



MEMCONNECT CONTRACT FOR
<CLIENT NAME>

Base Document Version: v01-06

**Cantarus Limited
Lower Ground Floor
Jutland House
15 Jutland Street
Manchester
M1 2BE**

Company registration number 04700674

MEMCONNECT CONTRACT

CONTRACT DETAILS

Contract No:	[CONTRACT NUMBER]
Contract Start Date:	[insert date]
PARTIES	
Client:	<client name> (No. [NUMBER])
Client's address:	[REGISTERED ADDRESS]
Cantarus:	CANTARUS LIMITED (No. 04700674)
Cantarus' registered office address:	123 Wellington Road South, Stockport, Cheshire, SK1 3TH
MEMCONNECT APP AND ANNUAL SUBSCRIPTION FEE	
Number of Members of Client at Contract Start Date:	[Number of Users] – Maximum No. of Monthly Active Users
Number of 50,000 User blocks:	[Number of Users / 50,000]
Annual Subscription Fee:	£ [To be inserted – as agreed for the relevant MemConnect subscription][An option to pay quarterly or monthly can be included but there is an uplift on the Annual Subscription Fee of 10% respectively in such circumstances.]
IMPLEMENTATION AND CUSTOMISATION	
Implementation Fee:	£ [150% of the Annual Subscription Fee]
Customisation Package:	[Details to be inserted – eg choice from a 'menu' of user interface items and other branding changes]
Customisation Fee:	£ [insert or mark N/A]
CONTRACT DURATION	
Initial Subscription Term	The period commencing on the Contract Start Date and ending on the third anniversary of the [Go Live Date].
Go Live Date:	[MemConnect App go live date after implementation]
CONNECTORS	
Free Connectors to be provided:	[insert if applicable]

Other Connectors required:	<i>[insert if applicable]</i>
Connector Fee:	£ <i>[to be inserted]</i>

1. This Contract is made up of the following:

- (a) the Contract Details; and
- (b) the MemConnect Subscription Terms (the “**Terms**”).

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

IN WITNESS whereof the parties or their duly authorised representatives have entered into this Contract on the date of signature below.

Signed by the duly authorised representative of <client name>

Name: Signature:

Position: Date:

Signed by the duly authorised representative of CANTARUS LIMITED

Name: Signature:

Position: Date:

MEMCONNECT SUBSCRIPTION TERMS

These Terms apply to the licence by Cantarus to the Client of rights to access the MemConnect App as detailed in the Contract Details, along with MemConnect Cloud, to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1 **Definitions**

- 1.1 The definitions and rules of interpretation in this clause apply in these Terms and to the Contract, unless the context requires otherwise.

“Authorised Users” means all those individuals who are authorised by the Client to use the MemConnect App;

“Business Day” means any day which is not a Saturday, Sunday or public holiday in England;

“Confidential Information” means any information in whatever form which is marked as confidential or which, by its nature or the circumstances of its disclosure, ought to be treated as confidential;

“Connector” means a software component of the MemConnect Cloud used to integrate the MemConnect App with services provided by Cantarus, the Client or a third party.

“Contract Year” means any 12-month period ending on any anniversary of the Go Live Date;

“Control” means the ability to direct the affairs of another party whether by virtue of the ownership of shares or otherwise (and **“Controlled”** shall be construed accordingly);

“Controller” shall have the same meaning as in the Data Protection Legislation;

“Data Protection Legislation” shall mean the Data Protection Act 2018, the GDPR (as applicable) and any other applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time);

“Data Subject” shall have the same meaning as in the Data Protection Legislation;

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

“Group” means the subsidiary companies and other organisations Controlled by Cantarus from time to time, and any organisation which Controls Cantarus (the **“Controlling Entity”**) as well as any other organisations Controlled by the Controlling Entity from time to time;

“Implementation Services” means the work which Cantarus needs to perform before the MemConnect App can be made available to Authorised Users for performance in accordance with the Contract, with such work to include (without limitation) the Customisation Package as set out in the Contract Details;

