

My Council Services Hosted Services Agreement

This Hosted Service Agreement (the “Agreement”), is made this ____ day of _____, 202__ (the “Effective Date”), between, Abavus Ltd. (“Abavus”) with its principal place of business at 7-8 The Shrubberies, South Woodford, London E18 1BD and _____ (“Customer”) with its principal place of business at _____.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1 DEFINITIONS

“**Customer**” means a third party customer of Abavus that is entitled to use the Service pursuant a Solution Agreement.

“**Customer Data**” means all electronic data or information submitted by Customer or by Abavus on behalf of Customer to the Service.

“**Feature Listing**” means the features and functionality of the Service as described in any online user or technical documentation, made available and updated from time to time.

“**Instance**” means an account linked to the Service with storage space within the Service to manage a specific Customer’s data and implementation of the Service.

“**Purchase Authorisation Schedule**” means the ordering documents representing the initial purchase of the Service as well as any renewals or subsequent purchases agreed to between the parties in writing from time to time, that are executed hereunder and deemed incorporated into Schedule A from time to time and that specify, among other things, the number of subscriptions ordered, the Subscription Start Date, the Subscription Term and the applicable fees.

“**Service**” means the on line incident reporting engine developed and currently hosted by iTouch Vision which enables individuals to submit geographically referenced reports with supporting evidence in the form of images, videos, sound recordings, electronic files and such like from any web browser and selected mobile devices. The Service also provides organisations with broad and detailed incident reporting, workflow management and automation capabilities that can be used for optimisation, scheduling and service delivery. The Service is currently known as My Council Services but will also include any derivations such as, but not limited to, My Police Services and My Housing Services.

“**Solution Agreement**” means the agreement by and between Abavus and Customer pursuant to which the Customer may use the Service

“**Subscription Start Date**” means the date that the Customer is notified (via email) by Abavus that the Service is ready for use by the Customer and Instances for Users have been created pursuant a Purchase Authorisation Schedule.

“**Subscription Term**” means the period of use specified in the Purchase Authorisation Schedule, or if none is specified 12 months from the Subscription Start Date, or any extension thereto.

“**User Subscription**” means the fees and charges which Customer is charged for use of the Service during the Subscription Term together with any additional fees which may be due under this Agreement.

“**Users**” means Customer’s employees, consultants, contractors or agents who are authorised to use the Service and have been supplied user identifications and passwords by Customer or by Abavus.

“**Data Protection Legislation**” means: i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; ii) the DPA to the extent that it relates to processing of personal data and privacy; iii) all applicable Law about the processing of personal data and privacy;

“**Data Subject Access Request**” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“**Data Subject**” has the meaning given in the GDPR;

“**DPA**” means the Data Protection Act 2018 as amended from time to time;

“**Personal data**” has the meaning given in the GDPR

“**Controller**” has the meaning give in the GDPR;

“**Data Protection Officer**” has the meaning given in the GDPR;

“**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679)

“**LED**” means the Law Enforcement Directive (Directive (EU) 2016/680)

“**Protective Measures**” appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

“**Processor**” has the meaning given in the GDPR;

“**Processor Personnel**” all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor

“**Personal Data Breach**” has the meaning given in the GDPR;

“**Sub-processor**” any third party appointed to process Personal Data on behalf of the Supplier related to this agreement;

2 SERVICE

2.1 Provision of Service. During the Subscription Term, Abavus grants to Customer a limited, personal, non-exclusive, non-transferable, time limited, non-sublicenseable right to access and use the Service, identified in any and all Purchase Authorisation Schedules executed pursuant this Agreement, in accordance with the terms of this Agreement

2.2 Subscription Term. The minimum subscription term is taken to be 12 months unless otherwise agreed in writing.

2.3 Backups and Virus Checkers. The Service will be subject to on-site backups every business day (recycled after one year) and will use a recognised virus checker.

2.4 Availability. The Service is intended to be available 24 hours a day, 7 days a week except for: (a) any planned downtime which includes weekly maintenance every Sunday between the hours of

3:00a.m. GMT to 9:00a.m GMT (the “Standard Maintenance Window”), (b) emergency maintenance if deemed necessary and (c) down time caused by an event of force majeure. Abavus will use commercially reasonable efforts to notify Customer four (4) days in advance of downtime planned for a Standard Maintenance Window.

