



## Terms and Conditions

THESE TERMS AND CONDITIONS together with the attached Order Form which is incorporated hereto by reference (the "Order Form", and collectively – the "Agreement"), are entered hereto and shall constitute a binding agreement by and between Biz-Effective Ltd. ("Company") and the party executing the Order Form ("Customer". Company and Customer may each be also referred to herein as "Party", and collectively as the "Parties"), as of the Effective Date stated in the Order Form.

### Services

#### 1.1. The Services.

1.1.1 Subject to Customer's compliance with its obligations under this Agreement, Company will provide Customer online access to Company's comprehensive enterprise gamification solution (the "SaaS Product") and related services as set forth in the Order Form executed by and between the Parties and further detailed in Schedule A and Schedule B, for the applicable Term as set forth hereunder (collectively – the "Service(s)").

1.1.2 Additional Services. The Parties may execute additional Order Forms for additional or different features of the Services, and such additional Order Forms shall be incorporated and attached hereto under Schedule C.

1.1.3 Installation. In order to receive the Services, Customer may be required to download and install Company's proprietary software component (the "Component") on Customer's organizational task management system ("Customer's System"), and to use access methods such as browsers supported by the Services, thereby allowing the SaaS Product to access, collect and process certain Data (as defined below) in connection with and for the purpose of providing the Services.

#### 1.2. Access and Use.

1.2.1. Upon the execution of each Order Form, Company shall issue and provide Customer with personal access credentials ("User IDs") for Customer's system administrators and personnel designated to use the Services on its behalf ("Personnel"). Customer and its Personnel may only access and use the Services through the User IDs issued to them by Company. Customer is solely responsible for maintaining the confidentiality of the User IDs. Any instruction, action or activity occurring through any such User IDs shall be deemed to be provided and/or taken by Customer, and Customer shall be solely responsible for all activities that occur under such User IDs, including for any unauthorized use of such User IDs or any other breach of security, or any related damage or loss.

1.2.2. Customer shall ensure that (i) any Customer Data (as defined below) is provided in proper format as specified by the relevant documentation provided by Company with respect to the applicable Order Form and Service ("Documentation");



(ii) its Personnel are fully skilled and familiar with the use and operation of the Services; and (iii) each Service will be used solely in accordance with the applicable Documentation, including with respect to software, equipment and data compatibility.

1.3. Availability. During the Term, Company shall use commercially reasonable efforts to ensure the Services' availability, except for: (a) planned downtime (of which the Company shall give at least 72 hours' notice via its Internet website and which the Company shall schedule to the extent practicable during the weekend hours from 9:00 p.m. Friday to 6:00 a.m. Monday EST), or (b) any unavailability caused by circumstances beyond the Company's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems, Internet service provider failures or delays, or denial of service attacks.

## **License**

2.1. Subject to the terms and conditions of this Agreement, Company hereby grants to Customer a worldwide, nonexclusive, nontransferable, nonsublicensable, royalty-free, limited license during the respective Subscription Period (in accordance with the Order Form executed by and between the Parties) to access and use, and to allow its Personnel to access and use the Services, the SaaS Product, and the Component that are provided by Company in conjunction with the Services.

## **Term and Termination**

3.1. Term. This Agreement shall commence as of the Effective Date set forth under the Order Form and will continue for the Initial Subscription Period(s) set forth under the Order Forms executed pursuant hereto, unless terminated earlier as provided in this Agreement. Upon the lapse of each Initial Subscription Period, this Agreement (and the respective Order Form) shall automatically renew for subsequent periods of one (1) year (each, a "Renewal Term", and collectively with the Initial Subscription Period – the "Term"), unless either Party notifies the other Party of its intent not to renew at least thirty (30) days prior to the beginning of the Renewal Term. The expiration or termination of one Order Form but not of this Agreement shall not affect any other Order Form.

3.2. Termination for Breach. If either Party materially breaches this Agreement, the non-breaching Party may terminate this Agreement upon provision of written notice to the other Party, provided that the breaching Party has failed to cure such breach within thirty (30) days following its receipt of such notice. Company may terminate this Agreement immediately in its sole discretion upon Customer's breach of Sections 4, 5, 6 or 8 of this Agreement. Customer may terminate this Agreement immediately in its sole discretion upon Company's breach of Section 8 of this Agreement.