“Initial Subscription Term” means the initial term of the Contract as set out in the Contract Details, together with any additional period for which the Client is obliged to remain subscribed to an Upgrade under clause 2.15;

“Intellectual Property Rights” means patents, registered trademarks and registered designs (including without limitation applications and the right to apply for any of them in any country of the world), any other rights in inventions, discoveries and improvements, unregistered trade marks (including without limitation any trade, brand or business names, devices, logos or get-up whether registrable or not), copyright (including without limitation any copyright subsisting in any computer software) and typographical rights, design rights, database rights, and any other industrial or intellectual property right subsisting now or in the future in any country in the world;

“MemConnect App” means the mobile telephone software application created by Cantarus using the MemConnect platform and provided to the Client pursuant to the Contract;

“MemConnect Cloud” means the middleware software connecting the MemConnect App and the Client's back-office IT systems providing business logic and integration through Connectors and a Client-facing web interface;

"MemConnect Solution" means together the MemConnect App and MemConnect Cloud;

"Monthly Active Users" means the count of unique users of the MemConnect App, as tracked by Cantarus, over a 28-day period as differentiated by device and app installation. For the sake of clarification: a user uninstalling and reinstalling the MemConnect App on the same device will register as two unique users for these purposes; and the same user installing the MemConnect App on two devices (such as an iPhone and an iPad) will register as two unique users for these purposes;

"Monthly Equivalent Fee" means one twelfth of the Annual Subscription Fee set out in the Contract Details;

"Normal Business Hours" means 9.00 am to 5.30 pm local UK time, each Business Day and excluding public holidays;

"Other Connectors" means all those Connectors required by the Client in relation to the MemConnect App other than the Free Connectors set out in the Contract Details;

"Overuse Fee" means the sum equal to:

(1/12 x the then-applicable annual subscription fee charged by Cantarus to its clients generally for the number of User blocks required to cover the the number of actual Monthly Active Users in that calendar month) (the **"Relevant Block Monthly Fee"**)

PLUS 10% of the Relevant Edition Monthly Fee

MINUS the Monthly Equivalent Fee;

"Personal Data" has the meaning set out in the Data Protection Legislation in relation to data Processed under this Contract;

"Personal Data Breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.

"Platform Provider" means an entity that provides an online technical platform through which mobile applications are made available to the public;

"Processing" shall have the same meaning as in the Data Protection Legislation;

"Processor" shall have the same meaning as in the Data Protection Legislation;

"Renewal Period" means the period described in clause 10.1;

"Services" means the Implementation Services, the subscription services provided by Cantarus to the Client under this Contract for the MemConnect App, and the applicable support services set out in clause 4.1;

"Subscription Term" has the meaning given in clause 10.1;

"Upgrade" means a change pursuant to clause 2.11, clause 2.12 or clause 2.13 to the number of User blocks licensed under the Contract and **"Upgrading"** shall be construed accordingly;

"User" means (a) an Authorised User; or (b) any individual who should otherwise be considered as a user at the sole discretion of Cantarus;

"User Content" means any content created, published or in any way added on or to the MemConnect App by the Client; and

"Virus" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including without limitation worms, trojan horses, viruses and other similar things or devices.

2 Subscription licence

Implementation

2.1 Upon the Contract Start Date, Cantarus shall commence the performance of the Implementation Services.

2.2 The Client shall co-operate with Cantarus in connection with the transition and migration of any data to Cantarus to the extent required for the provision of the Services as anticipated by this Contract.

2.3 The Client acknowledges and agrees that in order to enable Authorised Users to access and use the MemConnect App, the Client must have set up and must maintain the appropriate developer account with the relevant Platform Provider, at the Client's

cost. Cantarus shall have no liability for any failure to provide the Services that is attributable to the Client's failure to set up and/or maintain the appropriate developer account in accordance with this clause 2.3.

Licences

2.4 Subject to these Terms, Cantarus hereby grants to the Client a non-exclusive, non-transferable right to permit the Authorised Users to access and use the MemConnect App from the Go Live Date during the Subscription Term for the Client's membership purposes.

