

## Instilled

### SUBSCRIPTION SERVICES AGREEMENT

#### for the Instilled LXP and any other agreed Application

#### Standard Terms and Conditions Schedule

This Subscription Services Agreement is between gomo Learning Inc. acting through its division known as Instilled ("Instilled") and the Client, and describes the terms and conditions pursuant to which Instilled will provide the Services to the Client. By usage of the Services, the Client agrees to be bound by the terms and conditions of this Agreement.

#### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

**"Affiliate"** means at any time a party that, directly or indirectly, partially or fully controls, is partially or fully controlled by, or is under partial or full common control with, either of the parties to this Agreement, including but not limited to direct and indirect subsidiaries of an ultimate parent holding company.

**"Agreement"** means this Instilled Subscription Services Agreement for the Instilled LXP and any other agreed Application to which the Client is required to agree before using the Services comprising the Sales Order Form(s) and this Standard Terms and Conditions Schedule.

**"Application(s)"** means the Instilled LXP software application(s) and, where so agreed in the Sales Order Form, any other indicated gomo software application(s), as made available by Instilled to the Client through the Subscription Services.

**"Authorized Users"** means up to the agreed quantity of employees, agents, contractors or such other category of users as agreed in a Sales Order Form of the Client and its Affiliates issued with passwords by the Client's Instilled account or system owner to access and use the Subscription Services in accordance with this Agreement.

**"Authorized Support Contacts"** means Clients Instilled system administrator(s).

**"Bandwidth"** means the rate of data transfer, bit rate or throughput to Instilled's systems paid for by the Client as identified in the Sales Order Form, as may be varied by Instilled pursuant to this Agreement.

**"Business Hour"** means any hour during Normal Business Hours.

**"Client"** means the entity that wishes to access and use the Subscription Services, as indicated in the Sales Order Form.

**"Client Content"** means the (personal) data, information and (video) material uploaded, created in, or input to the Subscription Services and stored by Instilled or its Affiliates on behalf of the Client within the Subscription Services.

**"Confidential Information"** means all (1) Client Content and (2) information concerning the business, finances, technology, clients or commercial affairs of a party or its clients which, by its nature, would be reasonably known to be confidential.

**"Fees"** means the annual fees or other fees payable for the Services by the Client to Instilled specified in the Sales Order Form or separately agreed upon, as may be varied by Instilled pursuant to clause 6.5 of this Agreement.

**"Hosting Facility"** means any third-party hosting facility or facilities used by Instilled or its Affiliates in providing the Subscription Services (currently with Amazon Web Services) as may be changed from time to time by Instilled in accordance with this Agreement.

**"Initial Term"** means as defined in the Sales Order Form, or, by lack of such definition, 12 months from the Start Date.

**"Intellectual Property Rights"** means patents, trademarks, internet domain names, service marks, registered designs, applications for registration of any of the foregoing, copyright, database rights, design rights, trade and business names and any other similar protected rights in any country.

**"Normal Business Hours"** means between 09:00 and 17:00 EST on weekdays, not including any UK and US (as applicable) public holidays.

**"Renewal Term"** means as outlined in clause 13 or as otherwise defined in the Sales Order Form.

**"Sales Order Form"** means the order form, signature page, webpage and/or statement of work referencing this Agreement and specifying the relevant agreed commercial terms (including the Fees, and detail of the Application(s) to be made available through the Subscription Services) as accepted by the Client prior to the Start Date. The Sales Order Form may be attached to this Agreement or may be included in a separate (digital) document(s) or website making reference to this Agreement.

**"Services"** means any service rendered to Client by Instilled under this Agreement as specified in the Sales Order Form or agreed upon separately, including (1) providing the Client access to the Subscription Services, and (2) the Support Services.

**"Service Documentation"** means the applicable parts of the description of the Subscription Services supplied to the Client as may be varied or amended from time to time by Instilled.

**"Service Level Terms"** means the service level terms specified in clause 4 as part of the Services under this Agreement.

**"Start Date"** means the date set out above, or as included in a Sales Order Form, or, if earlier or in the absence of a date being specified, the first date on which one or more Authorised Users are given access to the Subscription Services.

**"Storage Capacity"** means the maximum storage capacity within the Subscription Services to be used by, and paid for by the Client as identified in the Sales Order Form, or, where not so specified, as determined by Instilled.

