# MASTER SUBSCRIPTION AGREEMENT

## INTRODUCTION

**MASTER SUBSCRIPTION AGREEMENT |** This Master Subscription Agreement ("**MSA**"), together with and incorporating the Schedules, and all Order Forms in force between the Parties in connection with the applicable Cutover Instance (collectively, the "**Agreement**"), is entered into between the Cutover entity ("**Cutover**") and the customer entity ("**Customer**") identified on the signature page (each a "**Party**" and together the "**Parties**") as of the date of the last signature (the "**Effective Date**").

Capitalised terms used in this Agreement have the meanings given above or in Clause 17 (*Definitions & Interpretation*).

## 1. PROVISION OF CUTOVER SERVICES

1.1 **Access to Cutover Services** | Cutover will provide Customer (and its Affiliates subject to Clause 2.6) with access to and use of the relevant Cutover Instance and all other purchased Services in accordance with the terms of this Agreement.

1.2 **Cutover Affiliates** | Cutover or its Affiliates may provide the Services. Where any Services are provided by a Cutover Affiliate, references in this Agreement to Cutover shall be read to mean the relevant Cutover Affiliate and Cutover shall remain solely responsible for such Cutover Affiliate's performance and for any acts, omissions or breaches of this Agreement of or by it or its Personnel. Any Loss(es) 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.

1.3 **Product Trials** | During the Term, Cutover may offer Customer the opportunity to participate in a free trial of a new product or service ('**Product Trial**'), solely for the purpose of evaluating the relevant product or service. Cutover shall outline to the Customer in writing (which may be by email) the length of any Product Trial and may end a Product Trial without notice at any time. Product Trials are provided "as is" and without any guaranteed service levels or warranty of any kind.

## 2. USE OF CUTOVER SERVICES

2.1 **Service Limits** | Customer's Service Limits are as set out in the relevant Order Form(s) (subject to increases pursuant to Clause 2.3). Service Limits may be stated to apply on a per-User basis (e.g. "40 API Calls per Full User") in an Order Form, but consumption is measured across all usage of the Customer's Cutover Instance, whether in the production environment or any non-production or sandbox environments or, for the Call Feature Limit, whether by a Full User or a Registered User.

2.2 **Overages** | Cutover will monitor Customer's usage on a monthly basis. If Customer exceeds an applicable Service Limit in any given month, applicable Overage Fees will be charged in accordance with the relevant Order Form.

2.3 **User Types**

(a) **Full Users** | A Full User is a User who has access to all current features included in Customer's Cutover Instance (subject to any regional restrictions applicable to Call Features).

(b) **Registered Users** | A Registered User is a User who has access to the Customer's Cutover Instance for the limited purposes of: (i) authenticating their login credentials where required, (ii) receiving email notifications and reports, without consuming a Full User login, and (iii) using the Call Features where available (collectively, "**Registered User Actions**"). A Registered User who performs any actions in the Cutover Instance beyond the Registered User Actions will be deemed to be and charged as a Full User.

2.4 **Usage Restrictions** | Customer agrees (and shall procure that its Affiliates, Users and any Customer Providers agree) that:

(a) the Services may only be used for Customer's internal business purposes and to the extent permitted by and in accordance with the terms of this Agreement;

(b) it will not (i) licence, sub-licence, sell, re-sell, rent, lease, transfer, distribute, time share, or otherwise make any of the Services available to third-parties, except as expressly permitted by this Agreement, (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 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 or otherwise in breach of such rights, or (vii) knowingly or negligently introduce any viruses or other harmful computer code into the Services or otherwise engage in any malicious act to disrupt the Services; and

(c) it will not allow the login credentials of a User 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 **Call Features Fair Use** | Cutover operates a 'reasonable fair use' policy in relation to the Call Features. If Customer's monthly usage of the Call Features exceeds the Call Feature Limit, Cutover may invoice Customer such Overage at Cutover's then current rates. Cutover does not guarantee that the Call Features of the Cutover Instance will function in every region or country.