2.5 Except as expressly stated herein, these Terms do not grant or assign the Client any Intellectual Property Rights or any other rights or licences in respect of the MemConnect App or MemConnect Cloud.

2.6 These Terms shall not prevent Cantarus from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

2.7 The Client grants to Cantarus a non-exclusive royalty-free, non-transferable licence to:

2.7.1 copy, store and distribute the User Content; and

2.7.2 use any materials, equipment, tools, drawings, relevant specifications and logos supplied by the Client to Cantarus,

to the extent necessary for providing the Services in accordance with these Terms.

Number of Members and Monthly Active Users

2.8 The Client's payment of the Annual Subscription Fee set out in the Contract Details entitles the Client to allow the MemConnect App to be accessed and used in any one calendar month by no more than the Maximum No. of Monthly Active Users set out in the Contract Details.

2.9 Cantarus shall be entitled to monitor the actual number of Monthly Active Users at any and all times throughout the Subscription Term.

2.10 If the actual number of Monthly Active Users in any one month exceeds the Maximum No. of Monthly Active Users set out in the Contract Details, then (without prejudice to

clause 2.11) Cantarus shall be entitled to invoice the Client for, and the Client shall pay, the Overuse Fee in respect of that calendar month.

2.11 If the actual number of Monthly Active Users exceeds the Maximum No. of Monthly Active Users set out in the Contract Details in three separate months in any 12 month period, then the Client shall, upon receipt of notification from Cantarus, pay for additional User blocks to cover the highest number of actual Monthly Active Users recorded by Cantarus.

2.12 If at any point during the Subscription Term the number of Members exceeds the Maximum No. of Monthly Active Users set out in the Contract Details, the Client shall notify Cantarus of this within 14 days after such an increase in the number of Members first occurs and purchase additional User blocks permitting a Maximum No. of Monthly Active set out in the Contract Details.

2.13 The Client may at any time during the Subscription Term, upon request, purchase additional User blocks, permitting a greater number of Monthly Active Users than the Maximum No. of Monthly Active Users set out in the Contract Details.

2.14 The Client shall notify Cantarus in advance if the Client has reason to believe that the number of Members and/or the actual number of Monthly Active Users will exceed the Maximum No. of Monthly Active Users at any time and that, therefore, the Client is likely to require an Upgrade.

2.15 The minimum term for the Client's subscription to any Upgrade shall be the longer of: (a) the unexpired Initial Subscription Term at the point of Upgrade; or (b) 12 months.

2.16 The details of any Upgrade, including (without limitation) the annual subscription fee to be paid by the Client in respect of the Upgrade, shall be confirmed in writing by Cantarus. That written confirmation shall vary and form part of the Contract Details for the purposes of these Terms. For the avoidance of doubt, the annual subscription fee to be paid in respect of any Upgrade shall be the standard annual subscription fee charged by Cantarus to its clients generally on the date of such Upgrade for number of User blocks to which the Client is Upgrading.