**"Subscription Services"** means the Application-based Subscription Services as made available by Instilled to the Client for its access and user subject to the terms and conditions of this Agreement.

**"Support Services"** means the support services described in this Agreement.

**"Term"** means the term of this Agreement.

**"Year"** means a 12 month period starting from the Start Date or each subsequent anniversary thereof.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the section to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

1.4 Anything agreed in a Sales Order Form takes priority over the terms and conditions set out in this Standard Terms and Conditions Schedule. Except as set out in this Agreement, no other terms shall apply, even where specified in the Client's purchase order or otherwise.

## **2 PROVISION OF THE SERVICES**

2.1 In consideration of the payment of the applicable Fees and subject to the terms and conditions (including any quantity restrictions) of this Agreement, Instilled shall for the duration of this Agreement provide the Client with, as applicable:

- 2.1.1 access to the Subscription Services and the right to use the Subscription Services for its internal business purposes by its Authorized Users, subject to any agreed Authorized User and Bandwidth quantity restrictions;
- 2.1.2 the Support Services;
- 2.1.3 the Storage Capacity;
- 2.1.4 such other Services as may be agreed in the Sales Order Form, or otherwise agreed between the parties in writing.

2.2 Any services or resources provided by Instilled in addition to those referred to in section 2.1 shall be charged to the Client on a time and materials basis (on Instilled's standard rates notified to the Client or published on Instilled's website) or on such other basis and subject to such terms and conditions as may be mentioned on the Sales Order Form or separately agreed between the parties.

2.3 Client Content is only available through the Subscription Services for the Term and, subject to the terms and conditions of this Agreement, shall, subject to section 10, be deleted by Instilled after the termination of this Agreement.

2.4 Instilled may implement changes, updates, upgrades and/or enhancements to the Services from time to time ("Changes"). Changes to the Subscription Services shall normally be scheduled with reasonable advance notice. The Intellectual Property Rights in the Changes shall remain with and vest in Instilled and/or its licensors.

## **3 ACCESS TO SUBSCRIPTION SERVICES**

3.1 The Client shall during the Term have a non-exclusive, limited, non-transferable, non-sublicensable right to use the Services and to allow Authorized Users to access and use the Subscription Services for its legitimate internal business purposes, subject however to the agreed quantity restrictions included in this Agreement.

3.2 Instilled will provide the Client with access to the Subscription Services from the Start Date at the administrator level which will allow the Client to configure the Subscription Services and assign usernames and passwords that will allow Authorized Users to access and use the Subscription Services at the level selected by the administrator.

3.3 The Client shall be responsible for any unauthorized use of the Subscription Services. Instilled will take reasonable steps to prevent unauthorized use of the Subscription Services.

3.4 The Client is responsible for ensuring that: (i) the Authorized Users have adequate access to the internet, (ii) the Client's systems and firewalls do not hinder or prevent access to the Subscription Services, (iii) the Authorized Users have an up to date browser supported by the Subscription Services (as identified in the Service Documentation).

3.5 Instilled shall use industry recognised virus protection software in the operation the Subscription Services.

3.6 Instilled shall be entitled to suspend the Client's access to the Subscription Services: (i) on reasonable notice to the Client for such period as may be reasonably required for maintenance, repairs and/or improvements; and (ii) without prior notice to the Client for exceptional operational reasons, and in such circumstances Instilled shall, if requested, provide the Client with an explanation for any such suspension.

3.7 Instilled shall use commercially reasonable efforts to prevent unauthorised access to the Client Content and Subscription Services. The Client acknowledges that the Subscription Services and data transmitted to the Subscription Services are provided via the internet, a publicly-available computer network, and that such publicly-available networks are susceptible to failure, attack and hacking.

#### **4 SUPPORT SERVICES AND SERVICE LEVEL TERMS**

4.1 Instilled's Support Services and Service Level Terms are set out in this section 4 provided that they may be further specified in the Sales Order Form. Instilled reserves the right to amend the Support Services and Service Level Terms at any time, so long as the amendment does not have a material adverse effect on the Client. The Service Level Terms are limited to those events and service levels within Instilled's commercially reasonable control and do not include events or services or security failures resulting from any actions or inactions of the Client or any third parties not under Instilled's direct control (including but not limited to Client or third-party equipment and internet or telecommunications providers).

