



## SPECIFIC TERMS AND CONDITIONS FOR LICENSING OF MDM SOFTWARE

### 1. INTRODUCTION

- 1.1 This page sets out the Specific Terms on which (together with the General Terms and Order Terms forming part of the Agreement between us) we, Curveball Solutions UK Limited, a company incorporated in The United Kingdom under registered company number 09310243, whose registered office is at Suite 5, Enterprise House, Moorgate Point, Moorgate Rd, Liverpool, L33 7XW (“we” or “us”) design, develop, supply and license the Deliverables, and provide the associated Services, as may be more specifically set out within the relevant Order Terms, to you as our client (“you”).
- 1.2 Unless otherwise defined herein, any terms used in these Specific Terms shall have the meaning attributed to them in the General Terms. When construing the meaning of the Agreement, the order of priority in the event of any inconsistency or conflict shall be as set out in clause 1.4 of the General Terms.
- 1.3 These Specific Terms apply to the Agreement between you and us for the provision of the Deliverables and Services to you. Please note that by ordering any such Services or Deliverables from us, you agree to be bound by the terms of our Agreement. Where we provide any products or services to you other than the Deliverables or the Services, the provision of such products or services shall be governed by the relevant Additional Terms applying to such products or services.
- 1.4 You should print a copy of these Specific Terms or save them to your computer for future reference.
- 1.5 We may amend these Specific Terms from time to time as set out within the General Terms. Every time you sign new Order Terms for the provision of Deliverables please check these Specific Terms and the General Terms to ensure that you understand the terms which will apply to our Agreement at that time. These Specific Terms were most recently updated in July 2019.

### 2. DEFINITIONS & INTERPRETATION

- 2.1 The following terms shall have the following meanings in these Specific Terms:
- “**Agreement**” means the agreement between us for the provision of the Deliverables and the Services;
- “**Appendix**” means an appendix to these Specific Terms;
- “**Authorised Users**” means those of your employees, agents and independent contractors who are authorised by you to use the Deliverables;
- “**Charges**” means the total amount payable by you, by way of a licence fee, in return for the licencing of the Deliverables and provision of the Services, set out within the Order Terms (excluding any VAT or other applicable sales taxes to be included within the total price), which licence fee shall, unless otherwise specified therein, be payable per Authorised User in accordance with the Payment Terms. Where the context requires or permits the Charges shall also include any other

amounts otherwise payable by you and provided for under the terms of Agreement;

“**Clause**” means a clause of these Specific Terms;

“**Commencement Date**” means the date of the Order Form;

“**Deliverables**” means the Software and the Documentation together;

“**Devices**” means the mobile devices owned or leased by you upon which or with which the Software may be used or installed, as specified in Appendix 2;

“**Documentation**” means the documentation (if any) supplied or made available to you by us, or by our third party suppliers/licensors, in connection with the Software;

“**Extended Term**” has the meaning given in Clause 15.2 below;

“**General Terms**” means our general terms and conditions for the supply of products and services, which shall apply to the Agreement between us in addition to these Specific Terms;

“**Implementation Services**” means no more than a half day training session to be provided by us to you, such training to be provided remotely;

“**Initial Term**” means the period set out within the Order Terms, taking effect from the Licence Date, which shall, in any event, be not less than 2 years;

“**Licence Date**” means the date on which we notify you, as part of the Implementation Services, that the Software has been installed and is operating in accordance with its functional specification, or, if earlier, the date on which the Authorised Users begin to use the Software for the Purpose;

“**Order Form**” means the order form provided by us in connection with the Deliverables and the Services;

“**Order Terms**” means, in respect of the provision of the Deliverables and the Services, the Proposal and the Order Form, and the General Terms shall be construed accordingly;

“**Other Data**” has the meaning given in Clause 9.1 below;

“**Payment Terms**” are as set out in Clause 12 below or otherwise outlined in the Order Terms or indicated by us to you;

