



TOOLKIT SUBSCRIPTION TERMS

These TOOLKIT Subscription Terms apply to Customers (and their Authorised Users) who use the TOOLKIT, TOOLKIT Software and/or the Services ("TOOLKIT Subscription Terms").

For the purposes of these TOOLKIT Subscription Terms, you are the customer stated in the Order Form (**Customer** or **You**) and **We, Us** or **2iC** is 2iC Limited of 2 Venture Road, Southampton Science Park, Chilworth, Southampton, England, SO16 7NP. Together, You and 2iC are the **Parties** and each are a **Party**.

BACKGROUND

- (A) 2iC has supplied and licensed certain software products to the Customer under the terms of the Licence (defined below) and has agreed to provide support and maintenance for such applicable software products (and, where agreed, other software products) under these TOOLKIT Subscription Terms.

AGREED TERMS

1. Definitions which apply to these TOOLKIT Subscription Terms are stated in Appendix 2.
2. **TOOLKIT SUBSCRIPTION**
 - 2.1 In consideration of the Customer paying the TOOLKIT Subscription Fee and complying with these TOOLKIT Subscription Terms and the terms of the Licence, 2iC shall:
 - (a) permit Authorised Users to :
 - (i) use TOOLKIT and the TOOLKIT Software;
 - (ii) download latest releases (and any available previous release) of the COTS Software;
 - (iii) access to latest online Documentation (online); and
 - (iv) access to the 2iC Support Portal;
 - (b) provide the Services.
 - 2.2 In the event that the Customer has subscribed to the 'Premium' TOOLKIT Subscription, the Authorised Users shall also be permitted to:
 - (i) download and use 2iC SDKs for developing 'Lean Services' apps;
 - (ii) access 2iC Developer Resources and sample apps (GitHub) and source for demos and accelerated development.

3. THE SERVICES

- 3.1 The Services comprise the following:
 - (a) the Standard Support Service;
 - (b) the Maintenance and Updating Service; and
 - (c) Engineering Support, where purchased under the Engineering Support Terms.
- 3.2 The Standard Support Service shall:
 - (a) comprise the services more particularly set out in Annex 1 of Appendix 1;
 - (b) be provided in respect of the Supported Software during the Standard Support Hours; and
 - (c) meet the Service Levels.
- 3.3 The Supported Software is:



- (a) the COTS Software, being of the current stable version of the COTS Software;
 - (b) the current immediately preceding version of the COTS Software;
 - (c) any Software Update; and
 - (d) any other software which 2iC and Customer agree should be Supported Software for the purposes of this TOOLKIT Subscription.
- 3.4 In providing the Maintenance and Updating Service, 2iC shall:
- (a) make available to the Customer all Software Updates without charge no later than their general release;
 - (b) ensure that each Software Update:
 - (i) complies in all material respects with the Cybersecurity Requirements; and
 - (ii) mitigates against vulnerabilities affecting the TOOLKIT Software since the last Software Update;
 - (c) issue Software Updates as and when required and in whatever form 2iC considers appropriate, including in the case of non-critical faults by way of a local fix, patch or temporary by-pass solution; and
 - (d) provide the Customer with any revisions to the Documentation that are necessary to reflect any Software Update supplied to the Customer.
- 3.5 The Customer shall:
- (a) ensure that its operating systems, environment, hardware, infrastructure and configuration are suitable for the proper operation of the TOOLKIT Software and comply with any pre-requisites stated in the Documentation;
 - (b) promptly install and apply all Software Updates provided by 2iC in order to maintain the security and proper functioning of the TOOLKIT Software;
 - (c) take all reasonable steps to prevent unauthorised access to, or use of, the TOOLKIT Software and notify 2iC promptly if the Customer becomes aware of any unauthorised access, misuse or security breach related to the TOOLKIT Software;
 - (d) maintain appropriate backups, failover measures and disaster recovery arrangements for any systems, Data or operations that rely on or interact with the TOOLKIT Software;
 - (e) not provide to 2iC any Personal Data or operational, commercial or other Data generated, processed or stored using the TOOLKIT Software, except through the controlled support process described in these TOOLKIT Subscription Terms and only where strictly necessary to resolve a support request; and
 - (f) comply with all applicable laws and regulations in connection with Authorised Users and their use of the TOOLKIT Software, including any export control laws that apply to the Customer's environment or operations.
- 3.6 If the Customer fails to acquire and install a Software Update within nine months of 2iC's making such Software Update available to the Customer then the version of the TOOLKIT Software then used by the Customer shall constitute an **Unsupported Release** until such time as the Customer installs the latest Software Update, as appropriate.
- 3.7 During such period as the Customer is using an Unsupported Release 2iC shall not be bound by the Service Levels or any warranties or guarantees given under these TOOLKIT Subscription Terms (including for the avoidance of doubt, those given by 2iC pursuant to clause 9).
- 3.8 2iC shall have no obligation to provide the Services where faults arise from:
- (a) an Unsupported Release;