4.2 Service availability is defined as the amount of time that the Subscription Services are available to the Client and capable of performing operations, excluding Scheduled Maintenance Down Time (as defined below) and non-availability caused by actions or inactions of the Client. Non-availability is the amount of time (excluding Scheduled Maintenance Down-Time) that the Subscription Services are either not available or not capable of performing operations. The Subscription Services will be available 99% of the time calculated over each Year. Scheduled Maintenance Down-Time will not be included when calculating the availability of the Subscription Services.

4.3 The Client accepts that Instilled will require scheduled down-time periods from time to time to perform system maintenance, backup and upgrade functions for the Subscription Services ("Scheduled Maintenance Down-Time").

4.4 Instilled will use its reasonable endeavours to ensure that Scheduled Maintenance Down-Time is at times and for periods which minimise inconvenience to the Client. The measurement for Scheduled Maintenance Down-Time is the time elapsed from when the Subscription Services become unavailable to perform operations to the time when the Subscription Services become available to perform operations again.

4.5 Instilled shall only provide support to the Client's Authorized Support Contacts (subject to purchase of the appropriate support service as included in the Sales Order Form), as stated below.

4.6 Support is provided by Instilled to the Authorized Support Contacts during Normal Business Hours, and may be provided via the following channels (as applicable, and as may be varied from time to time):

4.6.1 Instilled online ticketing system;

4.6.2 live chat;

4.6.3 email;

4.6.4 online knowledge base;

4.6.5 Telephone support: only where so expressly agreed in the Sales Order Form, at the telephone number provided by Instilled from time to time.

4.7 Instilled will in its sole discretion prioritize support requests related to the Subscription Services into four levels, as follows:

<b>LEVEL</b>	<b>DESCRIPTION</b>	<b>RESPONSE TIME</b>
CRITICAL	All users and/or critical functions affected. Subscription Services completely unavailable	1 Business Hour
SEVERE	Large number of users and/or critical functions affected	2 Business Hours
MEDIUM	Limited number of users and/or functions affected. Business processes can continue	8 Business Hours
MINOR	Few users and/or functions affected. Business processes can continue	16 Business Hours

4.8 “Response Time” refers to the response time by which Instilled shall endeavour to communicate (by email, online case management system or telephone, as applicable) with the Client in respect of the reported support request. It does not refer to the time in which the reported problem will be resolved by Instilled. Response Times are calculated on the basis of Business Hours, e.g., if Instilled receives a Medium ticket from a non-US client at 17:00 BST, we shall endeavour to respond before 5pm BST the next business day.

4.9 Subject to section 4.8, Instilled shall provide its reasonable efforts to resolve Critical and Severe tickets as soon as reasonably possible and any other tickets as soon as practicable. Instilled shall also provide its reasonable efforts to communicate ticket progress to the Client from time to time.

4.10 When reporting an error or fault in, or connection with the Subscription Services, the Client shall provide sufficient material and information to enable Instilled to duplicate or identify the error or fault being reported by the Client, and Instilled shall only be held to address such error or fault after notification of the same by the Client.

4.11 Instilled shall not be obliged to provide support in respect of:

- 4.11.1 any error or fault attributable to Force Majeure (as defined below);
- 4.11.2 incorrect use of, or damage to the Services from whatever cause other than any act or omission by Instilled or any party under its control;
- 4.11.3 Client’s failure to maintain the necessary environmental conditions for use of the Subscription Services; and/or
- 4.11.4 breach of the Client’s obligations under this Agreement.

4.12 Unless where so explicitly stated in a Sales Order Form, Support Services do not include:

- 4.12.1 Client or Authorized Users training;
- 4.12.2 Client custom themes and functionality; and/or
- 4.12.3 Third-party functionality that has been developed and made available to the Client within or in conjunction with the Subscription Services.

4.13 To the extent additional Support Services have been agreed upon in a Sales Order Form or otherwise, Instilled shall provide its reasonable efforts to provide such services in accordance with the relevant Sales Order Form without any guarantee that results envisaged by the Client will be achieved, except where so expressly otherwise agreed in writing.

