



Master Licence and Services Agreement

Date:

Licence Granted / Services
Performed By:

Licence Granted / Services
Performed For:

V 05.25

EX3 Partner LLP
Warehouse K, 2 Western
Gateway House, London, E16 1DR

EX3 Partner LLP – Master Licence and Services Agreement

THIS MASTER LICENCE AND SERVICES AGREEMENT (**MSA**) is dated (**Effective Date**)

Parties:

- (1) **EX3 Partner LLP**, an organization incorporated in England and Wales under company number OC420569 and whose registered office is at Warehouse K, 2 Western Gateway, London E16 1DR (**EX3**); and
 - (2) **Customer**, an organisation registered in England & Wales under company number and whose registered office is at (**Customer**),
- each a "**party**" and together the "**parties**".

Background:

- (A) EX3 is in the business of providing consulting and strategic advisory services for HR Transformation and Technology programmes as well as implementation and support services and Licence sales for HR Technology solutions including SAP SuccessFactors.
- (B) The Customer wishes to appoint EX3 to provide some or all of these services to it and its Affiliates under this MSA.
- (C) When the Customer or any of its Affiliates requests Services from EX3, and EX3 is able to provide such services, the relevant parties will enter into a separate Statement of Work for the provision of Professional Services or Sales Order for the provision of Cloud Services in accordance with this MSA (all as defined below).

Agreed Terms:

1 Definitions and Interpretation

The following definitions and rules of interpretation apply in this MSA.

1.1 Definitions:

Affiliate: in relation to a party, any corporation, partnership or other entity that directly or indirectly controls, is controlled by or is under common control with that party from time to time. For the purposes of this definition "control" means the direct possession of a majority of the share capital of an entity, and "controlled" shall be construed accordingly.

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

Cloud Service: EX3's proprietary cloud based software programs or services to be provided by EX3 as set out and described in the Sales Order.

Confidential Information: has the meaning given in Clause 13.1.

Customer Data: any data and information that is (i) inputted or submitted by the Customer or any User for use on the Cloud Service, or (ii) generated, processed or stored on the Cloud Service and relating specifically to the Customer.

Customer Materials: any documents, information, images, content, trademarks, trade names, logos or other materials owned by the Customer and provided to EX3 for use in the provision of the Services, as identified in a Service Agreement.

Deliverables: any deliverables identified in a Statement of Work to be developed or provided by EX3 as part of or in relation to the Professional Services.

Documentation: the documentation for the Cloud Service generally supplied by EX3 to assist its customers in the use of the Cloud Service including user and system administrator guides and manuals and other written materials.

EULA: in respect of any Third Party Products and Services, any end user licence agreement or licence terms relating to the use, provision and receipt of such Third Party Products and Services as set out or referred to in the relevant Sales Order.

Fees: the fees payable by the Customer in respect of the Services, as set out in a Service Agreement.

Liability: has the meaning given in Clause 9.6.1.

Losses: all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable legal fees and expenses.

MSA: this Master Licence and Services Agreement including the Annexes.

Payment Schedule: the schedule for invoicing the Fees set out in the relevant Service Agreement.

Professional Services: any professional services to be provided by EX3 in relation to a Cloud Service or Third Party Product and Service, including any development, set-up, integration, configuration, consulting and/or training services, as set out in a SOW (but excluding the Support Services).

Sales Order: EX3's sales order document for Cloud Services, Support Services and/or Third Party Products and Services, which is agreed and signed by duly authorised representatives of both parties in accordance with Clause 3 of this MSA, and which references this MSA and sets out the Cloud Services, Support Services and/or Third-Party Products and Services ordered by the Customer from EX3, the Fees for such Cloud Services, Support Services and/or Third-Party Products and Services, and contains other applicable terms and conditions.

Service Agreement: a Sales Order or SOW entered into in accordance with Clause 3 of this MSA and in each case incorporating the terms of this MSA together with any ancillary documentation identified in that Sales Order or SOW.

Service Commencement Date: the date a Service Agreement is signed or the date that the relevant Services commence (whichever is earlier).

Services: any Cloud Service, Support Services and Professional Services agreed to be provided by EX3 in accordance with this MSA and as set out in the relevant Service Agreement.

Statement of Work (SOW): a statement of work for the provision of Professional Services in such form as EX3 may require, which is agreed and signed by duly authorised representatives of both parties in accordance with Clause 3 of this MSA, and which references this MSA and sets out the Professional Services to be provided by EX3, the Fees for such Professional Services and certain other applicable terms and conditions.

Support Services: any support services to be provided by EX3 in relation to a Cloud Service as set out in the relevant Sales Order.

Third Party Provider: the third-party provider of any Third Party Products and Services as identified in the relevant Service Agreement.

Third Party Materials: any information, methodologies, data, ideas, concepts, know-how, techniques, documentation, software or development tools used in the performance of the Services which are owned by a Third Party Provider and licenced to EX3.

Third Party Products and Services: online, Web-based applications and offline software products and services that are provided by a Third Party Provider as set out in the relevant Sales Order.

Users: individuals who are authorised by the Customer to use the Cloud Service. Users consist of designated employees, and independent contractors of Customer and its Affiliates.

EX3 Data: all data and information made available by EX3 to the Customer in connection with the Customer's use of the Cloud Service, excluding any Customer Data.

EX3 Materials: any information, methodologies, data, ideas, concepts, know-how, techniques, documentation, software or development tools that EX3 possesses prior to the commencement of the Services or which it develops independent of any activities governed by this MSA or a Service Agreement, and any derivatives, modifications or enhancements made to any such property while performing the Services including all materials, configurations and customization of any Third Party Products and Services (such as SAP's SuccessFactors or similar software) that have general applicability to EX3's other customers.

