

Babble Terms and Conditions

1. **Background, Definitions and Interpretation**
- 1.1 Babble Cloud (ARL) Limited ("Babble") whose company number is 06716533 and whose registered office is at 7 Bury House, 31 Bury Street, London, England, EC3A 5AR, England.
- 1.2 The following are the terms and conditions under which Babble sells Products and Services (as defined below) to Customers, details of which are set out in any submitted sales quotations, order form or proposal and project specifications where applicable. These Terms and Conditions are the only terms and conditions upon which Babble is prepared to deal with Customers and they shall govern the Agreement (as defined below) to the entire exclusion of all other terms and conditions
- 1.3 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- "Acceptance Certificate"** means a document to be used in conjunction with the supply of Products and/ or Services to be signed by the Customer on delivery indicating their acceptance of that delivery;
- "Agreement"** means these Terms and Conditions, the Sales Quotation or Order Form (as the case may be) and any other document or agreement entered into between Babble and the Customer to which these standard Terms and Conditions apply;
- "Charges"** means the charges payable by the Customer (or any member of its Group) to Babble for the supply of Products and/or Services;
- "Confidential Information"** means all non-public information of a confidential or proprietary nature received by Babble or the Customer in connection with the Agreement whether in written, verbal or file form regardless of whether it is identified at the time of disclosure as confidential, proprietary or the like. Confidential Information is broadly defined and includes but is not limited to the Services, Products, specification, business plans, client lists, Suppliers of Babble, inventions, know-how, instructions, ideas, trade secrets, techniques, processes, programs, schematics, software source documents, data, financial information, sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party;
- "Customer"** means the person, firm, company or business entity with whom Babble contracts. Where Babble contract with the Customer and then also provides Services and Products to other members of the Customer's Group, the Customer shall be jointly and severally liable with the relevant member of its Group for such member's obligations (including payment obligations) under the Agreement;
- "Group"** in relation to the Customer, the Customer, any subsidiary or holding company from time to time of the Customer, and any subsidiary from time to time of a holding company of the Customer. Holding company and subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006;
- "Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- "Order Form/Sales Quotation"** means the order for the sale and supply of Services and/or Products;
- "Party/Parties"** means both Babble and the Customer being a Party and together the Parties;
- "Products"** means Voice or Data related hardware, any other hardware and associated equipment that may be supplied by Babble;
- "Services"** means any service supplied by Babble;
- "Software"** means any computer or communications software whether embodied in ROM, RAM, and firmware or on disk, tape or other media;
- "Supplier"** means any third-party supplier of Products and/or Services to Babble; and
- "VAT"** means value added tax chargeable under English law for the time being and any similar additional tax.

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1.4 Any reference to a day or days refers to business days - that is any day which is not a weekend or public or bank holiday in the United Kingdom. Services are supplied between 9:00 am and 5:30 pm on business days, unless otherwise agreed.

1.5 In these Terms and Conditions, unless the context otherwise requires:

1.5.1 words in the singular include the plural and vice versa and words in one gender include any other gender;

1.5.2 a reference to any statutory provision shall be construed as a reference to that statute or provision as from time to time amended;

1.5.3 the headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Customer Orders

2.1 The Customer must sign an Babble Order Form or Sales Quotation (as the case may be) which constitutes an offer by the Customer to purchase the Services and/or Products specified in it in accordance with these Terms and Conditions. The Order Form/Sales Quotation (as the case may be) shall be deemed to be accepted by Babble on the earlier of:

(i) Babble issuing written acceptance of the Order Form / Sales Quotation; or (ii) Babble's commencement or execution of work pursuant to the Order Form/Sales quotation, at which point the Agreement for the supply and purchase of those Services and/or Products shall come into existence in accordance with these Terms and Conditions and subject to the any other term stated on the Order Form/Sales Quotation and to the availability of all relevant Products and/or Services.

2.2 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, the Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Order Form or Sales Quotation (as the case may be) shall not govern the Agreement. No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding on Babble unless in writing and signed by a duly authorised representative of Babble.

2.3 Where the Order Form/Sales Quotation (as the case may be) includes Products and/or Services to be procured by Babble from a Supplier, the Customer agrees that the terms and conditions of the Supplier shall apply Mutatis Mutandis as if between the Customer and Babble. In the event of a conflict between these Terms and Conditions and those of the Supplier, then these Terms and Conditions shall prevail save in the event that the terms in conflict pertain specifically to obligations to the Supplier or relate to the Products or Services being provided by the Supplier.

3. Price Lists

3.1 Price lists, catalogues and any other promotional material supplied by Babble are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them and do not constitute contractual offers capable of acceptance. They shall not form part of the Agreement or have any contractual force. Prices shown in any such materials may be subject to change at any time prior to the entry by Babble and the Customer into a binding Agreement.

4. Sales Quotations/Order Forms

4.1 All Sales Quotations/Order Forms are subject to these Terms and Conditions and shall be valid for a period of fourteen (14) days unless otherwise stated in writing on the relevant Sales Quotation/Order Form.

4.2 All Sales Quotations/Order Form shall be in Pounds Sterling (GBP), unless the Parties have agreed in writing that the Sales Quotation/Order Form will be provided in US Dollars (USD) or in Euros (EUR). Babble may subsequently adjust the quoted Charges in the event of any fluctuations in the GBP-USD or the GBP-EUR or the USD-EUR exchange rate at the point of concluding the Agreement.

4.3 Babble reserves the right to carry out a credit check on the Customer prior to the Agreement.

4.4 Babble reserves the right to withdraw or amend any Sales Quotation/Order Form prior to the Agreement.

4.5 Babble reserves the right to withdraw or amend any Sales Quotation/Order Form following the Agreement where:

4.5.1 Products and/or Services are withdrawn or discontinued by the Supplier;

4.5.2 the Supplier increases the charges for Products and/or Services to Babble;

4.5.3 specifications of Products and/or Services are varied by the Supplier; or

4.5.4 in order to comply with any applicable laws, regulations or safety requirement.

4.6 Sales Quotation/Order Form for Services may be subject to the Customer completing, to Babble's satisfaction, the relevant scoping documents.

5. Product Specifications

5.1 Babble shall use reasonable endeavours to advise the Customer of variations to Product specifications following formal notification to Babble of such variations by the Supplier.

