

XR SUITE SERVICE AGREEMENT

This XR Suite Service Agreement (“**Agreement**”) contains the terms and conditions that govern Your access to and right to use the Services described below, and is a legally binding contract between the entity or company you represent (“**You**” or “**Your**”) and HTC Corporation and/or one or more of its affiliates (collectively, “**HTC**”). You and HTC may be individually referred to as a “**Party**” and collectively as the “**Parties**”. This Agreement is made and entered into as of the date that the last Party signs below (“**Effective Date**”). You represent that You are lawfully able and have full legal authority to enter into this Agreement (i.e., are competent, of legal age and have full legal authority to bind the entity or company You represent).

1. DEFINITIONS

- a) “**Administrators**” means those employees, representatives or agents that You have designated to oversee, control and manage the Services.
- b) “**Authorized Users**” means Your legal entity and Your employees, and independent contractors that access and use the Services, provided such independent contractors agree to be bound by terms and conditions no less restrictive than those contained in this Agreement and solely to the extent that they are acting on Your behalf and for Your benefit. Authorized Users include Administrators. Authorized Users may be reallocated by You during the Subscription Term if the total number of Authorized Users does not exceed the number of Users set forth on the Order Confirmation.
- c) “**Authorized Use Limitation**” means the limitation on access to and use of the Services as measured by the billing metric specified on the Order Confirmation or Service Description.
- d) “**Customer Data**” means any information: (i) provided by Authorized Users to HTC in the course of accessing and using Services; and (ii) stored in connection with the Services.
- e) “**Device**” means a hardware device that is compatible with the Services as described in the Documentation, including, by way of example, virtual, augmented, mixed, or extended reality devices, personal computers and mobile devices, either manufactured by HTC or by third parties.
- f) “**Documentation**” means official Service descriptions, published or online manuals, and all associated documentation (including updates) that relate to use of the Services.
- g) “**Force Majeure**” means an event that arises out of causes beyond HTC’s reasonable control, including, without limitation, acts of God, civil disorder, labor disputes or other industrial disturbances, pandemics, epidemics, forces of nature, acts of terrorism or war, any law, decree, regulation or order of any government or governmental body (including courts or tribunals) and delays or outages caused by internet service providers or independent hosting facilities.
- h) “**Order Confirmation**” means the written or online order form, purchase confirmation or other documentation setting forth Your purchase of Services, together with the applicable prices, quantities and Authorized Use Limitations.
- i) “**Personal Data**” means any information relating to an identified or identifiable individual, including: (i) information that identifies an individual, (ii) information from which identification or contact information of an individual can be derived, (iii) information capable of being associated with individually identifying information or could reasonably be linked, directly or indirectly, with a particular individual (such as device identifier, location data, an online identifier), or (iv) information that can be used to authenticate an individual.
- j) “**Security Incident**” means unauthorized access to or acquisition, use, loss, alteration, destruction, or compromise of Customer Data.
- k) “**Subscription Term**” means the limited time period set forth in the Order Confirmation during which You have access to and right to use one or more of the Services.

- l) **“Service Description”** means the ‘VIVE XR Suite Service Description’ made available to You online (or via an alternate method selected by HTC) that provides additional details related to the Services, such as the applicable billing metric and the service level agreement for individual Services.

2. THE SERVICES

- a) **License Grant.** Conditioned upon Your full compliance with (and subject to) all the terms and conditions of this Agreement, HTC grants You access to and rights to use the ‘VIVE XR Suite’ services made available by HTC (each a **“Service”** and collectively, the **“Services”**). The Services include Services sold individually, bundles of more than one Service, and any other services designated by HTC. HTC software that may be required to access and use the Services (e.g., HTC device firmware, PC applications and mobile device software) is licensed to You under its respective license agreement, not under the terms of this Agreement.
- b) **System and Compatibility Requirements.** For proper functioning of the Services You will need additional equipment and services provided by third parties (e.g., Devices, internet access, and compatible software) that meet system and compatibility requirements as may be described in the Documentation. System and compatibility requirements may change from time to time, and those changes may affect Your ability to access and use the Services. Meeting system and compatibility requirements (and the associated costs) are Your responsibility.

