

TERMS AND CONDITIONS

Airbox Systems Ltd

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SCHEDULE

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Airbox Terms and Conditions

Agreed terms

1. Interpretation

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

- 1 **Account:** means an account enabling a person to access and use the Services, including both administrator accounts and user accounts;
- 2 **Affiliate:** includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.
- 3 **Agreement:** means these Terms and Conditions, including the Order Form and any attached Schedules.
- 4 **Airbox Software:** means the mobile, desktop and web applications, application programming interfaces, databases, system and server software produced by Airbox in object code format and as further specified in the Order Form or otherwise in writing by the parties together with any Customisation, Upgrade or Update applied to such software from time to time under this Agreement and where the context allows, includes the Device Software;
- 5 **Airbox:** means AIRBOX SYSTEMS LIMITED, a company incorporated in England and Wales (registration number 06534784) having its registered office at Unit 4, The Quadrangle, Grove Business Park, Wantage, Oxfordshire, England, OX12 9FA;
- 6 **Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.
- 7 **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business, or Airbox's Christmas shutdown period (normally the period beginning on Christmas Eve and ending on the 2 January)
- 8 **Business Hours:** the period 09:00 to 17:00 GMT/BST on any Business Day.
- 9 **Confidential Information:** all Confidential Information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.
- 10 **Customer Users:** Customer employees, agents and other permitted individuals utilising the Services.
- 11 **Customer:** means the person or entity as identified in the Order Form which purchases Services from Airbox.
- 12 **Customer Data:** means all data, works and materials uploaded to or stored on the Airbox Software, transmitted by or at the instigation of the Customer; or generated as a result of the use of Services by the Customer (but excluding analytics data relating to the use of the Services and server log files);
- 13 **Customer Personal Data:** means any Personal Data that is processed by Airbox on behalf of the Customer in relation to this Agreement
- 14 **Customer Systems:** means the hardware, software, network, infrastructure and other information technology systems of the Customer upon which the Airbox Software is installed or with which the Airbox Software does or may reasonably be expected to interact
- 15 **Customisation:** means a customisation of the Airbox Software, whether made through the development, configuration or integration of software, or otherwise, including amendments, alterations or features added to the Airbox Software and created by or on behalf of Airbox
- 16 **Data Protection Legislation:**

16a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

16b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the party is subject, which relates to the protection of personal data.

- 17 **Device Software:** means the mobile or other device applications known as MOSAIC, ACANS, Mission Control or such others that are made available by Airbox directly to the Customer or through an App Store;
- 18 **Documentation:** means the documentation for the Airbox Software produced by Airbox and delivered or made available by Airbox to the Customer;
- 19 **EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).
- 20 **Export Control Laws:** means all applicable laws restricting and/or regulating:
- 20a) the inter-jurisdictional import, export, supply, disclosure, transfer or transmission of goods, services, software, technology, technical know-how, data and/or information; and/or
- 20b) the import, export, supply, disclosure, transfer or transmission of goods, services, software, technology, technical know-how, data and/or information to designated entities or persons, or to designated classes of entities or persons;
- 21 **Fee:** the licence fee payable by the Customer to Airbox in the Order Form.
- 22 **Maintenance Services:** means the supply to the Customer and/or application to the Airbox Software of Updates and Upgrades and/or the general maintenance of the Airbox Software as set out in Schedule 2.
- 23 **Managed Service:** the hosting by Airbox of the Airbox Software and provision of the functionality of the Airbox Software as a service via the internet, and as further specified in the Order Form or agreed in writing by the parties in accordance this Agreement.
- 24 **Representative:** means the person or persons identified as such in the Order Form or otherwise by the relevant party in writing, and any additional or replacement persons that may be appointed by the relevant party by giving to the other party written notice of the appointment;
- 25 **Supported Web Browser:** means the current release from time to time of the most commonly used browser software as designated by Airbox from time to time;
- 26 **Third Party Services:** means any software, hardware, hosted, cloud or other services provided by any third party that may transmit data to and/or from the Airbox Software;
- 27 **Update:** means a hotfix, patch or minor version update to any relevant software;
- 28 **Upgrade:** means a major version upgrade of any relevant software and/or hardware.
- App Store:** means the online sales and distribution platform operated by Google, Apple and/or Microsoft by means of which the Customer may obtain the Device Software;
- 29 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
- 30 **Maintenance Release:** any release of the Airbox Software that corrects faults, adds functionality or otherwise amends or upgrades the Airbox Software, but which does not constitute a New Version.
- 31 **New Version:** any new version of the Airbox Software which from time to time is publicly marketed and offered for purchase by Airbox in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.
- 32 **Order Form:** means the Order Form signed by both Parties

- 33 **Services:** the Airbox Software, the Managed Service, the Maintenance Services, the Support Services, and any other Services provided by Airbox to the Customer as outlined in this Agreement and any applicable Order Form.
- 34 **Source Code Materials:** the source code of the Airbox Software, and all technical information and documentation required to enable the Customer to modify and operate it.

Term: means the Term of this Agreement as outlined in the Order Form.

- 35 **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.4 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) a reference to one gender shall include a reference to the other genders; and
- (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.6 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.7 A reference to writing or written excludes fax but not email.

2. Delivery, acceptance and installation

2.1 During the Term Airbox shall supply the Services to the Customer and the Customer shall pay the Fee and use the Services outlined in this Agreement and the Order Form.