3 Terms of use

3.1 The Client shall not and shall procure that Authorised Users shall not:

3.1.1	provide access to the MemConnect App to any individual or legal entity other than the Authorised Users;		Authorised Users to ensure compliance with these Terms. This right shall be exercised by Cantarus by giving the Client reasonable prior notice.
3.1.2	disrupt, interfere with or restrict the use of the Services provided by Cantarus through the MemConnect App and MemConnect Cloud;	3.3	If Cantarus becomes aware that the Client has breached any of its obligations under these Terms, Cantarus shall have the right to immediately:
3.1.3	create or develop using the Services or upload to, display on or transmit through the MemConnect App any materials, including without limitation User Content, which are or could be considered to be false, offensive, defamatory, threatening, obscene, unlawful, which violate export control laws or which infringe the rights, including but not limited to Intellectual Property Rights, of any other person anywhere in the world;	3.3.1	suspend access to the Services and disable the MemConnect App, until such breach has been remedied to Cantarus' satisfaction;
3.1.4	probe, scan or test the vulnerability of the MemConnect App and/or the Services or circumvent or hack any user authentication or security controls in respect of the MemConnect App and/or the Services, or attempt to do so;	3.3.2	remove or procure the removal from the MemConnect App of any materials, including without limitation User Content, which Cantarus in its absolute discretion deems to be or deems could be interpreted to be false, offensive, defamatory, threatening, obscene, unlawful, or it deems violate export control laws or infringe the rights, including but not limited to Intellectual Property Rights, of any other person anywhere in the world.
3.1.5	reverse compile, disassemble, reverse engineer, decompile, copy, duplicate, modify or adapt any software or other code or scripts forming part of the MemConnect App and/or the Services (except to the extent permitted by law) or transmit or attempt to transmit to or via the MemConnect App and/or the Services any information that contains a Virus;	3.4	The Client shall:
3.1.6	attempt to obtain, or assist others in obtaining, access to the MemConnect App except as permitted by these Terms; or	3.4.1	provide Cantarus with:
3.1.7	change, modify, delete, interfere with or misuse any files or other data contained on the MemConnect App or provided as part of the Services.	(i)	all necessary co-operation in relation to the Contract; and
		(ii)	all necessary access to such information as may be required by Cantarus
			in order to provide and audit use of the Services;
		3.4.2	comply with all applicable laws and regulations with respect to its activities under the Contract;
		3.4.3	carry out all other Client responsibilities set out in these Terms in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Cantarus may adjust any agreed timetable or delivery schedule as it may consider necessary;
3.2	The Client shall permit Cantarus to audit the use of the Services by the Client and the	3.4.4	ensure that the Authorised Users use the Services in

	accordance with these Terms and shall be responsible for any such person or entity's breach of these Terms;				example, if they instead result from the use of the MemConnect App or MemConnect Cloud, or any other aspect of the Services, in combination with other software, hardware, or other parts of the Client's technical infrastructure not licensed under this Agreement. If Cantarus spends (collectively) more than five hours in any calendar month investigating or otherwise dealing with any request(s) from the Client in connection with performance issues not attributable to the MemConnect Solution itself, then Cantarus shall be entitled to issue an invoice for, and the Client shall pay to Cantarus within 30 days of the date of such invoice, an additional sum for such time at its standard consultancy rates applied at that time.
3.4.5	ensure that its network and systems comply with the reasonable and relevant specifications provided by Cantarus from time to time; and				
3.4.6	be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Cantarus' datacentres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.	4.3		The SLA attached to these Terms shall apply to the Contract.	
		4.4		Cantarus is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks caused by any issues relating to the performance of the Client's IT systems.	
4	<u>Support and updates</u>				
4.1	Subject always to the limitations contained in clause 4.8 Cantarus shall, during the Subscription Term, provide to the Client on and subject to these Terms:	4.5		Cantarus will, as part of the Services and at no additional cost to the Client, provide the Client with all updates of MemConnect Solution components used in the Client's particular MemConnect Solution as may be released from time to time during the Subscription Term, subject to the Client and (where applicable) the Authorised Users processing the updates (as may be required) in accordance with clause 4.6.	
	:				
4.1.1	core product issue fixes for the MemConnect Solution;				
4.1.2	online support for demonstrable faults in the MemConnect Solution which are capable of replication by Cantarus; and	4.6		The Client is responsible at all times for the processing of all updates to the MemConnect App notified to the Client during the Subscription Term. Cantarus shall not be liable to the Client for any loss, damage, cost or expense incurred by the Client as a consequence of any failure by the Client or any Authorised User to process any such update.	
4.1.3	email support for demonstrable faults in the MemConnect Solution which are capable of replication by Cantarus,				
	in each case during Normal Business Hours; and			Other Connectors	
	:	4.7	If:		
4.1.4	telephone support during Normal Business Hours for demonstrable faults in the MemConnect Solution which are capable of replication by Cantarus.	4.7.1		the Client notifies Cantarus in writing that it wishes to purchase any Other Connectors; or	
		4.7.2		Cantarus reasonably determines that any Other Connectors are required in respect of any Upgrade,	
4.2	Cantarus shall be under no obligation to provide support under the Contract where any performance issues are not attributable to the MemConnect Solution itself – for				Cantarus will provide to the Customer such Other Connectors requested or required following agreement of the applicable