5.2 Where changes to Product specifications significantly alter the Charges, or the nature, scope of, performance, quality of the Products Babble and the Customer shall agree upon such changes in writing or arrange for the supply of alternative Products.

5.3 Changes to Product specifications shall not provide grounds for cancellation or termination of an order by the Customer unless such cancellation or termination is agreed to in writing by Babble and the Customer.

5.4 Babble may, at its sole discretion, change the Supplier engaged in the provision of Services and/or Products to the Customer for whatever reason howsoever. A change of Supplier does not provide grounds for cancellation or termination of an order, provided that Babble arranges for the supply of alternative Products and/or Services which do not materially affect the nature, scope of, performance, quality, or the Charges for the Services and/or the Products.

6. Hardware and Software Products

6.1 In respect of Products purchased by Babble from a Supplier for resale to Customers, such Products are supplied by Babble on the terms and conditions of use for such Products as defined by the relevant Supplier at the time of delivery.

6.2 Babble gives no warranty to the Customer in respect of any Product that is purchased by Babble from a Supplier for resale to the Customer but shall take reasonable steps to assist Customer in pursuing warranty claims against the relevant Supplier.

6.3 Unless otherwise specified in the Agreement, Babble shall only deliver non-modifiable and executable run-time versions of Software.

6.4 The Customer must comply with the terms of the Supplier's software licenses, details of which are provided with the relevant Order Form/Sales Quotation.

7. Delivery and Acceptance

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- 7.1 Unless it is agreed otherwise delivery shall be to the Customer's address as specified in the Agreement.
- 7.2 Babble shall not be liable for any shortfalls in delivery or variation from Product specifications on delivery unless a claim in writing is made by the Customer within three (3) days of delivery.
- 7.3 In circumstances where Babble has attempted to physically deliver Products to the Customer and the Customer is unable or unwilling to accept such delivery, the Customer will be charged for the cost of the failed delivery in addition to any and all subsequent attempts, and the costs of storing the Products. If the Customer is unable to accept delivery, a new date shall be set by mutual written agreement of the Parties. If the Customer is unwilling to accept delivery, the parties shall seek to vary the Agreement as appropriate by mutual written agreement or the Customer shall seek to terminate the Agreement in accordance with clause 20 of these Terms and Conditions.
- 7.4 Where the necessity for such has been agreed in advance and not otherwise, the Customer shall sign Babble's Acceptance Certificate stating any defects, shortfalls or exclusions in the delivery.
- 7.5 Acceptance of a delivery requiring an Acceptance Certificate is deemed to occur on the signing of the Acceptance Certificate on the date of delivery, which date shall be recorded on the actual Acceptance Certificate.
- 7.6 Babble shall on the signing of the Acceptance Certificate be entitled to invoice the Customer.
- 7.7 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Customer does not sign a required Acceptance Certificate, further work may be agreed in writing between the Parties to remedy such defects. Babble shall use all reasonable endeavours to undertake such work without undue delay.
- 7.8 If, as a result of defects, shortfalls or exclusions in a delivery of Products or the provision of Services, the Customer does not sign a required Acceptance Certificate and subsequently uses the Products (including but not limited to hardware), Software or the results of Services provided without prior written agreement as to any remedial work on the part of Babble then the Customer is deemed to have accepted the same.

8. Warranties

- 8.1 To the maximum extent permitted by law, Babble's warranties, conditions and other terms implied by statute or common law are limited to those set out in the Agreement and , any other documentation provided by Babble,, all other conditions, guarantees or warranties whether expressed or implied by law, statute or otherwise are expressly excluded and, to the extent that they cannot be excluded, liability for them is subject to the limit set out in these Terms and Conditions.
- 8.2 As stated in clause 6.2, Babble gives no warranty to the Customer in respect of any Product that is purchased by Babble from a third party Supplier for resale to the Customer but shall take reasonable steps to assist Customer in pursuing warranty claims against the relevant third party Supplier. For the avoidance for doubt, in respect of Supplier's Products, Babble shall not be liable or responsible for administering any defect or other claim which arises from normal wear and tear, misuse, negligence, accident, abuse, use not in accordance with the Supplier's documentation, modifications or alterations not authorised by the Supplier, or use in conjunction with any other third party products.
- 8.3 Notwithstanding clause 8.2, in respect of Products directly produced by Babble or Services provided directly by Babble, the only warranty given by Babble to the Customer is that Babble shall in accordance with normally accepted professional standards make good as quickly as is reasonably possible and at its own expense any defects identified on any relevant Acceptance Certificate or which develops during a period of three (3) days after delivery of the Product or performance of the Services.
- 8.4 Notwithstanding anything to the contrary contained in these Terms and Conditions, to the maximum extent permitted by law, Babble makes no representation concerning the quality of the Products, and does not promise that the Products will operate without error or interruption. For the avoidance of doubt, Babble does not warrant that Products are free from minor errors not materially affecting performance; such errors shall not be rectified in the absence of a prior written agreement to the contrary.
- 8.5 The warranty in this clause shall not apply if Products have been altered in any manner by any party other than Babble or have been operated or run not as specified, or have been operated or run on any platform or in any environment inappropriate for the Products. For the avoidance of doubt, the warranty in this clause does not apply in respect of Products directly produced by Babble or Services provided directly by Babble, if:
 - a) the defect arises because the Customer failed to follow Babble oral or written instructions as to the installation, commissioning, use or maintenance of the Products;
 - b) the Customer or any person other than Babble alters in any way the Products;
 - c) the defect arises as a result of wilful damage, negligence, or abnormal working conditions;
 - d) the Products differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 8.6 Where Babble has supplied any Products in connection with the provision of Services supplied by a third party, Babble does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the third party supplying the Products to Babble.