2.2 Airbox shall create an Account for the Customer and will provide to the Customer, log in details for that Account on or promptly following the Commencement Date.

2.3 The Services will be deemed to have been accepted if the Customer commences using the Airbox Software in a live operational environment, or five (5) Business Days from the date of first access – whichever is earlier.

- 2.4 The Customer acknowledges that provision of the Services may require installation of the Device Software on user devices or through (if set out in the Order Form) a Supported Web Browser.

3. Licence

- 3.1 In consideration of the Fee paid by the Customer to Airbox and subject to the restrictions set out in this Agreement and the other terms and conditions of this Agreement, Airbox hereby grants to the Customer a non-exclusive, non-transferable, revocable right and license to use the Services and Airbox Software for the Term of this Agreement commencing on Commencement Date.
- 3.2 Airbox shall supply the Services to the Customer and provide such assistance in relation to the supply of the Services as specified in the Order Form or agreed by the parties in writing.
- 3.3 In relation to scope of use:
- (a) The rights granted to the Customer under clause 3.3 must not be exercised for any purpose except the Customer's internal business purposes.
 - (b) The Customer may not use the Services or Documentation other than as specified in this Agreement, and the Customer acknowledges that additional fees may be payable on any change of use approved by Airbox.
 - (c) The Customer must not use the Service to store or transmit any malicious code, malware, attack, bugs, viruses, Trojans or similar.
 - (d) The Customer must not use any machine learning or artificial intelligence system in relation to the output of the Airbox Software.
 - (e) The Customer must not conduct or request that any other person conduct load testing or penetration testing on Airbox Software without the prior written consent of Airbox.
 - (f) Except as expressly stated in this 3, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Airbox Software in whole or in part except to the extent that any reduction of the Airbox Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Airbox Software with the operation of other software or systems used by the Customer, unless Airbox is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Airbox to carry out such action or to provide such information (and shall meet Airbox's reasonable costs in providing that information) before undertaking any such reduction.
 - (g) The Customer may not use any such information provided by Airbox or obtained by the Customer during any such reduction permitted under 3.3(f) to create any software whose expression is substantially similar to that of the Airbox Software or the Services nor use such information in any manner which would be restricted by any copyright subsisting in it.

4. Customer Obligations

- 4.1 The Customer shall be solely responsible for:
- (a) familiarising itself with the functionality of the Airbox Software;
 - (b) ensuring that the Airbox Software meets the Customer's requirements;
 - (c) for its use of the Airbox Software and its features, including any training in relation to the use of the Airbox Software of all persons using the Airbox Software with the authority of the Customer.

4.2 The Customer shall not:

- (a) sub-license, assign, sell, resell, distribute, rent, lease, lend or novate the benefit or burden of the licence or Airbox Software in whole or in part without the prior written consent of Airbox;
- (b) allow the Airbox Software to become the subject of any charge, lien or encumbrance;
- (c) use the Software or Services to provide a product or service that is in any way competitive with the Airbox Software or Services;
- (d) deal in any other manner with any or all of its rights and obligations under this Agreement;
- (e) conduct or request that any other person conduct any security testing or penetration testing on the Airbox Software without Airbox's written consent;
- (f) republish or redistribute any content or material from the Airbox Software;
- (g) attempt to gain unauthorized access to the Airbox Software or their related systems or networks.
- (h) use the Airbox Software to store or transmit any malicious code, malware, attack, bugs, viruses, Trojans or similar; or
- (i) use the Airbox Software in any way that causes, or may cause, damage to the Airbox Software or impairment of availability, integrity, performance or accessibility of the Airbox Software (including making an unreasonable number of requests to the Airbox Software or otherwise placing an unreasonable load upon the Airbox Software).

4.3 The Customer shall:

- (a) ensure that the Services are not used at any point in time by more than the number of persons corresponding to the number of user licences purchased by the Customer as set out in an Order Form;
- (b) ensure that the Airbox Software is installed on designated equipment only;
- (c) ensure that the Services and Documentation may only be used by the officers, employees, agents and subcontractors of the Customer; and not permit unauthorised access to or use of the Airbox Software, Services or Documentation;
- (d) keep a complete and accurate record of the Customer's copying and disclosure of the Airbox Software and its users, and produce such record to Airbox on request from time to time;
- (e) notify Airbox as soon as it becomes aware of any unauthorised use of the Services and Documentation by any person;
- (f) pay for broadening the scope of the licences granted under this licence to cover any unauthorised use, an amount equal to the fees which Airbox would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in 8.3, from such date to the date of payment.
- (g) use the Services and Documentation only in accordance with this Agreement, and all Applicable Laws and government regulations that apply to Customer and Customer's use of the Airbox Software or Airbox Software.
- (h) educate Customer Users of the obligations contained in this Agreement and be responsible for its and its Customer Users' compliance with this Agreement.
- (i) use reasonable endeavours, including reasonable security measures relating to Account access details and installation of Updates and Upgrades, to ensure that no unauthorised person may gain access to the Managed Service using an Account.

4.4 Nothing in this Agreement shall give to the Customer or any other person any right to access or use the Airbox Software source code or constitute any licence of the Airbox Software source.

