

## IONBURST SOFTWARE LICENCE AGREEMENT

This Ionburst Software Licence Agreement is entered into between you (or the entity for which you are acting) (the “Customer”) and Ionburst Limited, a company incorporated and registered in Scotland with company number SC613416 whose registered office is at Citypoint, 3<sup>rd</sup> Floor, 65 Haymarket Terrace, Edinburgh EH12 5HD (the “Supplier”).

### BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers for download and deployment for the purpose of providing an enhanced data privacy platform.
- (B) The Customer wishes to use the Supplier's software in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's software subject to the terms and conditions of this agreement.

### Agreed terms

#### 1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this agreement.

**Amazon Web Services Group:** means (i) Amazon Web Services EMEA SARL; (ii) any subsidiary or holding company of Amazon Web Services EMEA SARL from time to time; and (iii) any entity under common Control with Amazon Web Services EMEA SARL from time to time.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Products and the Documentation.

**Business Day:** a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

**Control:** in respect of a company shall mean the possession by any individual or entity of either: (a) the voting rights attaching to 25% or more of the voting shares of that company; or (b) the power to direct or cause the direction and management of that company in accordance with the individual's or entity's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the company.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Customer Data:** the data inputted by the Customer and/ or Authorised Users on the Customer's behalf for the purpose of using the Products or facilitating the Customer's use of the Products.

**Data Protection Legislation:** means the UK GDPR and the law of the United Kingdom or of a part of the United Kingdom relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Documentation:** the document made available to the Customer by the Supplier online via <https://docs.ionburst.io> or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Products and the user instructions for the Products. The documentation will be available after purchase of a valid Ionburst Software Licence.

**Effective Date:** the date this agreement is accepted by the Customer.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Licence Fees:** the licence fees payable by the Customer to the Supplier for the Products, as set out in paragraph 1 of Schedule 1.

**Licence Period:** the period of time for which a licence to use the Products shall continue in effect as determined at the point of purchase.

**Permitted Use:** the permitted uses of the Products authorised by the Supplier and to which this agreement applies.

**Products:** the software applications provided and licensed by the Supplier hereunder.

**Support Services Policy:** the Supplier's policy for providing support in relation to the Products as made available at <https://ionburst.io/support-services-policy> or such other website address as may be notified to the Customer from time to time.

**Third Party Marketplace:** one or more online platforms where licences to use the Products and Products are available for purchase and/ or download and any regional presence thereof.

**Trial Products:** Products limited by time, function, performance and other criteria determined by the Supplier provided for testing and evaluation of any Customer of other party.

**UK GDPR:** has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9. A reference to writing or written excludes faxes but includes e-mail.
- 1.10. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## **2. Licence**

**2.1.** Subject to the Customer paying for the Products in accordance with this agreement, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to permit the Authorised Users to use the Products and the Documentation during the Licence Period solely for the Customer's internal business operations.

**2.2.** In relation to the Authorised Users, the Customer undertakes that:

- (a) each Authorised User shall keep a secure password and/or other personal identity assurance credentials for his use of the Products and Documentation, that such password and/or personal identity assurance credentials shall be changed no less frequently than once per calendar month and that each Authorised User shall keep his password and/or other personal identity assurance credentials confidential; and
- (b) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times.

**2.3.** The Customer shall not access, store, distribute or transmit any Viruses, malware, or any material during the course of its use of the Products that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- (f) is otherwise illegal or causes damage or injury to any person or property; or
- (g) breaches any policies or usage requirements of a Third Party Marketplace thereby entitling the relevant provider to terminate its arrangement with Supplier or cease distribution of the Products

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable without notice the Customer's access to any material that breaches the provisions of this clause.

**2.4.** The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Products and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Products; or
- (b) access all or any part of the Products and Documentation in order to build a product or service which competes with the Products and/or the Documentation; or
- (c) use the Products and/or Documentation to provide services to third parties; or
- (d) subject to clause 23.1, licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Products and/or Documentation available to any third party except the Authorised Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Products and/or Documentation, other than as provided under this clause 2;
- (f) introduce or permit the introduction of, any Virus, malware or Vulnerability into the Products or the Supplier's, network or information systems; or
- (g) attempt to circumvent or disable, or assist third parties in circumventing or disabling, any of the functionality of the Products such as licence keys, metering or other measures intended to ensure use of Products is within the parameters of the Permitted Use.

**2.5.** The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Products and/or the Documentation and, in the event of any such access or use, promptly notify the Supplier.