3.3. Termination for Bankruptcy. Either Party may terminate this Agreement in its entirety if the other Party (a) becomes insolvent or is unable to meet its debts as they mature, (b) files a voluntary petition in bankruptcy or seeks reorganization or to effect a plan or other arrangement with creditors, (c) applies for, consents to or acquiesces in the appointment of any receiver or trustee for all or a substantial part of its property, or if any such receiver or trustee is appointed and not discharged within thirty (30) days after the date of such appointment.



3.4. Effects of Termination. Upon expiration or termination of the Agreement for any reason, (i) all rights and licenses granted herein, and any Order Forms executed pursuant hereof, shall terminate immediately; (ii) each Party shall promptly return to the other Party, or destroy and certify the destruction of, all Confidential Information (as defined below) to the other Party; (iii) Customer shall immediately cease to use and shall purge from its systems any traces of the SaaS Product, the Services and the Component, shall immediately revert the Customer's System to the configuration existing prior to the installation of the Component and receipt of the Services; (iv) Customer shall remit in full all payments due to Company according to this Agreement and all Order Forms pursuant thereto (and in the event of termination by Company, only such payments accruing prior to the date thereof), and following such final payment, neither Party will be entitled to receive any payment from the other Party; (v) the following provisions shall survive the expiration or termination of this Agreement: 3.4, 4, 5.2, 6, 7, 8, 9, 11; and (vi) all other performance obligations of both Parties under this Agreement shall cease.

#### **Proprietary Rights; Privacy**

##### **4.1. Company Ownership and Permission to Use Content**

4.1.1. Customer acknowledges that Company owns the Services, including all rights related to or arising from the SaaS Product and/or Component, any literary works, text, images, photos, trademarks, service marks, designs, UI, technology, software, trade secrets and any other proprietary materials included and/or used therein, and any and all related content and information that Company provides to Customer through the SaaS Product and Services (collectively, the "Content"). This Agreement does not confer to Customer any right of ownership in the Content or Services. Customer acknowledges that subject to Section 4.2, the Services and the Content (excluding Customer Data) are proprietary in nature and owned exclusively by Company.

4.1.2. In the event Customer provides Company with any suggestions, comments or other feedback ("Feedback") relating to the Services or the SaaS Product, whether such Feedback is provided prior to, on or after the Effective Date, such Feedback shall become the sole and exclusive property of Company, and Customer hereby irrevocably assigns to Company all of its right, title and interest in and to such Feedback.

4.2. Ownership of Customer Data. As part of the Services, Customer and its Personnel may provide certain data through their use of the Services, SaaS Product and Component. Additionally, the SaaS Product may collect and process certain data from or through the Customer's System, including without limitation, personnel work performance details; name, email (collectively, "Data"). All Data that is either provided by Customer (including any Personnel and Customer's employees) through or pursuant to the use of the Services, SaaS Product and Component, or collected by Company from the Customer's System through the SaaS Product and Component, and which is proprietary to Customer ("Customer Data"), will remain the property of Customer.



4.3. Customer's Privacy Policy. Customer warrants and represents that it has the full right, authority to permit Company and its third party service providers to collect, store, process and use Data for the purposes set forth under this Agreement, and that the collection, storage and use of Data as contemplated under this Agreement by Company and/or Company's service providers will not violate any applicable law, regulation or rules (including any privacy protection or employment laws) or breach any contractual agreement to which Customer is a party to. Customer further warrants and represents that it has obtained the necessary consents and permissions from its Personnel, employees and other end-users of Customer's System ("End Users"), including without limitation through Customer's System privacy policy and/or employee guidelines and policies, to permit Company and its service providers to access, collect, store, process and use Data in accordance with the terms of this Agreement.

4.4. Personally Identifiable Information. Company will not use the SaaS Product or Component to collect, store or use any information that can be used on its own or with other information to identify, contact, or locate an End User ("Personal Data"), except to the extent necessary for providing the Services to Customer or as set forth in the Company Privacy Policy located at <https://www.central.com/privacy/>.