1.2 Interpretation:

1.2.1 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.4 A reference to writing or written includes e-mail.
- 1.2.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2 **Commencement and duration**

- 2.1 This MSA shall come into force on the Effective Date and will continue in force until terminated in accordance with Clause 10 of this MSA.
- 2.2 Each Service Agreement shall come into force on the relevant Service Commencement Date and will continue for the term set out in that Service Agreement or, if none is specified, until completion of the applicable Services, unless the Service Agreement is terminated earlier in accordance with Clause 10 of this MSA or the terms of the relevant Service Agreement.

3 **Sales Order and SOW process**

- 3.1 This MSA governs the overall relationship of the Parties in relation to (i) any Services to be provided by EX3 to the Customer, and (ii) any Third Party Products and Services to be procured by EX3 on the Customer's behalf. This Clause 3 sets out the procedure for the Customer to request:
 - 3.1.1 the provision of Cloud Services and related Support Services from EX3, and the procurement of any Third Party Products and Services by EX3, under a Sales Order; and
 - 3.1.2 the provision of Professional Services from EX3 under a SOW.
- 3.2 The Customer shall be entitled from time to time to request in writing the provision of Services and procurement of Third Party Products and Services from EX3. Following any such request from the Customer, EX3 shall:
 - 3.2.1 either notify the Customer that it is not able to provide the requested Services or Third Party Products and Services; or
 - 3.2.2 prepare a draft Sales Order (in respect of any Cloud Service, Support Services or Third Party Product and Services) or SOW (in respect of any Professional Services) and submit the draft to the Customer for its written approval.
- 3.3 Each Sales Order or SOW shall include the following information (as applicable):
 - 3.3.1 a description of the Services and/or any Third Party Products and Services;
 - 3.3.2 a projected timetable for completion of the Services, and any special conditions of acceptance;
 - 3.3.3 the location where the Services are to be performed;

- 3.3.4 the commencement and termination dates for the Sales Order or SOW;
- 3.3.5 the Fees for the Services and details of any reimbursable expenses, if any;
- 3.3.6 EX3's hourly rates;
- 3.3.7 a Payment Schedule for invoicing;
- 3.3.8 names of the parties' appointed project representatives;
- 3.3.9 any additional terms and conditions that apply to the provision of the Services including any applicable EULA and/or Third Party Terms; and
- 3.3.10 such other requirements for the Services as may be agreed by the parties.
- 3.4 Neither party has any obligation to enter into a Sales Order or SOW and no Sales Order or SOW shall be legally binding or have any other effect unless:
 - 3.4.1 the Sales Order or SOW has been signed by the authorised representatives of both parties; and
 - 3.4.2 as at the date the Sales Order or SOW is signed, this MSA has not been terminated.
- 3.5 Each Sales Order or SOW:
 - 3.5.1 shall be entered into by the Customer and EX3; and
 - 3.5.2 forms a separate contract between its signatories incorporating the terms and conditions of this MSA.
- 4 Services**
 - 4.1 EX3 shall provide the Customer with the Services specified in the applicable Service Agreement. The Customer acknowledges that:
 - 4.1.1 the Cloud Service and any related Support Services is provided in accordance with and is subject to the provisions set out in this MSA, the applicable Sales Order and the additional terms and conditions set out in Annex A; and
 - 4.1.2 the Professional Services are provided in accordance with and are subject to the provisions set out in this MSA, the applicable SOW and the additional terms and conditions set out on Annex B.
 - 4.2 EX3 may provide, or procure the provision of, Third-Party Products and Services to the Customer which will be subject to the Third Party Provider's EULA and/or Third Party Terms as specified in applicable Sales Order. The Customer acknowledges and agrees that:
 - 4.2.1 the use, provision and receipt of any Third Party Products and Services will require the Customer to agree and accept the applicable EULA and/or Third Party Terms, which unless otherwise agreed in the relevant Sales Order, shall be between the Customer and the relevant Third Party Provider;

- 4.2.2 performance of the Services and Third Party Products and Services shall be subject to any limitations and restrictions set out in the EULA and any other terms and conditions imposed by the Third Party Provider (provided that such terms are identified in the relevant Sales Order); and
 - 4.2.3 unless expressly stated otherwise in the Sales Order, EX3 is not liable to the Customer for any act or omission of the Third Party Provider arising out of or in connection with the Third Party Products and Services or the EULA and/or Third Party Terms.
- 4.3 If any provision contained in this MSA conflicts with any provision in a Sales Order or SOW, the provision of this MSA shall take precedence and govern, unless the Sales Order or SOW expressly provides that the specific provision in the Sales Order or SOW shall take precedence over a specific provision of this MSA with respect to the relevant Services to be performed under that Sales Order or SOW. In the event of a conflict between the provisions of this MSA or any Sales Order or SOW, and any of the terms and conditions of any Third-Party Terms, the terms and conditions of the Third-Party Terms shall take precedence and govern, but only with respect to the applicable Third-Party Products and Services.
- 4.4 The Customer may make the Cloud Service and any Third Party Products and Services available to its Affiliates where expressly set out in the relevant Sales Order and provided that:
 - 4.4.1 such Affiliate complies with the terms and conditions of this MSA and the relevant Sales Order including all licensing restrictions; and
 - 4.4.2 the Customer shall remain liable for any breach of the terms and conditions of this MSA, the relevant Sales Order or any Third-Party Terms, by any of its Affiliates, except where the Affiliate has signed its own statement of work or sales order with EX3 pursuant to Clause 4.5 of this MSA.
- 4.5 In addition to Clause 4.4, an Affiliate of the Customer may enter into a Service Agreement with EX3 to provide Services or any Third Party Products and Services to such Customer Affiliate under the terms of this MSA. Each Service Agreement, together with the terms of this MSA, shall constitute and be construed as a separate agreement between the two parties entering into such Service Agreement. For the avoidance of doubt, upon the execution of the Service Agreement issued hereunder, the Customer Affiliate that is a party to such Service Agreement shall be subject to, and bound by, the terms of this MSA as if such Customer Affiliate had executed this MSA as the "Customer".
- 4.6 It is acknowledged and agreed that EX3 may subcontract certain elements of the Services to its Affiliates or third party subcontractors which may include rights to (i) access, share, transmit, store, process or destroy the Customer's Confidential Information or Customer Data; (ii) supply a material or critical product or service that could affect the Customer's operations, clients/customers or reputation (e.g. critical processes); or (iii) provide IT infrastructure (e.g. cloud, physical data centre) to EX3. Any such subcontractors shall be confirmed in the relevant Service Agreement.