9. Warranty Assistance

- 9.1 Customer shall immediately notify Babble if any Products supplied by Babble prove to be defective in quality or condition within the Supplier's warranty period (it is the responsibility of the Customer to familiarise with the warranty period of the applicable Supplier). Upon receipt of notification of such claim from the Customer, Babble shall notify the Customer whether, as a matter of Supplier's policy, the claim must be handled directly with the Supplier or indirectly through Babble. In the event the claim must be handled directly between the Customer and the Supplier, Babble shall provide contact information to enable the Customer to contact the relevant Supplier directly. In the event a claim will be handled by Babble, then Babble shall provide the Customer with a Return Material Authorisation ("RMA") for the Customer to return the Products to Babble, and the Customer shall return such Product to Babble in accordance with these Terms and Conditions and Babble's then current RMA policy (which shall be made available to the Customer upon request). No Products may be returned to Babble without a valid RMA number displayed on the Products packaging. Any Products returned without a valid RMA number displayed on the Products packaging will be refused or returned to the Customer. Babble shall not be obligated to ship replacement Products to the Customer until Babble is in receipt of the original Products being returned and a valid warranty or support contract being in place.
- 9.2 The Customer agrees that Babble sole liability to the Customer regarding defect claims is limited to the administration of such claims with the Supplier and is expressly contingent upon Babble's ability to obtain a refund, credit or new replacement Products from the Supplier. Babble has no obligations to accept a return of Products that fail to comply with a Supplier's policy on product returns.
- 9.3 Babble shall not be liable or responsible for administering any defect or other claim which arises from normal wear and tear, misuse, negligence, accident, abuse, use not in accordance with Supplier's documentation, modifications or

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alterations not authorised by the Supplier, or use in conjunction with a third party product. Babble reserves the right, in its sole discretion, to determine whether any Products are defective.

- 9.4 All transport charges incurred in returning or replacing Products are the responsibility of the Customer.
- 9.5 Notwithstanding the foregoing, Babble will provide limited, reasonable endeavours telephone and email support for the period of thirty (30) days after delivery or installation, whichever shall be the earlier. Support after this period is dependent on a suitable support contract being entered between the Customer and Babble.

10. Return of Products

- 10.1 The return of Products shall be at the sole discretion of Babble, where Babble agrees to accept return of Products for any reason then the Customer shall:
- 10.1.1 advise Babble in writing within three (3) days from the date of delivery of Products by Babble of the reason(s) for the return of Products;
 - 10.1.2 obtain an RMA number from Babble prior to any return of Products;
 - 10.1.3 complete and return to Babble the returns form to arrive at Babble within seven (7) days from the date of delivery of Products by Customer;
 - 10.1.4 properly pack the Products in the original packing where possible and include a detailed packing list;
 - 10.1.5 return the Products in the condition in which they were received to arrive at Babble within fourteen (14) days from the date of delivery of Products by Babble; and
 - 10.1.6 take no action that may affect any warranties that may cover the Products.

11. Title and Risk in the Property

- 11.1 Risk of loss or damage in respect of any tangible item shall pass to the Customer on delivery or collection of the item by the Customer or Customer's agent.
- 11.2 The legal and beneficial ownership of Products and/or associated material supplied as part of Products and/or Services shall remain with Babble until payment in full in respect of all such Products and associated material supplied as part of Products and/or Services has been received in full by Babble in clear funds in accordance with the terms of the Agreement. Until payment is received in full Babble may, without prejudice to any other rights it may have, recover or resell any of the Products and/or associated material and may enter upon the Customer's premises by its servants or agents for that purpose.
- 11.3 Where a licence shall be granted by a Supplier and/or Babble to the Customer then the Customer shall not have the benefit of the licence until payment in full has been received by Babble.
- 11.4 Until ownership of the Products has passed to the Customer, the Customer must:
- 11.4.1 hold the Products on a fiduciary basis as Babble's bailee;
 - 11.4.2 store the Products (at no cost to Babble) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as Babble's property;
 - 11.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 11.4.4 maintain the Products in satisfactory condition insured on Babble's behalf for their full price against all risks to the reasonable satisfaction of Babble. On request the Customer shall produce the policy of insurance to Babble and
 - 11.4.5 hold the proceeds of the insurance referred to in condition 11.4.4 on trust for Babble and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 11.5 Until ownership of the Products has passed to the Customer, and subject to clause 11.4, the Customer's right to possession of the Products shall terminate immediately if the Customer:
- 11.5.1 has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - 11.5.2 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Agreement or any other contract between Babble and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or it ceases to trade; or
 - 11.5.3 encumbers or in any way charges any of the Products.
- 11.6 Babble shall be entitled immediately after giving notice of Babble's intention to repossess, to enter upon the Customer's premises with such transport as may be necessary and repossess any Products to which Babble has title.
- 11.7 Without prejudice to any other remedies Babble may have, in respect of all outstanding invoiced amounts due from the Customer Babble shall have a general lien on the Customer's server and/or other equipment in its possession and shall be entitled, on the expiration of fourteen (14) days' notice after the due date of payment, to dispose of such Products or property as an agent for the Customer in such manner and at such price as Babble thinks fit and to apply the proceeds towards any outstanding Charges due to Babble, and shall when accounting to the Customer for any balance remaining be discharged from all liability in respect of such Products or property.

12. Charges

- 12.1 Babble shall render to the Customer an invoice or series of invoices in Pounds Sterling, unless otherwise agreed that they shall be invoiced in USD or EUR, pursuant to the supply of Products and/or Services.
- 12.2 Charges specified in the Agreement do not include Value Added Tax (VAT) which, if applicable, shall be added at the rate in force at the time of supply. Where any taxable supply for VAT purposes is made under the Agreement by Babble to the Customer, the Customer shall, on receipt of a valid VAT invoice from Babble, pay to Babble such additional amounts in respect of VAT as are chargeable on the supply of the Services and Products at the same time as payment is due for the supply of the Services and Products.
- 12.3 Unless specified in the Agreement and subject to clause 7 of these Terms and Conditions:
- 12.3.1 all Products shall be invoiced on the date of despatch to the Customer or collection of Products by the Customer or his agent; and
 - 12.3.2 all Services shall be invoiced in full and in advance.
- 12.4 In the case of supply to a Customer outside the UK the Customer shall be responsible for all import levies, customs duties or other similar taxes of whatever nature.