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

(a) Cutover shall not be required to perform any additional Services, dedicate additional resource or provide additional Cutover Instances, 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 compliance by its Affiliates 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. If a Customer Affiliate suffers any Loss as a result of any breach by Cutover or a Cutover Affiliate of its obligations under this Agreement, Customer (but not the Customer Affiliate) may bring an action to recover such Loss from Cutover, subject to the terms of this Agreement.

2.7 **Future Functionality** | Customer acknowledges and agrees that (i) its purchase of access to the Cutover Instance is not contingent, and (ii) its payment of Charges is not conditional, on future features or functionality.

2.8 **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. Cutover utilises a blue-green deployment process, whereby releases are deployed to a parallel production environment and validated before traffic is switched over, minimising disruption to Customer operations.

## 3. CUTOVER RESPONSIBILITIES

3.1 **Service Warranties** | Cutover warrants that it will provide the Services:

(a) substantially in accordance with the applicable Documentation;

(b) free from known viruses or other harmful computer code and in accordance with the Security Policy;

(c) in accordance with Good Industry Practice; and

(d) utilising properly skilled and experienced Personnel.

3.2 **Non-Conformance** | The warranties in Clause 3.1 shall not apply to the extent of any non-conformance caused by use of the Services contrary to Cutover's instructions or not in accordance with this Agreement, or by modification of the Services by any person other than Cutover or its Personnel (including a Customer Provider) that Cutover has not authorised in writing. Subject to this Clause and Clause 13 (*Disclaimers & Restrictions*), if a Service does not materially conform to the Documentation and the non-conformance has a material adverse effect on Customer's use of the Service, Customer shall notify Cutover in writing, and Cutover shall use commercially reasonable efforts to correct the non-conformance or provide an alternative means of achieving the intended functionality within 90 days of such notice. If the non-conformance continues to have a material adverse effect on Customer's use of the relevant Service after such period, Customer may terminate the affected Service upon further written notice.

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

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

(b) it and its Affiliates have and will maintain all licences, 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 activities under this Agreement.

3.4 **SLA** | The SLA referenced in the relevant Order Form will apply to the provision of the Services.

## 4. CUSTOMER RESPONSIBILITIES

4.1 **Customer Warranties** | Customer warrants that:

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

(b) it has and will maintain all licences, consents, and permissions necessary for Cutover, any 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;

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

(d) it will promptly provide Cutover with all necessary co-operation in relation to this Agreement, and all necessary access to such information reasonably required by Cutover to provide the Services, including Customer Data and security access information;

(e) it will 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;

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

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

4.2 **Customer Data & File Data** | Customer is solely responsible for ensuring that Customer Data (including File Data) is accurate and complete. Customer will take all reasonable steps to ensure that Customer Data 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). Customer acknowledges and agrees that File Data will be configured within the Cutover Instance and that incomplete, malformed or structurally incorrect File Data may be rejected or cause performance issues.

## 5. CHARGES & PAYMENT

5.1 **Annual Charges** | The Services are conditioned on payment by or on behalf of Customer of the applicable Subscription Fees, Service Fees, and/or Overage Fees as set out in each Order Form ("**Charges**").

5.2 **Payment Terms** | Unless agreed otherwise, Cutover will invoice Customer by email to the "Billing Email" stated in the Order Form. All validly issued and undisputed invoices for the Charges are due and payable within **30 days** from the date of receipt by Customer.

5.3 **Overdue Payment** | If Cutover has not received payment by the due date of an undisputed invoice validly issued to Customer, without prejudice to any other rights and remedies, provided: (i) the payment remains outstanding 30 days after Cutover has given Customer written notice of the late payment; and (ii) Cutover has given Customer written warning of such non-payment and the risk of suspension 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.