- 4.7 Each party acknowledges that this MSA and any Service Agreement is non-exclusive and either party may contract with other parties for the procurement or sale of equipment, software, systems and services comparable to the Services or any Third Party Products and Services, without limitation or restriction.
- 5 **Payment**
- 5.1 The Customer shall pay EX3 the Fees for the Services and Third-Party Products and Services provided in accordance with the relevant Payment Schedule as provided in the Service Agreement.
- 5.2 All sums payable to EX3 under each Service Agreement are exclusive of VAT unless expressly stated in the relevant Service Agreement, and the Customer shall pay an amount equal to any VAT chargeable on those sums on delivery of the invoice.
- 5.3 The Customer shall pay all invoices in pounds Sterling (£) within thirty (30) days of the date of the invoice unless indicated otherwise in the Service Agreement.
- 5.4 EX3 may charge interest on invoiced amounts overdue at the statutory rate as prescribed pursuant to section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (as may be calculated using the calculator on the website: www.payontime.co.uk) from the due date until the date payment is received in cleared funds and reserves the right to charge compensation and further recovery costs in accordance with the Late Payment of Commercial Debts Regulations 2013.
- 5.5 EX3 may suspend the Services and/or any Third Party Products and Services (as applicable) pursuant to any Service Agreement if the Customer does not pay an undisputed invoice by the due date for payment.
- 5.6 **Invoice Disputes:** If the Customer disputes any portion of the invoice, the following provisions shall apply:
- 5.6.1 the Customer agrees to pay the undisputed portion of the invoice and to submit a written claim within thirty (30) days of the date of the invoice, documenting the reasons the remaining amount is disputed;
- 5.6.2 after receipt of such claim, EX3 will undertake an investigation of the disputed charges, and both parties agree to make a good faith attempt to resolve the dispute promptly;
- 5.6.3 any failure by the Customer to submit a written dispute of charges within thirty (30) days of the date of invoice receipt shall be deemed final acceptance of and agreement with all charges on the invoice.
- 5.7 **Expenses:** Unless otherwise agreed in the Service Agreement, the Customer agrees to reimburse EX3 for all reasonable and ordinary expenses incurred by EX3 in delivering the Services and any Third Party Products and Services (as applicable) to the Customer, provided the Customer pre-approves such expenses in advance. EX3 will itemize such expenses on the Customer's invoices.

6 Ownership and Use of Data and Materials

- 6.1 **Cloud Service:** Ownership of the Cloud Service (except for any Customer Data or Customer Materials), any related Documentation, copies, modifications and derivatives of the Cloud Service or Documentation (in whole or in part), and all related copyright, patent, trade secret and other proprietary rights, are and will remain the exclusive property of EX3 and/or its licensors. EX3 reserves all rights in the Cloud Service not expressly granted by it to the Customer under this MSA. There are no implied rights.
- 6.2 **Customer Data and Customer Materials:**
- 6.2.1 The Customer warrants that it owns all right, title and interest in and to the Customer Data and Customer Materials which will remain the exclusive property of the Customer and/or its licensors. The Customer grants to EX3 a non-exclusive, royalty-free, non-transferable, worldwide licence to use the Customer Data and Customer Materials for the purpose of providing the relevant Services and Deliverables to the Customer.
- 6.2.2 Notwithstanding the foregoing, the Customer acknowledges and agrees that EX3 shall have the right to copy, use, distribute, and display any information, analysis, statistics and other data generated by the Cloud Service (or derived from the Customer's use of the Cloud Service), including compilation of aggregated statistics about the Cloud Service, provided, however, that EX3 shall not publicly disclose or distribute any such data unless such data is in an aggregated and anonymized form that would not permit a third party to identify the data as associated with the Customer.
- 6.3 **EX3 Data and EX3 Materials:** EX3 retains ownership of all right, title and interest in and to all EX3 Data and EX3 Materials. EX3 grants to the Customer a limited, worldwide, non-exclusive, non-transferable, royalty-free right to use, display, transmit, and distribute the EX3 Data and EX3 Materials solely in connection with Customer's permitted use of the relevant Services.