- (b) misuse, incorrect use of or damage to the TOOLKIT Software from whatever cause (other than any act or omission by 2iC), including failure or fluctuation of electrical power;
- (c) failure to maintain the necessary environmental conditions for use of the TOOLKIT Software;
- (d) use of the TOOLKIT Software in combination with any equipment or software not provided by 2iC or not designated by 2iC for use with any modification forming part of the Supported Software, or any fault in any such equipment or software;
- (e) any fault with any equipment or software not provided by 2iC;
- (f) relocation or installation of the TOOLKIT Software by any person other than 2iC or a person acting under 2iC's instructions;
- (g) any breach of the Customer's or its Authorised Users' obligations under these TOOLKIT Subscription Terms, howsoever arising;
- (h) maintenance or modification of the TOOLKIT Software by a third party;
- (i) any Open Source Software;
- (j) failure of hardware;
- (k) failure of any Third Party Software which you license directly from a third party licensor; or
- (l) operator error.

4. SUPPORT STAFF

- 4.1 The Customer shall promptly inform 2iC of the identity of its Manager from time to time, who shall be available to liaise with and respond to queries from 2iC (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).
- 4.2 2iC shall provide sufficient Support Staff to fulfil its obligations under the terms of these TOOLKIT Subscription Terms. The Support Staff shall be suitably trained and experienced in the support and maintenance of the Supported Software.
- 4.3 For the duration of these TOOLKIT Subscription Terms, the Manager and the assigned 2iC point of contact shall meet (virtually) at least once every three months at a time to be agreed between the Manager and the 2iC designated point of Contact, for the purpose of discussing provision of the Services and any other appropriate matters.
- 4.4 The Customer shall procure that its Authorised Users are competent and trained on the TOOLKIT Software and such Authorised Users are the only individuals authorised by the Customer to triage and report incidents to 2iC through the Support Portal.

5. SUPPORT DATA ACCESS

- 5.1 If the Customer requests technical support from 2iC, the Customer may be required to provide Data or information that is necessary to investigate and resolve the support issue. The Customer shall ensure that any Data or information provided to 2iC for support purposes is limited to what is strictly required, is redacted, anonymised or pseudonymised where reasonably possible and does not include Personal Data or Commercial Data unless the Customer determines that such inclusion is essential for the support request.
- 5.2 2iC will use any Data or information provided solely for the purpose of diagnosing and addressing the support request and will delete such Data or information once the support request is closed, unless retention is required by law. The provision of Data or information for support purposes does not cause 2iC to become a Processor in relation to any Personal Data or other data that the Customer handles using the TOOLKIT Software.
- 5.3 The Customer warrants that it will not provide to 2iC any Data through any channel other than the controlled support process described in this clause, and that it will take all reasonable steps to avoid sending unnecessary or excessive Data when seeking support.



6. HOSTED DATA

- 6.1 2iC does not host any Data for the Customer unless this has been expressly agreed in writing and the Customer has paid to 2iC, the appropriate corresponding charges.
- 6.2 Where 2iC agrees to host Data, 2iC will do so only through third-party hosting platforms selected by 2iC, including GitHub and Atlassian or such other platforms as 2iC may reasonably determine from time to time.
- 6.3 Any Data that the Customer chooses to provide for hosting must be limited to what is strictly necessary for the agreed purpose and must not include Personal Data or Commercial Data unless the Customer determines that such inclusion is essential. The Customer remains responsible for ensuring that it has the right to share such Data and for complying with all applicable laws and regulations.
- 6.4 2iC will take reasonable steps to maintain the security of the hosted Data within the capabilities and controls provided by the chosen hosting platform. The Customer acknowledges that the hosting platforms are operated by independent third parties and that 2iC does not control and is not responsible for their availability, performance, security or compliance. 2iC does not warrant that any hosting service provided through those platforms will be uninterrupted, error free or immune from unauthorised access.
- 6.5 To the fullest extent permitted by law, 2iC shall not be liable for any loss, damage, corruption, disclosure or unauthorised access affecting hosted Data arising from or connected with the acts or omissions of any third-party hosting provider or from any event outside the reasonable control of 2iC. 2iC's total aggregate liability in relation to any hosted Data shall not exceed the fees paid by the Customer for the specific service under which the hosting was provided, and 2iC shall have no liability for any indirect, special or consequential loss.
- 6.6 The Customer agrees that it will not store or use the hosted Data for any purpose beyond the agreed scope and that it will remove or delete any Data from the hosting platform once the relevant support request or collaboration activity has concluded unless otherwise agreed in writing.