5.4 **Taxes** | All Charges are exclusive of any taxes, duties or similar governmental assessments ("**Taxes**"). Customer shall be solely liable for any Taxes except 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 paid so that Cutover receives and retains (free from any liability for Taxes) an amount equal to that 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, Cutover will invoice Customer and Customer will pay that amount unless Customer provides Cutover with a valid tax exemption certificate.

5.5 **Refunds** | Customer is responsible for payment in full of all Charges for the Term, without set off, counterclaim, deduction or withholding (unless permitted under Clause 5.4). Payment obligations are non-cancellable, and Charges are non-refundable and will not be prorated upon termination unless: (i) this Agreement is terminated for Cutover's material breach pursuant to Clause 6.3(a) (*Termination for Cause*); or (ii) as otherwise expressly provided for in this Agreement.

## 6. TERM & TERMINATION

6.1 **Term** | This Agreement commences on the Effective Date and continues in force until the date on which all Order Forms have expired or been terminated ("**Term**").

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

6.3 **Termination for Cause** | Without affecting any other right or remedy, a Party may terminate this Agreement upon written notice to the other Party:

(a) if the other Party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after written notice;

**(b)** if the other Party becomes insolvent or takes any action in connection with an arrangement with its creditors (other than in relation to a solvent restructuring), ceases to carry on business or any substantively equivalent procedure; or

**(c)** for Cutover, as an alternative, or in addition, to exercising its suspension rights under Clause **5.3** (*Overdue Payment*).

6.4 **Termination by Customer for Convenience** | Customer may terminate this Agreement for convenience at any time upon written notice to Cutover by email to **contract.notices@cutover.com** with a copy to **finance@cutover.com**. 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 such allocated resources and Personnel time. If Customer exercises its right to terminate for convenience:

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

(b) any invoices issued by Cutover under this Agreement shall remain payable by Customer in accordance with Clause 5 (*Charges & Payment*);

(c) Cutover shall provide the Services up to the effective date of termination, and Customer shall remain liable to pay all Charges for the same (including any Overage Fees) in accordance with the terms of this Agreement; and

(d) all other Charges which would otherwise have become due during the remainder of the Order Form Term shall be invoiced, if not already invoiced, and be payable by Customer in accordance with Clause 5 (*Charges & Payment*).

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 1.12 of the DPA shall apply;

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

(e) accrued rights shall not be affected or prejudiced.

6.6 **Survival** | All provisions that may be reasonably construed as surviving its termination will survive the expiration or termination of this Agreement.

## 7. CONFIDENTIALITY

7.1 **Confidentiality Undertaking** | Each Party (as the context requires, "**Receiving Party**") shall keep Confidential Information of the other Party and/or its Affiliates ("**Disclosing Party**") confidential and use it only in the exercise and performance of its rights and obligations under this Agreement (the "**Purpose**").

7.2 **Permitted Disclosure** | Unless otherwise permitted in this Clause, Receiving Party shall not disclose any Confidential Information of Disclosing Party, other than to:

(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, subject to an appropriate obligation of confidentiality and provided they are informed of its confidential nature. Receiving Party shall procure its Personnel's compliance with this clause;

(b) its and its Affiliates' legal, financial and other professional advisers (collectively, "**Advisers**"), subject to an appropriate obligation of confidentiality;

(c) in relation to Cutover as Receiving Party (i) the Approved Sub-Processors, and (ii) any individual subcontractor authorised by Customer, who needs to know it strictly for the Purpose, subject to an appropriate obligation of confidentiality with which Cutover will ensure compliance.

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 to limit further 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 provided that Receiving Party gives Disclosing Party reasonable prior notice and reasonable assistance, at Disclosing Party's cost, to seek protective treatment or otherwise contest the disclosure. Any disclosure under this Clause will not affect the confidential status of the Confidential Information.

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 Clause 1.12 of the DPA, promptly (and, in any event, within 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 except that Receiving Party shall be entitled to retain such of Disclosing Party's Confidential Information as required by applicable legal, regulatory, audit and/or backup requirements, provided that such retained Confidential Information is kept confidential in accordance with this Clause for so long as it is retained.