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- 12.5 Where travel and subsistence expenses are incurred by Babble, a 5% administration charge shall be added to these expenses and such expenses as surcharged shall be payable to Babble by the Customer immediately upon the date of the invoice unless otherwise agreed in writing.
- 12.6 Where the Customer requests work to be undertaken outside of hours on business days, Babble may charge the Customer the following increases:
- 12.6.1 1.5 x multiple of normal rates during the week from 17:31-23:59 or on Saturdays from 09:00-17:30; and
 - 12.6.2 2 x multiple of normal rates during the week from 00:00-08:59 (excepting Mondays) or Saturdays from 00:00-08:59 or Saturdays from 17:31-23:59 or on Sundays from 09:00-17:30; and
 - 12.6.3 3 x multiple of normal rate on Sundays from 00:00-08:59 or Sundays from 17:31-23:59 or on Mondays from 00:00-08:59; and
 - 12.6.4 4 x multiple of normal rates on Bank or Public Holidays.
13. **Payment**
- 13.1 The time stipulated for payment shall be of the essence of the Agreement and failure to pay within the period specified shall, in the absence of a written explanation from the Customer that has been duly accepted by Babble, render the Customer in material breach of the Agreement.
- 13.2 Invoices shall be payable in Pounds Sterling, unless otherwise agreed that they shall be payable in USD or EUR, by the due date of payment as stated on the Sales Quotation/Order Form for a particular charge or on the invoice, but in any event shall be no later than fourteen (14) days of the invoice date unless otherwise agreed in writing.
- 13.3 Despite any other provision to the contrary contained in the Agreement, all outstanding payments payable to Babble under the Agreement shall become due immediately: (i) on termination of the Agreement, (ii) on the commencement of any act or proceeding in which the Customer's solvency is involved, (iii) where the Customer fails to make (or admits its inability to make) any payment required to be made under the Agreement or any other material agreement between the Customer and Babble when such payment is due, (iv) if Babble determines in its sole discretion that the Customer (or any member of its Group to which Babble may supply Services and/or Products under the Agreement), represents a credit risk, or its financial position deteriorates to such an extent that its capability to adequately fulfil its obligations (including but not limited to the payment obligations) under the Agreement has been placed in jeopardy. In the above scenarios Babble may, by notice to the Customer declare that all outstanding payments, accrued interest and all other amounts accrued or outstanding under the Agreement be immediately due and payable, whereupon they shall become immediately due and payable. This clause 13.3 is without prejudice to any right to claim for interest under the law, or any such right under the Agreement.
- 13.4 Without prejudice to any other right or remedy Babble may have in respect of any failure by the Customer to pay the Charges or other monies payable pursuant to the Agreement, Babble may charge interest at the rate 5% above the base rate of the Bank of England from time to time in force, after as well as before judgement on any amount due from the Customer to Babble from the date due for payment until payment is received.
- 13.5 Without prejudice to clause 13.3, Babble reserves the right at its sole discretion to interrupt, suspend or terminate the Services to the Customer in the event of any default of payment or if in Babble's opinion the Customer becomes a credit risk. Such interruption does not relieve the Customer from paying any amount overdue and payable under this Agreement.
- 13.6 If the Customer fails to pay any sum due under the Agreement on the due date for payment, Babble may, without prejudice to any other any other right or remedy it may have, withdraw the provision of Services or any part thereof until all overdue payments are made in full.
- 13.7 Notwithstanding the provisions of clauses 13.1, 13.5 and 13.6, Babble agrees not to terminate and/or suspend the Services in the event of late payment due to clerical error or banking oversight on the Customer's part, provided the Customer subsequently makes payment upon receipt of reminder from Babble no later than seven (7) days from the date the invoice should have been paid.
- 13.8 Any credit note, balance or other liability issued by Babble to the Customer shall expire, without notice, within twelve (12) months of the date of issuance by Babble. The Customer shall be deemed to have forfeited any right to such credit amounts and shall not be entitled to a replacement or repayment of any amounts related thereto.
14. **Customer's Obligations**
- 14.1 During the Agreement the Customer shall:
- 14.1.1 provide, free of charge, reasonable usage of machine time, communications, stationery, media, suitable working accommodation, parking, and access deemed necessary by Babble in order to fulfil its obligations under the Agreement and shall provide an appropriate environment or platform to enable Babble to provide the Services or test run any Product and, in particular, the Customer warrants to Babble that the Customer shall provide an environment capable of receiving the Services or Products;
 - 14.1.2 provide in a timely manner such information as Babble may request, and ensure that such information is accurate in all material respects;
 - 14.1.3 nominate prior to the provision of any of the Services an authorised representative of the Customer to be its prime point of contact with Babble during the Agreement, who shall have the authority to contractually bind the Customer;
 - 14.1.4 ensure the accuracy and validity of all data and technical information provided to Babble;
 - 14.1.5 allow Babble reasonable access to its employees for the purpose of investigation and discussion in connection with the Agreement and ensure that its employees cooperate fully with Babble in relation to the provision of the Services;
 - 14.1.6 provide in a timely manner free and safe access to the Customer's premises and other facilities as is necessary by Babble to comply with its obligations under the Agreement;
 - 14.1.7 ensure that any equipment provided by Babble during the provision of Services and/or Products under the Agreement shall not be modified, changed or removed without the prior written permission of Babble. Where Babble, at its sole discretion, establishes that such equipment has been modified, changed or removed then the cost of restoring or replacing the equipment shall be recovered from the Customer.
- 14.2 The Customer represents and warrants that:

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- 14.2.1 it has obtained all necessary approvals, consents and authorizations of third parties and governmental authorities, to the extent necessary, to enter into the Agreement and to perform and carry out its obligations hereunder;
- 14.2.2 the persons executing the Agreement on its behalf have express authority to do so, and, in so doing, to bind the Customer;
- 14.2.3 the execution, delivery, and performance of the Agreement does not violate any provision of any law, charter, regulation applicable to it; and
- 14.2.4 the execution, delivery and performance of the Agreement has been duly authorized by all necessary corporate actions and the Agreement is a valid and binding obligation of the Customer enforceable in accordance with its terms.
- 14.3 If the Customer is a subsidiary within a Group, it undertakes to obtain a guarantee from the holding company in respect of its payment obligations under the Agreement before entering into the Agreement or at anytime at the request of Babble. Whereas, if the Customer is the holding company within the Group, it acknowledges and agrees to be jointly and severally liable for the obligations (including but not limited to the payment obligations) of any subsidiary company to which Babble provides Services and/or Products under the Agreement.
- 15. Performance**
- 15.1 Babble shall use its reasonable endeavours to comply with any day or dates for despatch or delivery of Products and for the performance of Services as stated in the Agreement. Unless the Agreement contains express provisions to the contrary, any such dates shall be estimates only and the time of despatch or delivery of Products, or the time for performance of Services shall not be of the essence; such dates shall constitute only statements of expectation and shall not be binding. If Babble, having used its reasonable endeavours fails to despatch or deliver the Products, or to perform the Services within the agreed dates or timescales, whether or not binding, such failure shall not constitute a breach of the Agreement. The Customer shall not be entitled to treat the Agreement as thereby repudiated or to rescind it, and any other ancillary Agreement in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- 15.2 When expedited delivery or performance is agreed to in writing by Babble and the Customer and necessitates overtime and/or other additional costs, the Customer shall reimburse Babble for the overtime and additional costs incurred and shall pay the same immediately upon invoice.
- 15.3 Babble shall not be liable for any delay or failure to deliver the Products or perform the Services that is caused by Force Majeure or the Customer's failure to provide adequate delivery instructions or any other instructions that are relevant to the supply of Products and/or performance of Services. If performance of the Agreement is suspended at the request of or delayed through default of the Customer including, but without prejudice to the generality of the foregoing, refusal to accept delivery of the Products or performance of the Services, for a period of seven (7) days, Babble shall be entitled to payment at the then prevailing rates for the Services already performed and Products supplied or ordered and any other additional costs thereby incurred and the Customer shall pay such sums immediately upon invoice.
- 15.4 If Babble's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to Babble on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Babble confirming such costs, charges and losses to the Customer in writing.
- 16. Business Associates and Delegation**
- 16.1 Babble may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party. For the avoidance of doubt, Babble may delegate any of its obligations or responsibilities arising out of the Agreement to any of its Supplier or business associates, and performance by such Suppliers and business associates shall be deemed to be performance by Babble.
- 16.2 The Customer shall not, without the prior written consent of Babble, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 16.3 At the written request of the Customer Babble may, at its sole discretion, agree to novate the Agreement. Such agreement must be evidenced in writing.
- 17. Intellectual Property Rights**
- 17.1 Unless otherwise specified in the Agreement, all Intellectual Property Rights and all other rights in or arising out of or in connection with the supply of Services and Products and any associated documentation and all parts and copies thereof shall be owned by Babble or its Suppliers, as the case may be.
- 17.2 All materials, equipment and tools, drawings, specifications and data supplied by the Customer to Babble ("Customer Materials") are the exclusive property of the Customer.
- 17.3 All Intellectual Property Rights that are owned by or licensed to Babble and which are or have been developed independently of the Agreement, that are necessary or desirable to enable a Customer to receive and use the Services and Products ("Babble IPRs") are the exclusive property of Babble and its licensors.
- 17.4 Subject to clause 17.5, Babble licenses all such rights to the Customer on a non-exclusive, non-transferable basis to such extent as is necessary to enable the Customer to receive and use the Services and/or Products during the Agreement. If this Agreement is terminated, this licence will automatically terminate. In relation to any Software all Intellectual Property Rights and all other rights in such Software shall be owned by Babble or its Suppliers or licensors, as the case may be. Babble hereby licenses all such rights to the Customer on a non-exclusive and non-transferable basis to such extent as is necessary to enable the Customer to make reasonable use of the Software as is envisaged by the Parties on condition that the Customer fulfils all of its relevant obligations arising out of the Agreement.
- 17.5 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services and/or Products and any associated documentation, the Customer's use of any such Intellectual Property Rights is conditional on Babble obtaining a written end-user licence (or sub-licence) from the relevant licensor on such terms as will entitle Babble to license such rights to the Customer.
- 17.6 The Customer grants Babble a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Intellectual Property Rights and Customer Materials during the Agreement for the purpose of providing the Services and Products to the Customer in accordance with the Agreement.
- 18. Liability**
- 18.1 Without prejudice to any claims brought by either Party under clause 22 or clause 24 to which the limits under this clause

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18 shall not apply, the following provisions set out the Parties' entire liability (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to each other in respect of:

18.1.1 any breach of the Agreement howsoever arising; and

18.1.2 any representation, misrepresentation (whether innocent or negligent), statement, breach of statutory duty or tortious act or omission (including without limitation negligence) arising under or in connection with the Agreement.

18.2 The Customer's attention is drawn to the following provisions:

18.2.1 the Parties' liability to each other for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or for fraud or fraudulent misrepresentation shall not be limited;

18.2.2 any act or omission of either Party falling within this clause shall be known as an "Event of Default"; and

18.2.3 the Parties shall accept liability to each other in respect of damage to the tangible property of a Party resulting from the negligence of the other Party or its employees, agents or subcontractors or any breach of the Agreement. Without prejudice to the limit set out below, the Customer shall indemnify and keep Babble fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by negligent act or omission, wilful misconduct or breach of contract by the Customer, its employees, agents or subcontractors.

18.3 Subject to the provisions of clause 18.2.1, neither Party shall be liable to the other Party in respect of any Event of Default, whether in contract, tort (including negligence), misrepresentation (whether innocent or negligent), breach of statutory duty or otherwise, for any loss of profits, loss of business, loss of anticipated savings, loss of goodwill, loss of contract, loss or corruption of data or information, or any type of special, indirect or consequential loss whatsoever arising under or in connection with the Agreement (including loss or damage suffered by the other Party as a result of an action brought by a third party, subject always to the provisions of clauses 22, or 24) even if such loss was reasonably foreseeable or if the Party has been advised of the possibility of incurring the same. If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

18.4 Subject to the provisions of clause 18.2.1 and clause 18.3, Party's total liability to the other Party in respect of all other losses arising under or in connection with any Event of Default, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the aggregate of all Charges paid or payable by the Customer under the Agreement during the preceding twelve months prior to the claim.

18.5 Subject to the provisions of clause 18.2.1:

18.5.1 Babble shall not be responsible, liable, or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent the failure is directly caused by the Customer failing to comply with its obligations under the Agreement, or by the negligence or misconduct of the Customer or its employees, agents and sub-contractors; and

18.5.2 neither Party shall have liability to the other Party in respect of any Event of Default unless that Party shall have served notice of the same upon the other Party within six (6) months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware. 18.6 The Parties hereby agree to afford each other not less than thirty (30) days in which to remedy any Event of Default.

18.7 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

18.8 This clause 18 shall survive termination of the Agreement.

19. Cancellation, Changes and Rescheduling of Orders

19.1 Once a Sales Quotation/Order Form has been accepted by Babble, no amendment shall be made to it unless Babble has given express written consent to the change and the change is in writing and signed by the Parties (or their authorised representatives).