- 4.5 The Customer must ensure that all persons using the Services with the authority of the Customer are familiar with the functionality of the Airbox Software including any acknowledgements and limitations specified in this Agreement.
- 4.6 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to Airbox, or procure for Airbox, such:
- (a) co-operation, support and advice (including as reasonably required by Airbox from vendors of third party services or the Customer Systems);
 - (b) such access to the Customer Systems and premises including any security clearances, visas and other accreditations;
 - (c) information and documentation; and
 - (d) governmental, legal and regulatory licences, consents and permits,
- as are reasonably necessary to enable Airbox to perform its obligations under this Agreement.
- 4.7 The Customer must perform or meet any other dependencies or requirements expressed to be the Customer's responsibility in the Order Form.
- 4.8 The Customer shall be responsible for the accuracy, quality and legality of the Customer Data and the means by which the Customer acquires the Customer Data.
- 4.9 The Customer hereby grants to Airbox a non-exclusive licence to use, copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of Airbox's obligations and the exercise of Airbox's rights under this Agreement. The Customer also grants to Airbox the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
- 4.10 The Customer warrants to Airbox that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

5. Audit

- 5.1 The Customer may permit Airbox or the Airbox's appointed representative to audit the Services in order to establish ascertain whether the Customer is complying with the licences granted under or in relation to this Agreement.
- 5.2 Airbox shall provides the Customer with at least 10 Business Days' written notice of an audit under this clause 5.
- 5.3 The Customer shall provide to Airbox all such co-operation as Airbox may reasonably request in relation the audit.
- 5.4 Any audit under this clause 5 shall be at the cost of Airbox unless the audit demonstrates that the Customer has breached the terms of any licence under this Agreement, in which case the Customer shall pay to Airbox the reasonable costs of the audit.
- 5.5 If the audit referred to in this clause 5 reveals that the Customer has underpaid the Fees to Airbox, then without prejudice to Airboxes rights, the Customer shall pay to Airbox an amount equal to such underpayment as calculated in accordance with the prices set out in the relevant Order Form within 10 Business Days of the date of the relevant audit.

- 5.6 Not more than 1 audit under this clause 5 may be conducted within any 12 month period unless Airbox reasonably suspects that the Customer is in breach of the terms of any licence under this Agreement in which case Airbox may conduct additional audits.

6. Availability

- 6.1 In this clause 6, "uptime" means the percentage of time during a given period when the Services are available at the gateway between public internet and the network of the hosting services provider for the Managed Service.
- 6.2 Airbox shall use reasonable endeavours to ensure that the uptime for the Managed Service is at least 99.9% during each calendar month.
- 6.3 Airbox shall be responsible for measuring uptime, and shall do so using any reasonable methodology.
- 6.4 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether Airbox has met the uptime guarantee given in Paragraph 2.1:
- (a) a Force Majeure Event as outlined in clause 27;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of Airbox's hosting infrastructure services provider, unless such fault or failure constitutes an actionable breach of the contract between Airbox and that company;
 - (d) a fault or failure of the Customer's computer systems or networks;
 - (e) any breach by the Customer of this Agreement; or
 - (f) scheduled or emergency maintenance carried out in accordance with this Agreement.

7. Maintenance Services and Support Services

- 7.1 Airbox shall provide the Maintenance Services and the Support Services to the Customer during the Term.
- 7.2 Airbox shall:
- (a) provide the Maintenance Services and the Support Services with reasonable skill and care.
 - (b) Airbox shall provide the Maintenance Services in accordance with Schedule 2 (Maintenance Schedule) and the Support Services in accordance with Schedule 3 (Support Schedule).
- 7.3 Airbox may suspend the provision of the Maintenance Services or the Support Services if any amount due to be paid by the Customer to Airbox under this Agreement is overdue, and Airbox has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services or the Support Services on this basis.

8. Fee

- 8.1 The Customer shall pay to Airbox the Fee as at the intervals specified on the Order Form. Where such intervals are not specified, the Customer shall pay to Airbox the Fee yearly in advance upon signature of this Agreement. The Customer must pay the Fee to Airbox within the period of 30 days following the issue of an invoice in accordance with this clause 8.
- 8.2 All payments made by the Customer under this Agreement are exclusive of VAT. Airbox shall provide the Customer with a valid VAT invoice. The Customer shall pay any stamp duties or similar transfer taxes imposed on the supplies

made under this Agreement and shall reimburse Airbox for any such stamp duties or similar transfer taxes paid by Airbox. All sums payable under this Agreement are exclusive of VAT or any relevant local sales taxes, for which the Customer shall be responsible. If the Customer is required to make any deduction for or on account of tax from any payment due under this Agreement (**Tax Deduction**):

- (a) The Customer shall account to the relevant tax authority for such Tax Deduction and shall provide evidence to Airbox that it has so accounted.
- (b) The amount of the payment due under this Agreement shall be increased so that Airbox receives an amount equal to the amount that would have been received by it, had the Customer not been required to make any Tax Deduction.

The Customer and Airbox shall co-operate to minimise the amount of any Tax Deduction. If following the making of a Tax Deduction, Airbox determines in its sole discretion/ acting in good faith that it (or any member of Airbox's group) has received and retained any credit, relief or other benefit as a result of the Tax Deduction, Airbox shall pay such amount to the Customer as Airbox determines in its sole discretion/ acting in good faith would leave Airbox in the same position as if the Customer had not been required to make any Tax Deduction.