“**Proposal**” means the proposal submitted to you by us in respect of the provision of the Deliverables and the Services;

“**Server**” means a computer server administered by us or by a third party in connection with the subject matter of the Agreement;

“**Software**” means the mobile device management software to be licensed and supplied, and, as appropriate, hosted by us for your benefit under the terms of the Agreement;

“**Specific Terms**” means, in respect of the provision of the Deliverables and Services outlined herein, the terms and conditions in this Schedule E, and the General Terms shall be construed accordingly;

“**Subscriptions**” means the subscriptions purchased by you from time to time, the initial number of which shall be specified in the Order Terms, which shall entitle you to use or install the Software on the Devices in accordance with the Agreement;

“**Support**” means a reasonable level of first line support for the Software to be provided remotely in accordance with our standard service level agreement for the provision of the support services. We shall have sole discretion for determining whether any support requested by you constitutes a reasonable level of support. Support will be made available to you, including any Authorised Users, during our normal business hours (08:00 to 17:30 on Business Days) either by telephone consultation (0151 547 4321) or via email contact at [support@curveballsolutions.com](mailto:support@curveballsolutions.com). The support also includes the release of any new Software upgrades, or Software versions (on a like for like basis), that may be developed and deployed by our third party suppliers and licensors during the Initial Term, but shall not include support to be provided by anyone other than us;

“**Your Data**” means all data, content and/or images that may be inputted by you, the Authorised Users, or by us (or our third party suppliers or licensors), acting on your behalf, for the purpose of or during the course of using the Deliverables or facilitating your use of the Deliverables; and

“**Your Representative**” means the person duly authorised by you to act on your behalf for the purposes of the Agreement and identified to us by you under Clause 8.2.

**3. USER SUBSCRIPTIONS**

- 3.1** Subject to payment of the Charges and to the other terms of the Agreement, we shall use reasonable endeavours to procure for you, with effect from the Licence Date, a worldwide, non-exclusive and non-transferable right to permit the Authorised Users (subject to the Licence Restrictions) to use the Deliverables and install or use the Software on the Devices during the Initial Term and any Extended Terms solely for the Purpose.
- 3.2** In relation to the licence outlined in Clause 3.1, you undertake that: (a) you shall be responsible for ensuring compliance by Authorised Users within the terms of the Agreement; (b) you and each of the Authorised Users shall not use the Deliverables in any way which is restricted by the Licence Restrictions, and shall abide by and adhere to any conditions imposed thereby; (c) the number of Devices upon which or with which the Software has been used or installed shall not exceed the number of Subscriptions you have purchased from time to time; (d) you will not allow or suffer any Subscription to be used on more than one Device unless it has been reassigned in its entirety to another Device, in which case you shall no longer have any right to use the relevant Subscription with the previous Device; (e) all passwords provided to you for use of the Software shall be kept confidential; (f) you shall permit us to audit your use of the Software in order to establish, inter alia, that the number of Devices upon which or with which the Software has been used or installed does not exceed the number of Subscriptions you may have purchased at any given time, and that the Deliverables are only being used by Authorised Users; (g) if any of the audits referred to in Clause 3.2(f) reveal that you have underpaid Charges to us, then without prejudice to any other right to which we may be entitled, you shall pay to us an amount equal to such underpayment (as calculated by reference to the Charges payable for additional Subscriptions) within 5 Business Days of the date of the relevant audit; and (h) if any of the audits referred to in Clause 3.2(f) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to our other rights, you shall promptly disable such passwords and we shall not issue any new passwords to any such individual.
- 3.3** You shall not access, store, distribute or transmit any viruses, or any material during the course of your use of the Software, and Your Data shall not constitute or contain anything 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, or any other illegal activity; or (f) causes damage or injury to any person or property.
- 3.4** You shall not: (a) other than as permitted by law, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Deliverables (as applicable) in any form or media or by any means; nor attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or (b) access all or any part of the Software in order to build a product or service which competes with the Software; or (c) use the Software to provide services to third parties; or (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Deliverables available to any third party except the Authorised Users without our prior written consent; or (e) attempt to obtain, or assist third parties in obtaining, access to the Deliverables, other than as provided under this Clause 3; or (f) interfere with or disrupt the integrity or performance of the Software or the third party data contained therein; or (g) attempt to gain unauthorised access to the Software or its related systems or networks, or the Servers within which Your Data may be stored.
- 3.5** You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Deliverables and, in the

event of any such unauthorised access or use, promptly notify us.