## **5 FEES AND PAYMENT**

5.1 The Client shall pay Instilled all Fees within 30 days of the date of receipt invoice, without deduction, set-off or counterclaim. All Fees are exclusive of all applicable taxes such as VAT which shall, if applicable, be payable in addition. Unless expressed otherwise in the Sales Order Form, the Fees shall be payable annually in advance.

5.2 If the Client does not make payment by the due date, Instilled may, without prejudice to any other rights and remedies at its option, suspend the Client's access to the Subscription Services until payment is received.

5.3 Instilled reserves the right to charge the Client interest in respect of the late payment of any sum due under this Agreement (as well after as before judgment) at the rate of 6% per cent per annum above the base rate from time to time of Barclays Bank plc from the due date therefore until payment.

5.4 Where the Client wishes to dispute an invoice or part of an invoice it will do so as soon as reasonably practicable and in any event within fifteen (15) working days of receipt of the applicable invoice after which period its right to dispute an invoice shall lapse.

5.5 Instilled may at the end of the Initial Term, applicable Renewal Term and/or applicable subscription period, increase the Fees with at least 90 days' advance notice in writing.

## **6 WARRANTIES**

6.1 Instilled hereby warrants to the Client that it will provide the Services:

- 6.1.1 with reasonable skill and care;
- 6.1.2 using appropriately qualified and experienced personnel; and
- 6.1.3 in accordance with all laws applicable to its obligations under this Agreement.

6.2 The Client hereby warrants to Instilled that:

- 6.2.1 it will use reasonably commercial endeavours, including using up-to-date virus-checking routines, to ensure that its data and content transmitted to the Services remain free from viruses and other malicious code;
- 6.2.2 in using the Services it will comply with all applicable laws; and
- 6.2.3 it will not upload any material or content through the Subscription Services which causes or may reasonably cause harm to Instilled's servers or to the provision of the Services.

## **7 THE CLIENT'S PARTICIPATION**

7.1 The Client shall ensure that its computer systems used for accessing and using the Subscription Services meet the minimum requirements as required by and made known to the Client by Instilled.

7.2 The Client shall each time provide Instilled in a timely fashion with such assistance and information as Instilled may reasonably require in the set up and provision of the Services.

7.3 The Client is responsible for all Client Content and acknowledges that Instilled is not obliged to, but may screen and/or monitor the Client Content. The Client shall ensure that:

- 7.3.1 Client Content does not contain any material that is defamatory, discriminatory, obscene or offensive or reasonably likely to cause offence;
- 7.3.2 It has all necessary rights, authorisations, licences and consents to upload, input and/or create the Client Content to/in the Subscription Services; and
- 7.3.3 the Subscription Services are not to be used for file sharing purposes or any other purposes that may adversely impact Instilled's servers and systems.

Instilled may temporarily suspend or limit all or any part of the Services where it, in its sole option, determines that this section is being breached by the Client.

7.4 Instilled reserves the right, in its sole discretion, to take such action as it considers appropriate with regard to any Client Content which may give rise to a claim against Instilled or which it considers to be defamatory, discriminatory, obscene, offensive, illegal or reasonably likely to cause offence.

7.5 A fair use policy shall apply in regard to all aspects of the Services and Instilled may temporarily suspend or limit all or any part of the Services where it, in its sole option, determines that such policy is being violated.

## **8 INTELLECTUAL PROPERTY RIGHTS**

8.1 The Client acknowledges that all Intellectual Property Rights in (any and all parts of) Subscription Services, the Application, the Service Documentation, and all other parts of the Services, including but not limited to the structure and arrangement of the Client Content within the Subscription Services, shall vest in and be the property of Instilled or its licensors (as applicable). The Client will not obtain any rights in (any part of) Subscription Services, the Application, the Service Documentation, and all other parts of the Services other than those expressly granted to it under this Agreement.

8.2 Subject to section 8.1, nothing in this Agreement or the use of (any part of) the Services by the Client and its Authorized Users shall transfer ownership of any Intellectual Property Rights in the Client Content to Instilled. All Intellectual Property Rights in the Client Content shall be and remain the property of the Client or its licensors (as applicable). The Client hereby grants Instilled a revocable, non-exclusive, limited, royalty free, non-transferable licence to use, store and process the Client Content as part of the Services for the duration of, and the purposes as envisaged by this Agreement.