7 Intellectual Property Indemnities

- 7.1 **EX3 indemnity:**
- 7.1.1 Subject to Clause 7.3 below, EX3 hereby agrees to defend, indemnify and hold the Customer (including its officers, directors, employees and agents) harmless from and against any and all Losses suffered or incurred by the Customer to a third party arising as a result of any claim or threatened claim by that third party against the Customer that the Services or Deliverables infringe, violate or misappropriate any England and Wales patent, copyright, trademark, or other property right of that third party (an **IP Claim**).
- 7.1.2 EX3 shall have no liability or obligation to the Customer with respect to any IP Claim if such IP Claim arises from:

- (a) the use of the Services or Deliverables in breach of this MSA or relevant Service Agreement; or
- (b) the use of the Services or Deliverables after EX3 notifies the Customer to discontinue use because of an IP Claim; or
- (c) the combination, operation, or use of the Services or any Deliverables with software, materials or equipment not provided by EX3, to the extent that the Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or
- (d) modification of the Services or any Deliverables other than by EX3 (where such IP Claim would not have arisen but for such modification); or
- (e) the compliance by EX3 with the Customer's custom requirements or specifications; or
- (f) any claim relating to the Third Party Products and Services or any Third Party Materials; or
- (g) any claim relating to the Customer Data or Customer Materials.

7.1.3 If as a result of an IP Claim, the Services or Deliverables are held to infringe such intellectual property or other property rights of that third party, EX3 will, at its own expense, in its sole discretion use commercially reasonable efforts to:

- (a) procure a licence that will protect the Customer against such claim; or
- (b) replace or modify the Services or Deliverables such that the Services or Deliverables are no longer infringing, without loss of material functionality; or
- (c) if (a) and (b) are not commercially feasible, terminate the relevant Service Agreement and refund to the Customer any prepaid unused fees paid to EX3 for the infringing Services or Deliverables as the case may be.

7.1.4 The rights and remedies granted to the Customer under this Clause 7.1 state EX3's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

7.2 **Customer Indemnity:** Subject to Clause 7.3 below, the Customer hereby agrees to defend, indemnify and hold EX3 (including its officers, directors, employees and agents) harmless from and against any and all Losses suffered or incurred by EX3 arising as a result of:

- 7.2.1 the use of the Customer Data or any Customer Materials including any claim or threatened claim that the Customer Data or Customer Materials infringe the intellectual property rights or other property right of a third party; or

- 7.2.2 the Customer's breach of the terms of use of the Cloud Service including any restrictions as set out in Annex A or the relevant Sales Order; or
- 7.2.3 the Customer's failure to comply with the terms of any EULA or other Third-Party Products and Services terms and conditions.
- 7.3 **Indemnification Procedure:** In the event of any claim or potential claim referred to under the indemnities in Clause 7.1 or 7.2 above, the indemnified party shall:
 - 7.3.1 promptly notify the indemnifying party in writing of such claim, provided that failure to do so will not remove the indemnifying party's obligation except to the extent it is prejudiced by such failure; and
 - 7.3.2 allow the indemnifying party sole control the defence, negotiation and settlement of such claim;
 - 7.3.3 provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost); and
 - 7.3.4 shall not make any admission or attempt to settle the claim without the indemnifying party's prior written consent.

8 Limited Warranties

- 8.1 The warranties given by EX3 in respect (i) the Cloud Service and Support Services are set out in Annex A; and (ii) the Professional Services are set out in Annex B.
- 8.2 The warranties stated in this MSA and any Service Agreement are the sole and exclusive warranties offered by EX3 in respect of the Services. There are no other warranties or conditions, express or implied, including without limitation, those of merchantability or fitness for a particular purpose.
- 8.3 Except as otherwise stated in this MSA or any Service Agreement, the Third-Party Products and Services are provided by EX3 on an "as is" basis without any warranties of any kind. Any warranties in relation to the Third-Party Products and Services are given by the relevant Third Party Provider as set out in the applicable EULA and/or Third Party Terms.

9 Limitation of Liability

- 9.1 This Clause 9.1 states the entire Liability of EX3 in respect of:
 - 9.1.1 the performance, non-performance, purported performance, delay in performance or mis-performance of the Services or Deliverables;
 - 9.1.2 any breach of this MSA or any Services Agreement;
 - 9.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with this MSA or any Service Agreement.

- 9.2 Nothing in this MSA or any Service Agreement excludes or limits either party's Liability for:
 - 9.2.1 fraud or fraudulent misrepresentation; or
 - 9.2.2 death or personal injury caused by that party's Negligence; or
 - 9.2.3 any breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
 - 9.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 9.3 Subject to Clause 9.2, EX3 shall have no Liability in respect of any:
 - 9.3.1 indirect or consequential losses, damages, costs or expenses;
 - 9.3.2 loss of actual or anticipated profits;
 - 9.3.3 loss of contracts;
 - 9.3.4 loss of use of money;
 - 9.3.5 loss of anticipated savings;
 - 9.3.6 loss of revenue;
 - 9.3.7 loss of goodwill;
 - 9.3.8 loss of reputation;
 - 9.3.9 ex gratia payments;
 - 9.3.10 loss of business;
 - 9.3.11 loss of operation time;
 - 9.3.12 loss of opportunity; or
 - 9.3.13 loss of or damage to software,suffered by the Customer in respect of this MSA or any Service Agreement whether or not such losses were reasonably foreseeable or EX3 or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, sub-sections 9.3.2 to 9.3.13 apply whether such losses are direct, indirect, consequential or otherwise.
- 9.4 Subject to Clause 9.2 and 9.3 the total aggregate Liability of EX3 under or in connection with any Service Agreement in any Contract Year shall, unless expressly agreed otherwise in that Service Agreement, be limited to the greater of: (a) £10,000; or (b) 110% of the Fees paid under that Service Agreement during that Contract Year.
- 9.5 The limitations of liability in Clause 9.4 shall not apply to any Liability of EX3:
 - 9.5.1 under the indemnity set out in Clause 7.1 of this MSA; or