2.5 Change of Hosting Provider. Abavus reserves the right to change the Hosting Provider to another party within the UK.

2.6 Acceptable Use Policy. The Service is provided in a shared hosted environment. Abavus reserves the right to introduce or modify any Acceptable Use Policy which it deems reasonable in order to preserve the benefits of the Service for all users generally by giving 14 days written notice. In the event that a user of the Service is in Abavus' reasonable opinion using the Service in a way that is using abnormal resources and is detrimental to other users, then Abavus may contact the user, explain the problem and the user will promptly take such action as is necessary to cease or reduce the activity which is causing the degradation of the Service for other users.

3 RESPONSIBILITIES AND USE OF THE SERVICE

3.1 Abavus Responsibility. Abavus shall be responsible for:

3.1.1 providing Customer with an Instance,

3.1.2 providing support consisting of telephone help desk or online support to the Customer's two designated support contacts as set forth in Abavus' Customer Support Service document, attached hereto as Schedule B,

3.1.3 making all commercially reasonable efforts to ensure that the Service remains available for the periods described in Section 2.4 above,

3.1.4 using all reasonable efforts to maintain the security and integrity of the Service and the Customer Data, and

3.1.5 not disclosing the Customer Data to any third party, other than iTouch Vision and its hosting provider.

3.2 Clarification of Abavus Responsibility. Notwithstanding anything else in this Agreement, Abavus shall have no responsibility for

3.2.1 any acts or omissions of Customer's employees, agents, contractors or representatives that result in failure of or disruption to the Service ,

3.2.2 Customer's or end user's own equipment, phones or data lines which are used to access the Service

3.2.3 the accuracy, quality, integrity, legality, reliability, and appropriateness of any Customer Data.

3.3 Customer Responsibilities. Customer shall

3.3.1 be responsible for all activities that occur under Customer's User accounts,

3.3.2 use commercially reasonable efforts to prevent unauthorised access to, or use of, the Service, and notify Abavus promptly of any such unauthorised use,

3.3.3 identify two Customer representatives who will serve as Customer's sole representatives for interacting with Abavus' customer support,

3.3.4 comply with all applicable laws in using the Service, and

3.3.5 abide by any Acceptable Use Policy which may be implemented.

3.4 Use Restrictions. Customer shall use the Service solely for business purposes relating to its own Council area as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; (ii) attempt in any way to circumvent or otherwise interfere with any security precautions, procedural controls, or other measures relating to the Service; or (iii) except as permitted by law, decompile, engineer, modify or derive source code from any software which forms part of the Service.

3.5 Acceptable Use Policy. Abavus reserves the right to introduce an Acceptable Use Policy designed to benefit the smooth running of the Service for all users and to prevent any behaviour which may discredit or degrade the Service.

4 TERM AND TERMINATION

4.1 Term of Agreement. This Agreement will commence upon the Effective Date and continues until all the Subscription Term(s) and any extensions thereto granted in accordance with this Agreement have expired or been terminated.

4.2 Term of Subscription Term. Unless otherwise set forth in the Purchase Authorisation Schedule issued by Abavus and signed by Customer, User Subscriptions to the Service shall commence on the Subscription Start Date and shall continue for the Subscription Term specified in the Purchase Authorisation Schedule. Subscription Terms shall automatically renew for additional periods of one (1) year at the list price in effect at the time of renewal unless either party gives notice of termination to the other at least thirty (30) days prior to the end of the relevant Subscription Term.

4.3 Termination for Cause. A party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

4.4 Survival of Termination. Sections 5, 6 and 10 shall survive termination of this Agreement.

4.5 Outstanding Fees. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Abavus prior to the effective date of termination.

4.6 Destruction of Customer Data. The Customer Instance shall be disconnected upon termination of this Agreement and backup activities on the Instance shall cease as of such date. Customer Data will remain on tape for a period of sixty (60) days from date of backup through complete deletion. Upon written request by the Customer Abavus may notify Customer when the Instance has been deleted.

