

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated the ____ day of [] 20__ (the “Effective Date”).

BETWEEN:

- (1) [] (“Customer”), with registered company number [] and offices at []; and
- (2) [] (“Startup”), with registered company number [] and offices at []

Each of Customer and Startup referred to individually as “Party” and collectively as “Parties.”

WHEREAS:

- (A) Startup is the provider of [](the “Products and Services”).
- (B) Customer engages in [].
- (C) Customer wishes to trial and evaluate the Products and Services, as further described in this MOU on a Trial basis for a Trial Period.
- (D) If the Trial is successful, both Parties are desirous of entering into a further agreement pursuant to which (i) Customer would [license certain software/license data] from Startup; and (ii) Startup would provide the Products and Services to Customer.
- (E) This MOU sets out the Parties understanding in relation to the Trial.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. **Definitions**

“Affiliate” means, with respect to a Party, any entity that directly or indirectly (now or hereafter) Controls, is Controlled by, or is under common Control with that party (but only while the entity meets those requirements).

“Background Intellectual Property Rights” means any Intellectual Property Rights in materials which are provided by a Party in connection with the Trial, that existed before the Trial began and that may be created during the Trial by a Party.

“Confidential Information” means any information or matter of confidential nature of the other Party and the other Party’s Affiliates which may be provided to it and its Affiliate comes to its knowledge in relation to this MOU, including without limitation, the contents and existence of this MOU and any future agreements contemplated herein as well as the fact that the discussions and negotiations are taking place in relation to such Trials and transactions.

“Control” means the power of a person, company, association, or other separate legal entity to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such entity) that the affairs of another are conducted in accordance with its wishes (and “Controlled” will be construed accordingly).

“Documentation” means any user guides, technical specifications, marketing materials, and other documentation and materials that Startup provides to Customer, as revised from time to time.

“Effective Date” means the date of the last signatory of this MOU.

“Intellectual Property Rights” means (i) patents, (ii) copyrights, moral rights, works of authorship (including copyrights in computer software), rights in data and databases, rights to use and protect the confidentiality of confidential information (including know how) (iii) trademarks, service marks, Internet domain names, trade dress, and trade names, together with all goodwill associated therewith (“Trademarks”), (iv) registrations, applications, renewals and extensions for any of the foregoing (i)-(iii), whether registered or unregistered, 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, and in (v) trade secrets, and (vi) rights of privacy and publicity.

“MOU” means this Memorandum of Understanding (including all of its Exhibits), as it may be amended from time to time.

“Products” means the products specified in Exhibit A.

“Services” means the services specified in Exhibit B.

“Trial” means the provision of Products and Services by the Startup for the Trial Period.

“Trial Period” means the period of [] [months/years].

“Trial Region” means the [].

2. **Evaluation and Trial**

- 2.1 Customer is carrying out the trial and evaluation contemplated by this MOU on a Trial basis to ascertain whether the Products and Services meet its requirements.
- 2.2 This MOU is non-exclusive and neither Party is prevented from entering into any negotiations with any third party.
- 2.3 For the avoidance of doubt, except as set forth in clause 3.2 (but subject to clause 7.4), this MOU does not obligate either Party or any of their Affiliates to enter into any further agreement for the provision of Products and Services on an ongoing (non-trial) basis after the Trial ends (a “Definitive Agreement”). This MOU relates only to the arrangements contemplated herein and no other contract exists, or will exist, between the Parties in relation to the Products and Services unless and until the Parties have agreed all the terms of a Definitive Agreement and both Parties have signed a Definitive Agreement.

3. **Phases**

- 3.1 The Parties contemplate that Customer will evaluate the Products and Services identified in Exhibit C on a Trial basis for the Trial Period.
- 3.2 Upon satisfaction of the Exit Criteria (as defined in Exhibit C) (a “Successful Trial”), the Parties shall negotiate in good faith a Definitive Agreement that includes the commercial terms set forth in Exhibit D.

4. **Fees**

- 4.1 Customer shall pay the fees (if any) for the Trial, in accordance with the payment instructions as set forth in Exhibit C.

5. **Ownership, Delivery, and Provision of the Products and Services**

- 5.1 Each Party shall own its Background Intellectual Property Rights, and the other Party shall not acquire any rights to those Background Intellectual Property Rights or in any other Intellectual Property Rights owned by the other Party, whether pre-existing or created during the term of this MOU. As between the Parties, Startup is and will be the sole and exclusive owner of all right, title, and interest in and to (i) the Products, Services, and Documentation (and all Intellectual Property Rights in and to all of the foregoing), (ii) all information, data, algorithms, software, results and other content that is derived from processing any data transmitted by or through the Services and the Products (collectively, the “Analytics Data”), including all Intellectual Property Rights therein and thereto, and (iii) all other Intellectual Property Rights developed by Startup under this MOU. To the extent Customer has any rights in the Services, Products, Documentation, or Analytics Data, it hereby irrevocably assigns to Startup all of those rights for no additional consideration.
- 5.2 During the Trial Period, Startup shall provide the Products and Services to Customer described in Exhibit A and Exhibit B, and as further detailed in Exhibit C. [Startup will also provide Documentation to Customer as detailed in Exhibit A and Exhibit B.]