- 9.5.2 for breach of the Data Privacy and Security Addendum; or
- 9.5.3 for breach of the obligations of confidentiality under Clause 13 (Confidentiality).
- 9.6 In this Clause the following definitions shall apply:
 - 9.6.1 **Contract Year:** in respect of any Service Agreement, the period of twelve (12) months from the relevant Service Commencement Date and each subsequent period of twelve (12) months from the anniversary of the relevant Service Commencement Date;
 - 9.6.2 **Liability:** liability in or for breach of contract (including liability under any indemnity), Negligence, tort (whether deliberate or not), breach of statutory duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this MSA or any Service Agreement, including, without limitation, liability expressly provided for under this MSA or any Service Agreement or arising by reason of the invalidity or unenforceability of any term of the MSA or any Service Agreement (and for the purposes of this definition, all references to "this MSA or any Service Agreement" shall be deemed to include any collateral contract); and
 - 9.6.3 **Negligence:** the breach of any (a) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (b) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).
- 10 **Insurance**
 - 10.1 EX3 shall maintain in force the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this MSA:
 - 10.1.1 professional indemnity insurance with a limit of at least [five million pounds (£5,000,000)] for claims arising from a single event or series of related events in a single calendar year;
 - 10.1.2 public and product liability insurance with a limit of at least [one million pounds (£1,000,000)] for claims arising from a single event or series of related events in a single calendar year.
 - 10.1.3 employer's liability insurance with a limit of at least [ten million pounds (£10,000,000)] for claims arising from a single event or series of related events in a single calendar year; and
 - 10.1.4 cyber and data insurance with a limit of at least [two million pounds (£2,000,000)] for claims arising from a single event or series of related events in a single calendar year.

11 Compliance

- 11.1 **Compliance With Applicable Laws:** Each party shall comply with all applicable laws in relation to the provision, receipt and use of the Services.
- 11.2 **Data Security (SOC2):** EX3 shall comply with the standards set forth in EX3's most recently completed SOC2 audit report, or comparable industry-standard successor report, to keep the Customer Data secure.
- 11.3 **Data Protection:** The parties shall comply with the terms of the Data Privacy and Security Addendum in relation to the processing of any Personal Data.

12 Termination

- 12.1 Either party may terminate this MSA upon giving not less than thirty (30) days' prior written notice to the other party for any reason, provided that at such time there are no outstanding Service Agreements then currently in force.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate this MSA or a Service Agreement immediately on giving notice in writing to the other party if the other party:
 - 12.2.1 commits a material breach of this MSA or the relevant Service Agreement and (if such breach is remediable) fails to remedy that breach within thirty (30) days of written notice to do so from the non-breaching party; or
 - 12.2.2 ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing.
- 12.3 Unless expressly stated otherwise in the termination notice, termination of one or more Service Agreements shall not terminate any other Service Agreement or this MSA which shall, as applicable, continue in full force and effect. Termination of this MSA for any reason shall automatically terminate all Service Agreements then in force at the date of such termination.
- 12.4 Upon any termination or expiration of this MSA or any Service Agreement the following provisions shall apply:
 - 12.4.1 EX3 shall no longer provide the applicable Services to Customer and Customer shall cease and cause its Users to cease using the Services;
 - 12.4.2 No refund shall be provided unless termination was by the Customer due to EX3's unremedied breach in which case the Customer shall be entitled to a refund of any prepaid fees for the balance of the unexpired term of the applicable Service Agreement, pro-rated from the date of termination;
 - 12.4.3 Except as expressly provided herein, termination of this MSA or Service Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party;

12.4.4 Each party shall promptly return or destroy all Confidential Information of the other party in its possession in accordance with Clause 10.9; and

12.4.5 EX3 shall provide such assistance as the Customer may reasonably request to support the transfer of the Services and any Third Party Product and Service to the Customer or a replacement supplier, subject to Customer paying the applicable Professional Services fees to be calculated in accordance with the then applicable Professional Services rate card.

12.5 All rights and obligations of the parties, which by their nature are reasonably intended to survive such termination or expiration, will survive termination or expiration of this MSA or any Service Agreement.

13 Confidentiality

13.1 In this MSA and any Service Agreement, the following definition shall apply:

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the Effective Date, including but not limited to:

- (i) the terms of this MSA and any Service Agreement;
- (ii) any information that would be regarded as confidential by a reasonable business person relating to:
 - (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and
 - (b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (iii) any information developed by the parties in the course of carrying out this MSA or any Service Agreement.

Representatives: in relation to a party, its employees, officers, representatives and advisers.

13.2 The parties expressly agree that:

13.2.1 the Customer Data and Customer Materials are the Customer's Confidential Information; and

13.2.2 the EX3 Data and EX3 Materials are EX3's Confidential Information.

13.3 The provisions of this Clause shall not apply to any Confidential Information that:

13.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause); or

- 13.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; or
- 13.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 13.3.4 the parties agree in writing is not confidential or may be disclosed.
- 13.4 Each party shall keep the other party's Confidential Information confidential and shall not:
 - 13.4.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this MSA or the relevant Service Agreement (**Permitted Purpose**); or
 - 13.4.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause.
- 13.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
 - 13.5.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - 13.5.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause.
- 13.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.7 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 13.8 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Clause are granted to the other party, or to be implied from this MSA or any Service Agreement.
- 13.9 On termination of this MSA or the relevant Service Agreement each party shall:
 - 13.9.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information relating to the terminated Service Agreements;

13.9.2 erase all the other party's Confidential Information relating to the terminated Service Agreements from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

13.9.3 certify in writing to the other party that it has complied with the requirements of this Clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 13 shall continue to apply to any such documents and materials retained by a recipient party in accordance with this Clause 13.9.3.