5 OWNERSHIP

5.1 Intellectual Property. Customer shall make no claim to title or ownership of any intellectual property rights including, without limitation, any patent, trademark, copyright or intellectual or industrial property right, relating to the Service and software used in support thereof. Customer expressly acknowledges that it does not have and shall not, by virtue of this Agreement, acquire any proprietary rights whatsoever of any kind in or over any adaptation, modification,

derivation, addition or extension to the Service, whether made by iTouch Vision, Abavus or Customer, and that Customer's sole right to the Service is as set forth in this Agreement. This Agreement does not authorise Customer to use iTouch Vision's name, Abavus' name or any of iTouch Vision's or Abavus' trademarks or those of its suppliers and/or licensors in any manner whatsoever, without prior written approval by iTouch Vision or Abavus, as appropriate.

6 CONFIDENTIAL/PROPRIETARY INFORMATION AND DATA PROTECTION

6.1 Restrictions. The parties acknowledge that, in the course of their dealings, each party may acquire Confidential Information (as defined in Section 6.2 below) of the other party. Neither party shall use or disclose any Confidential Information of the other party except as permitted by or in furtherance of the purposes of this Agreement. Confidential Information of a party will be maintained under secure conditions by the other party using reasonable security measures and in any event not less than the same security measures used by the receiving party for the protection of its own Confidential Information of a similar kind.

6.2 Definition of Confidential/Proprietary Information. As used herein, "**Confidential Information**" means trade secrets, the Customer Data, the Service and other non-public information of or concerning such party or its business, products, or services. With the exception of Customer Data, information will be considered to be Confidential Information if it (a) is marked as confidential, proprietary, or the equivalent, (b) is identified by the disclosing party as confidential or proprietary before, during, or promptly after the presentation, communication, or other disclosure thereof, or (c) reasonably should be understood to be confidential or proprietary based on the circumstances surrounding disclosure and/or the manner such information is treated in the industry. Notwithstanding the foregoing, information shall not be considered to be Confidential Information to the extent that it (i) is already known to the receiving party on a non-confidential basis at the time it is first obtained from the disclosing party, (ii) is or becomes publicly known through no wrongful act of the receiving party, (iii) is rightfully received by the receiving party from a third party without restriction on use or disclosure, or (iv) was independently developed by the receiving party without the use of any Confidential Information of the disclosing party.

6.3 Compelled Disclosure. If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it shall provide the disclosing party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at disclosing party's cost, if the disclosing party wishes to contest the disclosure.

6.4 Remedies. If the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing party in breach of this Section 6, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

6.5 Data Protection. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer Controller is the Controller and the Supplier (Abavus and iTouch Vision) is the Processor unless otherwise specified. The only processing that the Processor is authorised to do is in relation to the delivery of the Service.

6.5.1 The Processor shall notify the Controller immediately if it considers that any of the Buyer's instructions infringe the Data Protection Legislation.

6.5.2 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

6.5.3 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this contract:

- (a) process that Personal Data only in accordance with delivery of the Service, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this contract (and in particular delivery of the Service);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Call Off Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by Law to retain the Personal Data.
- 6.5.4 Subject to Clause 6.5.6, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 6.5.5 The Processor's obligation to notify under Clause 6.5.4 shall include the provision of further information to the Controller in phases, as details become available.
- 6.5.6 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 6.5.4 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 6.5.7 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 6.5.8 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 6.5.9 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 6.5.10 Before allowing any Sub-processor to process any Personal Data related to this contract, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this contract such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

6.5.11. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

6.5.12 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract).

6.5.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier to amend this contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

7. FEES AND PAYMENT

7.1 Service Fees. Customer shall pay all User Subscriptions specified in all executed Purchase Authorisation Schedules hereunder and any other charges agreed between the parties. Except as otherwise provided, all amounts payable to Abavus under this Agreement are stated and shall be paid in Great British Pounds. User Subscriptions are based on the population governed by the Council. Abavus reserves the right to amend the User Subscriptions on 30 days written notice should the population change such that it would fall into a different price banding.