19.2 If, after a Sales Quotation/ Order Form has been accepted by Babble, the Customer wishes to make changes to the Sales Quotation/Order Form (including but not limited to the specifications of the order or rescheduling the order), the Customer shall notify Babble in writing of such by submitting details of the requested change to Babble. Babble may, at its sole discretion, accept changes to a Sales Quotation/Order Form after it has been agreed. For the avoidance of doubt, Babble has no obligation to accept changes to a Sales Quotation/Order Form after it has accepted it.

19.3 Babble may charge for the time it spends assessing a request for change to a Sales Quotation/ Order Form from the Customer on a time and materials basis. The Customer acknowledges and agrees that in the event the Customer wishes to change a Sales Quotation /Order Form after it has been accepted by Babble, such change will be subject to the Customer reimbursing Babble of all costs, charges and expenses incurred by Babble in respect of the supply Products and/or performance of Services or any part thereof up to the date of receipt by Babble of the written notification of change from the Customer. Any change to a Sales Quotation/Order Form is subject to a minimum charge of 6% of the total Charges of the Sales Quotation /Order Form which amount the Customer agrees to represent a genuine estimate of Babble's loss together with Babble's costs of recovering Products delivered or in transit where applicable.

19.4 The Customer shall not be entitled to cancel a Sales Quotation/Order Form for Products and/or Services or any part thereof after it has been accepted by Babble, unless Babble has agreed to the cancellation in writing. The Customer agrees and acknowledges that cancellation of a Sales Quotation /Order Form (including early termination of a Sales Quotation/Order Form) by the Customer is subject to cancellation charges to be determined at the sole discretion of Babble on a case-by-case basis, and depending on when the cancellation took place taking in to account the efforts already employed by Babble for the delivery of the Products and/or performance of the Services at the time of receipt by Babble of the written notification of cancellation from the Customer. Cancellation of a Sales Quotation/Order Form must be made in writing and, without prejudice to any other rights and remedies that Babble may have, the following cancellation charges are applicable:

19.4.1 Service (including but not limited to installation and consultancy) - the Customer shall remain liable for all Charges in respect of the cancelled Sales Quotation /Order Form regardless of when such cancellation took place.

19.4.2 Products - the Customer shall remain liable for all Charges in respect of the cancelled Sales Quotation/Order Form if the Customer notifies Babble in writing within five (5) days or less of the scheduled dispatch or delivery date of the Products; or 50% of all Charges in respect of the cancelled Sales Quotation/Order Form if the Customer notifies Babble in writing within six (6) or more days of the scheduled dispatch or delivery date of the Products.

20. Termination

20.1 Without prejudice to any other provision of the Agreement, and without affecting any other right or remedy available to it, Babble may terminate the Agreement with immediate effect by giving written notice to the Customer in any of the following events:

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- 20.1.1 the Customer commits a material breach of the Agreement which is incapable of remedy; or
- 20.1.2 the Customer commits a material breach of the Agreement which is capable of remedy but which the Customer fails to remedy within fourteen (14) days after being notified by Babble in writing to do so; or
- 20.1.3 the Customer (or any member of its Group) fails to make any payment required to be made under the Agreement (or any other agreement between the Customer and Babble) when such payment is due, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within seven (7) days of its due date; or
- 20.1.4 the Customer repudiates or evidences an intention to repudiate the Agreement in whole or in part; or
- 20.1.5 the Customer's financial position deteriorates to such an extent that in Babble's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
- 20.1.6 an event occurs (or circumstances exist) which, in the opinion of Babble is likely to materially and adversely affect the Customer's ability to perform or otherwise comply with all or any of its obligations (including payment obligations) under the Agreement, or is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Customer.
- 20.2 Either Party may, by written notice to the other Party, immediately terminate the Agreement if the other Party:
- 20.2.1 (i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; (ii) becomes insolvent, liquidated or bankrupt (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring); (iii) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; (iv) becomes subject to any form of insolvency action or external administration or takes any step or action in connection with its entering any composition or arrangement with its creditors (other than in relation to a solvent restructuring); (v) suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business for any reason; (vi) any event occurs, or proceeding is taken in any jurisdiction to which the other Party is subject that has an effect equivalent or similar to any of the events mentioned above Such events are deemed to be a material breach incapable of remedy; or
- 20.2.2 is unable to perform a material obligation under the Agreement for six (6) months or more due to a Force Majeure event.
- 20.3 Where the Agreement is terminated by Babble under any of the circumstances set out in clause 20.1 and clause 20.2. and Babble has not completed the supply of Products and/or the performance of Services pursuant to the Agreement, the Customer is nevertheless under the obligation to pay the full Charges for the Services and/or Products as if they have been fully provided, Babble shall be under no obligation to provide the Services and/or the Products until full payment has been received by Babble in clear funds in accordance with this clause. Either Party may terminate the Agreement by giving the other Party no less than thirty (30) days' prior written notice. For the avoidance of doubt, the termination date is calculated thirty (30) days from the postmark date, email receipt date or facsimile receipt transmission date. If the Customer terminates the Agreement under this clause it acknowledges and agrees that termination can only occur after and not before the end of any minimum contract length stated in the Agreement, hence, it agrees to pay Babble the full Charges for the Services and/or Products up to the end of the applicable minimum contract length stated in the Agreement and any non-cancellable costs actually incurred by Babble (including but not limited to set-up charges) as if the supply of Products and/or the performance of Services have been fully completed. For the avoidance of doubt, Babble shall be under no obligation to provide the Services and/or the Products until full payment has been received by Babble in clear funds.
- 20.4 If the Agreement is terminated by the Customer due to Force Majeure or because Babble commits a material breach of the Agreement which is incapable of remedy, the total sums payable by the Customer shall be subject to any noncancellable costs actually incurred by Babble, including but not limited to set-up charges (which are non-refundable) and any contracted third party Supplier services or goods (or any other contracted third party services or goods), and shall thereafter be equitably prorated for actual Services performed and/or Products supplied up to the date of termination with any unexpended funds previously paid by the Customer to Babble being refunded to the Customer on condition that the Customer has provided a written request for any refundable amount within seven (7) days of the termination date. Babble reserves the right not to refund any outstanding amount if the Customer Party fails to comply with this term.
- 21. Consequences of Termination**
- 21.1 On termination of this Agreement any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected. On termination of the Agreement for any reason, the Customer shall immediately return to Babble the Products and all materials, information, equipment, documents, tools, drawings, specifications, data systems and other property of Babble in the Customer's possession or control.
- 21.2 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 21.3 On termination of the Agreement for any reason, despite any other provision, all payments/Charges payable to Babble under the Agreement shall become due and payable immediately. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Agreement. For the avoidance of doubt, the Customer shall immediately pay to Babble all of the outstanding unpaid invoices and interest and, in respect of Services and Products for which no invoice has yet been submitted, Babble shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 22. Intellectual Property Indemnity**
- 22.1 Babble (or the Supplier, as the case may be) shall indemnify the Customer from and against any claim or proceeding brought or made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Products and/or Services ("IP Claim"), to the extent the IP Claim is attributable to the acts or omissions of Babble, its employees, Suppliers or subcontractors. The indemnity in this clause is subject to the Customer:
- 22.1.1 promptly notifying Babble in writing of any allegation or infringement;
- 22.1.2 making no admission of liability and not otherwise prejudicing or settling the IP Claim, without Babble's prior written consent; and
- 22.1.3 giving Babble complete authority, information and all reasonable assistance required for Babble to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for Babble's account.
- 22.2 The indemnity in clause does not apply to the extent that the IP Claim arises from or in connection with the conduct of the Customer in breach of the Agreement.