## **9 INDEMNITIES**

9.1 INSTILLED SHALL DEFEND AND INDEMNIFY THE CLIENT AND KEEP THE CLIENT INDEMNIFIED AGAINST ANY AND ALL LOSSES, DAMAGES AND REASONABLE AND VERIFIABLE COSTS AND EXPENSES INCURRED BY THE CLIENT AND ARISING OUT OF ANY AND ALL ACTIONS, CLAIMS OR PROCEEDINGS BY A THIRD PARTY ALLEGING THAT USE BY THE CLIENT OF THE SUBSCRIPTION SERVICES (BUT NOT ANY CLIENT CONTENT STORED THEREIN) IN ACCORDANCE WITH THIS AGREEMENT INFRINGES SUCH THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS ("A CLAIM") PROVIDED THAT: (I) THE CLIENT SHALL IMMEDIATELY NOTIFY INSTILLED IF A CLAIM IS MADE AGAINST THE CLIENT AND AGREES TO GRANT TO INSTILLED EXCLUSIVE CONTROL OF THE CLAIM INCLUDING THE SETTLEMENT THEREOF; (II) THE CLIENT SHALL AT THE REQUEST AND EXPENSE OF INSTILLED AFFORD TO INSTILLED ALL REASONABLE ASSISTANCE FOR THE PURPOSE OF CONTESTING, NEGOTIATING OR SETTLING THE CLAIM; (III) THE CLIENT SHALL NOT MAKE ANY ADMISSIONS (SAVE WHERE REQUIRED BY COURT ORDER OR GOVERNMENTAL REGULATIONS) WHICH MAY BE PREJUDICIAL TO THE DEFENCE OR SETTLEMENT OF THE CLAIM WITHOUT THE APPROVAL OF INSTILLED (NOT TO BE UNREASONABLY WITHHELD OR DELAYED). IF THERE IS A CLAIM, INSTILLED MAY: (A) TAKE SUCH ACTION AS IT CONSIDERS APPROPRIATE IN ITS SOLE DISCRETION INCLUDING BUT NOT LIMITED TO CHANGING THE SUBSCRIPTION SERVICES TO AVOID OR SETTLE ANY SUCH CLAIM, (B) (PARTLY) SUSPEND THE CLIENT'S USE OF THE SUBSCRIPTION SERVICES IN WHICH CASE INSTILLED SHALL EXTEND THE CONTRACTED SUBSCRIBED-FOR PERIOD OF USE BY THE PERIOD OF SUSPENSION AND THE RENEWAL DATE SHALL BE ADJUSTED ACCORDINGLY, AND/OR (C) (PARTLY) TERMINATE CLIENT'S USE OF THE

SUBSCRIPTION SERVICES IN WHICH CASE INSTILLED SHALL PAY THE CLIENT AN AMOUNT EQUIVALENT TO THE UNUSED PART OF THE CONTRACTED SUBSCRIPTION PERIOD CALCULATED ON A STRAIGHT LINE BASIS.

9.2 THE CLIENT SHALL INDEMNIFY INSTILLED AND KEEP INSTILLED INDEMNIFIED AGAINST ANY AND ALL LOSSES, DAMAGES AND REASONABLE AND VERIFIABLE COSTS AND EXPENSES INCURRED BY INSTILLED AND ARISING OUT OF ANY AND ALL ACTIONS, CLAIMS OR PROCEEDINGS BY A THIRD PARTY ALLEGING THAT THE POSSESSION, PROCESSING, PUBLISHING, STORAGE OR USE BY INSTILLED OF THE CLIENT CONTENT IN ACCORDANCE WITH THIS AGREEMENT INFRINGES SUCH THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS ("A CLAIM") PROVIDED THAT: (I) INSTILLED SHALL AS SOON AS REASONABLY PRACTICABLE NOTIFY THE CLIENT IF A CLAIM IS MADE AGAINST INSTILLED AND AGREES TO GRANT TO THE CLIENT EXCLUSIVE CONTROL OF THE CLAIM INCLUDING THE SETTLEMENT THEREOF (NOT TO INSTILLED'S DETRIMENT); (II) INSTILLED SHALL AT THE REQUEST AND EXPENSE OF THE CLIENT AFFORD TO THE CLIENT REASONABLE ASSISTANCE FOR THE PURPOSE OF CONTESTING, NEGOTIATING OR SETTLING THE CLAIM; (III) INSTILLED SHALL NOT MAKE ANY ADMISSIONS (SAVE WHERE REQUIRED BY COURT ORDER OR GOVERNMENTAL REGULATIONS) WHICH MAY BE PREJUDICIAL TO THE DEFENCE OR SETTLEMENT OF THE CLAIM WITHOUT THE APPROVAL OF THE CLIENT (NOT TO BE UNREASONABLY WITHHELD OR DELAYED).