3. USING THE SERVICES

- a) **Subscription Basis.** The Services are provided on a subscription basis. Your access to and rights to use the Services is provided during the Subscription Term, as further described in an Order Confirmation.
- b) **Accounts.**
 - i) **Enterprise Account.** Before HTC provides You access to and rights to use the Services, You must establish an HTC enterprise account (**“Enterprise Account”**) at the VIVE Enterprise site. To create Your Enterprise Account, You will be asked to provide HTC with current, complete and accurate information. Your Enterprise Account is linked to Your entity or company and will be used by HTC as the primary means of contacting You.
 - ii) **Authorized User Accounts.** Likewise, before Your Authorized Users can access and use the Services, they must each establish an account (**“Authorized User Account”**) at the VIVE Enterprise site. To create their accounts, Authorized Users will be asked to provide HTC with current, complete and accurate information.
 - iii) **Services Availability.** Enterprise Accounts and Authorized User Accounts (collectively, **“XR Suite Accounts”**) may be limited to a specific territory, and Your ability (and Authorized Users’ ability) to access and use the Services may vary from country to country. You and Authorized Users may be required to establish additional accounts to access and use the Services in multiple jurisdictions.
- c) **Trials.** Subject to this Agreement and the terms (if any) presented to You for beta or trial use, HTC may grant access to and rights to use specified Services on a trial basis (**“Trial”**). Your use of the Trial will be for the period stated when you accept the Trial, or if no time is stated, for thirty (30) days from the date access is granted. TRIALS ARE PROVIDED BY HTC “AS-IS” WITH NO SERVICE LEVEL AVAILABILITIES, WARRANTIES, OR INDEMNIFICATIONS. ANY DATA YOU ENTER OR THAT IS COLLECTED DURING TRIAL USE WILL NOT BE STORED OR AVAILABLE AFTER THE TRIAL ENDS.

4. PROPRIETARY RIGHTS AND LICENSES

- a) **General.** Except for the provision of access to and rights to use the Services, nothing in this Agreement creates any right of ownership or license in or to HTC's or its licensors' intellectual property. You may not remove or destroy any proprietary or intellectual property markings or notices placed upon or contained within the Services.
- b) **HTC Intellectual Property.** HTC and its licensors own the title, copyright, and other intellectual property rights in the Services (and all rights embodied therein) and reserve all rights not expressly granted to You in this Agreement. HTC and VIVE, the HTC and VIVE logos, and other HTC and VIVE product and service names referenced in the Services are the trademarks of HTC. Any other company names, product names, service names and logos referenced in connection with the Services may be the trademarks of their respective owners.
- c) **Third Party Software and Services.** The Services may contain other third-party software or services that is subject to open source or third-party license terms. Open source materials and third-party terms, if applicable, are available at the VIVE Enterprise site.

5. LIMITATIONS ON USE

- a) **Prohibitions.** You may not: (i) decompile, decipher, disassemble, reverse engineer, disable, tamper with or otherwise work around technical limitations in the Services, except as expressly permitted by applicable law notwithstanding this limitation; or (ii) modify or make any derivative works of the Services, in whole or in part.
- b) **Other Prohibited Conduct.** You may not: (i) use the Services to infringe the rights of HTC, its affiliates, or any third-party; (ii) sell, resell, rent, lease, lend, or sublicense the Services; (iii) send or store code that can harm or result in damage to the Services; (iv) interfere with or disrupt the integrity of the Services or the data contained therein; (v) attempt to gain unauthorized access to the Services or its related systems or networks; (vi) use the Services in order to cause harm or disrupt the operations of a third-party; (vii) perform or disclose any benchmark or performance tests on the Services; (viii) perform or disclose the results of any of the following tests: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorized in the Documentation; or (ix) make use of the Services in any manner not permitted by this Agreement.