- 3.6** The rights procured under this Clause 3 shall be granted to you only, and shall not be considered granted to any of your subsidiary or holding companies.

**4. ADDITIONAL SUBSCRIPTIONS**

- 4.1** Subject to Clause 4.2, you may, from time to time during the Initial Term, purchase additional Subscriptions, subject to payment of our then prevailing rates.
- 4.2** You shall, within 30 days of the date of our invoice, pay to us the relevant fees for such additional Subscriptions. Time for payment of all monies due to us shall be of the essence.

**5. THE SOFTWARE AND THIRD PARTY TERMS – YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 5.1** You acknowledge that the Software, and all or part of the Documentation, is/are proprietary to our relevant third party suppliers/licensors, and shall be supplied to you strictly on and subject to the standard licence terms provided by the relevant third parties. You agree to be bound by such licence terms, and acknowledge that any licence which may be procured for you pursuant to Clause 3.1 shall be granted on and subject to your observance of such licence terms. The relevant third party licence terms, as they may be altered or amended from time to time, have been set out in Appendix 1. In the event of any conflict between any provision of the Agreement and any provision of such licence terms, you acknowledge and agree that the relevant provision of such licence terms shall take precedence.
- 5.2** You also acknowledge that the Software may be hosted by our third party suppliers or licensors, and that such services shall be provided on and subject to the terms imposed by such third party suppliers or licensors, a copy of which will be provided to you upon request. We shall use reasonable endeavours to inform you in advance of any planned service interruption where notified by our third party suppliers or licensors, but for the avoidance of doubt we shall not be liable for any service issues.
- 5.3** You acknowledge that our third party licensors may from time to time generally upgrade and improve the Software as they see fit, and you acknowledge that such upgrades and improvements may affect your use of the Deliverables. The Support provided by us does not include any upgrades, bespoke changes or amendments to the Software you may require or request from time to time, which may be provided by us, or sub-contracted to our third party suppliers/licensors on request in return for payment of the prevailing rates.

**6. SERVICES**

- 6.1** We will, as part of the Services and in return for payment of the Charges, provide you with the Implementation Services following the Licence Date. For the avoidance of doubt, the Implementation Services shall not include assistance with the installation of the Software upon the Devices, which may be provided by us upon request in return for payment of our then prevailing rates.
- 6.2** We will also provide the Support to you in accordance with our support services policy in effect at the time that the Services are provided. The Support also does not include the provision of any on-site support you may require or request from time to time, which, where agreed by us, shall be also chargeable at our then prevailing rates.
- 6.3** All Services shall be provided to you on and subject to the terms of the Agreement, and the charges for the Services are included within the Charges to be paid by you.

**7. OUR OBLIGATIONS**

- 7.1** We undertake that the Implementation Services and the Support will be performed with reasonable skill and care. If the Implementation Services and Support do not conform with the foregoing undertaking, we will, at our expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such