#### 4.5. Data Collection and Processing.

4.5.1. Notwithstanding anything herein to the contrary, Company may collect, store, transfer and use the Data and any additional information that Customer provides and/or that Company collects through the SaaS Product and Component on behalf of the Customer solely for the purpose of providing the Services hereunder.

4.5.2. To the extent Company processes any Personal Data on Customer's behalf when performing its obligations under this Agreement, Customer shall be deemed the data controller and Company shall be deemed a data processor, and in any such case: (i) Customer will collect, use, transfer and otherwise process any Personal Data collected by or through the SaaS Product and Component in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments, including but not limited to the data protection laws and employment laws; (ii) Customer shall be responsible for providing appropriate information and obtaining any required consent from its Personnel, employees and End Users, including notice and consent allowing it to own and control all Data that is provided by Personnel and End Users; and (iii) Customer have provided such information and obtained such consent to any processing of Personal Data by and through the SaaS Product, Component and Services in accordance with any and all applicable laws.

### **Customer Conduct**

5.1. Compliance. Customer will use the Services pursuant to, and only for the purposes set forth in, this Agreement. Customer will not use, nor will Customer permit any third party, Customer contractor or service provider, Personnel or End User to use, the Services for any unlawful purpose, in furtherance of any unlawful purpose or in violation of the terms and conditions of this Agreement. If Company has reasonable grounds to believe that Customer or any third party, Customer contractor or service provider, Personnel or End User is using the Services for any improper purpose or in violation of the terms and conditions of this Agreement, Company may suspend or terminate the Services immediately upon notice to Customer, in addition to all other rights and remedies available to Company in law and equity in connection with such



misuse. For the avoidance of doubt, any act or omission by a Customer's contractor, agent, representative or service provider that would have constituted a breach of any term or condition of this Agreement were it conducted by Customer, shall be deemed a breach of this Agreement by Customer.

## 5.2. Unauthorized Conduct

5.2.1. Customer will not, directly or indirectly, transmit or permit End Users, Personnel or third parties to transmit, directly or indirectly, to any of Company's servers any virus, software program or segment of code, or other programming design, instruction, or routine that permits unauthorized access to any Company server, or the Services and is intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any of the foregoing or any system, data, or personal information.

5.2.2. Customer will not (a) breach or attempt to breach the security of any network, servers, data, computers or other hardware or software relating to or used in connection with the Services or belonging to or used or leased by any other customer of Company or any third party that is hosting or interfacing with any part of the Services; or (b) use or distribute through the Services any software, files, data, or other tools, devices or information designed or reasonably expected to interfere with, infringe upon or compromise the privacy of any entities, the security or use of the Services, or the operations or assets of any other customer or end user of Company or any third party.

5.2.3. Customer will not modify or tamper with the Services (including the SaaS Product or Component) in any way. Furthermore, Customer will not, and will not permit any End User or third party to, reproduce, copy, emulate, translate, modify, adapt, create derivative works from, distribute, transmit, transfer, republish, reverse engineer, decompile, or otherwise attempt to discover any object code, compile or attempt to compile any object code from any source code, or remove or delete any portion of the Services (including the SaaS Product or Component).

5.2.4. Customer will not use the Services (including the SaaS Product and Component) in any context that harms the goodwill or reputation of Company or that may disparage or bring Company into disrepute, including any such use that may be perceived as indecent, illegal, misleading, harmful, abusive, harassing, defamatory or otherwise offensive against End Users, Personnel, Company or any third party.

## Fees and Payment Terms

6.1. Subscription Fees. In consideration for the Services, Customer shall pay Company the amounts set forth on each Order Form ("Fees").

6.2. Payment Terms and Taxes. All Fees shall be paid within Net thirty (30) days after receipt of invoice. Any payment not received by Company within such period shall accrue interest at a rate of one percent (1%) per month, or the highest rate allowed by applicable law, whichever is lower. All Fees are stated and payable in US Dollars, and are exclusive of VAT.



Customer will bear and pay all taxes related to or arising from this Agreement, except for those taxes based on Company's income. Customer may not withhold or set off any Fees due to Company hereunder.