- 8.3 If the Customer fails to make any payment due to Airbox under this Agreement by the due date for payment, then, without limiting Airbox's remedies under 18, the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.4 Airbox may increase the Fee on an annual basis with effect from each anniversary of the date of this Agreement in the amount of 8%, and the first such increase shall take effect on the first anniversary of the date of this Agreement.

9. Confidentiality and publicity

- 9.1 Each party undertakes that it shall not at any time, disclose to any person any Confidential Information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by 9.2.
- 9.2 Each party may disclose the other party's Confidential Information:
 - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 9.4 Neither party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 9.5 The Customer grants to Airbox a non-exclusive license during the Term to use the Customer's name, trade marks and branding for building case studies or for use in its proposals and other public marketing campaigns or collateral.

10. Export Control Laws

- 10.1 The Customer acknowledges that materials and/or information supplied to the Customer under this Agreement may be subject to the Export Laws.
- 10.2 The Customer must comply with the Export Laws insofar as they affect materials and information supplied to the Customer under this Agreement.
- 10.3 Without prejudice to the generality of clause 10.2, the Customer:
- (a) must not import, export, supply, disclose, transfer or transmit any materials or information supplied to the Customer under this Agreement if such import, export, supply, disclosure, transfer or transmission would contravene any embargo or exclusion list applying under the Export Control Laws; and
 - (b) must, where applicable, obtain all licences and consents required under the Export Control Laws for any import, export, supply, disclosure, transfer or transmission by or on behalf of the Customer of materials or information supplied to the Customer under this Agreement.
- 10.4 Each party undertakes if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

11. Integrations with Third Party Services

- 11.1 The Customer acknowledges that the Airbox Software will be integrated with Third Party Services. Airbox may integrate additional Third Party Services with the Airbox Software at any time.
- 11.2 Airbox may remove, suspend, limit or replace any Third Party Services at any time:
- (a) where Airbox reasonably believes that integration with such Third Party Services is or may be compromising the security, safety or stability of the Airbox Software; or
 - (b) where such removal, suspension, limitation or replacement does not have a material impact on the provision of the Airbox Software by Airbox to the Customer or on the functionality of the Airbox Software (unless such Third Party Service has been integrated on the Customer's request as a Customisation in which case any such removal, suspension, limitation or replacement shall require the Customer's consent); or
 - (c) where there has been a material change to the Third Party Services which in Airbox's sole discretion makes it unsuitable for continued inclusion in the Airbox Software; or
 - (d) where for strategic business or operational reasons Airbox has decided to cease supporting such Third Party Service (in which case Airbox will use reasonable endeavours to provide the Customer with reasonable notice of such decision).
- 11.3 Where the Airbox Software is integrated with the Third Party Services on request of the Customer as a Customisation, the supply of Third Party Services shall be under a separate Contract or arrangement between the Customer and the relevant third party unless otherwise agreed between the parties in writing. Where the supply of Third Party Services is under such separate Contract, Airbox does not Contract to supply the Third Party Services and is not a party to any Contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third Party Services.
- 11.4 The Customer acknowledges that:

- (a) the integration of Third Party Services may entail the transfer of Customer Data from the Airbox Software to the relevant Third Party Services; and
 - (b) where the supply of the Third Party Services is under a separate Contract between the Customer and provider of Third Party Services, Airbox has no control over, or responsibility in respect of, any disclosure, modification, deletion or other use of Customer Data resulting from any integration with any Third Party Services.
- 11.5 Without prejudice to its other obligations under this clause 11, where the supply of the Third Party Services is under a separate Contract as described in clause 11.3, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:
 - (a) the transfer of relevant Customer Personal Data to a provider of Third Party Services is lawful; and
 - (b) the use of relevant Customer Personal Data by a provider of Third Party Services is lawful.
- 11.6 The use of some features of the Airbox Software may depend upon the Customer enabling and agreeing to integrations between the Airbox Software and Third Party Services.
- 11.7 The Customer warrants to Airbox that the transfer of Customer Data by Airbox to a provider of Third Party Services in accordance with this clause 11 will not infringe any person's legal or contractual rights and will not put Airbox in breach of any Applicable Laws.
- 11.8 Additional Charges may be payable by the Customer to Airbox in respect of a Third Party Services integration, as set out in the Order Form or otherwise agreed between the parties in writing.
- 11.9 Save to the extent that the parties expressly agree otherwise in writing:
 - (a) Airbox gives no warranties or representations in respect of any Third Party Services; and
 - (b) Airbox shall not be liable to the Customer in respect of any loss or damage that may be caused by any Third Party Services or any provider of Third Party Services.

12. Device Software

- 12.1 Where provision of the Device Software forms part of the Services, Airbox shall make a master copy of the Device Software available directly to the Customer to install on user's devices itself or through its own app store or through the App Store or other delivery mechanism as deemed appropriate by Airbox.
- 12.2 The Customer may not sub-license and must not purport to sub-license any rights granted under clause 12.2 without the prior written consent of Airbox (save that the Customer may allow individual contractors or consultants to use the Device Software provided they are an authorised user).
- 12.3 Save to the extent expressly permitted by this Agreement or required by applicable law on a non-excludable basis, any licence granted under this clause 12 shall be subject to the following prohibitions:
 - (a) the Customer must not use the Device Software for any purpose other than accessing and using the Airbox Software and must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Device Software;
 - (b) the Customer must not alter, edit or adapt the Device Software; and
 - (c) the Customer must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Device Software.
- 12.4 The Customer shall ensure that any users of the Device Software comply with this Agreement.