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- 22.3 Without limiting the indemnity in this clause, if at any time an IP Claim is made, or in Babble's opinion is likely to be made, then in defence or settlement of the IP Claim, Babble may modify or replace the items the subject of the IP Claim so they become non-infringing.
- 22.4 The Customer shall indemnify and keep Babble indemnified from and against any claim, proceeding, damage, loss, liability, cost and expense (including legal costs) suffered or incurred by Babble resulting from infringement of the Intellectual Property Rights of Babble and/or its Suppliers by the Customer.
23. **Confidentiality**
- 23.1 It is expected that the Parties will disclose to each other information relating to a Party which is of a confidential and proprietary nature and each Party recognizes the value and importance of the protection of the other's Confidential Information. All Confidential Information of a disclosing party (hereinafter "Disclosing Party") disclosed to the recipient party (hereinafter "Recipient Party") shall remain the sole property of the Disclosing Party. Except as expressly allowed in these Terms and Conditions, both Parties agree to protect the Confidential Information of the other Party. The Recipient Party shall not disclose Confidential Information to any third party without the express written consent of the Disclosing Party.
- 23.2 Notwithstanding the above, the Recipient Party shall be authorized to disclose Confidential Information of the Disclosing Party only to those of its employees, agents, suppliers and subcontractors who need to know it for the purpose of discharging the Recipient Party's obligations under the Agreement, provided that it ensures that such employees, agents, suppliers and subcontractors are subject to obligations of confidentiality corresponding to those which bind the Recipient Party.
- 23.3 The Recipient Party may also disclose such of the Disclosing Party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement. The prohibitions contained in this clause shall not apply to information that:
- 23.3.1 the Parties have agreed in writing to disclose;
- 23.3.2 is in the public domain other than as a result of a breach of this clause;
- 23.3.3 is rightfully received by the Recipient Party from a third party not in breach of an obligation of confidentiality;
- 23.3.4 was already known to the Recipient Party prior to the time of disclosure.
- 23.4 Subject to the above, the Recipient Party agrees to cease using any and all materials embodying Confidential Information of the Disclosing Party, and to promptly return such materials to the Disclosing Party upon request or to destroy it. This clause shall survive termination of the Agreement.
24. **Health and Safety**
- 24.1 The Customer shall take all reasonable precautions to ensure the health and safety of Babble's employees, agents, Suppliers and subcontractors while at the Customer's premises.
- 24.2 Babble shall not be liable to the Customer in any civil proceedings brought by the Customer against Babble under any Health and Safety Regulations, except where such exclusion of liability is prohibited by law.
- 24.3 The Customer shall indemnify and keep Babble indemnified in respect of any liability, monetary penalty or fine in respect of or in connection with the Products and/or Service incurred directly or indirectly by Babble under any regulations, orders or directions arising or resulting from the Customer's default.
25. **Data Protection**
- 25.1 The terms "data controller", "data processor", "data subject," "personal data" and "processing" bear the respective meanings given them in the EU General Data Protection Regulation 2016/679 and Data Protection Act 2018. Data Protection Laws means all applicable laws relating to the processing of Personal Data including the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018. Customer Personal Data means any personal data provided by or on behalf of the Customer. Sub-processor means any person or entity appointed by the data processor to process the Customer Personal Data on its behalf in connection with the Agreement.
- 25.2 The Customer warrants to Babble that it has the legal right to disclose all personal data that it does in fact disclose to Babble under or in connection with the Agreement.
- 25.3 The Customer acknowledges that, in respect of all data processing activities which Babble carries out under any Agreement, Babble acts as a data processor, whereas the Customer acts as a data controller.
- 25.4 Babble shall:
- 25.4.1 comply with the Data Protection Laws with respect to the processing of the Customer Personal Data;
- 25.4.2 only carry out processing of the Customer Personal Data on the Customer's instructions;
- 25.4.3 only process the Customer Personal Data during the Agreement;
- 25.4.4 promptly inform the Customer if, in the opinion of Babble, an instruction of the Customer relating to the processing of the Customer Personal Data infringes Data Protection Laws;
- 25.4.5 ensure that persons authorised to process the Customer Personal Data are subject to a contractual, professional or legal duty of confidence to hold the Customer Personal Data in strict confidence;
- 25.4.6 implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage;
- 25.4.7 provide the Customer with such assistance as it reasonably requests to enable the Customer to comply with its obligations under Data Protection Laws;
- 25.4.8 report any data breach relating to the Customer Personal Data to the Customer within 72 hours following Babble becoming aware of the breach. Babble may charge the Customer at its standard time-based charging rates for any work performed by Babble at the request of the Customer pursuant to this clause 25.4.8;
- 25.4.9 make available to the Customer all information necessary to demonstrate the compliance of Babble with its obligations under the Data Protection Laws;
- 25.4.10 at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant personal data;
- 25.4.11 allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of Babble processing of Customer Personal Data with the Data Protection Laws. Babble may charge the Customer at its standard time-based charging rates for any work performed by Babble at the request of the Customer pursuant to this clause 25.4.11;
- 25.4.12 only transfer Customer Personal Data to countries outside the European Economic Area (EEA) where expressly authorised by the Customer in writing to do so and after taking such steps as are requested by the Customer to ensure that the transfer at all times complies with Data Protection Laws; provided that nothing in this clause will prevent the continuation of transfer of Customer Personal Data to countries outside the European Economic

