MASTER SUBSCRIPTION AGREEMENT

INTRODUCTION

MASTER SUBSCRIPTION AGREEMENT | This Master Subscription Agreement, comprised of the components below, the "**Agreement**", is made between the Cutover entity ("**Cutover**") and customer entity ("**Customer**") named on the Subscription Order Form (each of the relevant parties, a "**Party**", and collectively, the "**Parties**"). The Agreement between Cutover and Customer commences on the effective date as defined in the Subscription Order Form ("**Effective Date**").

AGREEMENT STRUCTURE | The Agreement comprises the Service Terms, the Schedules hereto (including the **Data Processing Addendum**), together with the Subscription Order Form and all other Order Forms in force between the Parties in connection with the applicable Cutover Instance.

Capitalised terms used in this Agreement have the meanings given in the introductory paragraphs above or otherwise in **Clause 18** (*Definitions & Interpretation*).

LOCATIONS

London | Godesic Limited
41 Luke Street, Shoreditch
London EC2A 4DP

New York | Cutover Inc.
27 E, 28th Street,
New York, NY 10016
www.cutover.com

SERVICE TERMS

1. PROVISION OF CUTOVER SERVICES

Access to Cutover Services | In consideration of payment by Customer of the Charges, Cutover will provide Customer (and its Affiliates subject to Clause 2.8 (*Customer Affiliates*)) with access to the relevant purchased Cutover Services set out in this Clause 1, subject to the stated particulars of the applicable Order Forms and the terms of this Agreement. Cutover Services will be provided by Cutover and/or its Affiliates in accordance with Clause 1.6.

1.1 **Subscription Service** | During the Subscription Term, Cutover shall:

    (a) make the Cutover Instance available to Customer and its Users pursuant to the terms of the Subscription Order Form and any applicable Additional Order Forms for its internal business purposes or other such purposes set out in an Order Form;

    (b) provide Customer with the service levels and support as set out in the SLA in relation to the production environment of its purchased Cutover Instance;

    (c) provide access to the Customer Success, Implementation and Training services ("**CSIT Services**") as set out in the Subscription Order Form;

    (d) provide Maintenance Releases pursuant to Clause 2.11 (*Maintenance Releases*) and otherwise in accordance with the upgrade and release particulars set out in the Documentation; and

    (e) enable Customers to use Ancillary Software solely for the purpose of facilitating Customer's connection to and use of the Cutover Instance.

1.2 **Developer API** | For the duration of the Subscription Term, Cutover will provide the Customer with access to the Developer API and self-serve Integration functionality in accordance with the Developer API Terms.

1.3 **Professional Services** | Cutover will provide Customer with the Professional Services expressly referred to in an Order Form in accordance with the terms of the applicable Order Form.

1.4 **Integrations** | Cutover-built Integrations expressly referred to in an Order Form will be provided in accordance with any applicable timeframes stated in the relevant Order Form or the Scope Document (as defined in the applicable Exhibit), subject to the specified assumptions, dependencies and other conditions.

1.5 **Cutover Affiliates** | Customer agrees that Cutover or its Affiliates may provide the Services pursuant to this Agreement. The terms of this Agreement shall apply *mutatis mutandis* to any part of the Services provided by Cutover's Affiliates and, in such circumstances, references to Cutover shall be read to mean the relevant Cutover Affiliate. Notwithstanding the foregoing, Cutover remains solely responsible for the performance of its and its Affiliates' obligations under this Agreement. All acts, omissions or breaches of this Agreement, of or by Cutover's Affiliates or their Personnel, shall be deemed to be the acts, omissions or breaches of Cutover, and any loss, damage, cost, expense or other liability incurred by Customer resulting from any such act, omission or breach shall be recoverable solely by Customer from Cutover subject to the terms of this Agreement.

1.6 **Product Trial** | During the Subscription Term, Cutover may offer Customer the opportunity to participate in free trial ('**Product Trial**') solely for the purpose of evaluating the Services to determine whether to purchase a subscription for Customer's internal use. Cutover shall outline to the Customer in writing the length of any Product Trial (which may be by email). Cutover may end a Product Trial without notice at any time. **Product Trials are provided "as is" and without any guaranteed services levels or warranty of any kind.**

2. USE OF CUTOVER SERVICES

2.1 **Service Limits** | Customer's Service Limits are (collectively) as stated in the Subscription Order Form and any other applicable Order Forms agreed between the Parties for the purchase of additional Service Limits (subject to increases pursuant to Clause 2.3

(*Registered User Actions*)). Service Limits are consumed across all usage of the Customer's Cutover Instance, including the production environment and any applicable non-production or sandbox environments.

2.2   **Full User Logins** | A User accessing a Full User login has access to all current features of the Cutover Instance subject to the limitations that apply to the sending and receipt of SMS messages and use of conference calls in certain countries and regions. Each Full User counts toward the User Limit as expressly set out in the applicable Order Form excluding Registered User Actions (as set out in Clause 2.3).

2.3   **Registered User Actions** | A User may login to the Cutover Instance as a Registered User to (i) authenticate their login credentials (unless set up via single sign-on (SSO) functionality for which authentication is not required), and (ii) receive email notifications and reports, without consuming a Full User login (collectively, "**Registered User Actions**"). A User may also use a Registered User login to receive SMS notifications once they have added a mobile telephone number to their Cutover login account (which will consume a single monthly Full User login for the initial setup). A REGISTERED USER THAT USES THE CUTOVER INSTANCE FOR MORE THAN REGISTERED USER ACTIONS IS AUTOMATICALLY DEEMED, AND CHARGED, AS A FULL USER.

2.4   **User Logins** | In relation to its Users' use of the Cutover Instance, Customer agrees that it will not allow the login credentials of an individual User (being a natural person) to be used by anyone or any technology other than that User and will notify Cutover promptly if it suspects or becomes aware that any User's login details have or are being shared with other individuals or technologies, or may otherwise have been compromised or subject to unauthorised disclosure.

2.5   **Overages** | Customer's usage of the Services may exceed its applicable Service Limits in any given month of the Subscription Term ("**Overage**"), and Cutover shall have the right to monitor account usage and invoice Customer for the Overage Fees in excess of the then current Service Limits. The applicable Overage Fees will be invoiced on a pro-rata basis from the beginning of the month in which the relevant Overage occurred to either (a) the end of the then-current Contract Year (if the Subscription Fees are billed annually) or, (b) the end of the Order Form Term. THE APPLICABLE SERVICE LIMITS SHALL THEN BE INCREASED BY THE OVERAGE FOR THE REMAINDER OF THE ORDER FORM TERM AND CUTOVER MAY INVOICE CUSTOMER THE CHARGES FOR THE INCREASED SERVICE LIMITS AT THE START OF THE NEXT CONTRACT YEAR (IF APPLICABLE).

2.6   **Usage Restrictions** | In relation to its use of the Services, Customer agrees (and shall procure that its Affiliates, Users and, as applicable, any Customer Providers agree):

(a)   that the Services may only be used to the extent permitted by the terms of this Agreement;

(b)   to abide by any restrictions agreed in the Order Forms in force between the Parties; and

(c)   that it will not (i) licence, sub-licence, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of the Services available for access by third-parties, except as may be otherwise expressly stated herein or in an Order Form, (ii) access the Services for the purpose of developing or operating products or services which compete with any of the Services, (iii) disassemble, reverse engineer, or decompile, or copy, create derivative works based on, or otherwise modify any part of the Services, except as is expressly stated in this Agreement, any Order Form or as permitted by applicable law, (iv) remove or modify any copyright or other proprietary rights notices in the Services, (v) use the Services in violation of applicable law, (vi) use the Services to reproduce, distribute, display, transmit, or use material protected by copyright or other Intellectual Property Rights (including the rights of publicity) without first obtaining the owner's permission, (vii) introduce any viruses or other harmful computer code into the Services or otherwise engage in any malicious act to disrupt the Services).