13. Warranties

13.1 Airbox warrants to the Customer that:

- (a) the Airbox Software and, where applicable, the Services will conform in all material respects with the details outlined in the Order Form;
- (b) where applicable, the Services will incorporate security features reflecting the requirements of good industry practice.
- (c) the Airbox Software, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- (d) the Airbox Software, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

13.2 The Customer warrants to Airbox that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

13.3 The Customer acknowledges:

- (a) that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, Airbox gives no warranty or representation that the Airbox Software will be wholly free from defects, errors and bugs.
- (b) the Airbox Software is designed to be compatible only with the versions of that software and those systems specified as compatible in the Order Form or in writing by Airbox to the Customer; and Airbox does not warrant or represent that the Airbox Software will be compatible with any other software or systems.
- (c) the Airbox Software is not designed as a safety or mission critical system and should not be treated or relied upon as such. The tools, features and information provided through the Airbox Software are provided as an aid to decision making only and should not be used as the only tool or input in making strategic or tactical decisions as to how, where and when to direct or instruct personnel or resources. The Airbox Software must be used within the context of a wider system and process and must not be used as a substitute for the users of the Airbox Software using their own sound judgement.
- (d) that any Third Party Services which the Customer has requested to be integrated with Airbox Software (including overlays) may cause instability to the Airbox Software outside of Airbox's control.
- (e) that a failure or delay in the Customer performing its obligations or dependencies under this Agreement may result in a delay in the performance of the Services or an increase in costs for Airbox to perform the Services, Airbox will not be liable to the Customer in respect of any failure to meet any timetable to the extent that that failure arises out of a delay in the Customer performing its obligations or dependencies under this Agreement. In such event, Airbox may by notice to the Customer adjust the Charges and any agreed timetable or delivery schedule as reasonably necessary without liability.
- (f) the Customer is solely responsible for ensuring adequate set up and use of the Airbox Software and Third Party Software and features. Airbox shall not be liable for any loss or damage arising from the Customer's incorrect or improper use of the Airbox Software and any Third Party Software and features.

13.4 The Customer hereby acknowledges and agrees that the use of the Airbox Software provided by Airbox is expressly prohibited in connection with updating or developing software embedded in military weapons systems without prior written approval from Airbox. Any such usage without explicit written consent shall constitute a material

breach of this Agreement. The Customer undertakes to seek and obtain written approval from Airbox before engaging in any activities related to military weapons systems, and failure to do so will result in the termination of this Agreement.

- 13.5 In the event that the Customer seeks and obtains written approval from Airbox for the use of the Airbox Software in relation to updating or developing software embedded in military weapons systems, the Customer agrees to bear all costs associated with obtaining a standard individual export license required for such activities.
- 13.6 The Customer accepts responsibility for the selection of the Airbox Software to achieve its intended results and acknowledges that the Airbox Software has not been developed to meet the individual requirements of the Customer.
- 13.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded save for those expressly outlined within this Agreement. This includes the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

14. Limits of liability

14.1 Except as expressly stated in 14.2:

- (a) Airbox shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (i) special damage even if Airbox was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;
 - (iii) loss of anticipated savings;
 - (iv) loss of business opportunity;
 - (v) loss of goodwill;
 - (vi) loss or corruption of data;
 - (vii) wasted expenditure,

provided that this 14.1(a) shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of 14.1(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this 14.1(a);

- (b) the total liability of Airbox, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the total amount paid by the Customer to Airbox, excluding the costs of any engineering work, under the Agreement in the 12 months preceding the commencement of the event(s) giving rise to the liability; and
- (c) the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Airbox shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

- 14.2 The exclusions in 13.7 and 14.1 shall apply to the fullest extent permissible at law, but Airbox does not exclude liability for:
- (a) death or personal injury caused by the negligence of Airbox, its officers, employees, contractors or agents;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Airbox Software Act 1982; or
 - (d) any other liability which may not be excluded by law.
- 14.3 All dates supplied by Airbox for the delivery of the Airbox Software or the provision of Airbox Software shall be treated as approximate only. Airbox shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 14.4 All references to "Airbox" in this 14 shall, for the purposes of this clause and 25 only, be treated as including all employees, subcontractors and suppliers of Airbox and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with 25.
- 15. Data protection**
- 15.1 For the purposes of this 15, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 15.2 Each party warrants that for the purposes of this Agreement, it shall comply with the provisions of the Data Protection Legislation, including without limitation that it shall use Personal Data in accordance with the permissions or consents obtained from the data subjects (as defined in the Data Protection Legislation) or otherwise in accordance with the Data Protection Legislation.
- 15.3 The Customer shall use its best endeavours to ensure that its users do not provide Personal Data when using the Airbox Software.
- 15.4 The Parties acknowledge that for the purposes of Personal Data and the Data Protection Legislation, Airbox is the Data Processor and the Customer is the Data Controller.
- 15.5 Without prejudice to the generality of clause 15.1, the Customer warrants that has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data into the Airbox Software for the duration of this license. The Customer shall indemnify and hold Airbox harmless from any cost, charge, damages, expense or loss which is caused as a result of the breach of the provisions under this clause 15.
- 15.6 Airbox shall only process the Customer Personal Data:
- (a) for the purposes specified in Part 3 of Schedule 4 (Data processing information).
 - (b) during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this clause 15.
 - (c) on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws), as set out in this Agreement or any other document agreed by the parties in writing.
- 15.7 The Customer hereby authorises Airbox to make the following transfers of Customer Personal Data:
- (a) Airbox may transfer the Customer Personal Data internally to its own employees, offices and facilities

outside of the EEA or UK in the Customer's own jurisdictions or otherwise to the extent necessary to provide the Airbox Software and perform the Services, providing that such transfers must be protected by appropriate safeguards.;