7. CHARGES

- 7.1 In consideration of the Services, the Customer shall pay the TOOLKIT Subscription Fee set out in the Order Form.
- 7.2 If the Customer fails to make any payment due to 2iC under these TOOLKIT Subscription Terms by the due date for payment, then, without limiting 2iC's remedies, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the 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.
- 7.3 All payments made by the Customer under these TOOLKIT Subscription Terms are exclusive of VAT. 2iC 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 these TOOLKIT Subscription Terms and shall reimburse 2iC for any such stamp duties or similar transfer taxes paid by 2iC. If the Customer is required to make any deduction for or on account of tax from any payment due under these TOOLKIT Subscription Terms (**Tax Deduction**):
 - (a) the Customer shall account to the relevant tax authority for such Tax Deduction and shall provide evidence to 2iC that it has so accounted; and
 - (b) the amount of the payment due under these TOOLKIT Subscription Terms shall be increased so that 2iC 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.
- 7.4 All amounts due under these TOOLKIT Subscription Terms shall be paid by the Customer to 2iC in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).



8. THE CUSTOMER'S RESPONSIBILITIES

- 8.1 The Customer shall provide 2iC, the Support Staff and all other persons duly authorised by 2iC with full, safe and uninterrupted remote access to the Customer's systems, environment and to the extent necessary, the Customer's instance of the TOOLKIT Software as may reasonably be required for the purpose of performing the Services. Such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours.
- 8.2 The Customer shall:
- (a) cooperate with 2iC in performing the Services and provide any assistance or information as may reasonably be required by 2iC;
 - (b) report faults promptly to 2iC through the Support Portal in the manner advised by 2iC; and
 - (c) to the extent necessary, keep full back-up copies of all of its Data.
- 8.3 The Customer undertakes to:
- (a) ensure the maximum number of Authorised Users that the Customer authorises to access and use the TOOLKIT Software and the Documentation shall not exceed the number of User Subscriptions purchased by the Customer from time to time;
 - (b) not allow any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the TOOLKIT Software and/or Documentation; and
 - (c) permit 2iC or 2iC's designated auditor to audit the TOOLKIT Software to verify that the Customer's use of the TOOLKIT Software and Documentation does not exceed the total number of User Subscriptions purchased. This audit may take place physically on the Customer's premises, or remotely, at 2iC's option, and 2iC may deploy reasonable online audit tools and access the Customer's solution for these purposes.
- 8.4 To the extent that 2iC's performance of its obligations is prevented or delayed by any act or omission of the Customer or any of the Customer's Authorised Agents (**Excusing Cause**), 2iC shall not be in breach of its obligations nor liable for any losses incurred by the Customer as a result of its performance being prevented or delayed. Without prejudice to any other right or remedy it may have, 2iC shall be:
- (a) allowed an extension of time to perform its obligations equal to the delay caused by the Excusing Cause;
 - (b) entitled to payment of all applicable fees or charges despite its performance being prevented or delayed; and
 - (c) entitled to recover any losses, including additional costs, incurred as a result of the Excusing Cause.

9. 2iC'S WARRANTIES

- 9.1 2iC warrants to the Customer that:
- (a) the Services will be performed:
 - (i) in accordance with all laws and Cybersecurity Requirements which are directly applicable to 2iC;
 - (ii) in accordance with the 2iC Quality Management System (QMS) and its Cyber Essentials Plus (or equivalent) certification; and
 - (iii) with all reasonable skill and care and in accordance with Good Industry Practice.