**2.6.** The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

## **2.7. Trial Products**

- (a) If a free or paid for trial or evaluation of a Service ("**Trial Service**") is available in the Third Party Marketplace and approved by the Supplier, Customer may access and use the Trial Service for fourteen (14) days or such other duration specified by the Supplier ("**Trial Service Term**").

- (b) Trial Products are provided for testing and evaluation solely for the Customer's own internal information security purposes.
- (c) TRIAL SERVICES AND BETA SERVICES ARE PROVIDED "AS IS" WITHOUT ANY SUPPORT, INDEMNITY, LIABILITY OR REMEDY OF ANY KIND. TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUPPLIER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY, CONDITION, OR OTHER IMPLIED TERM AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF TRIAL SERVICES OR BETA SERVICES.
- (d) The terms of this Clause 2.7 apply, and prevail over any conflicting terms in this Agreement, with respect to all access and use of Trial Products.

### **3. Additional Services**

- 3.1. Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Licence Period, purchase upgraded Products. The Supplier shall make such upgraded Products available to the Customer as soon as reasonably practicable thereafter.
- 3.2. If the Customer wishes to purchase upgraded Products, the Customer can select such products on the Third Party Marketplace or the Supplier's website.
- 3.3. The Customer shall pay to the Supplier the applicable Licence Fees for such upgraded Products in accordance with Clause 9 or as published on the Third Party Marketplace and/or the Supplier's website. Such fees shall be payable, unless otherwise specified, at the point of purchase.

### **4. Products**

- 4.1. The Supplier shall, during the Licence Period, provide the Products and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2. The Supplier shall use commercially reasonable endeavours to make the Products available 24 hours a day, seven days a week, except for:
  - (a) planned maintenance carried out during scheduled maintenance times of the Supplier or the Third Party Marketplace as notified to the Customer; and
  - (b) un-scheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 5 Normal Business Hours' notice in advance.
- 4.3. The Supplier will provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Products are provided. The Supplier may

amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

## **5. Customer data**

- 5.1.** The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 5.2.** The Customer acknowledges and agrees that it is responsible for the backup and retrieval of all Customer Data and the Supplier has no obligations to restore any lost or damaged Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data howsoever caused.
- 5.3.** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.4.** The parties acknowledge that the supply of the Products and the Documentation pursuant to this agreement is not anticipated to involve the Supplier processing any of the Customer's personal data. Notwithstanding the foregoing, the parties acknowledge that:
  - (a) if the Supplier processes any personal data on the Customer's behalf pursuant to any modification or update to the Products or this agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.
  - (b) Schedule 2 sets out the scope, nature and purpose of any such processing by the Supplier, the duration of such processing and the types of personal data and categories of data subject.
  - (c) the personal data may be transferred or stored outside the UK, or the country where the Customer and the Authorised Users are located in order to carry out the Supplier's obligations under this agreement.
- 5.5.** Without prejudice to the generality of clause 5.4, prior to instructing the processing of any personal data, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 5.6.** Without prejudice to the generality of clause 5.4, the Supplier shall, in relation to any personal data processed:

- (a) process that personal data only on the documented written instructions of the Customer or where otherwise required under relevant provisions of the Data Protection Legislation. Where the Supplier is relying on the Data Protection Legislation as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Data Protection Legislation unless so doing would be unlawful;
- (b) not transfer any personal data outside of the United Kingdom unless the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
- (e) in accordance with clause 14.4, delete or return personal data on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

**5.7.** Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner



after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

- 5.8.** The Customer consents to the Supplier appointing or otherwise hosting its Products with (i) Amazon Web Services EMEA SARL or any other member of the Amazon Web Services Group; and (ii) any other third party processor the Supplier considers appropriate to the provision of the Products; as a third-party processor of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business including terms related to the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall use commercially reasonable efforts to enforce the terms of any third-party processor.

## **6. Third party providers**

The Customer acknowledges that the Products may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website including any Third Party Marketplace.

## **7. Supplier's obligations**

- 7.1.** The Supplier may modify or update the Products from time to time without materially reducing or degrading their overall functionality. The Supplier may modify the terms of this Agreement from time to time by posting a modified version on the Service listing page on the Third Party Marketplace or by notifying the Customer in accordance with Clause 26 ("**Notices**").
- 7.2.** The undertaking at clause **7.1** shall not apply to the extent of any non-conformance which is caused by use of the Products contrary to the Supplier's instructions, or modification or alteration of the Products by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Products do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution

constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

**7.3.** Without prejudice to clause 7.1 The Supplier:

- (a) does not warrant that:
  - (i) the Customer's use of the Products will be uninterrupted or error-free;
  - (ii) the Products, Documentation and/or the information obtained by the Customer through the Products will meet the Customer's requirements; or
  - (iii) the Products or the Products will be free from Vulnerabilities.
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Products and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**7.4.** This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