6. FEES AND PAYMENTS

- a) **Fees.** Services fees are due as set forth in the Order Confirmation. HTC reserves the right to invoice You for any use of the Services in excess of the Authorized Use Limitation. Unless the Order Confirmation states otherwise: (i) fees are based on Services purchased and not Your actual usage; (ii) the number of Paid Subscriptions purchased cannot be decreased during the Subscription Term; and (iii) the terms of the Order Confirmation, including pricing, apply only to Your initial Subscription Term. Upon any renewal, HTC's then-current published provisions and pricing structure shall apply.
- b) **Payments.** Amounts payable under this Agreement will be made without setoff or deduction. You agree to pay any sales, value-added or other similar taxes imposed by applicable law. Unless otherwise provided in the Order Confirmation or this Agreement, payment obligations are non-cancellable and fees paid are non-refundable.
- c) **Verifying Compliance.** You agree to provide records reasonably requested by HTC to verify Your compliance with the Authorized Use Limitation, both during the Subscription Term and for a period of twelve (12) months after expiration or termination of any Subscription Term. You agree to allow HTC, or an independent auditing firm reasonably acceptable to You, to conduct an onsite and/or offsite audit within thirty (30) days of HTC providing written notice solely for the purpose

of verifying compliance with the terms and conditions of this Agreement. HTC agrees that the audit will be confidential and commercially reasonable in nature and time.

- d) **Distributors and Other Partners.** In the event You order Services through an authorized HTC distributor or other partner, the terms of this Agreement will apply to Your use of the Services.

7. SUPPORT, UPGRADES AND UPDATES

- a) **Support.** Support for the Services will be provided in a timely and professional manner by qualified support personnel. Support shall consist of:
- i) Access to the HTC support website (currently available at the Support page at the VIVE Enterprise site) for online support and access to Documentation, frequently asked questions (FAQs) and other materials, as such are made available by HTC from time to time; and
 - ii) Access to HTC's help desk, including the ability to open and manage support incidents online.
- b) **Upgrades and Updates.** HTC may perform scheduled maintenance, and may make upgrades, updates or other changes to the Services and its infrastructure (such as hosting facilities, security and technical configurations, among others). HTC will endeavor to provide You with at least seventy-two (72) hours advanced notice of any downtime required for such upgrades and updates.

8. CUSTOMER DATA, PERSONAL DATA AND SECURITY

- a) **General.** HTC does not claim ownership rights in Customer Data, and treats Customer Data and Personal Data as Confidential Information under the Agreement. HTC will process Customer Data and Personal Data only in accordance with this Agreement or other documented instructions from You. This Agreement constitutes such documented initial instructions and You may provide further instructions during the performance of the Services. Unless otherwise provided in this Agreement, HTC will not access: (i) Customer Data, nor (ii) Personal Data, except in response to support queries or technical issues only if You request or consent to such access in consultation with HTC.
- b) **HTC Use of Personal Data.** HTC: (i) will not sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate Personal Data to a third-party in exchange for monetary or other consideration, and (ii) except as necessary for providing the Services, HTC will not retain, use or disclose Personal Data outside of the direct business relationship between You and HTC.
- c) **Data Processing for Legal Requirements.** HTC may process Personal Data where required to do so by applicable law or requests from regulatory authorities. Unless disclosure is prohibited by applicable laws, HTC will notify You of the legal requirement before processing such data.
- d) **Data Collection.** HTC's collection and processing of Personal Data will be subject to the Data Processing Appendix in Schedule 1 and HTC's Privacy Policy (see [link](#)).
- e) **Sub-processors.** You hereby authorize HTC to use third-party entities to process Customer Data and Personal Data (collectively "**Sub-Processors**"), provided that:
- i) HTC shall provide the name of all Sub-Processors to You upon request;
 - ii) HTC shall enter into a written agreement with each Sub-Processor that imposes obligations on Sub-Processor that are no less stringent than those required under applicable laws and this Agreement; and
 - iii) HTC remains responsible for breaches of any obligations under this Section 8(e) as a result of Sub-Processor's behavior.
- f) **Cross-Border Data Transfers.** You agree that Customer Data processed by HTC (including its Sub-Processors) may be processed or stored in the United States or any other country where HTC (or its Sub-Processors) operate, and may be transferred outside the country in which You are located

as permitted under the applicable data protection laws. If You are located in the European Union, and Customer Data is transferred to a third-party country outside the European Economic Area, such cross-border data transfer shall be subject to the Standard Contractual Clauses (Processors) attached in Schedule 2, unless such third-party country has adequate safeguards in accordance with Article 45 of EU General Data Protection Regulation.