- (b) at the Commencement Date, 2iC has obtained and will maintain for the duration of these TOOLKIT Subscription Terms all permissions, licences and consents necessary for 2iC to perform the Services.
- 9.2 If, during the TOOLKIT Subscription Period, 2iC receives written notice from the Customer of any breach by 2iC of the warranties contained in clause 9.1, 2iC shall, at its own option and expense, either:
 - (a) Subject to clauses 8.4 and 17.2, remedy that breach within a reasonable period following receipt of such notice; or
 - (b) terminate these TOOLKIT Subscription Terms immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to 2iC under these TOOLKIT Subscription Terms during the TOOLKIT Subscription Period in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable 2iC to comply with its obligations under clause this clause and clause 9.1.
- 9.3 Clause 9.2 sets out the Customer's sole remedy and 2iC's entire liability for breach of clause 9.1.
- 9.4 No representation or warranty is given by 2iC that all faults will be fixed, or will be fixed within a specified period of time.
- 9.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these TOOLKIT Subscription Terms or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.
- 10. LIMITATION OF LIABILITY**
- 10.1 The restrictions on liability in this clause 10 apply to every kind of liability arising under or in connection with these TOOLKIT Subscription Terms including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2 Nothing in these TOOLKIT Subscription Terms limits or excludes:
 - (a) liability for deliberate or wilful default;
 - (b) liability for death or personal injury caused by negligence;
 - (c) liability for fraud or fraudulent misrepresentation;
 - (d) liability for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
 - (e) any liability that cannot legally be limited;
 - (f) the Customer's liability for its payment obligations under these TOOLKIT Subscription Terms.
- 10.3 Subject to clause 10.2, neither Party shall have any liability for:
 - (a) loss of profits (including loss of anticipated savings);
 - (b) loss of business or business opportunity;
 - (c) loss of use or corruption of software, Data or information;
 - (d) loss of or damage to goodwill; or
 - (e) indirect, special or consequential loss.
- 10.4 Subject to clause 10.2 and 10.3, 2iC's total aggregate liability to the other Party in respect of all claims arising from a breach of these TOOLKIT Subscription Terms arising within any TOOLKIT Subscription Period shall not exceed 100% of the TOOLKIT Subscription Fee.
- 10.5 The caps on 2iC's liability shall not be reduced by:



- (a) payment of an uncapped liability; or
 - (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 10.6 2iC has given warranties as to the compliance of the Services. In view of these commitments, all conditions, warranties, representations or other terms that might otherwise be implied into these TOOLKIT Subscription Terms are, to the fullest extent permitted by law, excluded from these TOOLKIT Subscription Terms, including the conditions and term implied by sections 3 to 5 and 13 of the Supply of Goods and Services Act 1982.
- 10.7 The Customer agrees that, in entering into these TOOLKIT Subscription Terms, 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 these TOOLKIT Subscription Terms or (if it did rely on any representations, whether written or oral, not expressly set out in these TOOLKIT Subscription Terms) that it shall have no remedy in respect of such representations and (in either case) 2iC shall have no liability otherwise than pursuant to the express terms of these TOOLKIT Subscription Terms.
- 11. **INTELLECTUAL PROPERTY RIGHTS**
- 11.1 Each party shall retain ownership of all Intellectual Property Rights that it creates, acquires or otherwise holds prior to the Commencement Date or that it develops independently of these TOOLKIT Subscription Terms whether prior to, on or after the Commencement Date.
- 11.2 All Intellectual Property Rights in and to the TOOLKIT Software, including all Software Updates and the Documentation are and shall remain owned by or licensed to 2iC.
- 11.3 All rights in and to the Customer's Data and materials are and shall remain owned by the Customer.
- 11.4 Nothing in these TOOLKIT Subscription Terms transfers or assigns any Intellectual Property Rights from one Party to the other.
- 11.5 Each Party grants the other only those rights that are expressly set out in these TOOLKIT Subscription Terms and no other rights are granted or implied.
- 11.6 Save as otherwise agreed between the Parties or as set out elsewhere in these TOOLKIT Subscription Terms, You acknowledge that the TOOLKIT Software contains proprietary and confidential information and You agree that you will not provide or otherwise make any of the TOOLKIT Software available for any reason to any third party (whether for outsourcing purposes or otherwise), except as permitted by these TOOLKIT Subscription Terms, unless agreed in writing in advance with Us, such consent to be granted by Us in our sole discretion.
- 12. **NON-SOLICITATION**
- 12.1 The Customer shall not, during the TOOLKIT Subscription Period, and for a period of 12 months following termination or expiry, directly or indirectly induce or attempt to induce any employee of 2iC who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with these TOOLKIT Subscription Terms to leave the employment of 2iC.
- 13. **TERM AND TERMINATION**
- 13.1 The TOOLKIT Subscription Period shall commence on the Commencement Date and, subject to expiry or earlier termination in accordance with the provisions of these TOOLKIT Subscription Terms, shall continue until the expiry of the TOOLKIT Subscription Period.
- 13.2 Each Party shall have the right, without prejudice to its other rights or remedies, to terminate these TOOLKIT Subscription Terms immediately by written notice to the other Party if the other Party is:
 - (a) in material or persistent breach of any of its obligations under these TOOLKIT Subscription Terms and either that breach is incapable of remedy, or that other party has failed to remedy that breach within 30 days after receiving written notice requiring it to do so; or