2.7   **Fair Use Policy** | Cutover operates a 'reasonable fair use' policy in relation to the conference call features of the Cutover Instance. Full Users are entitled to a monthly usage limit of one hundred (100) SMS and one hundred (100) minutes (for example, ten (10) attendees for a ten (10) minute conference call equals one hundred (100) minutes in total). Usage of SMS and conference call minutes will be calculated based on adding up the number of SMS messages and conference call minutes used by Customer's Users (whether Full Users or Registered Users) per month and dividing the totals by the number of Full Users included in Customer's then current User Limit. Cutover will monitor the level of usage. If the monthly usage limit is exceeded, Cutover shall invoice Customer an amount equal to the over usage at Cutover's then current rates. CUTOVER DOES NOT GUARANTEE THAT THE CONFERENCE CALL AND SMS FEATURES OF THE CUTOVER INSTANCE ARE AVAILABLE, OPERABLE OR RELIABLE IN EVERY REGION OR COUNTRY.

2.8   **Customer Affiliates** | Unless stated otherwise in an Order Form, provided Customer's User Limit is based on a fixed number of Users and is not priced on an unlimited User enterprise licence agreement basis, Customer shall be permitted to allow its Affiliates to use the Services subject to the conditions set out in Clause 2.9 (*Affiliate Use*).

2.9   **Affiliate Use** | In relation to use of the Services by Customer Affiliates:

(a)   Cutover shall not be required to carry out any Additional Services or Professional Services, dedicate additional resource or provide additional instances of the Platform, unless agreed between the Parties in an Order Form;

(b)   Customer shall be liable to pay all Overage Fees incurred by its Affiliates and their Users;

(c)   Customer shall procure (and be liable for any failure to procure) that each of its Affiliates granted use of the Services observes and complies with Customer's obligations in this Agreement; and

(d)   no Customer Affiliate has the right to commence legal action against Cutover or its Affiliates under this Agreement or any Order Form. If a Customer Affiliate suffers any loss, damage, cost, expense or other liability as a result of any breach by Cutover (and/or its Affiliates) of its obligations under this Agreement, Customer (but not the Customer Affiliate) may bring an action to recover such loss or damage from Cutover, subject to the limitations in this Agreement.

2.10 **Future Functionality** | Unless expressly stated in an Order Form, Customer acknowledges and agrees that (i) its purchase of access to the Cutover Instance is not contingent, and (ii) the payment of Charges by Customer is not conditional, on the delivery of future features or functionality.

2.11 **Maintenance Releases** | Customer acknowledges and agrees that Maintenance Releases will be rolled out to its Cutover Instance using Cutover's automatic deployment model so that the Cutover Instance is always running the latest, generally available (GA) release of the current version. Notwithstanding anything to the contrary herein, unless otherwise agreed in writing, Cutover shall not be obliged to support any more than one (1) version behind the current version of the Platform (N-1) and shall not be liable for any issues related to performance, functionality, availability (including under the SLA) or otherwise, should Customer's actions and/or technology estate be responsible for falling behind N-1.

3. CUTOVER RESPONSIBILITIES

3.1 **Minimum Standard Warranty** | Other than as expressly stated in this Agreement, Cutover warrants that it will provide the purchased Services substantially in accordance with the applicable Documentation and each applicable Order Form (including its applicable Exhibits), and with reasonable skill and care in accordance with Best Industry Practice utilising properly skilled and experience Personnel and never less than the standards prescribed in the Security Policy.

3.2 **Non-Conformance** | The warranties in Clause 3.1 (*Minimum Standard Warranty*) shall not apply to the extent of any non-conformance which is caused by the use of the Services contrary to Cutover's instructions, other than in accordance with the terms of this Agreement, or modification or alteration of the Services by any person other than Cutover or its Personnel (including a Customer Provider) that has not been authorised in writing by Cutover. Subject to Clause 3.2 and Clause 13, if the Services do not conform to the warranties at Clause 3.1, Cutover will, at its expense, attempt to correct any such non-conformance promptly, or provide Customer with an alternative means of accomplishing the desired performance.

3.3 **Cutover Warranties** | Cutover warrants and undertakes that:

   (a) it has the legal power to, and hereby does, enter into this Agreement and each Order Form validly and with all due authority;

   (b) it and its Affiliates have and will maintain all licenses, consents, and permissions necessary for the performance of Cutover's obligations under this Agreement; and

   (c) it will comply with all applicable laws and regulations with respect to its obligations under this Agreement.

4. CUSTOMER RESPONSIBILITIES

4.1 Customer Obligations | Customer warrants that it shall:

   (a) promptly provide Cutover with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required by Cutover to provide the Services, including but not limited to Customer Data and security access information;

   (b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement, including its and its Users' use and receipt of the Services;

   (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any material delays in Customer's performance of its obligations under this Agreement, Cutover may adjust any agreed timetable or delivery schedule as reasonably necessary;

   (d) ensure that the Users use the Services in accordance with the terms and conditions of this Agreement and Customer shall be directly responsible for any User's breach of this Agreement;

   (e) obtain and shall maintain all licences, consents, and permissions necessary for Cutover, any appointed subcontractors and the Approved Sub-Processors, to perform their obligations under this Agreement, including to provide the Cutover Instance and process Customer Data as permitted under this Agreement; and

   (f) to the extent permitted by law and except as otherwise expressly provided in this Agreement, be solely responsible for (i) procuring, maintaining and securing its network connections and telecommunications links to enable it to access the Cutover Instance, and (ii) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links, or as otherwise caused by the internet.

4.2 **Authority** | Customer warrants that it has the legal power to, and hereby does, enter into this Agreement and each Order Form validly and with all due authority. The person who executes each Order Form has express authority to do so and to bind Customer.

4.3 **Customer Data & File Data** | Customer must, and is solely responsible to, ensure that its Customer Data (including its File Data): (i) is accurate and complete, and (ii) does not include any information or Personal Data in relation to anyone other than Users, nor any financial, transactional or other private regulated data (including material non-public information) of Customer or its Affiliates or their respective customers. Customer acknowledges and agrees that File Data will be configured within the Cutover Instance and that incomplete, malformed or otherwise structurally incorrect File Data may be rejected. CUTOVER SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO CUSTOMER IN RELATION TO INACCURATE, INCORRECT OR INCOMPLETE FILE DATA, INCLUDING WHETHER OR NOT SUCH FILE DATA IS REJECTED OR CONFIGURED IN CUSTOMER'S CUTOVER INSTANCE, AND ANY IMPLICATIONS OF SUCH FILE DATA BEING USED BY OR IN CONNECTION WITH THE PROVISION OF SERVICES.

5. CHARGES & PAYMENT

5.1   **Annual Charges** | The Charges are set out in the Subscription Order Form and Additional Order Forms in force between the Parties, including the annual Subscription Fees for access to the Cutover Instance and Service Fees in respect of other purchased Services. Subject to the terms of the Order Form, the Charges will remain fixed for the Order Form Term unless Customer: (i) exceeds its Service Limits and/or incurs Overage Fees pursuant to Clause 2.5 (*Overages*), or (ii) purchases additional Services.

5.2   **Invoicing** | Unless otherwise stated in an Order Form, Cutover will invoice Customer by email to the "Billing Email" stated in the Order Form:

(a)   **Subscription Order Form** – annually in advance, on or before the Effective Date and on or before each anniversary thereof;

(b)   **Additional Order Forms** – on or promptly after the commencement date stated therein and then in accordance with the terms of the relevant Order Form in relation to any applicable future invoicing; and

(c)   **Other Charges** – at any other time during the Term when Charges are payable, including in accordance with Clause 2.5 and Clause 2.7.

5.3   **Payment Terms** | Unless stated otherwise in an Order Form, all validly issued and undisputed invoices for the Charges are due and payable within **thirty (30) days** from the date of receipt by Customer of the relevant invoice.

5.4   **Overdue Payment** | If Cutover has not received payment by the due date of undisputed invoice validly issued to Customer, without prejudice to any other rights and remedies available to it, provided: (i) the payment remains outstanding thirty (30) days after Cutover has given written notice of the late payment to Customer; and (ii) Cutover has given written warning of such non-payment and the risk of suspension to the Customer with a copy of the same via email to a reasonably appropriate Customer contact not usually the recipient of invoices, Cutover may, without liability to Customer, suspend Customer's access to the Platform and/or delivery of other Services pending full payment of the overdue amounts.