**7.5.** The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

**8. Customer's obligations**

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Products, including but not limited to Customer Data, security access information, data validating that use of the Products is within the Permitted Uses, and configuration services;
- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (d) ensure that the Authorised Users use the Products and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Products, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **9. Charges and payment**

- 9.1.** The Customer shall pay the Licence Fees to the Supplier for the Products in accordance with this clause 9 and Schedule 1 and the support fees in accordance with clause 4.3 and Schedule 1.
- 9.2.** Fees charged for any Additional Services purchased by the Customer during the Licence Period will be pro-rated to reflect the residual Licence Period or Renewal Term at time of purchase of the Additional Services.
- 9.3.** The Customer shall on or before the Effective Date provide to the Supplier or its billing agent valid, up-to-date and complete credit or debit card details and where relevant approved purchase order information acceptable to the Supplier or its billing agent and any other relevant valid, up-to-date and complete contact, bank payment and billing details. Where the Customer provides credit or debit card or bank details to the Supplier or its billing agent, the Customer hereby authorises the Supplier or its billing agent to charge such bank account or bill such credit card:
  - (a) in advance in relation to the Licence Fees; and
  - (b) in advance in relation to the Additional Services.
- 9.4.** If the Supplier or its billing agent has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
  - (a) the Supplier or its billing agent may, without liability to the Customer, disable the Customer's account and access to all or part of the Products and the Supplier

shall be under no obligation to provide any or all of the Products while the invoice(s) concerned remain unpaid; and

- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Royal Bank of Scotland from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

**9.5.** All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling in the absence of a currency agreed with the billing agent;
- (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added or other sales tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

**9.6.** The Supplier shall be entitled to increase the Licence Fees, the fees payable in respect of the additional Products purchased pursuant to clause 3.3, and/or the support fees payable pursuant to clause 4.3 upon 30 days' prior notice to the Customer and Schedule 1 shall be deemed to have been amended accordingly.

**9.7. Product Monitoring and Audit.** The Customer shall provide the Supplier with information relating to its use of the Products where reasonably required in order to provide support, monitor the performance, integrity, and stability of the Products and, to the extent relevant, provide usage statistics. In addition, on the Supplier's request the Customer shall provide certification by an authorised officer that use of the Products by the Customer has been made in compliance with this agreement and within the scope of Permitted Uses. The Supplier shall not request such certification more frequently than once per annum save in cases where the Supplier has reasonable grounds to believe the Customer is in breach of this agreement.

**9.8. Performance Data.** The Supplier retains all right, title and interest in data and data elements collected by the Products which, as applicable, pertains to the usage and performance of the Products ("Performance Data"). Without limiting the foregoing, the Supplier may collect and use Performance Data to provide to its billing agent and to improve the Products and the Supplier's other products and services.

**10. Proprietary rights**

**10.1.** The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Products and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether

registered or unregistered), or any other rights or licences in respect of the Products or the Documentation.

- 10.2.** The Supplier confirms that it has all the rights in relation to the Products and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

**11. Confidentiality and compliance with policies**

- 11.1.** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

- 11.2.** Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 11.3.** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

- 11.4.** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 11.5.** The Customer acknowledges that details of the Products, and the results of any performance tests of the Products, constitute the Supplier's Confidential Information.

- 11.6.** The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

**11.7.** No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

**11.8.** The above provisions of this clause **11** shall survive termination of this agreement, however arising.

## **12. Indemnity**

**12.1.** The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Products and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

**12.2.** The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Products or Documentation in accordance with this agreement infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

**12.3.** In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Products, replace or modify the Products so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

**12.4.** In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Products or Documentation by anyone other than the Supplier; or

- (b) the Customer's use of the Products or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Products or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

**12.5.** The foregoing and clause 13.3(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

### **13. Limitation of liability**

**13.1.** Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Products and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Products, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Products and the Documentation are provided to the Customer on an "as is" basis.

**13.2.** Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

**13.3.** Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to

the Licence Fees due by the Customer during the 3 month period immediately preceding the date on which the latest claim arose, to be calculated on a pro rata basis where applicable.