13.10 Except as expressly stated in this MSA or any Service Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

14 Assignment and other dealings

14.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this MSA or any Service Agreement without the prior written consent of EX3.

15 Entire agreement

15.1 This MSA (including the Annexes) and each Service Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.

15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this MSA or applicable Service Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this MSA or applicable Service Agreement.

16 Variation

16.1 No variation of this MSA or any Service Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17 Waiver

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

18 Severance

- 18.1 If any provision or part-provision of this MSA or any Service Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this MSA or Service Agreement.
- 18.2 If any provision or part-provision of this MSA or any Service Agreement is deemed deleted under Clause 18.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19 Third party rights

- 19.1 Except as expressly stated otherwise, this MSA and any Service Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 19.2 The rights of the parties to rescind or vary this MSA or any Service Agreement are not subject to the consent of any other person.
- 19.3 The Customer acknowledges that Third Party Providers have rights and obligations under their EULA and/or Third Party Terms.

20 Publicity

- 20.2 The Customer agrees that EX3 may use the Customer's name and may disclose that the Customer is a customer of EX3 in EX3's advertising, press, promotion and similar public disclosures. The Customer also hereby grants EX3 a non-exclusive licence to list the Customer's name and display the Customer's logo in its customer lists and on the "customer" or similar section of EX3's website. The Customer reserves the right to withdraw consent to use its name at any time with not less than thirty (30) days' written notice to EX3.

21 Independent Contractor

- 21.1 Each party is an independent contractor and neither party is, nor shall be considered to be, an agent, employee or representative of the other.
- 21.2 All personnel supplied or used by EX3 shall be its employees or subcontractors and EX3 assumes full responsibility for the actions of such personnel while performing the Services and for the payment of their compensation (including, if applicable, withholding of income taxes and the payment and withholding of social security and other payroll taxes), workers' compensation, disability benefits and the like to the extent applicable.
- 21.3 Nothing in this MSA or any Service Agreement is intended to, nor shall be deemed to, establish any partnership or joint venture between the parties, or authorise any party to make or enter into any commitments for or on behalf of the other party.

22 Non-Solicitation

- 22.1 The Customer acknowledges that EX3's employees are valuable business assets, and the Customer agrees that during the term of this MSA and for a period of six (6) months after termination of this MSA, it shall not (for itself or for any third party) directly or indirectly solicit for employment any employee (or former employee) of EX3 that has performed work under this MSA or any Service Agreement (a **Protected Individual**) or otherwise hire such Protected Individual as an employee or independent contractor.
- 22.2 The provisions of Clause 22.1 shall not restrict or preclude the Customer from making generalised searches for employees by the use of advertisements in the media or by engaging search firms to engage in searches that are not targeted or focused on the Protected Individuals, provided the Customer does not then hire the Protected Individuals as an employee or independent contractor as a result of such search.
- 22.3 Without prejudice to the foregoing, if the Customer commits any breach of Clause 22.1 or 22.2 it shall, on demand, pay to EX3 a sum equal to fifty percent (50 %) of one year's basic salary or the annual fee that was payable by EX3 to that Protected Individual. The parties agree that this sum is a genuine pre-estimate of the costs that will be incurred by EX3 in replacing such person.

23 Injunctive Relief

- 23.2 Each party acknowledges that if it breaches its obligations under this MSA or any Service Agreement the non-breaching party may sustain injuries that cannot be adequately compensated by an award of damages and accordingly, notwithstanding Clause 24 below, each party agrees that the non-breaching party shall be entitled to seek such injunctive relief as a court may determine to be appropriate therewith in addition to any other available equitable remedies and to available legal remedies.

24 Disputes

- 24.1 If a dispute arises out of or in connection with this MSA or any Service Agreement or the performance, validity or enforceability of them (**Dispute**), then, except as expressly provided in this MSA or the relevant Service Agreement, the parties shall follow the procedure set out in this Clause:
 - 24.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute;
 - 24.1.2 if the parties for any reason unable to resolve the Dispute within 30 Business Days of service of the Dispute Notice, the Dispute shall be referred to a senior officer (director level or equivalent) of EX3 and senior officer (director level or equivalent) of the Customer who shall attempt in good faith to resolve it;
 - 24.1.3 if the senior officers are for any reason unable to resolve the Dispute within 20 Business Days of it being referred to them, the parties agree to enter into mediation

in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR; and

- 24.1.4 unless otherwise agreed between the parties, the mediation will start not later than three months after the date of the ADR notice.
- 24.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

25 **Force-Majeure**

- 25.1 **Force Majeure Event** means an event adversely affecting the performance of this MSA or any Service Agreement arising from or attributable to acts, events, omissions which are beyond the reasonable control of the parties including, without limitation:

- 25.1.1 acts of God, flood, drought, earthquake or other natural disaster;

- 25.1.2 epidemic or pandemic;

- 25.1.3 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;

- 25.1.4 nuclear, chemical or biological contamination or sonic boom;

- 25.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

- 25.1.6 collapse of buildings, fire, explosion or accident;

- 25.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this Clause, or companies in the same group as that party);

- 25.1.8 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this Clause); and

- 25.1.9 interruption or failure of utility service.