- g) **Your Responsibilities.** You agree as follows with respect to your use of the Services:
- i) You will provide all necessary disclosures to Authorized Users regarding the privacy and security of Customer Data and Personal Data (including, if necessary, the HTC's Privacy Policy (see [link](#)).
 - ii) You are responsible for complying with this Agreement, Your privacy policies and all applicable laws in Your collection, use, storage, transfer and processing of Personal Data.
 - iii) Your information technology platforms and systems used to access and use the Services will be at all times compliant with this Agreement and applicable law (including all privacy and data security laws).
 - iv) Your standard of care to comply with Your obligations under this Section 8(g) shall conform to the requirements of applicable laws and industry standard security measures with respect to the sensitivity of the Authorized User data in Your possession or control.
 - v) You will not, without HTC's prior written consent, provide health, credit card or similarly sensitive personal information that imposes any specific data security obligations for the processing of such data.
- h) **Data Deletion.** Upon termination of this Agreement for any reason, You hereby agree and instruct HTC to delete Customer Data and Personal Data stored in HTC servers (or the servers of HTC's service providers) within a reasonable time period (but not more than ninety (90) days), unless applicable laws require otherwise.
- i) **Security.**
- i) General. HTC's security systems implement physical, organizational and technical safeguards designed in order to protect the security, integrity and confidentiality of Customer Data, all as described on Schedule 3. Schedule 3 applies only to the extent that the HTC Services are performed on or from HTC premises. HTC applies the technical and organizational measures set forth in Schedule 3 to HTC's entire customer base receiving the same HTC services. HTC may change the measures set out in Schedule 3 at any time (and without notice) as long as it maintains a comparable or better level of security, or for the purpose of complying with applicable data protection laws.
 - ii) Security Incidents. In the event that HTC determines that a Security Incident will (or is likely to) cause harm to You or an Authorized User, HTC will endeavor to: (1) promptly (but in no event later than may be required by law) provide You notice at the contact email address you assigned; (2) investigate the Security Incident and take reasonable steps to mitigate the impact resulting from the incident; and (3) provide You with the information about HTC's investigation of the Security Incident. Notwithstanding the foregoing, You acknowledge that HTC may be prevented by applicable laws from providing You notices and updates about Security Incidents.
 - iii) Unauthorized Access. HTC is not responsible for unauthorized access, alteration, theft or destruction of Customer Data and Personal Data arising from Your or Authorized Users' actions or omissions in violation of the provisions of the Agreement.
 - iv) Cooperation. At Your request, HTC will cooperate with You in dealing with requests from Authorized Users or regulatory authorities regarding HTC's processing of Personal Data, or regarding any Security Incident relating to Personal Data. If HTC receives a data subject request from an Authorized User, HTC will notify You as soon as reasonably practical.

- j) **Third Party Products and Services.** If You elect to use the Services in connection with third-party products and services, then any resulting data access, collection, use, or disclosure by such third parties' will be governed by Your own separate agreement with that third-party (including their privacy policies). HTC is not responsible for the conduct of third parties.

9. CONFIDENTIAL INFORMATION

- a) **Protecting Your Accounts.** You are responsible for maintaining the confidentiality of account credentials issued to You by HTC or which You or Your Authorized Users create. You are also responsible for all activities that occur under XR Suite Accounts. You will promptly notify HTC about possible misuses of XR Suite Accounts and other security incidents related to the Services at the following e-mail address: security@htc.com (use 'XR Suite Account' in the subject line). You shall use all physical, administrative, and technical controls, screening and security procedures and other safeguards necessary to securely administer access and use of XR Suite Accounts, and You shall protect against unauthorized access to or use of XR Suite Accounts or the Services.
- b) **NDA.** It is contemplated that each Party may disclose certain information to the other in the course of performing this Agreement. With regards to such information, each Party agrees to comply with and be bound by the terms and conditions of the non-disclosure agreement ("**NDA**") between the Parties (if any), during the term of this Agreement or the term specified in the NDA, whichever is longer. The terms and conditions of such NDA are incorporated herein by reference. If no such NDA exists, the Parties agree to comply with Sections 9(c)-(e) below.
- c) **Confidential Information.** You and HTC acknowledge that by reason of the relationship established under this Agreement, each Party may have access to and acquire knowledge from, materials, data, systems and other information concerning the operation, business, projections, financial affairs, products, services, customers and intellectual property rights of the other Party that may not be accessible or known to the general public (collectively, "**Confidential Information**").
- d) **Protecting Confidential Information.** Each Party receiving Confidential Information (the "**Receiving Party**") agrees to maintain all such Confidential Information received in any form or medium from the other Party (the "**Disclosing Party**"), in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third-party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose Confidential Information to its affiliates, employees, consultants, subcontractors, and advisors on a "need to know" basis, if such third parties agree to maintain the confidentiality of such Confidential Information under terms no less restrictive than those contained herein. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing under this Agreement. In addition, the Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody Confidential Information and which are provided to the Receiving Party hereunder.
- e) **Exceptions.** The Receiving Party's obligations under this Section 9 shall not apply to Confidential Information which: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) was rightfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third-party who is lawfully in possession of such Confidential Information without restriction; (iv) is independently developed by the Receiving Party without resort to the Disclosing Party's Confidential Information; or (v) is required by law or judicial order, provided that prior written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable, and prior to disclosure occurring, in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent such disclosure.