## **10 SECURITY**

10.1 Instilled will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect Client Content and to secure and defend the Subscription Services against "hackers" and others who may seek to access the Subscription Services without authorization. Instilled will use commercially reasonable efforts to remedy any breach of security or unauthorized access. Instilled reserves the right to suspend access to the Subscription Services in the event of a suspected or actual security breach.

## **11 LIMITATION OF LIABILITY**

11.1 This section 11 sets out the full extent of the entire financial liability of Instilled (including any liability for the acts or omissions of its employees, agents, Affiliates and sub-contractors) to the Client under or in connection with this Agreement no matter how such liability arises and whether for breach of contract, tortuous acts or omissions (not limited to negligence) or breach of statutory duty.

11.2 A party's liability to the other party for death or personal injury resulting from its negligence or for fraudulent misrepresentation shall not be limited.

11.3 Instilled shall have no liability to the Client in respect of the Client's or Authorized Users' inability to access the Services, or errors in the functioning of the Services which are attributable to: (i) an Event of Force Majeure (see section 14); (ii) Client's violation of, or non-compliance with section 7.1; (iii) operator error; and/or (iv) provision of insufficient and/or incorrect information by the Client to Instilled.

11.4 Subject to section 11.2, Instilled shall not be liable to the Client for: any indirect or consequential loss or damage; loss of profit; loss of business; loss of reputation; depletion of goodwill; and, subject to section 11.5 (ii), any loss of, damage to or corruption of Client Content.

11.5 Subject to section 11.2, Instilled's liability in respect of: (i) damage to the Client's tangible property resulting directly from Instilled's negligence or that of its employees shall not exceed \$500,000 for any one event or series of connected events; (ii) any loss of, damage to or



corruption of Client Content due to Instilled's fault or omission shall be limited to reconstituting the same so far as is reasonably possible from Instilled's back-up facilities (iii) impaired or no access to the Subscription Services which exceeds the availability levels stated in section 4 in any Year shall not exceed the total of Fees paid by the Client to Instilled for the Subscription Services for such Year proportionate to such excess calculated on a straight line basis; (iv) any indemnity obligation under this Agreement shall be limited to \$100,000; and, (v) any other and all losses not covered by the foregoing shall not exceed, in aggregate, 100% of the Fees paid by the Client for the Subscription Services under this Agreement for the Year in which the incident giving rise to the liability occurred and if more than one incident gives rise to the same liability then the Year in which the first in the series of incidents occurred.

11.6 Unless expressly set out in this Agreement, all conditions, warranties, representations (unless made fraudulently) or other terms implied by statute or law are excluded to the fullest extent permitted by law.

## **12 TERM AND TERMINATION OF THIS AGREEMENT**

12.1 This Agreement shall come into force on the Start Date and will, subject to the remainder of this section, continue for the Initial Term, and, unless otherwise agreed in writing, any Renewal Term, unless terminated earlier pursuant to this section 12. This Agreement shall, following the Initial Term, continue on a Year-to-Year basis (each subsequent Year in such case being a "Renewal Term") unless or until terminated by either party effective the last day of a Year on not less than 30 days' written notice to the other party. Instilled may terminate this Agreement immediately by notice to the Client if the Client: (i) fails to pay to Instilled any amounts payable under this Agreement as they fall due (provided that Instilled, prior to exercising this right, has given the Client written notice of its intent to exercise this right, and has given the Client at least 30 business days to remedy such breach); or, (ii) has repeatedly used or permitted access to the Subscription Services otherwise than in accordance with the terms of this Agreement.

12.2 Either party may terminate this Agreement immediately by written notice to the other party if:

12.2.1 The other party commits any material breach of any term of this Agreement which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; or

12.2.2 an order is made or a resolution is passed for the winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt.

12.3 Any termination of this Agreement shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law, and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof

which is expressly or by implication intended to come into or continue in force on or after such termination.