(b) unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

13.3 2iC shall have the right, without prejudice to its other rights or remedies, to terminate these TOOLKIT Subscription Terms immediately by written notice to the Customer if the Customer fails to pay the TOOLKIT Subscription Fee or any other sum when due, or if the Customer disputes the ownership or validity of 2iC's Intellectual Property Rights.

14. **CONSEQUENCES OF TERMINATION**

14.1 On expiry or termination of these TOOLKIT Subscription Terms for any reason:

- (a) the Customer's right to receive the Services shall cease automatically;
- (b) all Dev Use Licences provided under these TOOLKIT Subscription Terms shall immediately terminate;
- (c) each party shall immediately return to the other Party all property and materials containing confidential information belonging to such Party; and
- (d) all amounts due from the Customer under these TOOLKIT Subscription Terms shall be paid to 2iC immediately by the Customer.

14.2 In respect of any Data, upon expiry or termination of these TOOLKIT Subscription Terms:

(a) 2iC shall delete (or at the Customer's request, export to the customer and then delete) any hosted Data provided by the Customer within 90 days, subject to the technical limitations and retention policies of the applicable hosting platform; and

(b) where the Customer has uploaded Data to third-party platforms such as GitHub and/or Atlassian for use in connection with the Services, the Customer acknowledges that such Data will remain on those platforms following termination or expiry of the TOOLKIT Subscription. 2iC shall have no obligation to remove, delete, or return such Data in accordance with the applicable third-party terms.

14.3 Nothing in this clause requires either Party to delete Data that it is required to retain by law or regulation, or Data held solely in routine backups or archives of a third-party hosting provider, provided that any such retained Data remains subject to the confidentiality obligations in these TOOLKIT Subscription Terms until it is deleted.

14.4 Upon reasonable written request, each Party shall confirm in writing that the Data for which it is responsible has been deleted in accordance with this clause.

14.5 Any termination of these TOOLKIT Subscription Terms (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of these TOOLKIT Subscription Terms which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

15. **CONFIDENTIALITY**

15.1 Each Party shall keep confidential all information of the other Party that is marked as confidential or that ought reasonably to be treated as confidential. This includes information relating to the TOOLKIT Software, business operations, security arrangements and any Data provided under the controlled support process.

15.2 2iC does not ordinarily access or host any Customer Data and will treat any Data that the Customer chooses to provide through GitHub, Atlassian or another agreed platform as confidential.



15.3 Unless otherwise agreed in writing, each Party shall use the other Party's confidential information only for the purposes of these TOOLKIT Subscription Terms and shall not disclose it to any third party except:

a) to the extent necessary of its Authorised Users, personnel or sub-processors who need to know it for the purpose of complying with their obligations under these TOOLKIT Subscription Terms and who are bound by confidentiality obligations; or

b) to the extent required to be disclosed by law, or any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.

15.4 The obligations under this clause do not apply to information that is already public, that becomes public through no fault of the receiving Party, that is independently developed or that the receiving Party is required to disclose in accordance with clause 15.3.

15.5 Each party shall protect the other party's confidential information with the same degree of care that it uses to protect its own confidential information of a similar nature.

16. COMMUNICATIONS BETWEEN US

16.1 2iC may update these TOOLKIT Subscription Terms (including the Appendices) from time to time on written notice to the Customer. The Customer acknowledges and agrees that:

a) continued use of the TOOLKIT Software (or any part thereof) or the Services; or

b) compliance with any other acceptance trigger set out in clause 19.1,

shall constitute the Customer's acceptance of the revised TOOLKIT Subscription Terms, as varied. If the Customer does not wish to accept the TOOLKIT Subscription Terms (as varied) the Customer must immediately stop using and accessing the TOOLKIT Software and the Services.