- correction or substitution constitutes your sole and exclusive remedy for any breach of the undertaking set out in this Clause 7.1. We do not guarantee that the Support will be successful in resolving any default or technical issues related to the Software.
- 7.2** The Agreement shall not prevent us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or software which is/are similar to the Deliverables.
- 8. YOUR OBLIGATIONS**
- 8.1** You shall: (a) at your cost, provide us and our third party suppliers/licensors with all necessary co-operation in relation to the Agreement, and all necessary data and access to such information as may be required by us, our employees, agents or our third party suppliers, licensors or sub-contractors, in order to provide the Deliverables and the Services, including but not limited to approvals, security access information and configuration services; (b) comply with all applicable laws and regulations with respect to your activities under the Agreement; (c) carry out all your other responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays, we may adjust any agreed timetable or delivery schedule as reasonably necessary; (d) ensure that you and the Authorised Users use the Deliverables in accordance with the terms and conditions of the Agreement and the relevant third party licence terms and conditions, and shall be responsible for any Authorised User's breach of the Agreement; (e) obtain and maintain all necessary licences, consents, and permissions necessary for us, our employees, agents or subcontractors to perform our obligations under the Agreement, including without limitation providing the Services; (f) ensure that your network and systems comply with the relevant specifications provided by us from time to time, including with respect to the Devices; (g) be solely responsible for procuring and maintaining your network connections and telecommunications links; (h) be solely responsible at your own cost for generating Your Data, and any other information or content required to utilise the Software. In the event that you require any assistance from us in this regard, we may provide such assistance as we deem appropriate at our then prevailing rates.
- 8.2** No later than five Business Days after the Commencement Date, you shall notify to us the name of the person appointed as Your Representative for the purposes of the Agreement. Your Representative shall have the authority to bind you in all matters relating to the Agreement.
- 8.3** You warrant that you shall, immediately upon our request, cease any use of the Deliverables that we or our third party licensors informs you infringes the terms of the Agreement. We reserve the right to suspend your licence to the Software, without terminating the Agreement, where we reasonably suspect you to be in default or in breach of any of your obligations under the Agreement.
- 8.4** You shall be liable to pay us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including without limitation any direct, indirect or consequential losses) that arise directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Agreement, subject to our confirming such costs, charges and losses to you in writing.
- 8.5** We do not accept any responsibility for protection of the Software against security breaches, any loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions caused by any third parties, or by your errors or omissions. Use of any information provided by us to you is at your risk and we cannot be held liable for the accuracy or quality of information obtained.
- 9. YOUR DATA**
- 9.1** You acknowledge that any of Your Data, or any other data supplied by you in connection with the subject matter of the Agreement ("Other Data"), that neither we, nor our third party suppliers or licensors, shall be under any obligation to hold or retain any of Your Data that may at any time be inputted into or used in conjunction with the Software, or any Other Data supplied by you.
- 9.2** Where we do hold any of Your Data, or any Other Data, we shall maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of such data. We shall not modify Your Data, disclose it or access it except: (a) as required by law; (b) as expressly permitted by you; (c) to provide the Services; (d) to address technical problems or issues with the Services; or (e) at your request when providing the Services.
- 10. INTELLECTUAL PROPERTY RIGHTS & INDEMNITY**
- 10.1** You acknowledge and agree that any and all IP Rights which subsist in or arise in connection with the Deliverables, with the exception of Your Data, belong to us and/or our third party suppliers/licensors and that you shall have no right in or to the Deliverables save the right to use them as permitted by the Agreement.
- 10.2** You shall own all rights, title and interest in and to all of Your Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data and the Materials and the means by which you acquired same.
- 10.3** You shall use reasonable endeavours to prevent any infringement of the IP Rights in the Deliverables and shall promptly report to us any such infringement that comes to your attention.
- 10.4** If we believe that the Deliverables infringe or may infringe the IP Rights of any third party, we may choose to either modify the Software or obtain a licence to allow for continued use, or if these alternatives are not commercially reasonable, we may terminate the Agreement and refund any applicable Charges (or part thereof) you have paid for the Deliverables (less an amount in consideration of your use prior to such termination). For the avoidance of doubt, this indemnity shall not apply where the claim in question is attributable to the possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by you, use of a non-current release of the Software, or otherwise attributable to your breach of any provision of the Agreement or of the relevant third party licence terms. This Clause 10.4 provides you with your sole and exclusive remedy for any infringement claims or damages.
- 10.5** You shall defend, indemnify and hold us harmless against all or any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your and/or the Authorised Users' use of the Deliverables including for any liability, damages, costs or claims incurred by us due to (a) your use of the Deliverables for any purpose outside of the Purpose, (b) otherwise arising in respect of Your Data.
- 11. CHANGE CONTROL**
- 11.1** Either party may submit written requests for changes to the Agreement (or any part thereof) to the other party during the term of the Agreement. We shall advise you of the likely impact of any such change, including, but not limited to, any effect on the Charges.
- 11.2** The parties shall in good faith discuss changes proposed in accordance with Clause 11.1 as soon as reasonably practicable. Until such time as a change control document is agreed (such agreement not to be unreasonably withheld or delayed by either party) and signed by both parties, covering such change, including any change to the Charges, both parties shall continue to perform their respective obligations under the Agreement as if such change had not been requested.
- 12. CHARGES**
- 12.1** In return for the provision of the Services and licensing of the Deliverables you agree to pay the Charges to us in accordance with the payment terms set out within this Clause 12.
- 12.2** The Charges shall be due and payable on the date(s) specified by us to you.
- 12.3** If we have not received payment within 30 calendar days after the due date, and without prejudice to any of our other rights and remedies, we may, without liability to you, disable your and Authorised Users' passwords, accounts and access to all or