7.2 Payment. User Subscriptions will be invoiced in advance or as they become known or otherwise in accordance with the terms set forth in the relevant Purchase Authorisation Schedule. Unless otherwise stated in the Purchase Authorisation Schedule, all invoices are due net thirty (30) days from the invoice date. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify Abavus in writing of its objection within ten (10) days from the date of Customer's receipt of the invoice, provide a detailed description of the reasons for the objection, and pay the portion of the invoice which is not in dispute. Any undisputed amounts not paid within the period set forth above shall bear interest at a rate equal to the lower of ten percent (10%) per annum or the maximum rate of interest allowable under applicable law. All costs incurred for outside collection and related bank charges of overdue debts shall be paid by Customer. Prices are quoted exclusive of VAT and Customer shall pay any sales, use or other taxes of any nature, assessed upon or with respect to the Service which are imposed by any entity, but excluding taxes based on Abavus' net income.

7.4 Suspension of Service. If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, Abavus reserves the right upon ten (10) days prior written notice to Customer, to suspend the Service, and the provision of consulting and training services under any other agreement, without

liability to the Customer, until Customer pays all overdue amounts in full. Suspension of the Service shall not relieve Customer of its obligation to pay any fees for the Service or other amounts due to Abavus nor shall it extend the Subscription Term.

8. LIMITED WARRANTY

8.1 Authority and Performance. Each party represents and warrants that (i) it has the legal right and authority to enter into this Agreement and perform its obligations under this Agreement, and (ii) the performance of its obligations and its use of the Service will not violate any applicable laws, regulations, or cause a breach of any agreements with any third parties.

8.2 Warranty. Abavus warrants that (i) the Service will operate in all material respects at least in accordance with the applicable Feature Listing as of the Subscription Start Date, and (ii) the Service will be available to customers for normal use for at least 99% of the time each quarter, excluding any downtime during a Standard Maintenance Window. In the event of any breach of the warranties under this Section 8.2, then subject to the remainder of this Section 8.2, Abavus' sole and exclusive responsibility shall be for Abavus to make all reasonable efforts to have any reported failure of the Service causing a breach of this warranty corrected as soon as practical. However, if within 10 business days, such defects are not corrected, then Customer's sole and exclusive remedy shall be to terminate this Agreement and to receive a refund of the prepaid fees. NO OTHER REMEDIES SHALL BE AVAILABLE TO CUSTOMER FOR BREACH OF WARRANTIES UNDER THIS SECTION 8.2.

8.3 Disclaimer Of All Other Warranties. THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND ABAVUS DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICE, WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT ABAVUS KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), OR NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

9.1 Direct Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR LIABILITY ARISING FROM SECTIONS 6.1, 10.1 and 10.2, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY FOR ANY BREACH OR DEFAULT UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY BREACH OF ANY WARRANTY GIVEN BY ABAVUS UNDER THIS AGREEMENT) SHALL BE LIMITED TO THE AMOUNT OF SUCH PARTY'S DIRECT DAMAGES RESULTING FROM SUCH BREACH OR DEFAULT, NOT TO EXCEED THE AMOUNTS PAID TO ABAVUS BY CUSTOMER WITHIN THE LAST TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE OR IF THE AGREEMENT HAS BEEN RUNNING FOR LESS THAN 12 MONTHS, THEN THE ANNUALISED EQUIVALENT. WHERE CUSTOMER HAS A LIABILITY TO ABAVUS, THIS LIMITATION SHALL BE IN ADDITION TO ANY SUMS ALREADY INVOICED AND DUE TO ABAVUS.

9.2 Indirect Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFITS OR FAILURE TO REALISE SAVINGS OR OTHER BENEFITS) ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT OR THE OPERATION OR USE OF THE SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.

9.3 Limitation of Action. Except for actions for nonpayment or liability arising from Section 10, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued.

9.4 Exclusion from Liability Limitation. Notwithstanding anything within this Agreement, neither party's liability: (a) for death or personal injury caused by its negligence or the negligence of its employees or agents; (b) for fraudulent misrepresentation; or (c) for any action that may not be excluded or limited by applicable law; is excluded or limited by this Agreement.

10. INDEMNIFICATION

10.1 Indemnification by Customer. Subject to the provisions of Section 10.3, Customer shall indemnify, defend and hold harmless Abavus, iTouch Vision and its hosting provider, and any director, officer or employee thereof, against all costs, liabilities, losses and expenses (including, but not limited to, reasonable attorneys' fees) arising from any claim, suit, action, or proceeding (each, an "**Action**") brought by any third party against Abavus, iTouch Vision and the hosting provider of the Service (if different) arising from Customer's use of the Service contrary to the terms of this Agreement or any applicable law.