16.2 If 2iC has to contact the Customer, 2iC will do so via email using the address provided on the Order Form (or such other email address notified by the Customer in writing from time to time).

16.3 Any notice given under these TOOLKIT Subscription Terms by either Party to the other must be in writing and may be delivered by email and will be deemed to have been given upon production of a valid delivery receipt notice to the correct email address.

16.4 Notices will be delivered or sent to the email addresses of the Parties on the order form or to any other email address notified in writing by either party to the other for the purpose of receiving notices after the date of these TOOLKIT Subscription Terms.

17. FORCE MAJEURE

17.1 2iC will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Licence that is caused by a Force Majeure Event.

17.2 If a Force Majeure Event takes place that affects the performance of our obligations under this Licence:

(a) 2iC's obligations under these TOOLKIT Subscription Terms will be suspended and the time for performance of our obligations will be extended for the duration of the Force Majeure Event; and

(b) 2iC will use its reasonable endeavours to find a solution by which its obligations under these TOOLKIT Subscription Terms may be performed despite the Force Majeure Event.

18. DISPUTE RESOLUTION

18.1 If any disagreement or difference of opinion arises out of this agreement, the Manager and the 2iC designated point of Contact shall meet (in person or by suitable alternative means, e.g. a telephone call) to attempt resolution. Should they not meet within 14 days of either party attempting to convene a meeting with the other to resolve the matter, or should they not be



able to resolve the matter with 14 days of first meeting, then the matter shall promptly be referred by either party to the senior management of each party for immediate resolution.

- 18.2 If, within 14 days of the matter first having been referred to the respective parties' senior representatives pursuant to clause 16.1 above, no agreement has been reached as to the matter in dispute, the dispute resolution process shall be deemed to have been exhausted in respect of the matter in dispute and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.
- 18.3 For the avoidance of doubt, clauses 18.1 and 18.2 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of a party's Intellectual Property Rights.

19. ACCEPTANCE

- 19.1 The Customer shall be deemed to have accepted these TOOLKIT Subscription Terms (and accordingly unequivocally agrees to be bound by its terms) on the earlier occurrence of:
- (a) the Commencement Date;
 - (b) the Customer logging on to the Support Portal using its unique login credentials; or
 - (c) the Customer paying 2iC the TOOLKIT Subscription Fee (or any part thereof).

20. OTHER IMPORTANT TERMS.

- 20.1 Nothing in these TOOLKIT Subscription Terms is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party as the agent of the other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party.
- 20.2 If any provision or part-provision of these TOOLKIT Subscription Terms 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 the TOOLKIT Subscription Terms. If any provision of part-provision of these TOOLKIT Subscription Terms is deemed deleted under this clause, 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.
- 20.3 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 20.4 No variation of these TOOLKIT Subscription Terms, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties (or their authorised representatives).
- 20.5 Unless expressly stated otherwise, a person who is not a party to these TOOLKIT Subscription Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit under or to enforce any term of these TOOLKIT Subscription Terms.
- 20.6 2iC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under these TOOLKIT Subscription Terms.
- 20.7 The Customer shall not assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of the Customer's rights, obligations, benefits or interests arising under these TOOLKIT Subscription Terms without the prior written consent of 2iC.
- 20.8 These TOOLKIT Subscription Terms and any Documentation annexed to it or referred to in them or expressly referred to it them, constitute the entire agreement between the Parties in respect of the supply of TOOLKIT Subscription and supersedes and extinguishes all previous and contemporaneous agreements, arrangements and understandings between the Parties relating to that subject matter.



- 20.9 The Customer acknowledges that in entering into these TOOLKIT Subscription Terms The Customer does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these TOOLKIT Subscription Terms or any document expressly referred to in it.
- 20.10 Each of the conditions of these TOOLKIT Subscription Terms operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 20.11 These TOOLKIT Subscription Terms, their subject matter and their formation (and any non-contractual disputes or claims) are governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.



