform Access Charges for all Modules paid to the Supplier by the Client under this Agreement.

15.4   The Charges payable to the Supplier under this Agreement are calculated with specific reference to the level of liabilities assumed by it and, accordingly, the Client agrees that the limitations and exclusions of liability in this Agreement are reasonable.

16.   INSURANCE

16.1   The Supplier will maintain the following insurance: (i) Employer's Liability insurance to a value of £10,000,000.00 (ii) Public and Product Liability insurance to the value of £1,000,000.00, and (iii) Professional Indemnity insurance to the value of £500,000.00. Upon request, The Supplier will provide Client with certificates of insurance evidencing the required coverage.
16.2   Additional amounts may be obtained at the cost to the Client

17.   TERMINATION

17.1   Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
a)   the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default thirty (30) calendar days after being notified in writing to make such payment;
b)   the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) calendar days after being notified in writing to do so;
c)   the other Party repeatedly breaches any of the terms of this Agreement or the separate {{Data Sharing Agreement / DSA}} between the Parties (irrespective of whether such breaches collectively constitute a material breach) in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of either Agreement; or
d)   the other Party becomes Insolvent.

17.2 The Client may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier is in breach of Clauses 13 or 19.

17.3 The Client or the Supplier (as appropriate) may terminate this Agreement under the following Clauses in accordance with the timescales set out in such clauses: 2.2, 2.3, 11.3, 14.3 and 18.4.

17.4 Subject to Clause 17.7, if the Client terminates the Agreement for any reason, the Supplier shall not be required to pay a refund or provide any form of exchange for any Charges paid by the Client.

17.5 If the Client terminates this Agreement in accordance with Clauses 18.3 or 18.4, the Supplier shall refund to Client any prepaid Platform Access Charges on a pro-rata basis for the remainder of the prepaid period.

17.6 On termination of this Agreement for any reason during the Term:
   a) all licences granted under this Agreement shall immediately terminate and the Client and Client Users shall immediately cease all use of the Services, the Platform and/or the Documentation;
   b) each Party shall return and make no further use of any equipment, property, data, Documentation and other items (and all copies of them) belonging to the other Party;
   c) the Supplier may destroy or otherwise dispose of any of the Client Data in its possession unless the Supplier receives, no later than thirty (30) calendar days after the effective date of the termination of this Agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up in its native format to the Client within thirty (30) calendar days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).
   d) Supplier charges £3500 for a MySQL copy of the Client's database.
   e) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.

17.7 Upon termination of this Agreement for any reason during the Term, all the provisions herein will cease to have effect, save that the following Clauses will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6, 9, 12, 13, 15, 20, 24, 25, 28, 30.

18. FORCE MAJEURE

18.1 Neither Party will be in breach of this Agreement or otherwise liable to the other Party for any failure to perform or delay in performing its obligations hereunder to the extent that such failure or delay arises out of a Force Majeure Event.

18.2 If a Force Majeure Event occurs, the Party affected will:
   a) as soon as reasonably practicable after becoming aware of the Force Majeure Event

give the other Party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;

b)   use commercially reasonable endeavours to mitigate the effects of the Force Majeure Event, and continue to perform where reasonably possible the affected obligations notwithstanding the occurrence of the Force Majeure Event; and

c)   continue to perform all of its obligations under the Agreement the performance of which are not affected by the Force Majeure Event.

18.3   If the Supplier is the Party affected by the Force Majeure Event, the Client will be relieved from any liability to pay the Charges to the extent that they relate to Services which the Supplier is materially prevented from providing on account of the occurrence of a Force Majeure Event.

18.4   If the Supplier is unable to supply or the Client is unable to receive or access a material part of the Services for a period of more than thirty (30) days due to a Force Majeure Event, either Party will be entitled to terminate this Agreement without further liability to the other Party upon giving thirty (30) days' written to the other Party.

19.   ANTI-BRIBERY

19.1   The Supplier will, and will procure that all Supplier Staff will:
a)   adhere to all applicable Anti-Bribery Laws;
b)   not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws; and
c)   not do or omit to do any act or thing which causes or may cause the Client to be in breach of and/or to commit an offence under any Anti-Bribery Laws.

19.2   The Supplier will promptly notify the Client of any breach of this Clause 19.

20.   CONFLICT

20.1   If there is an inconsistency or conflict between any of the provisions in these terms and conditions and the Schedules, the provisions in the Schedules shall prevail.

21.   VARIATION

21.1   No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

22.   WAIVER

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

23.   RIGHTS AND REMEDIES

23.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24. SEVERANCE

24.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

24.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 24.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

25. ENTIRE AGREEMENT

25.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. This clause is separate from the {{Data Sharing Agreement / DSA}} between the Parties.

25.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. This clause is separate from the {{Data Sharing Agreement / DSA}} between the Parties.

25.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. This clause is separate from the {{Data Sharing Agreement / DSA}} between the Parties.

25.4 Nothing in this Clause shall limit or exclude any liability for fraud or fraudulent misrepresentation, or breaches of the separate {{Data Sharing Agreement / DSA}} between the Parties.

26. ASSIGNMENT

26.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

26.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

27. NO PARTNERSHIP OR AGENCY

27.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. THIRD PARTY RIGHTS

28.1 This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

29. NOTICES

29.1 Any notice required to be given under this Agreement shall be in writing and may be sent by electronic means (email), delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes.

29.2 A notice sent by email shall be deemed to have been received the next Business Day after sending. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by a pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

30. GOVERNING LAW

30.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The Client hereby waives any right that it may have under the laws of the jurisdiction of its residence or any other jurisdiction.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by a duly authorised representative of

Make Time Count Today LTD

_____
signature

_____
name

_____
title

Signed by a duly authorised representative of

{{CLIENT NAME}}

_____
signature

_____
name

_____
title