7.7 **Product Feedback** | Any suggestions, ideas, feedback or proposals received from Customer or its Users or Affiliates regarding the Services ("**Product Feedback**") may be used by Cutover without attribution or compensation. Cutover will ensure that any Confidential Information is removed from Product Feedback and Cutover will not disclose its source.

## 8. DATA PROTECTION

8.1 **DPA |** To the extent Cutover processes Personal Data in connection with this Agreement, it will do so in accordance with the Data Processing Agreement available at https://cutover.com/legal-documents/data-processing-addendum ("**DPA**"), which is hereby incorporated into and forms part of this Agreement.

## 9. CUTOVER AI

9.1 **AI Definitions |** For the purposes of this Clause, the following terms have the meanings given:

(a) **AI Features** means the artificial intelligence, machine learning and automated decision-support functionalities made available within the Cutover Instance from time to time, as described in the Documentation, including any generative AI, predictive analytics, and automated task-generation capabilities.

(b) **Input** means any prompts, queries or other content submitted by Customer or its Users to the AI Features and shall constitute Customer Data.

(c) **Output** means any content, recommendations, suggestions, runbook steps or other responses generated by the AI Features in response to an Input.

9.2 **AI Features - Availability and Control** | Customer acknowledges that the Cutover Instance offers AI Features as described in the relevant Order Form and Documentation. At Customer's request, the AI Features described in an Order Form can be enabled or disabled at any time.

9.3 **Data Use and Model Training** | Cutover does not use and will not permit any third party to use Customer Data or Inputs to train, retrain or otherwise improve any AI model without Customer's prior written consent. Inputs and Outputs shall be treated as Customer's Confidential Information.

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

9.5 **AI Disclaimer** | Outputs are generated automatically by AI and are not tested or guaranteed to be accurate, complete or suitable for any particular purpose and that factual assertions in them should not be relied upon as they may be false, incomplete, misleading or not reflective of recent events or information. Customer and Users are responsible for reviewing Outputs and independently checking their accuracy before acting on them and for determining their suitability for specific use cases and regulatory requirements. The SLA does not apply to the AI Features.

## 10. PROPRIETARY RIGHTS

10.1 **Customer Data** |

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

(b) During the Term, Customer grants Cutover and its Affiliates the right to use Customer Data as required to deliver the Services.

(c) Cutover shall be permitted to use aggregated, anonymised data derived from Customer Data for its legitimate business purposes (including service improvement).

10.2 **Platform IP** | Cutover, its Affiliates and/or their licensors remain the sole owners of all Intellectual Property Rights in the Platform, Services and Documentation ("**Platform IP**"). Except as expressly stated herein, this Agreement does not grant Customer any rights to, under or in, any Platform IP.

10.3 **Third-Party Applications**| If Customer uses or connects a Third-Party Application, Customer grants Cutover permission and all necessary rights to allow the Third-Party Application and the relevant Customer Provider to access Customer Data required for the interoperation of the Third-Party Application with the Cutover Instance.

## 11. INDEMNIFICATION

11.1 **Cutover Indemnity** | Subject to Clauses 11.3, 11.4 and 11.5, Cutover shall defend and indemnify Customer, its Affiliates and Users, against any Loss(es) arising as a result of any third-party claim that Customer's use of the Cutover Instance in accordance with this Agreement infringes such third party's Intellectual Property Rights.

11.2 **Customer Indemnity** | Subject to Clause 11.3, Customer shall defend and indemnify Cutover and its Affiliates against any Loss(es) connected with any third-party claim arising from Customer's use of the Services in breach of this Agreement.