- 25.2 Provided it has complied with Clause 25.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this MSA or any Service Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this MSA or any Service Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 25.3 The Affected Party shall:

- 25.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this MSA or a Service Agreement; and
- 25.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

26 Notices

- 26.1 Any notice given to a party under or in connection with this MSA or any Service Agreement shall be in writing and shall be:
 - 26.1.1 delivered by hand or by pre-paid signed-for post or other next working day delivery service at the address above or its registered office (if a company); or
 - 26.1.2 sent by email to legal@weareex3.com for EX3 Partner LLP and to the Customer.
- 26.2 Any notice sent by email shall not be deemed validly served unless the sending party also serves a copy of such notice on the other party by one of the other means identified in Clause 26.1 above, such notice to be delivered or sent on the same day as the day when such email is sent.
- 26.3 Any notice shall be deemed to have been received:
 - 26.3.1 if delivered by hand, at the time of signature evidenced on a valid delivery receipt;
 - 26.3.2 subject to compliance with Clause 26.2, if sent by email, on the day it was sent if sent before 5.00 pm on a Business Day, and otherwise at 9.00 am on the next Business Day.
- 26.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27 Counterparts

- 27.2 This MSA and any Service Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 27.3 Transmission of an executed counterpart of this MSA or any Service Agreement by email (in pdf, jpeg or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this MSA or Service Agreement.

28 Governing law and Jurisdiction

- 28.1 This MSA, each Service Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

- 28.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this MSA, any Service Agreement or their subject matter or formation.

Master Services Agreement

IN WITNESS WHEREOF, the parties have executed this MSA as of the Effective Date.

EX3 Partner LLP		[Client Name]	
Name:	_____	Name:	_____
Signature:	_____	Signature:	_____
Title:	_____	Title:	_____
Address:	Warehouse K, 2 Western Gateway, London, E16 1DR	Address:	
Date:		Date:	

ANNEX A: CLOUD SERVICE

In the event that the Customer purchases any Cloud Service, the following additional terms and conditions shall apply:

1. **Cloud Service.** Subject to the terms and conditions of this Annex A, the MSA and the Sales Order, EX3 will provide the Customer with access to the Cloud Service during the term set out in the Sales Order. The Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Cloud Service. EX3 assumes no responsibility for the reliability or performance of any connections as described in this Annex.
2. **Licence Grant.** Subject to the terms and conditions of this Annex A, the MSA and the Sales Order, and in consideration for the payment of fees set out in the Sales Order, EX3 hereby grants to the Customer, solely during the term of the Sales Order, a non-exclusive, non-transferable licence to access and use the Cloud Service solely for the Customer's internal use and solely for the specific service offering (as indicated in the Sales Order). This licence is restricted to use by the Customer and its Users and does not include the right to use the Cloud Service on behalf of any third party or the right to permit any non-User to access or use the Cloud Service. The Customer also agrees to be bound by any further restrictions set out in the Sales Order and its Appendices. All rights not expressly granted to the Customer are reserved by EX3 and its licensors. There are no implied rights. Except as expressly set out in the Sales Order or this Annex A, all fees are non-refundable.
3. **Licensed Volume.** The Customer acknowledges that access and use of the Cloud Service is licenced for use up to the number of Users or other metric purchased by the Customer and set out in the Sales Order (the "Volume Limitations"). By way of example, if the Sales Order specifies a specific number of Users, then the Cloud Service may only be accessed and used for that number of Users. In the event that the Cloud Service is used in excess of the Volume Limitations set out in the Sales Order then the Customer shall be obligated to pay EX3 for the number of applicable Users or other metric purchased by the Customer, as the case may be, in excess of such Volume Limitations at the rates set out in the Sales Order. The Customer may also add licences for additional Users or other metric purchased by the Customer by executing a new Sales Order or addendum.
4. **Restrictions.** The Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Annex A, the MSA and the Sales Order. Unauthorised use, resale or commercial exploitation of the Cloud Service in any way is expressly prohibited. Without EX3's express prior written consent in each instance, the Customer shall not (and shall

not allow any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Cloud Service, or (ii) access the Cloud Service in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Cloud Service. Except as expressly permitted herein, the Customer shall not copy, licence, sell, transfer, time-share or distribute the Cloud Service or use the Cloud Service on behalf of any third-party. In addition to EX3's other remedies hereunder, EX3 reserves the right upon notice to the Customer to terminate any User's right to access the Cloud Service if such User has breached any of the restrictions contained in the Sales Order (including this Annex A).

5. **Cloud Service Warranty.** EX3 warrants that during the term of the Sales Order, (i) the Cloud Service will conform, in all material respects, with its Documentation and (ii) it will use commercially reasonable efforts to ensure that it does not introduce any virus, Trojan horse or other malicious code into the Cloud Service environment. EX3 does not warrant that it will be able to correct all reported defects or that use of the Cloud Service will be uninterrupted or error free. EX3 makes no warranty regarding features or services provided by third parties or that the Cloud Service will meet the Customer's requirements. For any breach of the above warranty, EX3 will, at no additional cost to the Customer, provide remedial services necessary to enable the Services to conform to the warranty. The Customer will provide EX3 with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. Such warranties shall only apply if the Cloud Service has been utilised by the Customer in accordance with this MSA and the Sales Order. If EX3 is unable to remedy the warranty breach within thirty (30) days then the Customer may terminate its use of the defective Cloud Service and will receive a pro rata refund of the prepaid, unused Fees paid by the Customer for such Cloud Service. The remedies set out in this subsection are the Customer's sole remedies for breach of the above warranties.
6. **Modifications to Cloud Service.** EX3 may make modifications to the Cloud Service or particular components of the Cloud Service from time to time provided that such modifications do not materially degrade any functionality or features of the Cloud Service and EX3 will use commercially reasonable efforts to notify the Customer of any material modifications.
7. **Customer Data.** Except as provided in a Service Agreement, the Customer shall be solely responsible for providing, updating, uploading and maintaining all Customer Data to the Cloud Service. The Customer is solely responsible for all accuracy and quality of the Customer Data and EX3 does not guarantee the accuracy or quality of such Customer Data. Upon termination

of the Cloud Service, EX3 shall make the Customer Data available for the Customer to extract from the Cloud Service in its most recent form for a period of 30 days.