10. REPRESENTATIONS, WARRANTY AND DISCLAIMERS

- A) **Customer Data.** You represent and warrant that you have all intellectual property rights, including all necessary patent, trademark, trade secret, copyright or other proprietary rights, in and to Customer Data. You agree that You will not submit Customer Data that is copyrighted, protected by trade secret or otherwise subject to third-party proprietary rights, including patent, privacy and publicity rights, unless You retain all necessary licenses to do so. You will ensure that Customer Data and Your and Authorized Users' use of Customer Data and the Services will not violate any applicable laws.
- B) **WARRANTY.** HTC WARRANTS THAT THE SERVICES WILL MATERIALLY CONFORM TO THEIR DOCUMENTATION DURING THE TERM OF A PAID SUBSCRIPTION. IF IT IS ESTABLISHED THE WARRANTY HAS BEEN BREACHED, HTC WILL, AT ITS OPTION: (I) USE REASONABLE EFFORTS TO CURE THE DEFECT; OR (II) REPLACE THE SERVICES WITH SERVICES THAT MATERIALLY CONFORM TO THE SPECIFICATIONS IN THE DOCUMENTATION. IN THE EVENT HTC, CANNOT, AFTER COMMERCIALY REASONABLE EFFORTS, ACHIEVE THE REMEDIES IN (I) OR (II), HTC MAY TERMINATE YOUR ACCESS TO AND RIGHTS TO USE THE SERVICES AND PROVIDE A REFUND OF PRE-PAID, UNUSED FEES CALCULATED AGAINST THE REMAINDER OF THE SUBSCRIPTION TERM AS OF THE EFFECTIVE DATE OF SUCH TERMINATION. YOU MUST REPORT THE ALLEGED BREACH OF WARRANTY WITH REASONABLE SPECIFICITY IN WRITING WITHIN THIRTY (30) DAYS OF ITS OCCURRENCE TO BENEFIT FROM THIS WARRANTY AND THE REMEDIES STATED HEREIN.
- C) **DISCLAIMERS.** THE WARRANTY PROVISIONS SET FORTH ABOVE ARE THE EXCLUSIVE REMEDY FOR HTC'S SERVICES WARRANTY AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES UNDER APPLICABLE LAW OR AVAILABLE FROM HTC. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND THE ENTIRE RISK OF USE REMAINS WITH YOU. HTC AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT. IN PARTICULAR, HTC, ITS SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT: (I) THE SERVICES WILL MEET YOUR REQUIREMENTS OR WILL WORK WITH THIRD-PARTY HARDWARE, SOFTWARE, APPLICATIONS OR THIRD-PARTY SERVICES; (II) THE SERVICES WILL BE AVAILABLE OR PROVIDED ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; (III) ANY INFORMATION OR CONTENT OBTAINED THROUGH THE SERVICES WILL BE ACCURATE, COMPLETE, OR RELIABLE; OR (IV) ANY DEFECTS OR ERRORS IN THE SERVICES WILL BE CORRECTED.
- D) **HEALTH AND SAFETY.** THERE ARE IMPORTANT HEALTH AND SAFETY WARNINGS AND INSTRUCTIONS FOR USE OF THE DEVICES WHICH ARE AVAILABLE FROM THE RESPECTIVE MANUFACTURER OF EACH DEVICE (INCLUDING HTC). YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND THESE WARNINGS AND INSTRUCTIONS. EACH RESPECTIVE MANUFACTURER MAY UPDATE OR REVISE THESE WARNINGS AND INSTRUCTIONS, SO PLEASE REVIEW THEM PERIODICALLY. YOU ARE SOLELY RESPONSIBLE FOR PROVIDING ADEQUATE WARNINGS AND INSTRUCTIONS TO YOUR USERS AND WITH COMPLYING WITH ALL APPLICABLE LAWS IN THE OPERATION OF YOUR BUSINESS.