5.5   **Taxes** | All Charges are exclusive of any taxes, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Subject to the terms of this clause, Customer shall be solely liable for any Taxes applicable to its purchase of the Services. However, Customer shall have no liability for any Taxes based upon Cutover's (or its Affiliates') gross revenues or net income, or for any penalties or interest levied against Cutover that arise from the actions or inaction of Cutover. Customer shall not deduct Taxes from payments to Cutover, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, Cutover receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. If Cutover has the legal obligation to pay or collect Taxes for which Customer is responsible under this clause, Cutover will invoice Customer and Customer will pay that amount unless Customer provides Cutover with a valid tax exemption certificate authorised by the appropriate taxing authority.

5.6   **Refunds** | Customer is responsible for payment in full of all Charges for the Term of the Agreement, without set off, counterclaim, deduction or withholding (unless permitted under Clause 5.5). Payment obligations are non-cancellable, and Charges are non-refundable and will not be prorated upon termination unless the Agreement is terminated for material breach pursuant to Clause 6.3(a) (*Termination for Cause*), or as otherwise expressly provided for in this Agreement.

5.7   **Third Party Payment Processor Fees** | Customer must reimburse Cutover (or its Affiliates, as applicable) (within 30 days of receipt of invoice) for any fees Cutover incurs arising solely from Cutover's (or its Affiliates') use of Customer's selected third-party procurement or payment platforms/service.

6.   TERM & TERMINATION

6.1   **Term** | This Agreement commences on the Effective Date and continues in force until the Order Form Terms of all Order Forms signed between the Parties have expired or been terminated ("**Term**").

6.2   **Order Form Terms** | Except as otherwise stated in an Order Form, an Order Form starts on the effective date thereof (or the commencement date in respect of an Additional Order Form) and continues for the stated term (the "**Order Form Term**").

6.3   **Termination for Cause** | Without affecting any other right or remedy available to it, the relevant Party (as indicated below) may terminate this Agreement with immediate effect by giving written notice to the other Party:

(a)   if the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or

(b)   if the other Party becomes the subject of a petition in bankruptcy, or has a receiver, administrative receiver or an administrator appointed, passes a resolution for winding up or a court of competent jurisdiction making an order to that effect, becomes subject to an administration order, enters into a voluntary arrangement with its creditors or anything substantively equivalent to the foregoing occurs under national or local law, except where for the purposes of a solvent and bona fide amalgamation or reorganisation.

6.4   **Termination by Customer for Convenience (including as required by law or regulation)** | Customer may terminate this Agreement (including all Order Forms hereunder) for convenience without fault to either Party upon the provision of written notice to Cutover. Customer acknowledges that in providing Services under this Agreement for the Order Form Term, Cutover has allocated resources and personnel time which would otherwise have been available for providing Services to other customers, and therefore that the Charges below for termination pursuant to this clause are appropriate and represent reasonable compensation for Cutover's loss of the value of the allocated resources and personnel time. If Customer exercises its foregoing termination for convenience right:

(a)   Customer shall not be entitled to any refund (or credit) for Charges paid (or payable) to Cutover under this Agreement;

(b)   any invoices that have been issued by Cutover under this Agreement shall remain payable by Customer in accordance with the terms of this Agreement;

(c)   Cutover shall continue to provide the Services up to the effective date of termination, and Customer shall remain liable to pay all Charges for the same (including, without limitation, any Overage Fees for Overages incurred) in accordance with the terms of this Agreement; and

(d)   all other Charges under this Agreement which would otherwise have become due during the remainder of the Order Form Term (for all Order Forms in force between the Parties) shall be invoiced, if not already invoiced. Customer agrees to pay such invoice(s) within thirty (30) days of receipt of the invoice, without set-off or other deduction.

For the avoidance of doubt, this clause shall remain in effect, notwithstanding the termination of the Agreement. Notice of termination for convenience must be sent by email to **contract.notices@cutover.com** with a copy to **finance@cutover.com**.

6.5   **Effect of Termination** | On termination of this Agreement for any reason:

(a)   all rights of access and licences granted under this Agreement shall immediately terminate (and may be disabled or discontinued by Cutover) and Customer shall immediately cease all use of the Services and the Documentation;

(b)   each Party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party;

(c)   Clause 7.6 (*Return of Confidential Information*) and Clause 8.11 (Backup Data Retention) shall apply accordingly;

(d)   Customer shall immediately pay Cutover any Charges, taxes or other amounts due or outstanding; and

(e)   any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

6.6   **Survival** | In addition to any provisions that expressly survive, the following provisions shall survive the expiration or termination of this Agreement: Clauses 5 (*Charges & Payment*), 6 (*Term & Termination*), 7 (*Confidentiality*), 8 (*Data Protection & Security*), 9 (*Cutover AI*), 10 (*Proprietary Rights*), 12 (*Limitation of Liability*), 15 (*Governing Law & Jurisdiction*), 16 (*Notices*) and 17 (*General*).

7.   CONFIDENTIALITY

7.1   **Confidentiality Undertaking** | Each Party (as the context requires, "**Receiving Party**") may directly or indirectly receive or have access to the Confidential Information of the other Party and/or its Affiliates ("**Disclosing Party**") in connection with its provision or receipt of Services, or otherwise through the performance or exercise of its obligations and rights under this Agreement. Subject to the terms of this Clause 7 (*Confidentiality*), Receiving Party undertakes to keep all such Confidential Information of Disclosing Party confidential and agrees not to use it other than in the exercise and performance of its rights and obligations under this Agreement (such activities, collectively, the "**Purpose**").

7.2   **Permitted Disclosure** | Subject to the other provisions of this Clause (*Confidentiality*), Receiving Party shall not disclose any Confidential Information of Disclosing Party to any person, other than:

(a)   its and its Affiliates' employees, officers, Users, individual contractors and other representatives (collectively, its "**Personnel**") who need to know it strictly for the Purpose, provided all such Personnel are subject to a written obligation of confidentiality to Receiving Party (or its Affiliates, as the context requires) and are informed of the confidential nature of all such Confidential Information disclosed to them. Receiving Party shall ensure that its Personnel are aware of and shall procure their compliance with this clause;

(b)   its and its Affiliates' legal, financial and other professional advisers (collectively, "**Advisers**"), provided all such Advisers are subject to a written obligation of confidentiality to Receiving Party (or its Affiliates, as the context requires);

(c)   in relation to Cutover as Receiving Party – to (i) the Approved Sub-Processors, and (ii) any individual subcontractor authorised by Customer, who needs to know it strictly for the Purpose, provided any such third-party has first entered into a written obligation of confidentiality to Cutover or its Affiliates in terms substantially similar to this clause that Cutover will ensure is complied with.

7.3   **Standard of Care** | Receiving Party shall protect Disclosing Party's Confidential Information with the same degree of care that Receiving Party uses to protect its own Confidential Information of a similar nature, which shall never be less than a reasonable standard. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any unauthorised use or disclosure of the Disclosing Party's Confidential Information, and reasonably cooperate with Disclosing Party in attempts to limit further onward unauthorised disclosure.

7.4   **Compelled Disclosure** | Receiving Party may disclose Confidential Information of Disclosing Party if and to the extent compelled by law, governmental or regulatory authority or by a court or other authority of competent jurisdiction to do so, provided that the minimum amount of Confidential Information compelled to be disclosed is disclosed and the Receiving Party gives Disclosing Party reasonable prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure, request protective orders, confidential treatment or other appropriate remedy regarding such disclosure. Disclosure of any Confidential Information pursuant to any legal requirement will not be deemed to render it non-confidential, and Receiving Party's obligations with respect to Confidential Information of Disclosing Party will not be varied or lessened by virtue of any such disclosure.

7.5   **Securities Regulation Disclosure** | Cutover shall have the right to disclose the existence and terms of this Agreement: (i) in any prospectus, offering memorandum, or other document required by law or securities regulations, (ii) to any current or prospective investors or acquirers (provided that a recipient of any such disclosure shall be subject to appropriate obligations of confidentiality and non-use), or (iii) as otherwise required by applicable law or regulation.