Appendix 1 - Standard Support Service

Annex 1 - Description

The Standard Support Service shall include:

- online self-help, articles and knowledge base;
- online ticket creation for incident and query support;
- the ability for the Customer to ask questions about the TOOLKIT Software and raise change requests through Engineering Support;
- identifying and troubleshooting problems in the TOOLKIT Software;
- assistance with issues during installation and upgrades of TOOLKIT Software and/or Software Updates in engineers environment;
- identifying bugs and creating bug reports; and

Annex 2 - Service Levels

Initial logging of the support request

The Authorised User will log a support request and assign a priority level to each support request submitted through the Support Portal according to the criteria set out in the table below. 2iC will promptly, where necessary, amend the priority level of a support request where a support ticket has been assigned a priority level which is inconsistent with the priority level criteria set out in the table below. If the Customer disagrees with an amended support request priority level, the parties shall promptly meet (virtually) to discuss and use best endeavours to agree the appropriate priority level.

2iC's response

2iC provides a response-based service level for support requests. Upon receiving an incident report, via the Support Portal, 2iC shall acknowledge the incident as soon as practical within Standard Support Hours and shall conduct an initial assessment to determine severity, impact and the steps required to commence investigation. 2iC shall use reasonable endeavours to provide this initial assessment within the Service Level set out below (**2iC Response Time**).

Following this assessment, 2iC shall begin reasonable diagnostic activity and shall provide the Customer with an outline of the proposed approach to investigation and possible resolution, if any.

2iC does not provide any service level commitments in relation to the time required to develop, deliver or install a fix, workaround or other resolution. The time needed to resolve an incident depends on factors outside the control of 2iC, including the Customer's environment, configuration and ability to supply information required for diagnostics. 2iC shall use reasonable efforts to investigate and, where possible, provide a workaround or fix.

2iC shall keep the Customer informed of progress through reasonable status updates until the incident is closed, placed on hold pending Customer action or determined to be non-reproducible.

Priority level criteria and response times shall be:

Priority Level	Description	Criteria	2iC Response Time from The Customer notification
P1	Blocker	a key component does not work at all and there is no work around resulting in severe business disruption	1 Business Day
P2	Critical	either a key component does not work but there is a work around, or the software has	2 Business Day

		significant issues such as crashes, loss of data or severe memory leaks. Having significant negative business impact	
P3	Major	not critical, but still important such as significant loss of functionality or infrequently occurring problem	3 Business Days
P4	Minor	Annoying, not critical problem but where a work around can be implemented easily	5 Business Days
P5	Trivial	cosmetic problem such as spelling or text alignment	7 Business Days



Appendix 2 – Definitions

The following definitions apply in these TOOLKIT Subscription Terms:

Affiliate	each and any indirect and direct subsidiary, group or holding company of that party and each and any subsidiary of a holding company of that party.
Authorised User	an employee, agent or independent contractor of the Customer or its Affiliate, who is authorised by the Customer to access and use the TOOLKIT.
Business Day	a day other than a Saturday, Sunday or public holiday in England.
Commencement Date	as stated in the Order Form.
Commercial Data	the data inputted by or on behalf of You, including operational, commercial or other data, for the purpose of using or facilitating your use of the TOOLKIT Software or Documentation and any data processed or generated by, or derived from your use of the TOOLKIT Software or Documentation, whether hosted or stored within the TOOLKIT Software or Documentation or elsewhere, but excluding any Personal Data.
COTS Software	the 2iC COTS computer software listed on the Order Form.
Cyber Essentials Plus Certificate	the certification awarded on the basis of external testing by an independent certification body of 2iC's cyber security approach under the Cyber Essentials Scheme.
Cyber Essentials Scheme	the Cyber Essentials Scheme developed by the UK Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet-based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: https://www.cyberessentials.ncsc.gov.uk/
Cybersecurity Requirements	all laws, regulations and sanctions relating to the security of network and information systems and security breach and incident reporting requirements applicable to either party, including, where applicable, the Network and Information Systems Regulations 2018 (SI 506/2018), as amended or updated from time to time.
Data	Commercial Data and Personal Data.
Data Protection Law	Data, privacy and/or electronic communications in force from time to time in any relevant jurisdiction including the United Kingdom General Data Protection Regulation (as it forms part of the law of the UK by virtue of section 3 of the European Union (Withdrawal) Act 2018) (the UK GDPR) and the Data Protection Act 2018 and any associated national implementing laws, regulations and secondary legislation and any legislation that replaces, extends, re-enacts, consolidates or amends any of the foregoing from time to time.
Dev Use Licence	the licence of the COTS Software granted to the Customer for Dev Use.
Dev Use	use of the COTS Software for research, development, testing and demonstration purposes.
Documentation	the Documentation and other materials made available by 2iC online via https://2icltd.atlassian.net/wiki/spaces/DC/overview or such other web address notified by 2iC to the Customer from time to time which include, for each of TOOLKIT, the TOOLKIT Software, and the Software: a) software and service descriptions; b) user instructions; c) articles and knowledge base;