11. INDEMNIFICATION

- a) **General.** To the maximum extent permitted by law, You agree to defend, indemnify and hold harmless HTC, its affiliates and their respective directors, officers, employees, subcontractors, and agents, from and against any and all third-party claims, actions, suits or proceedings (each, a

“Claim”), as well as any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or relating to: (i) Your use of the Services in violation of this Agreement, (ii) any allegation that Your access to and use of the Services infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy, (iii) Your breach of the representations, warranties or covenants set forth herein, and (iv) damage to tangible property, bodily injury or death sustained as a result of Your use of the Services.

- b) **Indemnity Procedures.** HTC will provide You prompt notice of any Claim, and will provide reasonable assistance in its defense or settlement. You will not consent to the entry of a judgment or settle any Claim without HTC’s prior written consent, if such entry of judgment or settlement arises from or is part of any of any criminal action, suit, or proceeding, or contains a stipulation to or admission or acknowledgment of any liability or wrongdoing on the part of HTC, or requires any specific performance or non-pecuniary remedy by HTC. You will use counsel reasonably satisfactory to HTC to defend each Claim. If HTC reasonably determines that a Claim might adversely affect HTC, HTC may take control of the defense at its expense (and without limiting Your indemnification obligations). Your obligations under this Section 11 are independent of Your other obligations under the Agreement.

12. LIMITATIONS OF LIABILITY

- A) **LIMITATIONS.** IN NO EVENT WILL HTC OR ANY HTC SUPPLIER OR LICENSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, GOODWILL, ANTICIPATED SAVINGS, LOSS OR CORRUPTION OF DATA OR BUSINESS INTERRUPTION) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SERVICES, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF HTC AND ITS SUPPLIERS AND LICENSORS UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU PAID FOR SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.
- B) **NO FAIL SAFE PERFORMANCE.** THE SERVICES WERE DESIGNED FOR SYSTEMS THAT DO NOT REQUIRE FAIL-SAFE PERFORMANCE. HTC IS NOT LIABLE FOR USE OF THE SERVICES IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON.
- C) **CLAIMS BARRED.** UNLESS THE FOLLOWING LIMITATION IS PROHIBITED BY APPLICABLE LAW, YOU AGREE THAT ANY DISPUTE MUST BE COMMENCED OR FILED WITHIN ONE (1) YEAR OF THE DATE THE DISPUTE AROSE, OTHERWISE THE UNDERLYING CLAIM IS PERMANENTLY BARRED (WHICH MEANS THAT YOU WILL NO LONGER HAVE THE RIGHT TO ASSERT SUCH CLAIM REGARDING THE DISPUTE).

13. TERM AND TERMINATION

- a) **Term.** The term of this Agreement will commence on the Effective Date and remain effective until terminated.
- b) **Termination for Breach.** A Party may terminate this Agreement for material breach by the other Party, provided that in each instance of a claimed breach: (i) the non-breaching Party notifies the breaching Party in writing of such breach within thirty (30) days of its occurrence, and (ii) the breach is not cured within thirty (30) days of receipt of such notice. In the event of an undisputed, uncured material breach by HTC, You will be entitled to a refund of any pre-paid unused fees. The refund will be based on a pro-rata share of the remainder of the term of Your Paid Subscription, calculated as of the effective date of such termination. If the Agreement is terminated by HTC due

to Your breach, the due dates of all invoices to be issued will be accelerated so that such invoices become due and payable on the effective date of termination.