7.6 **Return of Confidential Information** | Subject to encrypted data retention in accordance with Clause 8.11, promptly (and, in any event, within thirty (30) days) following the earlier of (i) the expiration or termination of this Agreement, or (ii) the written request of Disclosing Party, Receiving Party will return to Disclosing Party, or, at Disclosing Party's option, destroy all Confidential Information of Disclosing Party that is in written, electronic or other tangible form, including, without limitation, all copies, extracts and derivatives of such Confidential Information. In addition, upon the request of Disclosing Party, Receiving Party will certify to Disclosing Party in writing, Receiving Party's and its Personnel's compliance with its obligations pursuant to this clause. Although Receiving Party shall return and/or destroy Confidential Information as described above, the Parties acknowledge and agree that, due to the nature of computer information storage systems and email communications, even if a file is "deleted", a shadow or backup copy may remain within Receiving Party's computer systems or its backup systems.

7.7 **Product Feedback** | Any suggestions, ideas, feedback or proposals provided by Customer, its Affiliates or the Users in relation to improvements, developments or enhancements to the Services in any format or medium (collectively, "**Product Feedback**"), shall be deemed to be not confidential and non-proprietary. Customer hereby grants to Cutover a right to use the Product Feedback for any purpose whatsoever without compensation or accounting to Customer, Customer Affiliates or Users.

7.8 **Customer Confirmation** | Customer permits Cutover and/or its Affiliates to disclose (verbally or in writing) that Customer is a customer of Cutover (by legal entity name only) to Cutover's and each of its Affiliates' board of directors, partners and investors, and potential clients, partners and investors.

8. DATA PROTECTION & SECURITY

8.1 **Data Protection Law** | The Parties acknowledge and agree that with respect to the processing of Customer's Users' Personal Data for the provision of Services, Customer is a Controller and Cutover is a Processor. The terms of this clause and the applicable Schedules apply to such processing. In relation to the processing by each Party of the business contact information (Personal Data) of the other Party's representatives in the ordinary course of business (including in relation to the negotiation and execution of the Agreement and each Order Form and account management purposes) (the "**Excluded Processing Activities**"), Cutover and Customer are independent Controllers and each Party will comply with its own Controller obligations. Excluded Processing Activities will be undertaken by Cutover in accordance with its Privacy Policy.

8.2 **Customer Obligations** | In relation to receipt and use of the Services, Customer will ensure: (a) that it has all necessary appropriate safeguards, consents and notices in place to enable the lawful transfer of Personal Data to Cutover for the duration and purposes of this Agreement; and (b) its instructions to Cutover for processing of Personal Data comply with applicable Data Protection Law. Customer shall not submit any sensitive Personal Data into the Cutover Instance or any: (i) consumer reports as defined in the US Fair Credit Reporting Act, as amended ("**FCRA**"), (ii) protected health information as defined under the US Health Insurance Portability and Accountability Act, as amended ("**HIPAA**") that has not been de-identified in compliance with HIPAA, (iii) non-public personal information as defined under the US Gramm-Leach-Bliley Act, as amended ("**GLBA**"), or (iv) special categories of personal data (sensitive personal data) as defined in the GDPR and/or the UK GDPR.

8.3 **Cutover Obligations** | In the provision of Services to Customer, Cutover shall:

(a) process Personal Data in accordance with Customer's documented instructions unless such instructions are contrary to applicable law and only for the performance of this Agreement, the subject matter and scope of which is set forth in the Data Processing Addendum;

(b) not transfer any Personal Data from the United Kingdom, the EEA or Switzerland to a third country which the UK Data Protection Authority, EU Commission or Swiss Data Protection Authority (as applicable) has not provided an adequacy decision as having an adequate level of protection unless Cutover has provided appropriate safeguards under Data Protection Law in relation to the transfer which may include, but not limited to, the entry into an Approved Transfer Mechanism;

(c) to the extent required by Data Protection Law, assist Customer in ensuring compliance with Customer's Controller obligations under Data Protection Law taking into account the nature of the processing and information available to Cutover;

(d) make available to Customer all information necessary to demonstrate compliance with Cutover's obligations under the Data Protection Law and allow for and contribute to reasonable audits, including inspections, conducted by Customer or a third party auditor mandated by Customer;

(e) ensure that its Personnel authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(f) at the written direction of Customer, delete or return Personal Data and copies thereof to Customer on expiry or termination of the Agreement unless required by applicable law to store the Personal Data and subject to encrypted backup retention in accordance with this Agreement;

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause and inform Customer if, in the opinion of Cutover, an instruction infringes the Data Protection Law;

(h) confirm receipt of any data subject rights request, promptly forward the request to Customer and, to the extent possible taking into account the nature of processing, assist the Customer in its obligations to respond to requests for the exercise of the rights of data subjects; and

(i) provide reasonable cooperation and assistance to Customer with respect to its obligations as a Controller in the carrying out of any data protection impact assessments and consultations with its supervisory authority.

8.4   **Approved Sub-Processors** | Customer consents to Cutover appointing each of the Sub-Processors as third-party processors of Customer Data and User Personal Data under this Agreement as required to provide the Services. Cutover confirms that either it or its Affiliates has entered into and will maintain written agreements with each Sub-Processor which reflect the requirements under Data Protection Law. As between Customer and Cutover, Cutover shall remain fully liable for all acts or omissions of all Sub-Processors appointed by it or its Affiliates pursuant to this clause.

8.5   **New Sub-Processors** | Cutover will provide Customer with **thirty (30) days** advance written notice of any proposed additional or replacement Sub-Processors ("**Notification Period**"). Customer may object to such change on reasonable grounds, such as where it has concerns regarding the security of Personal Data, within the Notification Period by sending a notification to **contract.notices@cutover.com** and agrees to set out an explanation for the objection within the notification. In the event of such an objection, Cutover will not use the applicable Sub-Processor(s) in the provision of Services to Customer and the Parties agree to discuss commercially reasonable alternative solutions in good faith. If the Parties cannot reach a resolution within ninety (90) days of the end of the Notification Period, Customer may request not to have access to the affected feature or component of the Services. If no objection has been notified to Cutover by Customer prior to the end of the Notification Period, Customer agrees that it shall be deemed to have authorised the new or replacement Sub-Processor, the Approved Sub-Processor List shall be deemed to have been updated accordingly.

8.6   **Security Policy** | During the Subscription Term, Cutover will maintain a written security policy that includes policies, procedures and controls aligned to ISO27001, or a substantially equivalent standard, that includes Best Industry Practices designed to protect Customer Data from a Security Incident ("**Security Policy**").

8.7   **Security Measures** | In providing the Services, Cutover shall:

(a)   comply with the measures and standards set out in its Security Policy and test the effectiveness of such security measures (at least once annually); and

(b)   ensure that it has in place appropriate technical and organisational measures designed to protect against a Security Incident, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Data and Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

8.8   **Testing & Audit Reports** | During the Term, Cutover will conduct annual penetration testing or other regular security testing and assessments of the Cutover Instance. Upon written request from Customer (not more than once annually), Cutover will provide Customer a copy of or online viewing access to reports summarizing such testing and assessments. If Cutover engages an independent third-party to conduct audits, upon request by Customer, Cutover will provide to Customer a copy of or online viewing access to a summary of the audit reports or certifications issued as a result of such audits. If Cutover conducts its own risk assessment, then Cutover will provide Customer with a copy of or online viewing access to a summary of its report of such assessment. Any such reports are Cutover's Confidential Information. Cutover shall remedy material issues (classified as critical or high-risk) identified from the testing and audits in a timely manner.

8.9   **Security Incident Notification** | Cutover will notify Customer without undue delay (and, in any event, within **seventy-two (72) hours**) upon becoming aware of any Security Incident in accordance with the requirements of Clause 16 (*Notices*). Cutover will keep records of its investigation of the Security Incident including identifying the impact of the Security Incident and the steps Cutover takes to mitigate the effects of any such Security Incident. Where a Security Incident includes the unauthorised disclosure of the Personal Data of Customer's Users or other representatives, Cutover shall include in the notification all available information described in Article 33(3) of the GDPR or UK GDPR. However, where it is not possible to provide all information referred to in Article 33(3) in the initial notification, the information shall be provided in phases without undue delay and Cutover shall ensure Customer is kept apprised of material updates as more information becomes available during the course of the investigation. Customer may request a copy of Cutover's incident report in writing (by email to infosec@cutover.com) that Cutover will provide following resolution of the Security Incident and completion of all required notification and related requirements.

8.10   **Disaster Recovery** | In the event that the Customer provides a written request that Cutover circumvent any agreed security protocols and notice requirements in order to facilitate the Customer's disaster recovery process, Cutover shall bear no liability in connection with the same to the extent it complies with the written instructions of the Customer.