part of the Software and we shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

**12.4** If, at any time whilst using the Software, you exceed the Licence Restrictions, we shall charge you, and you shall pay, our then prevailing rates for such excessive use, without prejudice to any other rights to which we may be entitled.

**12.5** Without prejudice to our general right to increase the Charges as outlined within the General Terms, we reserve the right to review and increase the Charges, for any reason no more than once during each Extended Term, upon giving you 1 month's prior written notice, provided that such Charges shall be fixed for the Initial Term and that any increase shall not exceed 5%.

**13. LIMITATION OF LIABILITY**

**13.1** Except as expressly and specifically provided in the Agreement all Services and the Deliverables provided by us under the Agreement are provided to you on an "as is" basis and you assume sole responsibility for results obtained from use of the Deliverables by you and Authorised Users, and for any conclusions drawn from such use, and expressly agree and acknowledge that we in no way warrant or guarantee the accuracy or authenticity of any such results, or of the performance of the Software to achieve such results. We shall have no liability for any damage caused by errors or omissions in any information, instructions or data provided to us by you in connection with the Services or the Deliverables, or any actions taken by us at your direction.

**14. EXPORT**

You shall be responsible for obtaining any necessary import or export licenses or permits necessary for the use of the Software in any territory where the Software is used and you shall be solely responsible for any and all custom duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation, delivery and use of the Software.

**15. TERM AND TERMINATION**

**15.1** The Agreement between you and us in respect of the provision of the Services and the Deliverables shall come into effect on the Commencement Date and, subject to the other provisions of the Agreement, shall continue in force for the Initial Term, and shall, unless either party serves 3 months' prior written notice upon the other that they do not wish the Agreement to be renewed (such notice to expire no sooner than the end of the Initial Term) be automatically renewed annually thereafter for successive terms of 2 year each (each an "Extended Term"), unless and until terminated by either party giving to the other no less than 3 months' prior written notice (such notice to expire no sooner than the end of any relevant Extended Term) or otherwise until the termination of the Agreement in accordance with any of its provisions.

**16. EFFECTS OF TERMINATION**

**16.1** All rights and licences granted to you under the Agreement shall terminate on the termination date.

**17. GENERAL**

**17.1** Survival: Without prejudice to the generality of clause 14.8 of the General Terms, the terms of Clauses 1, 2, 5, 8.4, 10.1, 10.2, 10.3, 10.5, 13, 16 and 17 shall survive expiry, variation or termination of the Agreement.