11.3 **Conditions** | Obligations of the indemnifying Party (the "**Indemnitor**") under Clauses 11.1 and 11.2 are conditional on the beneficiary of the relevant indemnity (the "**Indemnitee**"):

(a) as soon as reasonably practicable, giving the Indemnitor written notice 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 Loss(es) resulting from the claim; and

(d) giving the Indemnitor and its Advisers reasonable assistance and access at reasonable times (on prior notice) to relevant documents and records within its control, including taking of copies (at the Indemnitor's expense), to assess, defend and/or settle 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) procure the right for Customer to continue using the Platform, replace or modify the Platform so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 10 days' written notice to Customer and provide a pro-rata refund of all prepaid but unused Charges (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 subcontractor or the Sub-Processors be liable to Customer to the extent that the alleged infringement is based on or arose as a result of:

(a) modification of the Services by anyone other than Cutover or a party acting on Cutover's behalf;

(b) Customer's or Users' use of the Platform or Documentation in a manner contrary to the instructions given by Cutover or 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 (*LIMITATION OF LIABILITY*) 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 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 LIABILITY CANNOT BE LAWFULLY LIMITED OR EXCLUDED.

12.2 **Exclusions** | To the extent permitted by applicable law, neither Party will be liable to the other or any third-Party for: (i) any indirect, incidental, consequential, punitive, special or exemplary damages; or (ii) any lost profits, revenue, business, business opportunities, data or use of data, reputation or goodwill; in each case however caused (whether based in contract, tort (including negligence), or any other legal or equitable theory) even if such Party has been advised of such damages in advance or if such damages were foreseeable.

12.3 **LIMITATION OF LIABILITY** | EXCEPT AS SET FORTH IN CLAUSE 12.1 (*APPLICABILITY*) OR CLAUSE 12.4 (*SUPER CAP*), AND IN RESPECT OF EACH PARTY'S INDEMNIFICATION OBLIGATIONS, EACH PARTY'S TOTAL AGGREGATE LIABILITY, INCLUDING THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, PERSONNEL AND OTHER REPRESENTATIVES, 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) IN EACH CONTRACT YEAR WILL BE LIMITED TO THE AMOUNTS PAID AND PAYABLE BY (OR ON BEHALF OF) THE CUSTOMER FOR USE OF THE SERVICES DURING THE RELEVANT CONTRACT YEAR.

12.4 **SUPER CAP** | EXCEPT AS SET FORTH IN CLAUSE 12.1 (*APPLICABILITY*), AND NOTWITHSTANDING THE GENERAL LIMIT IN CLAUSE 12.3 (*LIMITATION OF LIABILITY*), THE FOLLOWING SUPER CAPS APPLY IN RESPECT OF EACH CONTRACT YEAR, WHETHER THE RELEVANT LIABILITY IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY: EACH PARTY'S TOTAL AGGREGATE LIABILITY, INCLUDING THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, PERSONNEL AND OTHER REPRESENTATIVES, FOR (A) ANY AND ALL BREACHES OF ITS CONFIDENTIALITY OBLIGATIONS; AND (B) ANY AND ALL BREACHES OF ITS DATA PROTECTION OBLIGATIONS, WILL NOT IN EITHER CASE EXCEED TWO TIMES (2X) THE AMOUNTS PAID AND PAYABLE BY (OR ON BEHALF OF) THE CUSTOMER FOR USE OF THE SERVICES DURING THE RELEVANT CONTRACT YEAR. EACH SUPER CAP IN (A) AND (B) APPLIES SEPARATELY IN RESPECT OF EACH CONTRACT YEAR.

12.5 **No Double Recovery** | Notwithstanding any other provision of this Clause 12, a Party shall not be entitled to recover more than once in respect of the same loss, regardless of whether more than one claim, cause of action or limit under this Clause 12 applies to it. Where any liability falls within a super cap set out in Clause 12.4, it shall be subject to the relevant super cap only and shall not also count towards, or be recoverable under, the general limit in Clause 12.3; and any amount counted towards or recovered under, the general limit in Clause 12.3 shall not also be counted towards or recovered under any super cap in Clause 12.4.