8.11   **Backup Data Retention** | Unless Customer requests otherwise in writing and subject to any requirements to the contrary under applicable law:

(a)   Customer Data will be deleted from the Customer's Cutover Instance within thirty (30) days of the termination of this Agreement; and

(b)   Cutover's encrypted database backups of information relating to the performance of its obligations under this Agreement will be retained for a seven (7) year backup preservation window and shall then be deleted (to the extent technically possible and in accordance with Best Industry Practice) by Cutover on an automated "rolling-off" basis.

8.12   **California Consumer Privacy Act (CCPA) |** To the extent applicable in relation to California User Data, Cutover represents and warrants to Customer that (i) it is acting as a service provider in connection with this Agreement under the CCPA, and (ii) it receives such California User Data from Customer pursuant to and solely for the provision of Services and its legitimate business purposes. To the extent applicable, Customer represents and warrants to Cutover that it is (i) acting as a business in connection

with this Agreement with respect to any California User Data, and (ii) sharing and making available to Cutover the California User Data pursuant to and solely for a legitimate business purpose and in accordance with the CCPA. Cutover shall not sell, retain, use or disclose California User Data (x) for any purpose (commercial or otherwise) other than for the specific purpose of providing the Services and performing its obligations and exercise of rights under this Agreement, or (y) outside of the direct business relationship between Cutover and Customer. Cutover certifies that it understands and will comply with the restrictions in the foregoing sentence. Additionally, Cutover confirms that its Sub-Processors are acting as service providers and have entered into written contracts with Cutover containing terms with substantially similar effect to those in this clause restricting Sub-Processor's use of California User Data. As used in this clause, "**California User Data**" means the personal information of consumers (whether the Users or other representatives) of Customer or its Affiliates provided or made available by Customer to Cutover in connection with this Agreement and the provision of Services. The terms "**business**", "**business purpose**", "**consumer**", "**personal information**", "**sell**" and "**service provider** have the meaning given to each term in the CCPA.

9. CUTOVER AI

9.1 **AI Features** | Customer acknowledges that the Cutover Instance offers features that leverage the use of artificial intelligence, machine learning and other similar technologies provided by Cutover and/or its licensors ("**AI Features**"). Customer has the ability to both enable and disable AI Features within the Cutover Instance at the admin level for all Users. Cutover does not use Customer Data or Inputs (defined below) to train, retrain or otherwise improve any underlying third-party or Cutover AI models, except with the Customer's prior written consent. Customer may submit their Customer Data to AI Features within the Platform (including by submitting prompts and requests or by making queries of the AI Features) ("**Input**"). In response to Inputs, Customer may receive responses generated by AI Features ("**Output**").

9.2 **Query Limit** | Customer's access to the AI Features is subject to Customer's applicable current quota of queries or requests using AI Features as agreed in an Order Form or otherwise in writing between the Parties ("**Query Limit**").

9.3 **AI DISCLAIMER** | OUTPUTS ARE GENERATED AUTOMATICALLY AND ARE NOT TESTED OR GUARANTEED TO BE ACCURATE OR COMPLETE. OUTPUTS ARE PROVIDED "AS IS" AND ARE USED AT CUSTOMER'S OWN RISK. CUSTOMER AND ITS USERS ARE RESPONSIBLE FOR MAKING THEIR OWN DETERMINATION THAT THE OUTPUTS ARE SUITABLE FOR CUSTOMER'S USE CASES AND REGULATORY REQUIREMENTS. THE SLA DOES NOT APPLY TO THE AI FEATURES.

9.4 **AI Output** | Customer retains all right, title and interest in and to its Customer Data used as Inputs in connection with AI Features. To the extent Output includes Customer Data, Customer retains all right, title and interest in relation to that part of the Output that is Customer Data (as applicable, "**Customer Output**"). Except for Customer Output, Cutover retains all right, title and interest in and to the Output ("**Cutover Output**"), which is also Cutover Confidential Information, and hereby grants Customer a non-exclusive, worldwide, perpetual right and licence to use, reproduce and create derivative works of the Cutover Output for the purpose of receiving and using the Services, subject to the confidentiality and use restrictions set out in this Agreement.

10. PROPRIETARY RIGHTS

10.1 **Customer Data** | Customer shall own all right, title and interest in and to all of its Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data (including File Data).

10.2 **Licence to Customer Data** | Customer grants Cutover and its Affiliates the right to use Customer Data solely to (i) deliver the Services to Customer, and (ii) analyse Customer's use of the Services to develop, support and improve the functionality and performance of the Platform and related Services; in each case on an aggregated and anonymised basis and without compensation or accounting to Customer.

10.3 **Services** | This is an agreement for access to and use of the Services. Unless expressly stated in an Order Form, Cutover, its Affiliates and/or their licensors remain the sole owner of all Intellectual Property Rights and other right, title, Cutover trade marks, Services, including the Platform. Except as expressly stated herein, this Agreement does not grant Customer any rights to, under or in, any Intellectual Property Rights, or any other rights or licenses in respect of the Services.

10.4 **Third-Party Websites** | Customer acknowledges that the Cutover Instance may enable or assist it to access the website content of, correspond with, and purchase products and services from, third-parties and that it does so solely at its own risk. Cutover makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by Customer, with any such third-party.

10.5 **Integrations** | If Customer purchases Integrations or otherwise chooses to use or connect a Third-Party Application with the Cutover Instance, Customer grants Cutover permission and all necessary rights to allow the Third-Party Application and the relevant Customer Provider to access Customer Data and any applicable information about Customer's use of the Services and/or Third-Party Application as required for the interoperation of the Third-Party Application with the Cutover Instance. Each Integration purchased by Customer is subject to any Special Terms in the relevant Order Form.

11. INDEMNIFICATION

11.1 **Cutover Indemnity** | Subject to Clauses 11.3, 11.4 and 11.5, Cutover shall defend and indemnify Customer, its Affiliates (if applicable) and Users, against any actions, proceedings, losses, damages, expenses and costs arising as a result of any third party claim that Customer's use of the Cutover Instance in accordance with this Agreement infringes any patent effective in the United Kingdom or United States of America as of the Effective Date, copyright, trade mark or database right, and shall indemnify Customer in respect of such third party claims. Cutover shall have full control of all claims and the authority to settle or otherwise dispose of all claims. In no event, however, may Cutover agree to settlement of any claim if such settlement would impose any

liability or obligation upon Customer, or make any admission of liability on behalf of Customer, without Customer's prior, written consent (such consent not to be unreasonably conditioned, withheld or delayed).

11.2 **Customer Indemnity** | Subject to the conditions at Clause 11.3, Customer shall defend and indemnify Cutover against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with use of the Services and/or Documentation by Customer, its Affiliates (if applicable) and Users.

11.3 **Conditions** | Obligations of the other Party (the "**Indemnitor**") under Clauses 11.1 and 11.2 (respectively) are conditional on the Indemnitee:

(a) as soon as reasonably practicable, giving written notice of the claim to the Indemnitor, specifying the nature of the claim in reasonable detail and allowing the Indemnitor to take full control of the claim;

(b) not making any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the Indemnitor (such consent not to be unreasonably conditioned, withheld or delayed);

(c) using reasonable efforts to mitigate any damages, costs, losses, liabilities and expenses resulting from the relevant claim; and

(d) giving the Indemnitor and its Advisers reasonable assistance and access at reasonable times (on prior notice) to the relevant documents and records within its power or control, so as to enable it and its Advisers to examine the same and to take copies (at the Indemnitor's expense) for the purpose of assessing, defending and/or settling the claim.

11.4 **Replacement or Modification** | In the defence or settlement of any claim, or should the Platform become or in Cutover's opinion be likely to become the subject of an infringement claim, Cutover may (at its option) eliminate such infringement by procuring the right for Customer to continue using the Platform (or relevant part thereof), replace or modify the Platform so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on ten (10) days' written notice to Customer and provide a pro-rata refund of all prepaid but unused Charges (but without any additional liability or obligation to pay liquidated damages or other additional costs to Customer).