- Connector Fee and, upon the Other Connectors being provided to the Client, Cantarus shall raise an invoice for, and the Client shall pay to Cantarus within 30 days of the date of such invoice, the relevant Connector Fee.
- 4.8 The Client understands and accepts that it is impractical for Cantarus to support all hardware device and operating system permutations (the "Device Platforms") and that:
- 4.8.1 Cantarus shall maintain a list of supported Device Platforms (the "Supported Device Platforms") which shall be made available to the Client upon request; and
- 4.8.2 Cantarus is not obligated to support any Device Platforms not included in the list of Supported Device Platforms and refusal to provide such support shall not constitute grounds for termination of this agreement.
- 5 Data Processing and User Content**
- 5.1 Cantarus seeks to minimise the extent to which it processes Personal Data, as required under the GDPR. The Client shall ensure that Personal Data processed through the MemConnect Solution is restricted to such data as is adequate, relevant and limited to what is necessary in relation the Services to be delivered under the Contract.
- 5.2 If the Client transfers Personal Data to Cantarus for Cantarus to process in the course of providing any Services, the parties intend that the Client will be the Controller and Cantarus will be a Processor in relation to such Personal Data.
- 5.3 The Client warrants and represents that:
- 5.3.1 it is entitled to transfer such Personal Data to Cantarus to lawfully allow Cantarus to process the Personal Data in accordance with the Contract; and
- 5.3.2 it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 5.4 For the purposes of the Contract:
- 5.4.1 the types of Personal Data being processed include Users' names, contact details, survey responses and categories of Data Subjects will be the Authorised Users; and
- 5.4.2 the nature/purpose of the Processing is to enable Cantarus to carry out the Services (which form the subject matter of the Processing) and the duration of the Processing shall be the Subscription Term.
- 5.5 Cantarus shall comply with its obligations under the Data Protection Legislation and shall, in particular:
- 5.5.1 process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of providing the Services and in accordance with the Client's written instructions;
- 5.5.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
- 5.5.3 not transfer the Personal Data outside of the European Union without the prior written consent of the Client;
- 5.5.4 ensure that any employees or other persons authorised to process the Personal Data are subject to appropriate obligations of confidentiality;
- 5.5.5 not engage any third party to carry out its Processing obligations under this Contract without obtaining the prior written consent of the Client

	and, where such consent is given, procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data Processing obligations equivalent to those set out in this clause 5;		accordance with Articles 35 and 36 of the GDPR;
5.5.6	notify the Client, as soon as reasonably practicable, about any request or complaint received from Data Subjects without responding to that request (unless authorised to do so by the Client) and the Client by technical and organisational measures, insofar as possible, for the fulfilment of the Client's obligations in respect of such requests and complaints;	5.5.8	on request by the Client, make available all information necessary to demonstrate Cantarus' compliance with this clause 5 and otherwise permit, and contribute to, audits carried out by the Client (or its authorised representative); and
		5.5.9	on termination or expiry of this Contract, destroy or return to the Client (as the Client directs) all Personal Data and delete all existing copies of such Personal Data.
5.5.7	on request by the Client and taking into account the nature of the Processing and the information available to Cantarus, assist the Client in ensuring compliance with its obligations under the GDPR (where applicable) with respect to:	5.6	The Client or the relevant Authorised User shall own all rights, title and interest in and to all of the User Content and the Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the User Content.
	(i) implementing appropriate technical and organisational measures in accordance with Article 32 of the GDPR;	5.7	Cantarus shall have the right (but not an obligation) to moderate any User Content prior to and/or after publication through the MemConnect App of such User Content and may remove, amend or refuse to publish any User Content in its absolute discretion.
	(ii) where relevant, notifying any Personal Data Breach to the Information Commissioner's Office (or any replacement body) and/or communicating such Personal Data Breach to the Data Subject in accordance with Articles 33 and 34 of the GDPR; and	5.8	If Cantarus becomes aware that any User Content infringes the copyright or any other Intellectual Property Right belonging to any third party, or of any allegation to such effect, Cantarus shall have the right to immediately suspend access to such User Content until it is satisfied that the Client has made, or procured, such alterations, modifications or adjustments to the User Content so that it becomes non-infringing.
	(iii) where necessary, carrying out and/or reviewing and, if applicable, consulting with the Information Commissioner's Office (or any replacement body) with respect to data protection impact assessments in	5.9	In the event of any loss of or damage to User Content, the Client's sole and exclusive remedy shall be for Cantarus to use reasonable commercial endeavours to restore the lost or damaged User Content from the latest back-up of such User Content maintained by Cantarus in accordance with the archiving procedure described in its back-up policy. Cantarus shall not be responsible for any loss, destruction, alteration or disclosure of User Content caused by any third party (except those third parties sub-contracted by Cantarus to perform services related to User Content maintenance and back-up).
		6	<u>Payment terms</u>
		6.1	The Client shall pay to Cantarus the fees referred to in this Contract without set-off, deduction, withholding or counterclaim for