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- Area (EEA) which have already been expressly approved by the Customer and in relation to which appropriate safeguards are in place to ensure the transfer complies and continues to comply with Data Protection Laws;
- 25.4.13 promptly and fully notify the Customer in writing of any notices it receives in connection with the processing of any Customer Personal Data, including data subject access requests, and provide such information and assistance as the Customer may reasonably require. Babble shall insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the its obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 25.5 Babble is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third party Suppliers identified in the Agreement. Babble agrees to ensure that each third party Supplier that processes the Customer Personal Data is subject to equivalent legal obligations as those imposed on Babble by this clause.
- 25.6 Subject to clause 25.5 above, aside from the third party Suppliers identified in the Agreement, Babble must not engage any other third party to process the Customer Personal Data without the prior written authorisation of the Customer. Notwithstanding any other provision in these Terms and Conditions, Babble may process the Customer Personal Data if and to the extent that Babble is required to do so by applicable law. In such case, Babble shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 25.7 If any changes or prospective changes to Data Protection Laws result or will result in one or both Parties not complying with Data Protection Laws in relation to processing of personal data carried out under the Agreement, then the Parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such non-compliance.
26. **Non-circumvention**
- 26.1 The Parties hereby irrevocably agree not to circumvent or attempt to circumvent the provisions of the Agreement, and affirm that in every case they will act with the highest standards of ethics in their dealings with each other. At any time during the Agreement, it is expressly agreed that the identities of any individual or entity and any other third parties (including without limitation, Suppliers, manufacturers and consultants) engaged in the provision of Services and/or Products on behalf of Babble to the Customer constitute Confidential Information of Babble and the Customer shall not, without the prior written consent of Babble:
- 26.1.1 directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions, agreements or undertakings with any such third party identified or introduced by Babble; or
- 26.1.2 seek to by-pass, compete, avoid or circumvent Babble from any business opportunity that relates to the Agreement by utilising any Confidential Information or by otherwise exploiting or deriving any benefit from the Confidential Information.
- 26.2 The Customer covenants that it will pay Babble by way of liquidated damages a lump sum equivalent to any financial gains made by it from a breach of clause 26.1 (i.e. the difference between all amounts it would have paid Babble but for the breach of clause 26.1 and the actual amounts paid for the Services and/or Products as a result of the breach of clause 26.1), the above does not affect Babble's ability to also sue for damages should the covenants in this clause 26 be violated in any way.
27. **Notices**
- 27.1 Any notice pursuant to the Agreement shall be in writing signed by a director of Babble or by some person duly authorised by a director of Babble and shall be delivered personally, sent by prepaid recorded delivery (airmail if overseas) or by facsimile transmission to the party due to receive such notice at the address of the party as shown in the Agreement or to such other address as shall be notified in writing to the other party to the Agreement from time to time.
- 27.2 Any notice delivered personally shall be deemed to be received when delivered. Any notice sent by prepaid recorded delivery shall be deemed (in the absence of evidence of earlier receipt) to be received 48 hours after posting (6 days if sent by airmail). In proving the time of despatch it shall be sufficient to show that the envelope containing such notice was properly posted.
- 27.3 Any notice sent by facsimile transmission shall be deemed to have been received upon receipt by the sender of the correct transmission report.
28. **Dispute Resolution**
- 28.1 Any dispute which may arise between the Parties concerning the Agreement shall be determined as provided in this clause 28.
- 28.2 For the purpose of this clause 28, a dispute shall be deemed to have arisen when one Party serves on the other a notice in writing stating the nature of the dispute.
- 28.3 If the dispute is of a technical nature then such dispute shall be referred for arbitration, to be carried out in London by a single arbitrator appointed by agreement between the Parties within thirty (30) days after a request for a reference is made by either Party, nominated on the application of either Party by the President for the time being of the Law Society. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the Parties and his fees for so acting shall be borne by the Parties in equal shares unless he determines that the conduct of either Party is such that such Party should bear all of such fees.
- 28.4 In the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court in the quickest manner possible, and the Parties agree to co-operate in the speedy conduct of such legal proceedings.
29. **Variation**
- 29.1 Except as set out in these Terms and Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Babble.
30. **Set-Off**
- 30.1 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding except as required by law. Babble may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Babble to the Customer.
31. **Force Majeure**

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- 31.1 Force Majeure means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations (including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Suppliers or subcontractors). Inability to pay is not Force Majeure.
- 31.2 Neither Party shall be in breach of the Agreement nor shall be liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure results from a Force Majeure event. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations provided that it promptly notifies in writing the other Party of the Force Majeure event and its expected duration; and uses reasonable endeavours to minimise the effects of that event.
- 31.3 Clause 31.2 shall not apply with respect to strikes and lockouts where such actions have been induced by the Party so incapacitated.
- 31.4 If the period of delay or non-performance continues for a period of six (6) months or more, the Party not affected may terminate the Agreement by giving written notice to the affected Party.

32. Non-solicitation

- 32.1 The Customer shall not, without the prior written consent of Babble, during the Agreement and for a period of twelve (12) months after its termination, either directly or indirectly, solicit or entice away from Babble or employ or attempt to employ any person who is, or has been, engaged in the supply of Products and/or Services to the Customer as an employee or sub-contractor of Babble.
- 32.2 Without prejudice to any other rights and remedies Babble may have, in the event the Customer breaches this clause, the Customer acknowledges that it amounts to a material breach of the Agreement and agrees to pay Babble, by way of liquidated damages, a lump sum equivalent to 50% of the annual remuneration (including all benefits and emoluments) to be paid by the Customer to such employee or sub-contractor and the Customer hereby agrees that such sum is a genuine and reasonable pre-estimate of Babble's loss. For the avoidance of doubt, general employment advertising for open positions not targeted to the other Party's employees shall not constitute solicitation.

33. Governing Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with English law. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

34. General

- 34.1 The Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law. Each Party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 34.2 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, nor constitute either Party the agent of another Party for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.
- 34.3 In the event of conflict between the provisions of the Order Form/quotation and the provisions of these Terms and Conditions the provisions of the former shall prevail.
- 34.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 34.5 No one other than a Party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 34.6 A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 34.7 The rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 34.8 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement. If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.