10.2 Indemnification by Abavus Subject to the provisions of Section 10.3, Abavus shall indemnify, defend, and hold harmless Customer against any Action brought against Customer by a third party to the extent that the Action is based upon a claim that Customer's use of the Service in accordance with the terms of this Agreement infringes any copyright or patent in the European Union or misappropriates any trade secret, and Abavus will pay those costs and damages finally awarded against Customer in any such Action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such Action made by Abavus. If the Service becomes, or in Abavus' opinion is likely to become, the subject of an infringement or misappropriation claim, Abavus may, at its option and expense, either: (i) procure for Customer the right to continue using the Service, (ii) replace or modify the Service so that it becomes non-infringing (provided any such replacement or modification does not materially degrade the Service's functionality), or (iii) if (i) or (ii) are not commercially practicable despite Abavus using commercially reasonable efforts, terminate this Agreement and pay to customer a sum equal to the total of any fees which Customer has paid to Abavus during the twelve months prior to Abavus' first notification to Customer that the Software may become subject to an infringement or misappropriation claim. Abavus' obligations under this Section 10.2 shall constitute its only obligations in the event that any claim or action is brought against Abavus alleging that the Software infringes, misappropriates, or otherwise violates the rights of any third party.

10.3 Notification and Cooperation. The obligations under this Section 10 are conditioned on: (a) the indemnified party notifying the indemnifying party promptly in writing of the commencement of any Action, (b) the indemnified party giving the indemnifying party sole control of the defence thereof and any related settlement negotiations, and (c) the indemnified party cooperating with the indemnifying party in such defence.

11. GENERAL

11.1 Miscellaneous. To the extent that any provision of this Agreement is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, it shall be severed from this Agreement, and the remaining provisions shall remain in full force and effect. No failure or delay by either party to exercise any right or remedy specified herein shall be construed as a current or future waiver of such remedy or right, unless said waiver is in writing signed by a duly authorised representative of the party issuing such waiver.

11.2 Assignment. This Agreement is binding upon the parties respective representatives, successors, and assigns; provided, however, neither party shall assign this Agreement without the prior written consent of the other party not to be unreasonably withheld or delayed. Notwithstanding the foregoing, either party shall be permitted to assign this Agreement upon thirty (30) days prior written notice in the event of change of control, corporate reorganisation, merger, acquisition or, divestiture of all or substantially all of such party's assets.

11.3 Notices. Any written notice required to be given to a party under this Agreement shall be given by personal delivery to such party, or mailed by registered or certified mail, return receipt requested, postage prepaid, or shipped by a nationally-recognised carrier, shipping prepaid, to such party at such party's address set forth at the beginning of this Agreement, or as subsequently notified in writing.

11.4 Governing Law and Jurisdiction. This Agreement will be interpreted and construed in accordance with the laws of England and Wales and any legal action resulting from any dispute shall be heard in a court in England.

11.5 Force Majeure. Except for the obligation to make payments, neither party shall be liable for delays or breaches in its performance under this Agreement due to causes beyond its reasonable control, such as acts of vendors, acts of god, acts or omissions of civil or military authority, government priorities, fire, earthquakes, strikes or other labour problems, floods, epidemics, quarantine restrictions, riots, war, acts of terror, computer or telecommunications failures over which neither iTouch Vision nor its service providers have control, network intrusions or denial of service attacks and delays of transportation ("**Force Majeure**").

11.6 Entire Agreement. This Agreement, including all schedules and addenda hereto, along with all Purchase Authorisation Schedules executed hereunder, constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals or representations, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Any modification of the provisions of this Agreement will be effective only if in writing and signed by the party against whom it is to be enforced. If any of the terms or conditions of this Agreement conflict with any of the terms or conditions of any Schedule, then, unless otherwise provided herein, the terms and conditions of such Schedule will control solely with respect to the services covered by such Schedule.

11.6 Counterparts. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

* * *

Executed by the parties hereto as an instrument under seal effective as of the Effective Date.

Abavus Ltd.

<<Customer>>.

Signature Date

Signature Date

Name Title

Name Title