- any reason whatever and in accordance with this clause 6.
- 6.2 The Client shall pay the Implementation Fee on the Contract Start Date by BACS transfer to the bank account which Cantarus notifies to the Client in writing.
- 6.1 The Client shall pay the Customisation Fee on the Go-Live Date by BACS transfer to the bank account which Cantarus notifies to the Client in writing. This shall be payable notwithstanding any delay to the launch (Go-Live) of the MemConnect App requested or required by the Client.
- 6.2 The Client shall pay the Annual Subscription Fee annually in advance, within 30 days after receipt of Cantarus' invoice for the same.
- 6.3 If Cantarus has not received payment by the applicable due date specified in this clause 6, then without prejudice to any other rights and remedies of Cantarus:
- 6.3.1 Cantarus may, without liability to the Client, disable the Client's password, account and access to all or part of the Services and Cantarus shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 6.3.2 interest shall accrue on such due amounts at an annual rate equal to 4% over the then current Bank Rate (set by the Bank of England) as at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.4 All amounts and fees stated or referred to in these Terms:
- 6.4.1 shall be payable in pounds sterling;
- 6.4.2 are non-cancellable and non-refundable; and
- 6.4.3 are exclusive of value added tax, which shall be added to Cantarus' invoice(s) at the appropriate rate.
- 6.5 Following completion of the Initial Subscription Term Cantarus shall be entitled annually to increase the Annual Subscription Fee by the higher of 5% or the increase in the Consumer Price Index with Housing Costs plus 1% in the preceding 12 months. Should Cantarus wish to apply a greater increase to the Annual Subscription fee it shall provide the Customer with not less than three months' prior written notice of such increase.
- ## 7 Liability
- 7.1 Nothing in these Terms shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of one party or for liability for any fraudulent misrepresentation by a party to the Contract.
- 7.2 Subject to the provisions of clauses 7.1 and 7.3 the liability of Cantarus to the Client for direct loss in contract, tort or otherwise arising out of or in connection with the Contract or the provision or use of the Services and/or the MemConnect App shall be limited for any one incident or series of connected incidents to the Annual Subscription Fee paid or payable under the Contract to Cantarus by the Client in the preceding 12 months.
- 7.3 Subject to the provisions of clause 7.1 in no circumstances shall Cantarus be liable to the Client whether in contract, tort, negligence, breach of statutory duty or otherwise in respect of loss of profits, revenue, goodwill, business opportunity, loss of or cost of restoration of data or for use of any results obtained by use of the Services or for any loss or damage suffered by you as a result of a claim brought by a third party or any indirect, consequential, financial or economic loss or damage costs or expenses whatever or however arising out of or in connection with the Contract or any use of the Services and/or the MemConnect Solution.
- ## 8 Publicity
- 8.1 The Client shall permit and grant to Cantarus all rights necessary to allow it to:
- 8.1.1 use the Client's name and/or logo(s) for the purpose of identifying the Client as a MemConnect customer;
- 8.1.2 display the words "Powered by Cantarus MemConnect" or similar wording within the MemConnect App; and
- 8.1.3 include a screen within the MemConnect App providing information to the Authorised Users about the version of the MemConnect App and also an