8. **Acceptable Use Policy.** Neither the Customer nor its Users shall use the Cloud Service to: (i) send, upload or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (ii) upload or otherwise transmit, display or distribute any Customer Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (iii) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) interfere with or disrupt the Cloud Service or networks connected to the Cloud Service; or (v) violate any applicable law or regulation.
9. **Support Services.** All Support Services relating to the Cloud Service will be provided with reasonable skill and care and in compliance in all material respects with the specification and any service performance levels for such Support Services as set out in the relevant Sales Order.

ANNEX B: PROFESSIONAL SERVICES

In the event that Customer purchases any of EX3's Professional Services, the following additional terms and conditions shall apply:

1. **Professional Services.** EX3 will provide the Professional Services pursuant to SOWs executed by the parties and referencing this MSA. Any Professional Services or Deliverables not expressly described in the applicable SOW are considered outside the scope of the SOW. EX3 will perform the Professional Services remotely unless expressly agreed in the SOW or otherwise mutually agreed in writing.
2. **Customer Responsibilities.** The pricing in the SOW assumes the participation of various Customer resources to ensure a smooth implementation such as data provision, system access and administration, testing assistance, user acceptance, and steering committee or stakeholder areas. The project is dependent upon active participation and the prompt response time from all the Customer participants. The Customer will provide access to necessary systems and resources in order for EX3 to perform the Professional Services outlined in the SOW. The Customer acknowledges EX3's ability to fulfill its responsibilities under each SOW is dependent upon the Customer fulfilling its responsibilities described in the SOW. Incorrect assumptions or information provided by the Customer, delays on the part of the Customer or any other failure of the Customer to meet its responsibilities may result in additional cost, delay in completion of the Professional Services, or inability to complete the Professional Services, and EX3 shall not be liable for such failure or delay.
3. **Warranty.** EX3 warrants that any Professional Services shall be provided in a professional manner, with reasonable skill and care and in accordance with any specifications set out in the SOW, in all material respects. EX3 further warrants that any Deliverables provided pursuant to any Professional Services shall comply, in all material respects, with the specifications set out in the applicable SOW. If the Professional Services are not performed as warranted or any Deliverable does not so comply, then, upon Customer's written request, EX3 shall promptly re-perform, or cause to be re-performed, such Professional Services or replace any defective Deliverables, at no additional charge to Customer. Unless a different warranty period is set out in the SOW, such warranties and other obligations shall only survive for sixty (60) days following the completion of the Professional Services or the delivery of the relevant Deliverable, as the case may be, and the Customer must report any such deficiency in Deliverables or Professional Services to EX3 in writing within such sixty (60) days. Such re-performance shall be Customer's exclusive remedy and EX3's sole liability for any such non-performance. If, however, after repeated efforts, EX3 is unable to remedy such defect in any

Professional Services or Deliverable, then Customer's sole remedy and EX3's entire liability shall be to refund to Customer any amounts previously paid by Customer for the particular deficient portion of the Professional Services or Deliverable. This warranty does not apply to any Deliverable that has been damaged, altered or used or maintained or stored other than in conformity with this MSA or the applicable Service Agreement.

4. **Deliverables.** Except for EX3 Materials and Third Party Materials, the Customer shall, upon payment in full of the applicable Fees, own all right, title, and interest in and to the Deliverables including all intellectual property rights in such Deliverables. The Customer acknowledges, however, that the Deliverables provided to the Customer may contain Third Party Materials or EX3 Materials. To the extent that the Deliverables include any Third Party Materials or EX3 Materials, then EX3 grants the Customer a perpetual, non-exclusive, non-transferable, royalty-free, worldwide licence to use such Third Party Materials and EX3 Materials solely in conjunction with Customer's use of the Deliverables (and not separate from such Deliverables). Notwithstanding the foregoing, certain Third Party Materials, may be subject to special licence notices, terms and/or conditions as provided to the Customer by EX3 ("**Third-Party Terms**"). The Third-Party Terms may include important licensing and warranty information and disclaimers. In the event of conflict between the Third-Party Terms and the other terms of this MSA or any Service Agreement, the Third-Party Terms will take precedence (but solely with respect to the Third Party Materials to which the Third-Party Terms relate). The Customer also acknowledges and agrees that EX3 is in the business of providing the Services, and as such will retain the unlimited right to use and to sublicense to others the ideas, concepts, techniques, processes, routines, algorithms or other expertise which EX3 develops or employs in providing the Professional Services, including those acquired in developing the Deliverables, in any products and for any purposes. Customer hereby grants to EX3 a perpetual, non-exclusive, royalty-free, worldwide licence to use any generic materials contained within the Deliverables for its own commercial business purposes.
5. **Change Requests.** Either party may request a change to Professional Services, and for such purpose shall submit to the other party a written notice ("**Change Request**") setting out the requested change and the reason for such request. Within five (5) business days (or such other period of time as agreed by the parties) after the receipt of such Change Request, the parties shall discuss the necessity, desirability and/or acceptability of the Change Request. When and if both parties have agreed in writing upon the changes, and any resulting change in the estimated fees for the project, the parties shall complete and execute a Change Order.