11.5 **Exclusions** | In no event shall Cutover, its Affiliates or Personnel, any appointed subcontractor or the Sub-Processors be liable to Customer under this clause or any other term of this Agreement to the extent that the alleged infringement is based on or arose as a result of:

(a) a modification of the Services by anyone other than Cutover;

(b) Customer's or Users' use of the Platform or Documentation in a manner contrary to the instructions given by Cutover or contrary to the terms of this Agreement;

(c) Customer's or Users' use of the Platform or Documentation after notice of the alleged or actual infringement from Cutover or any appropriate authority;

(d) any Third Party Application, File Data or other Customer Data;

(e) fraud, fraudulent misrepresentation, negligence or the wilful misconduct of Customer or a User; or

(f) any act or omission of a Customer Provider.

11.6 **EXCLUSIVE REMEDY** | THE FOREGOING AND CLAUSE 12 STATE CUSTOMER'S SOLE AND EXCLUSIVE RIGHTS AND REMEDIES, AND CUTOVER'S (INCLUDING CUTOVER'S AFFILIATES', SUBCONTRACTORS', SUB-PROCESSORS' AND EACH MEMBER OF ITS PERSONNEL'S) ENTIRE OBLIGATIONS AND LIABILITY, FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

12. LIMITATION OF LIABILITY

12.1 **APPLICABILITY** | NOTHING IN THIS CLAUSE (OR OTHERWISE IN THIS AGREEMENT) LIMITS OR EXCLUDES A PARTY'S LIABILITY FOR (I) DEATH, PERSONAL INJURY, DAMAGE OR DESTRUCTION TO PROPERTY CAUSED BY A PARTY'S NEGLIGENCE, (II) MISAPPROPRIATION OF THE OTHER PARTY'S OR ITS AFFILIATES' INTELLECTUAL PROPERTY RIGHTS, (III) ITS FRAUD OR FRAUDULENT MISREPRESENTATION, (IV) ITS PAYMENT OBLIGATIONS, OR (V) ANY OTHER CAUSE OF ACTION FOR WHICH A PARTY'S LIABILITY CANNOT BE LAWFULLY LIMITED OR EXCLUDED.

12.2 **EXCLUSIONS** | TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CUTOVER NOR CUSTOMER WILL BE LIABLE TO THE OTHER OR ANY THIRD-PARTY FOR: (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES; OR (ii) FOR ANY LOST: PROFITS, REVENUE, BUSINESS, BUSINESS OPPORTUNITIES, DATA OR USE OF DATA, REPUTATION OR GOODWILL; IN EACH CASE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE.

12.3 **LIMITATION OF LIABILITY** | TO THE EXTENT PERMITTED BY APPLICABLE LAW, IF EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD-PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY), THE PARTY'S TOTAL AGGREGATE LIABILITY, INCLUDING THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, PERSONNEL AND OTHER REPRESENTATIVES, IN EACH CONTRACT YEAR WILL BE LIMITED IN RESPECT OF ANY AND ALL CLAIMS TO THE AMOUNTS PAID AND PAYABLE BY (OR ON BEHALF OF) THE CUSTOMER FOR USE OF THE SERVICES DURING THE RELEVANT CONTRACT YEAR. MULTIPLE CLAIMS WILL NOT ENLARGE THE FOREGOING LIMIT.

13. DISCLAIMERS & RESTRICTIONS

13.1 **GENERAL DISCLAIMER** | EACH PARTY ONLY GIVES THE EXPRESS WARRANTIES IN THIS AGREEMENT. ALL OTHER CONDITIONS, WARRANTIES OR OTHER TERMS WHICH MIGHT HAVE EFFECT OR BE IMPLIED OR INCORPORATED INTO THIS AGREEMENT WHETHER BY STATUTE, COMMON LAW OR OTHERWISE ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

13.2 **SERVICES DISCLAIMER** | CUTOVER DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE, UNINTERRUPTED OR CONTINUOUS OR THAT THEY ARE COMPATIBLE WITH CUSTOMER'S SYSTEMS (OTHER THAN AS SPECIFIED IN THE DOCUMENTATION), NOR THAT THE SERVICES WILL MEET CUSTOMER'S OR ITS AFFILIATES' BUSINESS REQUIREMENTS. CUSTOMER AGREES THAT THE SERVICES WILL NOT BE CATEGORIZED AS "CRITICAL" TO THE BUSINESS OF CUSTOMER. CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM ITS USE OF THE SERVICES, AND FOR CONCLUSIONS DRAWN FROM ALL SUCH USE. CUTOVER SHALL HAVE NO LIABILITY FOR ANY LOSS, COST, EXPENSE OR OTHER LIABILITY CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR TEMPLATES (INCLUDING RUNBOOKS) PROVIDED BY CUTOVER TO CUSTOMER OR DERIVED BY CUSTOMER IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY CUTOVER AT CUSTOMER'S DIRECTION. CUSTOMER ACKNOWLEDGES THAT COMPLETE ACCURACY CANNOT BE GUARANTEED AND THAT ERRORS AND DELAYS ARE INHERENT IN THE PROVISION OF SOFTWARE, DATA PROCESSING, INTERNET AND TELECOMMUNICATIONS SERVICES. CUTOVER SHALL NOT BE RESPONSIBLE OR LIABLE FOR VERIFICATION OF, OR ANY ERRORS (FACTUAL OR OTHERWISE) CONTAINED IN, ANY FILE DATA, CUSTOMER DATA OR OTHER INFORMATION PROVIDED TO CUTOVER BY CUSTOMER, ITS AFFILIATES, USERS, ANY CUSTOMER PROVIDER OR OTHER THIRD PARTY ACTING ON BEHALF OF CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT CUTOVER WILL HAVE NO LIABILITY TO CUSTOMER, ITS AFFILIATES OR ANY THIRD-PARTY IN CONNECTION WITH ANY OF THE FOREGOING PERSON'S REGULATORY COMPLIANCE OBLIGATIONS OR BURDENS, AND THAT THIS AGREEMENT SHALL NOT TRANSFER NOR BE DEEMED TO TRANSFER ANY SUCH RESPONSIBILITY TO CUTOVER OR ITS AFFILIATES.

13.3 **THIRD PARTY APPLICATIONS** | THE PLATFORM MAY CONTAIN FEATURES DESIGNED TO INTEROPERATE WITH THIRD PARTY APPLICATIONS. CUTOVER DOES NOT WARRANT AND CANNOT GUARANTEE THE CONTINUED AVAILABILITY OF SUCH FEATURES OR OF ANY PURCHASED INTEGRATIONS AND MAY CEASE PROVIDING THEM IF, FOR EXAMPLE (AND WITHOUT LIMITATION), THE PROVIDER OF A THIRD PARTY APPLICATION CEASES TO MAKE THE THIRD PARTY APPLICATION AVAILABLE FOR INTEROPERATION WITH THE PLATFORM IN A MANNER ACCEPTABLE TO CUTOVER. IN SUCH CIRCUMSTANCES, THE AGREEMENT WILL REMAIN IN FORCE (ABSENT THE RELEVANT FEATURE OR INTEGRATION) AND CUTOVER WILL PROVIDE CUSTOMER WITH A PRO-RATA REFUND OF ANY PREPAID AND UNUSED CHARGES IN RELATION TO SUCH FEATURE. OTHERWISE, CUSTOMER SHALL NOT BE ENTITLED TO ANY REFUND, CREDIT OR OTHER COMPENSATION.

14. INSURANCE

14.1 **Minimum Cover** | For the Term of this Agreement, Cutover (or its Affiliates) shall maintain insurance (providing cover in respect of Cutover and its Affiliates) with responsible insurers against such risks and in such amounts that could reasonably be expected to be carried by persons acting prudently and in a similar business to that of Cutover. At a minimum, such insurance shall include:

    (a) **Professional Indemnity Insurance** in an amount of not less than ten million British Pounds (£10,000,000) (aggregate);

    (b) **Third Party Cyber Liability Insurance** in an amount of not less than five million British Pounds (£5,000,000) (aggregate);

    (c) In respect of Cutover Inc. (US):

        (i) **Workers' Compensation Insurance**, in accordance with applicable statutory, federal, and other legal requirements;

        (ii) **Commercial General Liability Insurance** written on an occurrence form and including coverage for bodily injury, property damage, products and personal injury arising out of the Services provided under this Agreement.