## 13. DISCLAIMERS & RESTRICTIONS

13.1 **DISCLAIMER** | OTHER THAN EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUTOVER DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE ERROR-FREE, UNINTERRUPTED OR CONTINUOUS OR COMPATIBLE WITH CUSTOMER'S SYSTEMS, NOR THAT THE SERVICES WILL MEET CUSTOMER'S OR ITS AFFILIATES' BUSINESS REQUIREMENTS OR REGULATORY OBLIGATIONS. CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM ITS USE OF THE SERVICES, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. ANY TEMPLATES, EXAMPLES OR RUNBOOKS PROVIDED THROUGH THE SERVICES ARE SUPPLIED ON AN "AS IS" BASIS. CUSTOMER IS RESPONSIBLE FOR REVIEWING AND APPROVING THEIR USE, AND CUTOVER SHALL NOT BE LIABLE FOR ACTIONS TAKEN IN ACCORDANCE WITH CUSTOMER'S INSTRUCTIONS.

13.2 **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 and may cease providing them. In such circumstances, Cutover will provide Customer a pro rata refund of any prepaid and unused Charges relating to such features (other than for any Professional Services).

## 14. GOVERNING LAW & JURISDICTION

14.1 **Governing Law & Jurisdiction** | For Agreements where:

(a) **Godesic Limited is the contracting party**: 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 contracting party**: 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).

14.2 **Exclusions** | Notwithstanding the foregoing, either Party may seek appropriate legal or equitable relief, including emergency interim and/or injunctive relief, in any court of competent jurisdiction to protect its Intellectual Property Rights.

## 15. NOTICES

15.1 **Notices** | Subject to Clauses 15.3 and 15.4, any notice given under this Agreement shall be in writing and sent by email, in the case of Customer to the email address(es) stated in the relevant 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**").

15.2 **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 relevant 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.

15.3 **Service of Proceedings** | The service of any proceedings or other documents in any legal action, arbitration or other dispute shall be sent by registered post or courier to the other Party's registered address (or the invoice address if a registered address is not given) as set out on the Order Form, with a copy of all documentation sent to that Party's Legal Notice Email.

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

## 16. GENERAL

16.1 **Insurance |** For the Term, Cutover (or its Affiliates) shall maintain insurance 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.

16.2 **Variation** | No variation of this Agreement shall be effective unless in writing by authorised representatives of the Parties. No Schedules may be amended without the Customer's prior written consent, unless otherwise expressly set out in this Agreement. Notwithstanding the foregoing, 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 security standards of the Cutover Instance, as set out in this Agreement.

16.3 **Waiver** | No failure or delay by a Party to exercise any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it or any single or partial exercise of such right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver is not valid or binding unless made in writing.

16.4 **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.

16.5 **Force Majeure** | Neither Party shall be in breach of this Agreement, nor liable for delay or failure to perform, any obligation under this Agreement if such delay or failure results from an event, circumstance or cause 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 30 days, the Party not suffering the Force Majeure Event will have the right to terminate this Agreement.

16.6 **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 transfer this Agreement (and all of its 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 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.

16.7 **Relationship of the Parties** | This Agreement creates no partnership, joint venture, agency or other relationship between the Parties, and no Party has the authority to bind the other Party.

16.8 **Third Party Rights** | Other than expressly set out herein, nothing in this Agreement shall confer upon any third party any right, benefit or remedy of any nature whatsoever.

16.9 **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 shall not apply.

16.10 **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.

16.11 **Counterparts** | This Agreement may be executed in counterparts and by electronic means (including by email or via an electronic signature platform).

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

(a) any provision contained in the DPA and the MSA, the provision in DPA shall take precedence;

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

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

## 17. DEFINITIONS & INTERPRETATION

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

**Additional Services** mean any additional products and services agreed between the Parties in an Order Form or that Customer agrees to trial during the relevant Order Form Term, including any applicable Ancillary Software.

**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.

**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 Developer API Terms, as may be updated from time to time, including 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 set out in an Order Form 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 ("**Approved Sub-Processors**") set out in the DPA.

**Call Features** means the conference call features available within the Cutover Instance and the ability to receive SMS alerts.