6. **Trial and Evaluation**

- 6.1 The Trial Period during which Customer may Trial the Products and Services will begin on the Start Date (as set forth in Exhibit C). The Trial by Customer (i) will, subject to earlier termination of this MOU, continue for the duration of the Trial Period, and (ii) may only take place in the Trial Region.
- 6.2 Customer may use, test, and evaluate the Products and Services by sharing the Products, Services, and Documentation with authorised employees of the Customer. Customer will provide reports of problems, failures, or defects arising in connection with the Products, Services, and Documentation to Startup, and will implement a process reasonably acceptable to Startup for Customer and its authorised employees to provide feedback to Customer and Startup. Customer hereby grants Startup a worldwide, nonexclusive, perpetual, irrevocable, assignable, fully paid-up, royalty-free right and license to use any suggestion or idea for Startup’s products or services that Customer or its authorized employees communicates to Startup, without compensation, without any obligation to report on such use, and without any other restriction.
- 6.3 During the Trial Period, Customer will provide (i) Startup with reasonable access to the Products and Services, and (ii) access to any performance data held by Customer and relating to the Products and Services, in each case, to allow Startup to evaluate the performance of the Products and Services.
- 6.4 Customer shall not attempt to, nor permit, procure, enable, or request any other person or entity to (i) alter, adapt, copy, disassemble, decompile, reverse engineer, create derivative works of, or distribute externally the Products, Services, or Documentation, or any portion thereof, (ii) use the Products, Services, or Documentation to (a) create, market, or distribute any product or service that is competitive with the Products or Services, or (b) transfer, sell, lease, license, sublicense, distribute, disclose, divulge, or make available the Products, Services, or Documentation to, or permit use of or access to the Products, Services, or Documentation by, any person or entity (except as set forth in this MOU), or (iii) remove, alter, or obscure any intellectual property notice or other restrictive notice or legend contained or included in or on any of the Products, Services, or Documentation.

7. **Termination**

- 7.1 This MOU will be effective as of the Effective Date and will continue in effect until terminated in accordance with this Section.
- 7.2 A Party may terminate this MOU at any time by providing written notice of termination to the other Party (the "**Breaching Party**") if the Breaching Party commits a material breach of this MOU, and the breach continues unremedied for a period of 30 days after the Party provides notice to the Breaching Party describing the nature of the breach.
- 7.3 A Party may terminate this MOU at any time for any or no reason during the 30-day period following the end of the Trial Period on written notice to the other Party, but only if there has been not been a Successful Trial.
- 7.4 A Party may terminate this MOU at any time for any or no reason, if the Parties have not executed a Definitive Agreement within six months following a Successful Trial.
- 7.5 This MOU will automatically terminate upon the execution of a Definitive Agreement.
- 7.6 A Party may terminate this MOU at any time by providing notice of termination to the other Party if that other Party (i) becomes insolvent or unable to pay its debts as they mature, (ii) makes an assignment for the benefit of its creditors, (iii) is dissolved or liquidated, or takes any corporate action for those purposes, (iv) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business, or (v) seeks relief or if proceedings are commenced against that other Party, or on its behalf, under any bankruptcy, insolvency, or debtors' relief law and those proceedings have not been fully stayed within seven days or vacated or set aside within 30 days after the commencement of those proceedings.
- 7.7 Promptly following any termination of this MOU (except as may be agreed to in connection with the execution of a Definitive Agreement):
- (A) Customer shall cease use of the Products, Services, and Documentation, and return the Products and, if so requested by Startup, shall delete the Documentation and electronic copies of Startup's Confidential Information from Customer's systems (except for any Confidential Information that was backed up automatically in the ordinary course of business); and
- (B) If so requested by Customer, Startup shall return or delete all of Customer's Confidential Information from Startup's systems (except for any Confidential Information that was backed up automatically in the ordinary course of business).

Any Confidential Information that is automatically backed up remains subject to the confidentiality obligations set forth in this MOU.

8. **Disclaimers**

- 8.1 THE PRODUCTS, SERVICES, AND DOCUMENTATION ARE PROVIDED "AS IS." STARTUP HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES (WHETHER EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE), INCLUDING ALL WARRANTIES OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

9. **Data Protection**

9.1 Customer acknowledges that its employees' use of the Services will be subject to Startup's standard Terms of Service and Privacy Policy, available at [] (or any successor site), as they may be updated from time to time. Startup shall comply with its Privacy Policy and all applicable law in connection with its operation of the Services.