**Disclaimer of Warranties; Limitation of Liability**

7.1. Disclaimer of Warranties. COMPANY DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE, THE INABILITY TO USE OR OPERATE, OR THE RESULTS OF THE USE OR OPERATION OF THE SERVICES, THE SAAS PRODUCT OR THE COMPONENT (OR ANY PART THEREOF). THE SERVICES, THE SAAS PRODUCT OR THE COMPONENT (AND ANY PART THEREOF), INCLUDING WITHOUT LIMITATION ANY CONTENT, DATA, MATERIALS, REPORTS AND ANY INFORMATION RELATED THERETO, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF USE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY REPRESENTATIONS OR WARRANTIES AS TO THE USABILITY, ACCURACY, QUALITY, AVAILABILITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, SECURITY OR EFFECTIVENESS OF ANY CONTENT, DATA, RESULTS, OR OTHER INFORMATION OBTAINED OR GENERATED BY COMPANY AND/OR CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICES. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SERVICES COULD LEAD TO DEATH, PERSONAL INJURY OR PHYSICAL OR ENVIRONMENTAL DAMAGE, AND CUSTOMER SHALL ASSUME ALL RISK WITH RESPECT THERETO.

7.2. Aggregate Liability. IN NO EVENT WILL COMPANY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES (WHETHER IN CONTRACT, EQUITY, NEGLIGENCE, TORT OR OTHERWISE) EXCEED THE AGGREGATE FEES PAID BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE APPLICABLE CAUSE OF ACTION ARISES.

7.3. Indirect Damages. UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFIT OR LOSS RESULTING FROM BUSINESS INTERRUPTION OR LOSS OF DATA, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. COMPANY WILL NOT BE LIABLE FOR ANY DELAY, LOSS OR DAMAGE ATTRIBUTABLE TO ANY SERVICE, PRODUCT OR ACTION OF ANY PERSON OTHER THAN COMPANY AND ITS EMPLOYEES.

7.4. Basis of Bargain. Customer acknowledges that Company has set its Fees and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that the limitation and exclusions of liability and disclaimers specified in this Agreement will survive the expiration or termination of this Agreement and apply even if found to have failed of their essential purpose.

7.5. Customer Liability. Customer warrants that it is a business user and not a consumer. It accepts full and sole responsibility for developing and implementing a satisfactory full data backup and a disaster recovery capability facilitating complete data recovery including restoration or reconstruction of all lost or altered files data or programs, and the security of all its confidential proprietary and classified information, and all Personal Data.

### **Confidential Information**

8.1. Confidentiality. Each Party will hold all Confidential Information of the other Party, whether received prior to, on or after the Effective Date, in strict confidence and shall not directly or indirectly use (other than for the purposes as permitted hereunder), copy, transfer or disclose any such Confidential Information, unless specifically authorized by the other Party in writing. Each Party understands and acknowledges that all items of Confidential Information of the other Party are important, material and confidential trade secrets of the other Party and affect the successful conduct of its business. "Confidential Information" means the confidential and proprietary information of a Party, including any and all ideas, information, concepts, designs, logos, names, know how, techniques, processes, methods, inventions, products, works of authorship, discoveries, developments, source code and object code, other programming code, algorithms, innovations, improvements, Customer Data and Personal Data, and other proprietary information of a Party of any kind, whether tangible or intangible, whether in written or other form, and its technical information, and operating procedures and production technologies, that is labeled or otherwise designated as confidential, or that by its nature would reasonably be expected to be kept confidential. Without limiting the generality of the above, Company's Confidential Information shall also include (a) the terms and conditions of this Agreement, and (b) the SaaS Product, the Component, the Services and all Intellectual Property embodied therein and all Intellectual Property rights relating thereto. Notwithstanding the foregoing, information shall not be considered Confidential Information to the extent it: (i) is already known to the receiving Party free of any restriction at the time it is obtained from the other Party; (ii) is subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of either Party; or (iv) is independently developed by one Party without reference to any Confidential Information of the other. If Confidential Information is required to be disclosed by law, regulations, court order or subpoena, the receiving Party shall immediately notify the disclosing Party prior to making such disclosure in order to afford the disclosing Party a reasonable period of time to oppose to such order.