- option to learn more about Cantarus and its MemConnect services.
- 8.2 Subject always to the Client's approval based on its reasonable opinion of the quality of the solution and service provided by Cantarus the Client shall provide Cantarus with:
- 8.2.1 a testimonial quote from a senior executive for Cantarus to use on publicity materials;
- 8.2.2 assistance to produce and periodically update a public case study; and
- 8.2.3 up to four written or verbal references per year for prospective MemConnect customers.
- 9 Confidentiality**
- 9.1 Neither party shall at any time after the Contract Start Date:
- 9.1.1 divulge or communicate to any person, company, business entity or other organisation;
- 9.1.2 use for its own purposes or for any purposes other than those of the other party; or
- 9.1.3 through any failure to exercise due care and diligence, cause any unauthorised disclosure of:
- any trade secrets or Confidential Information relating to the other party provided that these restrictions shall cease to apply to any such information which shall become available to the public generally otherwise than through a breach of a duty of confidentiality owed to the other party and further provided that neither party shall be restricted from disclosing the Confidential Information or any part of it pursuant to a judicial or other lawful government order, but only to the extent required by such order and subject to the party obliged to comply with such order giving the other party as much notice of the terms of the order as may be reasonably practicable.
- 9.2 This clause 9 shall survive termination of the Contract, however arising.
- 10 Term and termination**
- 10.1 The Contract shall, unless otherwise terminated as provided in this clause 10, commence on the Contract Start Date and shall continue for the Initial Subscription Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a "**Renewal Period**"), unless:
- 10.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 10.1.2 otherwise terminated in accordance with these Terms;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".
- 10.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract immediately without liability to the other if:
- 10.2.1 the other party commits a material breach of any of these Terms and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach; or
- 10.2.2 immediately on written notice to the other party if the other party is unable to pay its debts when they fall due, is insolvent or enters into any arrangement with its creditors for the repayment of its debts, or if a petition for a bankruptcy order is presented or a bankruptcy order is made against it, or an administrator, receiver, liquidator, manager or similar officer is appointed over all or any substantial part of its assets, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (other than for the purposes of solvent amalgamation or reconstruction), or if it ceases or threatens to cease business

- or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 10.3 On termination of the Contract for any reason:
- 10.3.1 all licences granted under the Contract shall immediately terminate and the Services shall no longer be available to the Client;
- 10.3.2 each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- 10.3.3 Cantarus may delete any User Content within its control;
- 10.3.4 all amounts then owed by the Client to Cantarus shall immediately become due and payable if not already so; and
- 10.3.5 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 10.4 In any circumstances where Cantarus has the right to terminate the Contract it may instead, by serving written notice on the Client, opt to suspend the provision of the Services until the relevant material breach has been remedied or for such other period of time as Cantarus deems reasonable in the circumstances. Any suspension of the Services pursuant to this clause 10.4 shall not relieve the Client of its obligations to pay the fees due under clause 6, or entitle the Client to any discount in respect of those fees.
- 11 General**
- 11.1 No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.2 Neither party shall be liable for any delay in or for failure to perform its obligations under these Terms, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including, without limitation, fires, strikes, insurrection, riots, embargoes, the failure of any telecommunications or internet services provider or the regulations of any civil or military authority.
- 11.3 The Contract constitutes the entire agreement between the parties relating to the relevant Services and supersedes all previous representations, agreements, assurances, understandings and other communications between the parties, both oral and written, relating to such Services.
- 11.4 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.5 Cantarus may assign or novate the Contract to any member of its Group or any company Controlled by the same people and/or entities with Control of Cantarus, provided that such assignment or novation does not increase the risk or cost to the Client in respect of the performance of the Services. The Client warrants and represents that it will execute all such documents, and carry out all such acts, as reasonably required to give effect to this clause 11.5.
- 11.6 If any provision of these Terms is adjudged by a court of competent jurisdiction to be invalid, void or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.
- 11.7 All notices given under the Contract shall be in writing, sent for the attention of the relevant person named below and to the address given in the Contract Details (or such other address or person as the relevant party may notify to the other party), and shall be delivered either personally, by courier, or by recorded delivery. A notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices. This clause does not apply to the service of any proceedings or other documents in any legal action or dispute resolution.
- 11.8 These Terms and the Contract shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of the English Courts.