### **13 CONFIDENTIALITY**

13.1 Each party shall appropriately protect all Confidential Information received directly or indirectly from the other party. Such Confidential Information shall not be disclosed to any third party (not including Affiliates) other than the (Affiliates') employees, agents and authorized subcontractors of the receiving party without the prior written consent of the party to whom such Confidential Information belongs. Neither the party receiving Confidential Information nor its Affiliates, employees or authorized subcontractors shall use any such Confidential Information for any purpose other than the performance of this Agreement. Further, each party shall procure that such Affiliates, employees, agents and subcontractors act in a manner consistent with the obligations of confidentiality set out herein. This section shall not apply to Confidential Information if and to the extent that: (i) it is required to be disclosed by any court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose, provided that where possible and without breaching any such requirements, 2 days' prior notice is given to the other party of such disclosure; (ii) it is information which is, at the date of this Agreement or subsequently, in the public domain through no fault of the party receiving such information; (iii) the receiving party can demonstrate subsequently came into its knowledge by means of disclosure by a third party free from any obligation of confidentiality; (iv) the receiving party can show it was information in the possession of the receiving party prior to disclosure under this Agreement; and/or (v) it is information that is independently developed by personnel of the receiving party having no access to the other party's Confidential Information.

13.2 The obligations of this section shall survive termination of this Agreement.

### **14 FORCE MAJEURE**

14.1 Neither party shall have any liability to the other under this Agreement to the extent that the performance of its obligations is delayed, hindered or prevented by an Event of Force Majeure. "Event of Force Majeure" shall mean fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, terrorism or the threat thereof, nuclear, chemical or biological contamination, compliance with any law, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, public disorder, traffic congestion, accident, epidemic, breakdown, vandalism, interruptions in communications or power supply, shortages of materials or supplies, failure or malfunction of computer systems or any other event or circumstance outside the control of a party to this Agreement.

### **15 NOTICES**

15.1 Any notice, request, instruction or other document to be given by a party under this Agreement shall be delivered by hand, sent by pre-paid first class post, or by facsimile or e-mail transmission to the recipient's usual address, fax number or e-mail address or such other address, fax number or e-mail address which may be notified by that party in accordance with this section 15.1.

15.2 Unless proved otherwise, a notice shall be deemed to have been received if delivered by hand, at the time of delivery; if sent by facsimile or e-mail during the day of transmission as

long as the sender can show satisfactory transmission on a US week day (not a public holiday) between 9.00am and 5.00pm US time; and if sent by post, 48 hours after posting.

## **16 GENERAL**

16.1 The terms and conditions of this Agreement are the entire agreement between the parties and supersede all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained therein.

16.2 Each party acknowledges that in entering into this Agreement it does not do so on the basis of, and does not rely on any representation, unless made fraudulently, warranty or other provision not expressly contained in this Agreement.

16.3 Any variation to this Agreement must be in writing and signed on behalf of both parties. If a court decides that any part of this Agreement cannot be enforced, that particular part of this Agreement will not apply, but the rest of this it will.

16.4 A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under this Agreement shall not prevent the exercise of that or any other right.

16.5 The Client may not assign or transfer any benefit, interest or obligation under this Agreement.

16.6 Instilled has the right to make use of an Affiliate or such third-party service provider it deems appropriate in delivery of all or any part of the Services. In the event of any such use, Instilled shall remain responsible for all acts and omissions of the applicable Affiliate or service provider subject to the terms of this Agreement.

16.7 US Government clients only. Each of the components that constitute the Services is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and/or “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Services with only those rights set forth herein.

## **17 RIGHTS OF THIRD PARTIES AND AFFILIATES**

17.1 A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement. This shall not affect any right or remedy of a third party that exists or is available apart from under that Act.

## **18 GOVERNING LAW AND JURISDICTION**

18.1 This Agreement shall be governed by and interpreted in accordance with the laws of Delaware, without regard to its conflict of law principles or the United Nations Convention on the International Sale of Goods. Each Party irrevocably consents to the exclusive jurisdiction of forum and venue of the Delaware over any and all disputes, controversies or disagreements between the Parties or any of their respective subsidiaries, affiliates, successors or assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby. This Agreement and any communications or disputes concerning this Agreement shall be in the English language.