8.2. Restrictions and Obligations. The receiving Party shall: (i) use Confidential Information received by it solely to carry out the purposes of this Agreement and for no other purpose whatsoever; (ii) limit access to any Confidential Information received by it only to its employees and/or contractors who have a need to know and only for use in connection with this Agreement; (iii) advise those employees and/or contractors having access to the Confidential Information of the proprietary nature thereof and of the obligations set forth in this Agreement; (iv) take appropriate action by agreement with those employees and/or contractors having access to the Confidential Information to fulfill its obligations under this Agreement; (v) safeguard all Confidential Information received by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own similar information or material; and (vi) upon the disclosing Party's request, return or destroy and certify destruction of all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the Confidential Information to the disclosing Party. It is understood and agreed that each Party

assumes full liability for a breach by any of its agents, employees or contractors of this Section 8. It is hereby clarified that each Party's confidentiality and non-use obligations under this Section 8 shall survive the expiration or termination of this Agreement and remain in effect until each such Confidential Information is no longer deemed as "Confidential Information" as defined herein.

8.3. Remedies. The Parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and agree that the non-breaching Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

Non-Compete. The Customer hereby acknowledges and agrees that the Company will suffer irreparable injury if the Customer competes with the Company's business. The Customer hereby undertakes and agrees that during the Term and for a period of one (1) year following the date of termination or expiration of this Agreement, the Customer shall not, directly or indirectly, either alone or jointly with others or as an employee, agent, consultant owner, partner, joint venture, stockholder, broker, principal, corporate officer, director, licensor or in any other capacity or as an employee of any person, firm or company, anywhere in the world, engage in, become financially interested in, be employed by or have any connection with any business or venture that is engaged in any activities involving (i) products or services competing with the Company's products or services, including the SaaS Product and the Component or with such of the Company's affiliates products and services which relate to the Company actual or proposed business, products, including the SaaS Product and the Component, or research and development, as they shall be at the time of termination of my employment, or (ii) information, processes, technology or equipment which competes with information, processes, technology or equipment in which the Company has a proprietary interest, or in which any of the Company's affiliates then has a proprietary interest and which are related to the Company actual or proposed business, products or research and development, including the SaaS Product and the Component. The foregoing shall not apply to (i) holdings of securities of any company the shares of which are publicly traded on an internationally recognized stock exchange, which do not exceed 1% of the issued share capital of such public company, so long as the Customer has no active role in such public company as a director, officer, employee, consultant (including as an independent consultant) or otherwise, or (ii) de Minimis non-commercial activities.

### **Mutual Indemnification**

10.1. Indemnification by Customer. Customer will indemnify Company for, and hold Company harmless from and against, any and all Liabilities (as defined herein) or Expenses (as defined herein) at any time due, owing, paid or incurred by, or assessed against, Company arising out of (a) a breach by Customer of this Agreement; or (b) any third party claim related to the collection, storage, transfer or other use of Data, Customer's use of the Services, SaaS Product, Component or the Content, except to the extent the claim is solely attributable to the willful misconduct of Company; provided however, that Company must give Customer prompt notice in writing of the institution of the Proceeding (as defined below), permit Customer to defend the same and give Customer all available information assistance and authority (at Customer's expense) in connection therewith. Customer, at its option, will have control of the defense of any such Proceeding including appeals thereof and all negotiations therefor, including the right to effect the settlement or compromise thereof, provided that (i)





no settlement, consent order or consent judgment which involves any admission of any liability or wrongdoing, or any act or omission on the part of Company may be agreed to by Customer without Company's prior written consent, which shall not be unreasonably withheld or delayed, and (b) Customer shall keep the Company informed of the status and progress of such Proceeding, the defense thereof and/or settlement negotiations with respect thereto. "Liabilities" means all liabilities, losses and claims (including judgments, interest, fines, penalties, attorneys' fees due any other Party, court costs, and amounts to be paid in settlement) reasonably incurred in connection with any Proceeding. "Expenses" includes all attorneys' fees and costs, retainers, court costs, transcripts, experts' fees, witness fees, travel expenses, computer costs, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses reasonably incurred in connection with asserting or defending claims, and any expenses incurred in the enforcement of Customer's obligations hereunder. "Proceeding" includes any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative.