10. **Confidentiality**

10.1 The Parties acknowledge that the Non-Disclosure Agreement entered into between the Parties on [] (the "**NDA**"), governs the disclosure and use of all information and materials disclosed by one Party to the other Party under this MOU. Notwithstanding anything to the contrary in the NDA, Startup may disclose to any third parties conducting bona fide due diligence into Startup the existence and terms of this MOU and the nature of the discussions between the Parties. Neither Party may make any public announcement related to this Agreement without the prior written consent of the other Party. The obligation under this section 10.1 shall survive the termination or expiration of this MOU for three (3) years thereafter.

11. **Third party beneficiaries**

11.1 A person who is not a party to this MOU may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

12. **Entire Agreement**

12.1 This MOU and each of Exhibit A, B, C, and D, together with the NDA, is the final and exclusive statement of the Parties' agreement on the matters contained in this MOU. It supersedes all previous negotiations and agreements. If a provision in this MOU conflicts with a provision the NDA, the former governs to the extent of the conflict.

12.2 This MOU may be amended or modified only by a written instrument that refers specifically to this MOU and is executed in accordance with clause 20.

12.3 No failure or delay by either Party in exercising any rights, power, or legal remedy available to it under this MOU will operate as a waiver thereof. Further, the rights of each Party under this MOU are cumulative and not exclusive of rights or remedies provided by law and may be waived only in writing and specifically.

13. **Costs**

13.1 Subject to any express provisions to the contrary, each Party shall pay its own costs of and incidental to the negotiation, preparation, execution, and carrying into effect of this MOU and in carrying out any related due diligence.

14. **Invalidity**

14.1 In the event any one or more of the provisions contained in this MOU are for any reason held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision of this MOU, but this MOU will be construed as if such invalid, illegal, or unenforceable provision had never been set forth in this MOU, and the MOU will be carried out as nearly as possible according to its original terms and intent.

15. **Counterparts**

15.1 This MOU may be executed in two counterparts, each of which when executed and delivered is an original, but the counterparts constitute the same document.

16. **Law and Jurisdiction**

16.1 This MOU will be governed by and interpreted in accordance with the laws of England, and the Parties irrevocably submit to the exclusive jurisdiction of the English courts in relation to any legal actions or proceedings arising out of or in connection with this MOU. The Parties exclude the application to this MOU of the United Nations Convention on Contracts for the International Sale of Goods.

17. **Assignment**

17.1 Neither Party may assign, delegate, or otherwise transfer any of its rights or obligations under this MOU without the prior written consent of the other Party, except that either Party may assign, delegate, or otherwise transfer its rights and obligations under this MOU to an Affiliate or to a successor to all or substantially all of the assigning Party's assets or business to which this MOU relates.

18. **Notices**

18.1 All notices, requests, claims, and other communications between the Parties described in or otherwise regarding this Agreement must be in writing and be given or made (and will be effective on receipt) by delivery in person, by nationally recognized overnight courier service (with signature required and all fees prepaid), by facsimile (with confirmation of transmission), by e-mail (with telephone confirmation or confirmation by another method set forth in this Clause) or by registered or certified mail (postage prepaid, return receipt requested) to a Party at its address identified above or at any other address of which that Party has notified the other Party in accordance with this Clause.

19. **Independent Relationship**

19.1 Both Parties are independent contractors under this MOU. Nothing in this MOU creates an employment, agency, joint venture, or partnership relationship between the Parties or any of their personnel, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of the other Party. Neither Party will have any express or implied power to enter into any contracts or commitments or to incur any liabilities in the name of, or on behalf of, the other Party, or to bind the other Party in any respect whatsoever.

20. **Electronic Signature**

20.1 Each Party warrants that the person signing this MOU on behalf of that Party has the requisite authority to bind that Party by means of an electronic signature system. By affixing their respective electronic signatures hereto by means of an electronic signature system, the signatories below acknowledge and agree that they intend to bind the respective Parties on behalf of whom they are signing.

20.2 The Parties shall each nominate their signatories and their respective email addresses and the Parties and signatories agree that, except where the signatory is a victim of fraud or misrepresentation, the electronic signature emanating from such nominated email address constitutes valid signature and will be construed as (and given equal evidentiary weight as) the signatory having signed the document as an original in manuscript.

[signature page follows]

Signed
For and on behalf of [CUSTOMER]

Signature: _____

Name:

Position:

Signed
For and on behalf of [STARTUP]

Signature: _____

Name:

Position:

Exhibit A: Products

[List of Products to be delivered as part of the Trial, including the format the Products will be delivered in i.e. an API etc]

[List of Product Documentation]

Exhibit B: Services

[List of Services to be delivered as part of the Trial, including the format the Services will be delivered in i.e. an API etc]

[List of Services Documentation]

Exhibit C: Trial Scope and Success/Exit Criteria

[Trial Scope]

[Fees]

[Payment Instructions]

[Success/Exit Criteria] (“Successful Exit”)

Exhibit D: Commercial Deployment