- (b) Airbox may transfer the Customer Personal Data to its sub-processors identified in Part 4 of Schedule 4 (Data processing information), providing that such transfers must be protected by any appropriate safeguards identified therein; and
- (c) Airbox may transfer the Customer Personal Data to a country, a territory or sector to the extent that the competent data protection authorities have decided that the country, territory or sector ensures an adequate level of protection for Personal Data.

15.8 Airbox shall promptly inform the Customer if, in the opinion of Airbox, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

15.9 Notwithstanding any other provision of this Agreement, Airbox may process the Customer Personal Data if and to the extent that Airbox is required to do so by applicable law. In such a case, Airbox shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

15.10 Airbox shall:

- (a) ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- (b) implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- (c) insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- (d) Reasonably assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. Airbox may charge the Customer at its standard time-based charging rates for any work performed by Airbox at the request of the Customer pursuant to this clause 15.9(d).
- (e) notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after Airbox becomes aware of the breach.
- (f) make available to the Customer all information necessary to demonstrate the compliance of Airbox with its obligations under this clause 15 and the Data Protection Legislation. Airbox may charge the Customer at its standard time-based charging rates for any work performed by Airbox at the request of the Customer pursuant to this clause 15.9(f), providing that no such charges shall be levied with respect to the completion by Airbox (at the reasonable request of the Customer, not more than once per calendar year) of the standard information security questionnaire of the Customer.
- (g) at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent

that applicable law requires storage of the relevant Personal Data.

- (h) allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of Airbox's processing of Customer Personal Data with the Data Protection Laws and this clause 15. Airbox may charge the Customer at its standard time-based charging rates for any work performed by Airbox at the request of the Customer pursuant to this clause 15.9(h), providing that no such charges shall be levied where the request to perform the work arises out of any breach by Airbox of this Agreement or any security breach affecting the systems of Airbox.
- (i) Not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, Airbox shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then Airbox shall use reasonable endeavours to take the Customer's reasonable objections into account. Airbox shall ensure that each third party processor is subject to equivalent legal obligations as those imposed on Airbox by this clause 15.

15.11 As at the Commencement Date, Airbox is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties, and third parties within the categories, identified in Part 4 of Schedule 4 (Data processing information).

15.12 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

16. Non-solicitation of Personnel

16.1 In order to protect the legitimate business interests of Airbox, the Customer covenants with Airbox for itself and as agent for each of the Customers group companies (where applicable) that it shall not (and shall procure that no member of the Customer's group companies shall) except with the prior written consent of Airbox:

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away,

from the employment or service of Airbox the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of Airbox.

16.2 The Customer shall be bound by the covenant set out in 16.1 during the term of this Agreement, and for a period of 6 months after termination or expiry of this Agreement.

16.3 For the purposes of this clause 16, a **Restricted Person** shall mean any firm, company or person employed or engaged by Airbox during the term of this Agreement, who has been engaged in the provision of the Services or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

17. Intellectual Property Rights

17.1 The Customer acknowledges that all Intellectual Property Rights in the Airbox Software, Services and any Maintenance Releases belong and shall belong to Airbox and the Customer shall have no rights in or to the Airbox

Software, Services or Maintenance Releases other than the right to use the Services in accordance with the terms of this Agreement.

- 17.2 Airbox undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Airbox Software (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party (**Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, 17.2 shall not apply where the Claim in question is attributable to possession or use of the Airbox Software (or any part thereof) by the Customer other than in accordance with the terms of this Agreement, use of the Airbox Software in combination with any hardware or software not supplied or specified by Airbox if the infringement would have been avoided by the use of the Airbox Software not so combined, or use of a non-current release of the Airbox Software.
- 17.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Airbox's obligations under 17.2 are conditional on the Customer:
- (a) as soon as reasonably practicable, giving written notice of the Claim to Airbox, specifying the nature of the Claim in reasonable detail;
 - (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Airbox (such consent not to be unreasonably conditioned, withheld or delayed);
 - (c) giving Airbox and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Airbox and its professional advisers to examine them and to take copies (at Airbox's expense) for the purpose of assessing the Claim; and
 - (d) subject to Airbox providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as Airbox may reasonably request to avoid, dispute, compromise or defend the Claim.
- 17.4 If any Claim is made, or in Airbox's reasonable opinion is likely to be made, against the Customer, Airbox may at its sole option and expense:
- (a) procure for the Customer the right to continue to use the Airbox Software (or any part thereof) in accordance with the terms of this Agreement;
 - (b) modify the Airbox Software so that it ceases to be infringing;
 - (c) replace the Airbox Software with non-infringing software; or
 - (d) terminate this Agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Airbox Software to the date of termination) on return of the Airbox Software and all copies thereof,

provided that if Airbox modifies or replaces the Airbox Software, the modified or replacement Airbox Software must comply with the warranties contained in this Agreement and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Agreement been references to the date on which such modification or replacement was made.