10.2. Indemnification by Company. Company will indemnify Customer for, and defend and hold Customer harmless from and against, any and all Liabilities or Expenses at any time due, owing, incurred by, or assessed against, Customer arising out of claims brought by third parties, relating to or connected with, directly or indirectly, any claim that Customer's use of the Services in accordance with this Agreement infringes or otherwise violates the patent, trademark, copyright or other legally cognizable intellectual property rights of any such third party; provided however, that Customer must give Company prompt notice in writing of the institution of the Proceeding, permit Company to defend the same and give Company all available information assistance and authority in connection therewith. Company will have control of the defense of any such Proceeding including appeals of and all negotiations therefor, including the right to effect the settlement or compromise thereof. In case the Services are in any such Proceeding alleged or held to constitute infringement, Company will at its option and expense (a) procure for Customer the right to continue using the Services, (b) replace the same with materially equivalent or superior non-infringing Services, or (c) modify the same so that it becomes non-infringing without materially impairing or degrading its performance or functionality. Company, however, will not have any liability whatsoever to Customer, third parties or End Users to the extent that any such infringement, or claim thereof, is based upon or arises out of (i) the use of the Services, the SaaS Product and/or Component in combination with any software, apparatus or devices not used or supplied by Company if the action would have been avoided by use of other software, apparatus or devices, (ii) the use of the Services, the SaaS Product and/or Component in a manner for which the same was neither designated nor contemplated, or (iii) the claimed infringement of any patent in which Customer or any subsidiary or affiliate of Customer has any direct or indirect interest, by license or otherwise. The foregoing states the entire liability of Company for or resulting from such infringement or claim thereof with respect to the Services.

## **Miscellaneous**

11.1. Relationship of the Parties. Nothing in this Agreement shall in any way be construed to constitute either Party as an agent, partner, joint-venturer, employee or representative of the other Party, and both Parties shall remain independent contractors.



11.2. Public Relations (PR). The Parties shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement. The Parties agree that the Company may publicly refer to Customer as its customer and refer to the existence of this Agreement, and that the Company shall be permitted to display the logo of the Customer on the Company's Internet website.

11.3. Notices. Any written notice connected with this Agreement will be sufficiently made on the mailing date if sent by registered, certified or first class – postage prepaid mail to the Party at its address set forth on the cover page of this Agreement.

11.4. Force Majeure. Each Party to this Agreement will be excused for delays in performing or from its failure to perform hereunder (other than payment delays) to the extent that the delays or failures result from causes beyond the reasonable control of such Party; provided that, in order to be excused from delay or failure to perform, such Party must act diligently to remedy the cause of the delay or failure.

11.5. Assignment. This Agreement will be binding upon Company's or Customer's successors or assigns, as the case may be. However, neither this Agreement nor any of Customer's rights, privileges, duties or obligations under this Agreement may be assigned, sublicensed, sold, mortgaged, pledged or otherwise transferred or encumbered by Customer without the prior written consent of Company, which shall not be unreasonably withheld or delayed.

11.6. Governing Law; This Agreement shall in all respects, including matters of construction, validity and performance, be governed by and be construed in accordance with the laws of United Kingdom.

11.7. European Union Residents. If Customer resides in the European Union (EU) or if any transfer of information between Customer and the Services is governed by the European Union Data Protection Directive or national laws implementing that Directive, then Customer consents, and shall obtain any consent and approval required by applicable law, to the transfer of such information outside of the European Union to its country and to such other countries as may be contemplated by the features and activities provided via the Services.

11.8. Waiver of Breach. No waiver by either Party of any breach of this Agreement will constitute a waiver of any other breach of the same or other provisions of this Agreement. No waiver by either Party will be effective unless made in writing and signed by an authorized representative of that Party.

11.9. Severability. If any provision in this Agreement is invalid or unenforceable in any circumstance, its application in any other circumstances and the remaining provisions of this Agreement will not be affected thereby.