#### **14. Term and termination**

- 14.1.** This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Licence Period, after which it shall automatically renew for successive periods of equal duration to the Licence Period (each a "Renewal Term"). Any Additional Products purchased by the customer during the Licence Period will also automatically renew for the full Renewal Term.
- 14.2.** Either party may serve notice to terminate this agreement at any time, such notice to expire at the end of the current Licence Period or Renewal Term as the case may be. Notice in relation to the terminate right detailed in this clause 14.1 shall be served via the subscription options on the Third Party Marketplace, or the Supplier's website.
- 14.3.** The Customer shall ensure that all Customer Data is extracted from the Services prior to termination.
- 14.4.** If the Customer fails to comply with the provisions of clause 14.3, the Customer agrees and instructs that Customer Data will be deleted on the date of termination.
- 14.5.** Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - (b) the Customer commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (c) the Customer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (d) the Customer 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 or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;



- (e) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
- (h) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.5(d) to clause 14.5(j) (inclusive); or
- (l) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**14.6.** On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Products and/or the Documentation;
- (b) each party shall return and make no further use of any Products, equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
- (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any

breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**15. Force majeure**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, pandemics, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications 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 sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**16. Conflict**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

**17. Variation**

Subject to clauses 7.1, 26.4 and 26.5 no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18. General**

**18.1.** The Products comprising the Products includes the open source licensed software code, the then current list being detailed at <https://portal.ionburst.io/docs/reference/open-source-components>. This list will be available after purchase of a valid Ionburst Software Licence.

**18.2.** The Supplier may novate this agreement at any time to any third party capable of delivering the Products to the same specification as detailed in this agreement.

**19. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **20. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **21. Severance**

- 21.1.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 21.2.** If any provision or part-provision of this agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22. Entire agreement**

- 22.1.** This 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.
- 22.2.** Each party acknowledges that in entering into this 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 this agreement.
- 22.3.** Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 22.4.** Nothing in this clause shall limit or exclude any liability for fraud.

## **23. Assignment**

- 23.1.** The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 23.2.** The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **24. No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall

have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **25. Third party rights**

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Third Party Rights) (Scotland) Act 2017.

## **26. Notices**

- 26.1.** Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as set out in this agreement.
- 26.2.** A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.
- 26.3.** A notice may otherwise be given by delivery to the email address associated with the Customer Third-Party Marketplace Account. When requested by the Supplier, the Customer will direct the applicable Third-Party Marketplace to provide such email address to the Supplier.
- 26.4.** Notices may be posting on the Supplier listing page or pages on the Third-Party Marketplace.
- 26.5.** All modifications to this Agreement that are required by law, regulation, court order, or guidance from a government regulator will be effective immediately upon posting or notice to Customer, and by continuing to use the Service after the date of such posting or notice, Customer will be bound by the modified terms. All other modifications to the terms of this Agreement will be effective upon the earlier of (a) the next renewal date of an existing Subscription, or (b) thirty (30) days after the date the Supplier posts or provides notice of the modified terms.

**27. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Scotland.

**28. Jurisdiction**

Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the Effective Date.

## **Schedule 1      Licence Fees**

### **1.      Licence Fees**

Unless otherwise agreed in this Schedule 1, Licence Fees are set out at.  
<https://ionburst.io/pricing/>

### **2.      Additional Services**

Additional Services may be purchased by the Customer in accordance with clause **3**

### **3.      Support Fees**

The Supplier's standard and enhanced support fees are set out at  
<https://ionburst.io/pricing/>

## **Schedule 2    Processing, Personal Data and Data Subjects**

The following will apply in the event of any processing of personal data under this agreement is agreed to become necessary pursuant to any amendment or update to the Products or this agreement:

Subject matter: The subject matter of the data processing is the personal data provided by the Customer to the Supplier in relation to the provision of the Products detailed in the foregoing agreement.

Duration: The duration of the processing will be the term for which the Supplier provides the Products to the Customer.

Purpose: The purpose of the data processing is the provision, operation, maintenance and support of the Products.

Nature of the processing: As detailed in the Documentation.

Type of Data: All personal data supplied by the Customer when using the Products.

Categories of data subjects: the Customer; Customer's employees and agents; any other data subjects supplied by the Customer.

### **Schedule 3    Products**

The following combination of Supplier-provided and third-party components are required to successfully provision and operate the Products:

**Software components downloadable from Supplier (each component counts against purchased license allowance):**

- Ionburst S3 API
- Trust Engine
- Persistence Engine

**Supporting components downloadable from Supplier (each component does not count against purchased license allowance):**

- Policy Engine
- Cloudlet URI API
- Cloudlet Gateway
- Ionburst Management Portal
- Ionburst Database Preparation

**Third party dependencies downloadable via a link with Supplier software (each dependency does not count against purchased license allowance).**

- Memcached (for temporary data caching)
- Temporal (for activity management/coordination)
- Microsoft SQL Server (Database and metadata storage)
- MongoDB (Database and metadata storage)