- 17.5 Notwithstanding any other provision in this Agreement, 17.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Airbox Software or through the breach of any Third-Party Additional Terms by the Customer.

- 17.6 This clause 17 constitutes the Customer's exclusive remedy and Airbox's only liability in respect of Claims and, for the avoidance of doubt, is subject to 14.1.
- 17.7 The Customer hereby grants Airbox a worldwide, non-exclusive, perpetual, irrevocable, royalty free, fully paid up right and license to use, copy, modify, sell, publish, distribute, sub-license and create derivative works using any feedback provided in respect of the Airbox Software in any manner and for any purpose. Airbox may, in its sole discretion, and without compensation to or attribution of the Customer or any third party, use such feedback in any way, including in future modifications of the Airbox Software.
- 17.8 The Customer hereby grants to Airbox a worldwide, non-exclusive licence to use the Customer's trade marks, logos and other branding during the Term for the purposes of customising the Airbox Software to the extent set out in the Order Form or otherwise agreed between the parties in writing.

18. Term and Termination

- 18.1 This Agreement shall commence on the Commencement Date and continue, unless terminated earlier in accordance with this Agreement, for the Term specified in the Order Form.
- 18.2 Without affecting any other right or remedy available to it, Airbox may terminate this Agreement with immediate effect by giving written notice to Customer if:
- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the Customer commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - (c) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
 - (d) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (e) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company, partnership or limited liability partnership);
 - (h) the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;

- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 18.2(c) to 18.2(j) (inclusive);
- (l) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- (n) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

18.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

18.4 On termination for any reason:

- (a) all licenses granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and the Documentation;
- (b) the Customer shall immediately pay to Airbox any sums due to Airbox under this Agreement; and
- (c) the Customer shall immediately destroy or return to Airbox (at Airbox's option) all copies of the Airbox Software and Documentation then in its possession, custody or control and, in the case of destruction, certify to Airbox that it has done so. If Airbox so requests, the Customer shall procure that a director of the Customer certifies to Airbox, in a written document signed by that person and provided to Airbox within 5 Business Days following the receipt of Airbox's request, that the Customer has fully complied with the requirements of this clause 18.4(d); and
- (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data.

18.5 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement including but not limited to 1, 9, 13, 14, 18 and Schedules shall remain in full force and effect.

19. Representatives

19.1 Each party shall ensure that all its instructions in relation to the matters contemplated in this Agreement will be given by its Representative to the other party's Representative, and the other party:

- (a) may treat all such instructions as the fully authorised instructions of the first party; and
- (b) must not comply with any other instructions in relation to that subject matter.

20. Waiver

20.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 20.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

21. Remedies

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.

22. Entire agreement

- 22.1 This Agreement, the Order Form, schedules and the documents annexed as addendum to this Agreement or Order Form or otherwise referred to herein or within the Order Form contain the whole Agreement between the parties relating to the subject matter hereof and supersede all previous and contemporaneous agreements, arrangements and understandings between them, whether written or oral, relating to that subject matter.
- 22.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it or annexed to it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (**Representation**) other than as expressly set out in this Agreement or those documents.
- 22.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.
- 22.4 Nothing in this clause shall limit or exclude any liability for fraud.

23. Variation

- 23.1 Without prejudice to clause 22.1, variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 23.2 Airbox may elect to vary this Agreement by giving to the Customer not less than 30 days' prior written notice of variation and such variation shall be deemed accepted by the Customer unless the Customer notifies Airbox of its objection to such variation within 20 days of the notice of variation from Airbox.

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 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. Third-party rights

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

26. No partnership or agency

- 26.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any

commitments for or on behalf of any other party (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).

26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

27. Force majeure

27.1 Neither party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**).

27.2 A party that becomes aware of a Force Majeure event which gives rise to, or which is likely to give to, any failure or delay in that party performing any obligation under this Agreement, must:

- (a) promptly notify the other; and
- (b) inform the other of the period for which it is estimated that such failure or delay will continue.

27.3 If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

28. Notices

28.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the email addresses indicated in the Order Form.

28.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

28.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall include e-mail.

29. Assignment

29.1 Airbox may at any time, assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Customer.

29.2 The Customer must not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of Airbox.

30. Governing law and jurisdiction

- 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 law of England and Wales.
- 30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Schedule 1 Data processing information

1. Categories of data subject

The data subjects whose Personal Data may be processed are users of the Airbox Software and any persons whose data those users admit to the system.

2. Types of Personal Data

The types of Personal Data which will be processed are as follows: name, address, phone number, business address, location data, call handles, photographs, videos, points of interests, overlays.

3. Purposes of processing

Airbox may process the Personal Data to provide the Services under this Agreement.

4. Sub-processors of Personal Data

The authorized sub-processors of Personal Data are as follows:

Specific authorization.

Name:
Amazon Web Services Twilio Google Location Services Google Workspace Spanning Backup Here Mapping Ordnance Survey Euro Control Aha Freshworks Office365

General authorization.

Categories of sub-processors:	Hosting services and hosting infrastructure providers, support services infrastructure providers, maintenance providers, communications services providers.
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Schedule 2 Maintenance Schedule

1. Introduction

- 1.1 This Schedule 2 sets out the service levels applicable to the Maintenance Services and terms upon which Airbox will provide the Maintenance Services.