**Call Feature Limit** means, if applicable, a monthly usage quota of the Call Features equal to 100 conference call minutes (for example, 10 attendees for a 10 minute conference call equals 100 minutes in total) and 100 SMS, in each case per Full User.

**Confidential Information** means any non-public information of a Party or its Affiliates, including trade secrets and information relating to its products, software, technology, data, know-how, or business, and any other information that a reasonable person would understand to be proprietary, confidential, or sensitive. 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, as supported by written evidence.

**Contract Year** means, unless stated otherwise in the relevant Order Form, each 12 month period of the Order Form Term starting on the effective date of the relevant Order Form.

**CSIT Services** means any Customer Success, Implementation and Training services agreed between the Parties in an Order Form.

**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 and the Users' Personal Data.

**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.

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

**Developer API Terms** means the developer API terms applicable to the Services, as set out in the relevant Order Form.

**Documentation** means the documentation provided to Customer and its Users in connection with the purchased Services.

**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 Platform Product(s) and other Services.



**Full User** as defined in Clause 2.3(a).

**Good 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.

**Intellectual Property Rights** means any intellectual property rights, whether registered or unregistered, including patents, copyrights, trademarks, trade secrets, know-how, database rights, design rights, domain names, and all applications, renewals, extensions, and equivalent rights anywhere in the world.

**Loss(es)** mean all losses, damages, costs, liabilities, claims and expenses (including reasonable Advisers' fees).

**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 an order form signed by the Parties setting out the Services purchased by Customer, the applicable Charges, any special terms and incorporating any Schedules and/or other documentation attached, referenced or linked therein.

**Overage Fees** means the Charges that apply if Customer exceeds any applicable Service Limit as set out in the relevant Order Form.

**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 indicated in the relevant Order Form(s).

**Professional Services** means professional services agreed between the Parties from time to time as set out in an Order Form.

**Schedules** means the schedules that are incorporated into this Agreement including the DPA, SLA and Developer API Terms, either: (i) by reference in any part of this Agreement; or (ii) by inclusion as a schedule to any part of this Agreement.

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

**Security Policy**: as defined in the DPA.

**Service Fees** means the fees paid by Customer to Cutover for any Professional Services, Additional Services and CSIT Services as set out in the relevant Order Form.

**Service Limits** means any or all of the Customer's: (i) User Limit, (ii) API Credit Limit, (iii) Query Limit, (iv) Call Feature Limit or (v) 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 set out in the relevant Order Form.

**Services** means, collectively (as applicable), the Cutover Instance, CSIT Services, Professional Services, Additional Services, Documentation and provision of Ancillary Software agreed between the parties in an Order Form.

**SLA** means the service level agreement (support package) applicable to the Services, as set out in the relevant Order Form.

**Sub-Processor** means a third-party processor, including the organisations set out in the Approved Sub-Processor List in the DPA.

**Subscription Fees** mean the fees paid by Customer to Cutover for access to and use of the Cutover Instance as set out in the relevant Order Form(s).

**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.

**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, the number of Customer's permitted User logins in relation to its use of and access to the Cutover Instance as set out in the relevant Order Form and/or as increased as a result of Overages.

17.2 **General Interpretation** | Unless the context otherwise requires: (a) references to legislation include any amendment, modification, extension, or re-enactment of it; and (b) the terms "including", "include", and similar expressions are illustrative and do not limit the preceding words.

**The Parties have entered into this MSA on the Effective Date by their duly authorised signatories below.**

| | |
|---|---|
| Signed for and on behalf of **Cutover** **[GODESIC LIMITED] / [CUTOVER INC.]** | Signed for and on behalf of **Customer** **[CUSTOMER NAME]** |
| **Signature:** (Authorised Signatory) | **Signature:** (Authorised Signatory) |
| **Name:** _____ | **Name:** _____ |
| **Title:** _____ | **Title:** _____ |

**Date:** _____ **Date:** _____