11.10. Entire Agreement. This Agreement, together with its Schedules and any outstanding Order Forms executed pursuant thereto, constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof. This



Agreement supersedes all prior written and oral agreements and all other communications between Company and Customer. Amendments to this Agreement will be effective only if written and signed by Company and Customer.

11.11. No Third Party Beneficiaries. Each Party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than Customer and Company.

11.12. Interpretation and Priority of Documents. In the case of conflicts or inconsistencies between the terms of this Agreement and any Order Form or Schedule hereto, the terms of this Agreement will prevail, except as specifically stated otherwise. Unless designated as replacing a specific outstanding Order Form, a new Order Form will be considered to be in addition to then-outstanding Order Forms.

11.13. Authority; Counterparts. Customer's signature is by an authorized representative of Customer and constitutes Customer's acceptance of this Agreement and its agreement to be bound hereby. This Agreement may be executed and delivered by the Parties in counterparts (each of which will be considered for all purposes an original) and by facsimile or by e-mail transmission in PDF format, and when a counterpart has been executed and delivered by each of the Parties, by facsimile, e-mail in PDF format or otherwise, all such counterparts and facsimiles will together constitute one agreement.

11.14. Headings; Interpretation. The Section headings in this Agreement are for identification purposes only and will not affect the interpretation of this Agreement. Unless business days are specified, all references to "days" means calendar days.

## **Schedule A**

### **Services and Subscription Types**

Each Order Form will specify a Code from the following list (or will specify other terms of use) defining Customer's permitted use:

- i) User Count Subscription. Customer Personnel may access and use the Service through User IDs up to the number of Users specified on the Order Form. Customer may request Company to add/drop User IDs as reasonably needed to accommodate changes in Customer workforce. Customer is not entitled to a refund for any unused or unassigned User IDs (Code: UCS).
- ii) User count – limited activities Subscription. Customer Personnel may access and use the Service through User IDs up to the number of Users specified on the Order Form and the maximum number of Activities specified on the Order Form. Customer may request Company to add/drop User IDs as reasonably needed to accommodate changes in Customer workforce. Customer is not entitled to a refund for any unused or unassigned User IDs. (Code: ULS).
- iii) Company-Wide Subscription. Customer Personnel may access and use the Service through User IDs without limit. Customer may request Company to add/drop User IDs as reasonably needed to accommodate changes in Customer workforce. (Code: CWS).



iv) Enterprise-Wide Subscription. Personnel of Customer and its Affiliates may access and use the Service through User IDs without limit. Customer may request Company to add/drop User IDs as reasonably needed to accommodate changes in Customer workforce. If any Affiliate of the Customer is sold or otherwise ceases to qualify as an Affiliate, then upon request of the Customer, the Company shall in good faith negotiate reasonable terms and conditions for licensing that entity's continued use of the Service (Code: EWS).

## **Schedule B**

### **Support Services**

"Major Error" means the SaaS Product, Component and/or Services or a critical part thereof is unavailable with no bypass or workaround, or with a bypass or workaround that is intolerable or has major impact on the Customer's ability to conduct its business.

"Non-Major Error" means an error or deficiency of the SaaS Product, Component and/or Services that is not a Major Error.

"Support" means investigating reported errors and defects, and, if such errors or defects are confirmed by Company to exist in the SaaS Product, Component and/or Services as delivered by the Company, attempting to provide Customer with a resolution of or workaround to such errors and defects.

Subject to the terms of the Agreement and as set forth in the Order Form, and subject to Customer's compliance therewith, the Company shall provide Customer the following Support services:

Major Errors – the Company shall make its best efforts start Support of any Major Error which is reported by Customer to Company in writing and with a sufficiently detailed description, not later than twenty-four (24) hours from the Customer's said written report. If the Customer's report is not made during Company's normal Support and Service hours, then the twenty-four (24) hours shall be counted from the beginning of the next business day.

Non-Major Errors – the Company shall make commercially reasonable efforts to Support any Non-Major Error which is reported by Customer to Company in writing and with a sufficiently detailed description, not later than three (3) Support and Service days from the Customer's notification.