2. Maintenance Services for Managed Service

- 2.1. This Paragraph 2 shall only apply to Maintenance Services in respect of the Managed Service.
- 2.2. Airbox shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Managed Service or are likely to have a material negative impact upon the Managed Service, without prejudice to Airbox's other notice obligations under this Schedule 2.
- 2.3. Airbox shall give to the Customer written notice of the application of any security Update to the Managed Service and at least 10 Business Days' prior written notice of the application of any non-security Update to the Managed Service.
- 2.4. Airbox shall apply Updates to the Managed Service as follows:

- 2.4.1. third party security Updates shall be applied to the Managed Service promptly following release by the relevant third party, providing that Airbox may, acting reasonably, decide not to apply any particular third party security Update;
 - 2.4.2. Airbox's security Updates shall be applied to the Managed Service promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
 - 2.4.3. other Updates shall be applied to the Managed Service in accordance with any timetable notified by Airbox to the Customer or agreed by the parties from time to time.
- 2.5. Where Airbox has released an Upgrade, Airbox shall give to the Customer at least 10 Business Days' prior written notice of the application of an Upgrade to the Managed Service.

3. Updates and Upgrades applied by the Customer

- 3.1. Airbox may request that the Customer applies Airbox's Updates and/or Upgrades to Device Airbox Software and, where applicable, Airbox Software or apply third party Updates and/or Upgrades to Customer Systems and the Customer must comply with such request:
- 3.1.1. in case of security Updates or Updates notified to the Customer to be urgent by Airbox, as soon as practicable but no later than within 5 Business Days from the relevant request from Airbox or any such period as Airbox may request in writing; and
 - 3.1.2. in case of Upgrades and any other Updates, no later than within one calendar month from the relevant request by Airbox or within any such period as Airbox may request in writing.
- 3.2. If the Customer fails to comply with Paragraph 3.1 then Airbox shall not have any responsibility for any delays or failures in functionality, availability or security of Airbox Software.
- 3.3. Airbox shall keep the Customer reasonably informed during the Term of its plans for the release of Upgrades; however, except to the extent that the parties agree otherwise in writing, Airbox shall have no obligation to release Upgrades with features requested by the Customer or to take into account the opinions of the Customer in relation to plans for the release of Upgrades.

Schedule 3 Support Service

4. Introduction

- 4.1. This Schedule 3 sets out the service levels applicable to the Support Services.
- 4.2. Airbox may provide the Support Services on the following tiers:
- 4.2.1. Tier 1&2 and Tier 3; or
 - 4.2.2. only Tier 3.
- 4.3. Airbox shall only provide to the Customer the Support Services on the tiers as specified in the Order Form or otherwise agreed between the parties in writing.

5. Helpdesk

- 5.1. Airbox shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 3.
- 5.2. The Customer may use the helpdesk only for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
- 5.3. Airbox shall ensure that the helpdesk is accessible by telephone, email and using Airbox's web-based ticketing system.
- 5.4. Airbox shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term. In addition, Airbox shall provide a special telephone number for the Customer to report critical issues outside of Business Hours.
- 5.5. The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

6. Response and resolution

- 6.1. Issues raised through the Support Services shall be categorised as follows:
 - 6.1.1. **critical:** Airbox Software is inoperable or a core function of Airbox Software is unavailable;
 - 6.1.2. **serious:** a core function of Airbox Software is significantly impaired;
 - 6.1.3. **moderate:** a core function of Airbox Software is impaired, where the impairment does not constitute a serious issue; or a non-core function of Airbox Software is significantly impaired; and
 - 6.1.4. **minor:** any impairment of Airbox Software not falling into the above categories; and any cosmetic issue affecting Airbox Software.
- 6.2. Airbox shall determine, acting reasonably, into which severity category an issue falls.
- 6.3. Airbox shall use all reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:
 - 6.3.1. critical: 1 Business Hour;
 - 6.3.2. serious: 4 Business Hours;
 - 6.3.3. moderate: 1 Business Day; and
 - 6.3.4. minor: 5 Business Days.
- 6.4. Airbox shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.
- 6.5. Airbox shall use reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

	Tier 1&2	Tier 3
critical	2 Business Hours	2 Business Hours
serious	8 Business Hours	8 Business Hours
moderate	within the following Upgrade version	within the following Upgrade version
minor	within the timeframe determined by Airbox	within the timeframe determined by Airbox

7. Provision of Support Services

7.1. The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

8. Limitations on Support Services

8.1. Airbox shall have no obligation to provide Support Services:

8.1.1. in respect of any issue caused by the improper use of Airbox Software by the Customer;

8.1.2. in respect of any issue caused by any alteration to Airbox Software made without the prior consent of Airbox;

5.1.3. where the Customer has failed to fulfil any of the Customer obligations under this Agreement;

5.1.4. in respect of any issue which has been covered by training provided by Airbox to the Customer or in respect of which the Customer has already received adequate Support Services from Airbox;

5.1.5. in respect of any issues which would be reasonably expected to be resolved by the Customer without Airbox's assistance; or

5.1.6. for any Airbox Software in respect of which the Customer has failed to install any Updates or Upgrades as required under this Agreement.

5.2 Airbox may, in its absolute discretion, choose to provide Support Services where not obliged to do so under paragraph 5.1, in which case Airbox may charge for such additional Support Services at its standard time-based charging.