12 Service levels: standards and interruptions

- 12.1 The MemConnect Solution shall be available to Authorised Users from the Go Live Date during the Subscription Term 99.99% of the time calculated on a monthly basis. Where the MemConnect Solution is not so available, the Client will be credited with an amount calculated monthly as an aggregate of all Down Time in accordance with the following table:

Monthly Uptime Percentage	Service Credit (% of Monthly Equivalent Fee)
<99.90	5%
<99.00%	15%
<95.00%	25%
<90.00%	50%
<75.00%	100%

- 12.1.1 'Down Time' means any service interruption of one minute or more in the availability to Authorised Users of the MemConnect Solution, but only if the interruption is due solely to a default by:

- (i) Cantarus; or
- (ii) an organisation or individual with which Cantarus maintains a direct supply contract, including but not limited to Cantarus' datacentre provider.

- 12.1 Service Credits shall be the Client's sole and exclusive remedy for any Down Time or other interruption of Services.
- 12.2 Outages, excluding emergency but including previously scheduled windows for router, switch, server or other infrastructure maintenance, are not to be included in Down Time calculations, provided that such maintenance are carried out as far as reasonably possible outside of Normal Business Hours. Cantarus shall make all commercially reasonable efforts to provide the Client with prior email notification of all scheduled and emergency outages.
- 12.3 If an issue is raised through email support or online support the Client shall supply in writing to Cantarus a detailed description of the issue requiring support services and the circumstances in which it arose. Such information shall also be provided where the

issue is raised by telephone and Cantarus requests information to be provided in writing.

- 12.4 Cantarus will endeavour to give an estimate of how long an issue may take to resolve. Cantarus will keep the Client informed of the progress of resolution of the issue. Cantarus' target response times shall be:

- 12.4.1 **Business Critical** - A catastrophic problem with the MemConnect Solution as a result of which the MemConnect Solution is down or not functioning or performance is so severely degraded as to render the MemConnect Solution unusable: during Normal Business Hours Cantarus shall use its reasonable endeavours to be actively working on resolution of the issue within 1 hour of receipt of a request; or

- 12.4.2 **High Priority** - The MemConnect Solution is functioning but in a severely reduced capacity. The situation is causing significant impact to the Client and/or Authorised Users: during Normal Business Hours Cantarus shall use its reasonable endeavours to be actively working on resolution of the issue within 4 hours of receipt of a request; or

- 12.4.3 **Medium Priority** - A medium-to-low impact problem which involves partial non-critical functionality loss of the MemConnect Solution. This may be a minor issue with limited loss or no loss of functionality or impact to the Client's operation or issues in which there is an easy circumvention or avoidance by the Client's personnel or Authorised Users: Cantarus shall use its reasonable endeavours to be actively working on resolution of the issue within 2 Business Days of receipt of a request within Normal Business Hours; or

- 12.4.4 **Low Priority** - There is no significant impact on the quality, performance or functionality of the MemConnect Solution: Cantarus shall use its reasonable endeavours to be

actively working on resolution of the issue within 5 Business Days of receipt of a request within Normal Business Hours.

For avoidance of doubt these times do not indicate the length of time required to remedy the issue and the release of fixes to the MemConnect app is subject to Cantarus' release cadence and app store publishing processes and timelines. However, Cantarus shall use all reasonable endeavours to remedy Business Critical and High Priority issues as soon as reasonably practicable.

- 12.5 Cantarus shall notify the Client of any report of Down Time, and investigate it using suitably qualified personnel, as soon as reasonably practicable after becoming aware of it, and shall remedy the Down Time as soon as reasonably practicable.
- 12.6 The Client shall provide Cantarus with written notice of intention to claim credit in respect of Down Time within 14 days of Down Time occurring.