14.2 **Certificate of Insurance** | Upon Customer's written request to Cutover's Legal Notice Email (not more than once annually), Cutover will provide certificates of insurance evidencing the minimum cover set out in this clause.

15. GOVERNING LAW & JURISDICTION

15.1 **Governing Law & Jurisdiction** | The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on which Cutover Entity is Party to the Agreement. For Agreements where:

    (a) **Godesic Limited is the Cutover Entity**: This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims); or

    (b) **Cutover Inc. is the Cutover Entity**: This Agreement and any dispute or controversy arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles. The Parties to this Agreement irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction in New York City, New York in relation to any dispute arising out of or relating to this Agreement (including any non-contractual disputes or claims).

15.2 **Exclusions** | To the extent permitted by applicable law, the United Nations Convention on Contracts for the International Sale of Goods shall not apply. Notwithstanding the foregoing, either Party to this Agreement may, at any time, and without waiving any other rights under this Agreement, seek appropriate legal or equitable relief, including but not limited to, emergency interim and/or injunctive relief, in any court of competent jurisdiction to protect its Intellectual Property Rights.

16. NOTICES

16.1 **Notices** | Subject to Clauses 16.3 and 16.4, any notice required to be given under this Agreement, shall be in writing and shall be sent by email, in the case of Customer to the email address(es) stated in the Subscription Order Form for receipt of legal notices and in the case of Cutover to **contract.notices@cutover.com** (in respect of each Party, the relevant email address(es), their "**Legal Notice Email**").

16.2 **Delivery** | Any notice shall be deemed to have been duly received on the day that the sender can evidence the email was successfully sent to the other Party's Legal Notice Email. However, if the time of deemed receipt of a notice is after 17:00 hours in the location of the receiving Party's address as stated on the Subscription Order Form or not on a normal working day in that location, then the notice is deemed to have been received at the commencement of the next working day in that location.

16.3 **Service of Proceedings** | Clause 16.1 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, which the Parties agree shall be sent by registered post or courier to the other Party's registered address (or the invoice address stated if a registered address is not given) as set out on the Subscription Order Form, with a copy of all documentation being sent by email to that Party's Legal Notice Email.

16.4 **Security Incident Notifications** | Where Customer has nominated a specific separate email address (or addresses) for Security Incident notifications on the Subscription Order Form, Cutover will send any such notification to those addresses with a copy to Customer's main Legal Notice Email.

17. GENERAL

17.1 **Variation** | No variation of this Agreement shall be effective unless it is in writing and signed by authorised representatives of the Parties. No Schedules referred to within this Agreement may be amended without the Customer's prior written consent, unless otherwise expressly set out in this Agreement. Notwithstanding the previous sentence, the SLA may be updated by Cutover to reflect latest practice, provided that in no event shall any update result in a material adverse change to the performance of security standards of the Cutover Instance, as set out in this Agreement.

17.2 **Waiver** | No failure or delay by a Party to exercise any right or remedy provided under this 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. A waiver is not valid or binding on the other Party granting that waiver unless made in writing.

17.3 **Severance** | If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

17.4 **Force Majeure** | Neither Party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control ('**Force Majeure Event**'), and in such circumstances the time for performance shall be extended by a period equivalent to the length of the Force Majeure Event. If the obligation has been delayed by more than ninety (90) days, the Party not suffering the event will have the right to terminate the Agreement.

17.5 **Transfer of Rights and Obligations** | Neither Party may assign or novate its rights or obligations under this Agreement, by operation of law or otherwise, without the other's prior written consent. Notwithstanding the foregoing, on notice and without consent, either party may assign, novate or otherwise transfer (by operation of law or otherwise) this Agreement, including all Order Forms (and all of its respective rights and obligations thereunder) to (i) a successor-in-interest in connection with a merger, acquisition, reorganisation, sale of all or substantially all of its assets or equity, or other change of control, or (ii) any of its Affiliates, provided that such successor, acquirer or Affiliate (a) is not a direct competitor of the non-assigning Party and (b) has the financial and operational capacity to perform the assigning Party's obligations under this Agreement. The assigning Party shall remain responsible for the performance of its obligations under this Agreement unless and until a valid novation has occurred. Any purported assignment or other transfer in violation of this clause is void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors, assigns and transferees.

17.6 **Relationship of the Parties** | Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorize any Party to make or enter into any commitments for or on behalf of any other Party.

17.7 **Third Party Rights** | Other than expressly set out herein, nothing in this Agreement, express or implied, is intended to or shall confer upon any third-party, person or entity, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement or through the operation of law.

17.8 **Contract for Services** | This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar applicable legislation existing at the Effective Date or as may be enacted, shall not apply to this Agreement.

17.9 **Actions Permitted** | To the extent permitted by applicable law, except for actions for non-payment or breach of a Party's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either Party more than one (1) year after the cause of action has accrued.

17.10 **Entire Agreement** | This Agreement (i) is the entire contract between the Parties regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, negotiations and proposals, with respect to that subject, and (ii) excludes any other terms Customer seeks to impose or incorporate or that may be

implied by trade, custom, practice, or course of dealing (including as may be stated on Customer's purchase orders). Customer has not relied on any statement, promise, or representation not expressly included in this Agreement.

17.11   **Counterparts** | This Agreement may be executed in counterparts and by electronic means (including by email or via an electronic signature platform), and each Party agrees not to contest its validity solely because of such execution.

18.   DEFINITIONS & INTERPRETATION

18.1   **Definitions** | Unless otherwise defined, capitalised terms used in this Agreement have the following meanings:

Additional Order Form means an additional Order Form signed between Cutover and Customer in addition and subordinate to the then current Subscription Order Form, including for the purchase of Additional Services or Service Limits.

Additional Services mean any additional products and services agreed between the Parties in an Order Form from time to time or that Customer agrees to trial during the Subscription Term, including any applicable Ancillary Software. Additional Services are subject to any additional terms set forth in the relevant Order Form together with all other terms of this Agreement.

Affiliate means an organisation that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another entity. As used in this definition, "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of the subject entity (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) (and "**controlled**" has the corresponding meaning). In relation to Cutover, its Affiliates include the Cutover Entity that is not the Cutover counterparty to the Agreement.

Ancillary Software means any additional software purchased by Customer from Cutover (if any) as referred to in an Order Form.

API means Cutover's application programming interface made available by Cutover to Customer via the public internet as further described in the Cutover Developer API Terms, as may be updated from time to time, including (without limitation) by incorporation of an API Maintenance Release (as defined in the Developer API Terms).

API Call means either (a) a call from a Third Party Application via the API to interact with the Cutover Instance, or (b) a call from the Cutover Instance via the API to interact with a Third Party Application.

API Credit Limit means, if applicable, Customer's quota of API Calls as stated in the Subscription Order Form and any Additional Order Forms and/or as increased as a result of Overages. Customer's API Credit Limit is consumed across all available environments of its Cutover Instance (including non-production environments).

Approved Sub-Processor List means the list of approved Sub-Processors set out in the Data Processing Addendum.

Approved Transfer Mechanism means either (as applicable):

(a)   the European Commission's Standard Contractual Clauses under Commission Implementing Decision (EU) 2021/914 ("**EU SCCs**"); or

(b)   the UK Information Commissioner's Office's International Data Transfer Addendum to the EU Commission Standard Contractual Clauses Version B1.0, in force 21 March 2022 ("**IDTA Addendum**").

Best Industry Practice means the skill, care and diligence that would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.

Charges mean the fees payable by Customer to Cutover for Services as specified in an Order Form and all subsequent addenda or otherwise in accordance with the terms of this Agreement, including the Subscription Fees, Service Fees and any Overage Fees.

Confidential Information means, without limitation, any know-how, trade or business secrets, together with any commercial, financial, business, data, technical or other confidential information of whatever nature relating to the business of a Party or its Affiliates (whether disclosed in written, oral or in electronic or other form) which is clearly designated by a Party as being confidential (whether or not it is marked as confidential) or which can reasonably be expected to be recognised as confidential, including any design, process, procedure, data-processing technique, intellectual property right, software or computer program owned or licensed by Cutover or its Affiliates, any information about a Party's and its Affiliates' finances, sales, marketing plans or business prospects, any information relating to the clients and suppliers of a Party or its Affiliates and all other non-public information that the other Party obtains, receives or has access to as a result of this Agreement, including the Customer Data, the Documentation and the terms and conditions of this Agreement. Confidential Information shall not include information that:

(a)   is or becomes publicly known other than through any act or omission of the Receiving Party;

(b)   was in the Receiving Party's lawful possession before the disclosure;

(c)   is lawfully disclosed to the Receiving Party by a third-party without restriction on disclosure; and/or

(d)   was or is independently developed by the Receiving Party without reference to the Confidential Information of the other party, the independent development of which the receiving party can support through written evidence.