- c) **Suspension and Termination by HTC.** HTC may suspend or terminate Your access to the Services (in part or in whole, including one or more specific features of the Services) immediately if HTC determines: (i) Your use of the Services poses a security risk or otherwise adversely impacts the Services; (ii) Your use of the Services is fraudulent or subjects HTC to infringement liability; (iii) You are in breach of this Agreement; (iv) in order to comply with the law or a government request; or (v) if HTC's relationship with a third-party technology provider used to provide the Services expires or ends, or requires HTC to modify Services.
- d) **Effect of Suspension or Termination.** If Your access and use of the Services is suspended or terminated, then: (i) any licenses granted pursuant to this Agreement will immediately terminate; and (ii) each Party will return all confidential information of the Party in its possession (or certify to the destruction thereof). At Your request, and for a period of up to sixty (60) days after the end of the Subscription Term, HTC will make available Your data then hosted in the Services (as applicable) for the purpose of retrieval by You. At the end of such sixty (60) day period, and except as may be required by law, HTC will delete or otherwise render inaccessible any of Your data and that remains in the Services.

14. **GOVERNING LAW AND VENUE.** The Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed. This Agreement will be governed by and construed in accordance with the substantive laws in force in:

- a) State of Washington, if You are in the United States of America, Canada, or Mexico;
- b) England and Wales, if You are in any country in Europe; or
- c) Taiwan, if You are in Taiwan.

The respective courts of King County, Washington in the United States when Washington law applies, the competent courts of London in England, when the law of England and Wales applies, and Taipei District Court in Taiwan when Taiwan law applies, shall each have exclusive jurisdiction over all disputes relating to this Agreement.

15. MISCELLANEOUS

- a) **Notices.** HTC may amend the terms of this Agreement from time to time. HTC will provide You notices of these modifications through the Services. Modifications will become effective, and will be deemed accepted on the date specified in the notice, which will be no sooner than thirty (30) days after the modifications are posted (except modifications required by law or that do not materially restrict Your license rights to use Software, which will be effective immediately). Your continued access to or use of the Services following the effective date of the revised terms means that You accept and agree to the revised terms. If You do not agree with the modifications, You must terminate Your use of the Services and this Agreement, which will be Your sole and exclusive remedy.
- b) **Additional Products and Services.** The Services may provide You with access to additional products and services provided by HTC and third parties. If You choose to use those products and services, separate terms of use, terms of sale, and end user license agreements may apply.
- c) **Feedback.** If You provide oral or written comments, suggestions, ideas, plans, notes, and drawings, or other information about the Services or related services ("**Feedback**"), HTC is free to

use, disclose, reproduce, license, or otherwise distribute that Feedback, without any obligations to You.

- d) **Force Majeure.** HTC is not liable for any delay for failure to perform any obligation under the Agreement where the delay or failure results from Force Majeure.
- e) **Independent Contractors.** The Parties are independent contractors and are not employees, agents or legal representatives of the other Party. Neither is authorized to bind the other, act as an agent for the other or otherwise act in the name of or on behalf of the other Party.
- f) **Export Laws.** As applicable, each Party will comply with all relevant export laws and regulations in connection with this Agreement.
- g) **Assignment.** Either Party may assign its rights or obligations under this Agreement if the assuming party agrees in writing to be bound by the terms of this Agreement. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- h) **Third Party Beneficiaries.** The Parties hereto acknowledge that this Agreement is not intended to and shall not create any third-party beneficiaries, unless otherwise explicitly set forth herein.
- i) **Severability.** If a court of competent jurisdiction holds any term, covenant or restriction of this Agreement to be illegal, invalid or unenforceable, the remaining terms, covenants and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.
- j) **Final Agreement.** This Agreement constitutes the entire, final, complete and exclusive agreement between You and HTC and supersede all previous agreements or representations, written or oral, with respect to the subject matter of this Agreement. You and HTC expressly agree that the terms of this Agreement shall control over any additional, different, or conflicting terms. Notwithstanding the foregoing, if there is any conflict between this Agreement and any other agreement between You and HTC which pertains to the same subject matter and which was duly signed by authorized signatories of both Parties, then such duly signed agreement shall control to the extent of any conflict.
- k) **English Language.** This Agreement was originally written in English. If this Agreement is translated into other languages, the English version will control to the extent of any conflict.
- l) **Survival.** Sections 4(a), 4(b), 5, and 9-15 will survive any expiration or termination of this Agreement.
- m) **Notices.** HTC may provide any notice to You under this Agreement by posting such notice on the Services or sending an email to any address associated with your Enterprise Account. All notices to HTC must be by personal delivery or overnight courier (effective when received) to:

HTC Corporation
Attn: General Counsel
No. 88, Section 3, Zhongxing Road
Xindian Dist., New Taipei City 231
Taiwan

With a copy to the following if you are in any country in EMEA:

HTC Europe Co. Ltd.,
Attn: Legal Department
Salamanca, Wellington Street
Slough, Berks SL1 1YP
United Kingdom

Or with a copy to following if you are in any other jurisdiction:

HTC America Inc.
Attn: Legal Department
308 Occidental Avenue South, Suite 300
Seattle, Washington 98104
USA

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Each of the Parties has executed this Agreement by its duly authorized representative as of the Effective Date.

HTC	[Company]
(signature)	(signature)
(print name)	(print name)
(title)	(title)
(date)	(date)

SCHEDULE 1

DATA PROCESSING DETAILS

1. SUBJECT-MATTER OF THE PROCESSING:

Personal Data of Authorized Users (and other individuals identified in Section 5 below) is used to provide the Services as described in the Agreement.

2. NATURE AND PURPOSE OF THE PROCESSING:

- Collection
- Recording
- Disclosure
- Deletion
- Alteration
- Restriction
- Use

3. DURATION OF PROCESSING:

Processing of Personal Data by HTC shall be for the term of the Agreement, provided that Personal Data shall not be processed for longer than is necessary for the purpose for which it was collected or is being processed (except where a statutory exception applies).

4. PERSONAL DATA IN SCOPE:

HTC may process the following types/categories of Personal Data:

- Identity data about Authorized Users, including (but not limited to) first name, last name, date of birth, gender, email address, and organization name and address.
- Usage data (e.g. location, timezone settings, language, device information)
- Event or conference meeting information;
- User generated content; and
- Personal Data: (i) contained within communications sent to or from employee or users of the Your network, and (ii) contained within technical and support requests raised by or on Your behalf.

5. PERSONS AFFECTED (DATA SUBJECTS):

The group of data subjects affected by the processing of their Personal Data consists of:

- Authorized Users;

- Your employees, representatives, customers, vendors any other business contacts (including senders and recipients of emails, as applicable); and
- Permitted Sub-processors and data recipients.

SCHEDULE 2

STANDARD CONTRACTUAL CLAUSES (PROCESSORS)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation: _____

Address: _____

Tel.: ; fax:.....; e-mail:

Other information needed to identify the organisation

.....

(the **data exporter**)

And

Name of the data importing organisation: HTC Corporation (and its affiliates)

Address: No. 88, Section 3, Zhongxing Road, Xindian Dist., New Taipei City 231, Taiwan

e-mail:

Other information needed to identify the organisation:

.....

(the **data importer**)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in the Data Processing Details Appendix above.

1. Definitions

For the purposes of the Clauses:

'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the

European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

'the data exporter' means the controller who transfers the personal data;

'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

'the Member State' means one of the twenty-seven (27) member states that make up the European Union;

'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established

'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

2. Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in the Data Processing Details (Schedule 1) set forth above and forms part of these Clauses.

3. Third-party beneficiary clause

3.1 The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

3.2 The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

- 3.3 The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
- 3.4 The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

4. Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Schedule 3 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Schedule 3, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

5. Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Schedule 3 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Schedule 3 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

6. Liability

- 6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.
- 6.3 The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
- 6.4 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

7. Mediation and jurisdiction

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

8. Cooperation with supervisory authorities

8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

9. Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

10. Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

11. Subprocessing

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under

the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

- 11.2 The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
- 11.3 The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the law of England and Wales.
- 11.4 The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

12. Obligation after the termination of personal data processing services

- 12.1 The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 12.2 The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

SCHEDULE 3

TECHNICAL AND ORGANIZATIONAL SECURITY MEASURES

The physical, organizational and technical safeguards which HTC has implemented for the Services are set forth in HTC Corporate Information Security Policy.