	d) training materials; e) technical documentation; f) program specifications; and g) operating manuals.
Engineering Support	the support services to be provided by 2iC, pursuant to the Engineering Support Terms and as may be specified in an Order Form or statement of work.
Engineering Support Terms	the terms under which 2iC shall provide Engineering Support to the Customer.
Export Control Laws	any applicable laws, regulations, export controls or trade sanctions, including those imposed by the U.S. Export Administration Regulations, ITAR, and the trade sanctions regulated by the U.S. Office of Foreign Assets Control.
Force Majeure Event	means any circumstance not within a party's reasonable control including: a) acts of God, flood, storm, drought, earthquake or other natural disaster; b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; c) nuclear, chemical or biological contamination or sonic boom; d) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; e) collapse of buildings, breakdown of plant or machinery, fire, explosion or accident; f) any labour or trade dispute, strikes, industrial action or lockouts; and g) interruption or failure of utility service.
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.
Maintenance and Updating Service	the services described in clause 3.4.
Manager	the person appointed by the Customer from time to time in order to fulfil the role described in clause 4.1.
Open Source Software	software licensed under any form of open-source licence meeting the Open Source Initiative's open source definition from time to time and comprised in the COTS Software.
Order Form	the commercial document that sets out the specific products or services being purchased together with the applicable fees, quantities, terms, and any agreed variations. It acts as the formal record of the commercial



	agreement between you and us or, where relevant, between you and our authorised reseller. An order form may take the shape of a 2iC order form pro forma, a quotation document, a purchase order, or any other document that captures the agreed commercial terms.
Personal Data	as defined in Data Protection Law.
Process	as defined in Data Protection Law. Processing and Processed shall be construed accordingly.
Processor	as defined in Data Protection Law.
Service Levels	those standards of performance to be achieved by 2iC in performing the Services as set out in Annex 2 of Appendix 1.
Services	includes (as appropriate) the Standard Support Service and the Maintenance and Updating Service.
Software Update	any update, release, revision, upgrade, patch, fix, amendment or new version of the COTS Software issued by 2iC, whether to correct faults, add functionality, enhance security, improve performance or otherwise modify or update the COTS Software. Software Updates include any associated updates to the Documentation that are necessary to reflect the changes made.
Standard Support Hours	8.30 am to 6.00 pm on Business Days.
Standard Support Service	the support service which is to be provided by 2iC to the Customer in accordance with these TOOLKIT Subscription Terms, further details of which are provided in clause 3.2.
Support Portal	the 2iC portal through which support requests are raised and logged and which is accessed at support.2icworld.com
Support Staff	those officers, employees, workers, agents or subcontractors of 2iC connected with these TOOLKIT Subscription Terms, including those individuals who perform 2iC's obligations under these TOOLKIT Subscription Terms and (where the context permits) the 2iC designated point of Contact.
Supported Software	has the meaning set out in clause 3.3.
TOOLKIT	the subscription services provided by 2iC to the Customer under these TOOLKIT Subscription Terms via the online portal at https://2icltd.atlassian.net/wiki/spaces/DC/overview or any other website notified to the Customer by 2iC from time to time, as more particularly described in the Documentation.
TOOLKIT Software	the software supplied under the Dev Use Licence, and any other software developed or licensed by 2iC which is provided by 2iC as part of TOOLKIT as set out in the Order Form, which shall, where the Customer has purchase the 'Premium' TOOLKIT Subscription, include the 2iC Developer Resources and the 2iC SDKs.
TOOLKIT Subscription Fee	the subscription fee payable by the Customer to 2iC for each TOOLKIT User Subscription as set out in the Order Form.
TOOLKIT Subscription Period	The period set out in the Order Form commencing on the Commencement Date.



TOOLKIT User Subscription	a user subscription purchased by the Customer which entitles an Authorised User to access and use TOOLKIT, the TOOLKIT Software and the Documentation in accordance with these TOOLKIT Subscription Terms (and the Licence, as applicable), the number of which are stated in the Order Form (or as agreed between the Parties from time to time).
VAT	value added tax or any equivalent tax chargeable in the UK.