Contract Year means, unless stated otherwise in the Subscription Order Form, each twelve (12) month period of the Order Form Term starting on the effective date of the Subscription Order Form.

Controller has the meaning given in the Data Protection Law.

Customer Data means the data inputted or uploaded by Customer or its Users into and for the purpose of using the Services or facilitating Customer's use of the Services, including File Data, runbook data, the Users' Personal Data and all other text, information, content, notes and other materials.

Customer Provider means a contracted supplier of products or services to Customer that Customer elects to use in connection with its use, receipt or purchase of the Services (including, as applicable, an integration partner engaged by Customer).

Cutover Entity means either (as applicable), Godesic Limited or Cutover Inc. (as stated in the relevant Order Form).

Cutover Instance means a single instance of the Platform enabled with Customer's purchased Platform Product(s) (as further defined in the Subscription Order Form), including the production environment and (if applicable) any additional purchased non-production or sandbox environments.

Data Processing Addendum means the applicable addendum set out in the Schedules.

Data Protection Law means all applicable data protection and privacy laws, including the UK Data Protection Act 2018 (as amended), the GDPR, the UK GDPR, and any other applicable data protection or privacy legislation or regulation relating to the provision of the Services to Customer.

Developer API Terms means the applicable terms and conditions set out in the Schedules.

Documentation means the documentation provided to Customer and its Users in connection with the purchased Services, including any specification, feature and functionality documentation or release notes for the Platform and the set-up, implementation and training documentation provided in connection with the CSIT Services.

EEA means the European Economic Area.

Exhibit means an exhibit incorporated into an Order Form that sets out additional terms, particulars or requirements in relation to the Services specified in the Order Form. Exhibits may be attached to Order Forms or accessed via a URL link specified in any relevant Order Form.

File Data means the configuration management database or other file information that Customer chooses to upload to its Cutover Instance in relation to its applications and infrastructure to create pre-populated records of data for use by Customer in connection with its purchased Platform Product(s) and other Services.

Full User means a Registered User who logs into the Cutover Instance for purposes other than, or in addition to, performing Registered User Actions.

GDPR means the EU General Data Protection Regulation (2016/679), as amended.

Integration means an integration between the Cutover Instance and a Third Party Application as per the particulars and subject to the terms set forth in the applicable Order Form.

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Maintenance Release means a release of the Platform that Cutover provides to all of its customers that corrects faults, adds functionality or otherwise amends or upgrades the Platform and Cutover Instance.

Order Form means a Subscription Order Form or Additional Order Form agreed between and signed by the Parties setting out the Services purchased by Customer, the applicable Charges, any Special Terms and Exhibits or other documentation attached or linked therein, and incorporating the terms of this Master Services Agreement (including the Service Terms and Schedules). If stated therein, an addendum shall constitute an Order Form.

Overage Fees means the Charges that apply if Customer exceeds any of its applicable Service Limits (including its User Limit, API Credit Limit) in accordance with the terms and rates set out in the Subscription Order Form or Additional Order Form (as the context requires). Unless stated otherwise in the applicable Order Form, Overage Fees shall be invoiced to Customer in accordance with Clause 2.5 (*Overages*).

Personal Data means any information relating to an identified or identifiable natural person (the data subject).

Platform means the Cutover web-based SaaS platform from which the Cutover Instance is created, that is developed, operated, and maintained by Cutover and its Affiliates.

Platform Product means the Platform product(s) purchased by the Customer as may be indicated in the applicable Order Forms.

Privacy Policy means Cutover's privacy policy (available at **www.cutover.com/privacy-policy**) as may be updated from time to time.

Processor has the meaning given in the Data Protection Law.

Professional Services means professional services agreed between the Parties from time to time as set out in an Order Form, including consulting services and any additional technical services.

Registered User means a User that has been assigned an access login account to the Cutover Instance and who performs only Registered User Actions.

Schedules means each of the schedules to this Agreement set out at **https://www.cutover.com/legal-documents**, including the Data Processing Addendum (incorporating the Approved Sub-Processor List), the SLA and the Developer API Terms.

Security Incident means any unauthorized or accidental access, disclosure, processing, loss or use of any of Customer's Confidential Information held by Cutover or Personal Data processed by Cutover on behalf of Customer.

Service Fees means the fees paid by Customer to Cutover for Professional Services, Additional Services, CSIT Services (as applicable) and any applicable Integrations as set out in an Order Form.

Service Limits means any or all of the Customer's: (i) User Limit, (ii) API Credit Limit, (iii) Query Limit, or (iv) any additional limits that apply to Customer's use of the Cutover Instance or other Services (including in all available production and non-production environments of the Cutover Instance) as stated in the Order Form.

Service Terms mean these operative terms and conditions that commence on page 1 and end of page 18.

Services means, collectively (as applicable), the Cutover Instance, CSIT Services, Professional Services, Additional Services, Integrations, Documentation, provision of Ancillary Software, and any other products and services agreed between the parties to be delivered by Cutover to Customer to the extent set out in any Order Form.

SLA means Cutover's standard Service Level Agreement as set out in the Schedules.

Special Terms means, if applicable, any special terms stated on an Order Form that apply to the purchased Services.

Sub-Processor means a third-party processor, including the organisations set out in the Approved Sub-Processor List, as such list is updated pursuant to clause 8.5 (*Notification of New Sub-Processors)*.

Subscription Fees mean the fees paid by Customer to Cutover for access to and use of the Cutover Instance as stated in the Subscription Order Form and any additional applicable Order Forms.

Subscription Order Form means the then current Order Form signed between Cutover and Customer in relation to its access to the Cutover Instance (which may include other Services and specific Integrations). In the event there is no Subscription Order Form between the Parties, the first Order Form signed between the Parties for Services shall be deemed to be the "Subscription Order Form".

Subscription Term means the Order Form Term of the Subscription Order Form.

Third Party Application means an internal Customer or third-party browser-based, mobile, offline or other software application or functionality that interoperates with the Cutover Instance, that is operated by either the Customer or a third-party.

UK GDPR means the GDPR as transposed into United Kingdom national law by operation of Section 3 of the European Union (Withdrawal) Act 2018 as amended.

User means an individual (natural person) that is employee, officer, individual contractor or other representative of Customer (including Customer Providers), (or, if applicable, its Affiliates) who uses the Services for and on behalf of Customer.

User Limit means (if applicable), subject to Clause 2.5 (increases in connection with Overages), the number of Customer's permitted User logins in relation to its use of and access to the Cutover Instance as specified in the Subscription Order Form and any Additional Order Forms signed between the Parties. Customer's User Limit is consumed across all available environments of its Cutover Instance (including non-production environments).

18.2   **Communications |** Other than for the purposes of Clause 16.3 (Service of Proceedings) "writing" includes by email.

18.3   **Organisation** | Clause, Schedules, section, paragraph and item headings shall not affect the interpretation of this Agreement.

18.4   **General Interpretation** | Unless the context otherwise requires: (a) words in the singular shall include the plural and in the plural shall include the singular; (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; (c) any words following the terms "including", "include", "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; (d) a "person" includes an individual, corporate or unincorporated body (whether or not having separate legal personality); and (e) "Clause" means a clause in the Service Terms, "Section" and "Paragraph" mean, respectively, a section or paragraph of the Schedules or an Order Form.

18.5   **Conflict** | In the case of conflict or ambiguity between:

   (a)   any provision contained in the Data Processing Addendum and the Service Terms, the provision in Data Processing Addendum shall take precedence;

   (b)   any provision contained in the remaining Schedules and the Service Terms, the provision in Service Terms shall take precedence; and

   (c)   any provision contained in an executed Order Form and in any other part of the Agreement, the provision in the Order Form shall take precedence.

This Agreement has been entered into on the Effective Date.