



MASTER SERVICES AGREEMENT

Any use of the Software and any other Services is subject to the terms of this Master Services Agreement (“**Agreement**”, “**MSA**”). This is version v1202209 which is effective from 7 October 2022.

By using the Services, or by signing or accepting an Order Form, the Customer confirms that it accepts and agrees to be legally bound by all terms and conditions of this Agreement. Please read the full Agreement carefully. If these terms are not accepted, the Customer must not use the Services.

TERMS AND CONDITIONS:

1 **Definitions and Interpretation**

1.1 In this Agreement (except where the context otherwise requires) the following words and phrases shall have the following meanings:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity; for purposes of this definition, “**control**” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity;

“**Authorised User**” means those employees, agents, Affiliates, employees of Affiliates and independent contractors of the Customer who are authorised by the Customer to access and use the Services and Documentation under a Subscription;

“**Claim**” means any judicial, administrative, or arbitral act, suit, claim, investigation or proceeding;

“**Confidential Information**” means any commercial, technical, financial or other information (of whatever nature and in whatever form) disclosed (whether directly or indirectly) by one party to the other, or which relates to a party and is discovered or otherwise obtained by the other party, which is designated by the Disclosing Party as Confidential Information or which, due to its nature or the nature of its disclosure, ought reasonably be considered to be confidential. Confidential Information shall not include any information (a) which the Receiving Party can demonstrate was known to the Receiving Party prior to the date of disclosure by the Disclosing Party without any obligation of confidence; or (b) which is public knowledge, or becomes public knowledge in the future, other than by breach of this Agreement by the Receiving Party; or (c) which is lawfully disclosed to the Receiving Party by a third party which does not owe any duty of confidence to the Disclosing Party or to any third party in respect of such information; or (d) which is independently developed by the Receiving Party without use of or reference to the Confidential Information. The Software, the source code of the Software, the Documentation, any information provided in relation to the Subscription (including pricing) and the Services, the Service Data, and the results of any performance tests of the Services shall constitute Gearset’s Confidential Information; and Customer Data shall constitute the Customer’s Confidential Information;

“**Customer**” means, whether the Subscription is obtained directly from Gearset or through a Reseller, (a) where an individual purchases a Subscription for business use, that individual’s employer or the company on whose behalf the Subscription is purchased (and Gearset will assume that such individual has the authority to purchase on behalf of their employer or such company); or (b) where an entity or organisation purchases a Subscription for use by its employees, agents, Affiliates, employees of Affiliates and independent contractors, that entity or organisation (and such entity shall be responsible for all use by its employees of the Subscription);

“**Customer Data**” means the electronic data and information (including any login credentials) input into the Software by or for the Customer whether directly or through any Integrated Third Party Services (“**Input Data**”), and the data and information generated or derived from Input Data through Customer’s use of the Services, but not does not include User Data or Service Data;

“**Disclosing Party**” means the party disclosing Confidential Information, on whose behalf the Confidential Information is disclosed, or to whom the Confidential Information relates;



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“Documentation” means the documentation made available to Customer by Gearset from time to time (including, but not exclusively, via the Gearset Website), which sets out a description of the Services and the user instructions for the Services;

“Effective Date” means the date on which the Customer first used or uses the Services (including during any Evaluation Period), or the Activation Date stated on the applicable Order Form, whichever is earlier;

“Evaluation Period” has the meaning given to it in clause 2.1;

“Free Version” means any Subscription for, access to or enjoyment of the Services, for which no Subscription Fee is payable by the Customer, except during the Evaluation Period;

“Gearset” means Gearset Limited, a company registered in England with company number 10345423 and whose registered office is at The Bradfield Centre, Cambridge Science Park Rd, Cambridge, CB4 0GA, UK;

“Gearset Website” means Gearset’s website at www.gearset.com, or such other domain name as Gearset shall use from time to time to display its primary website;

“Integrated Third Party Services” means any of Customer’s third party services (such as Salesforce and any source control or issue tracking services) integrated by Customer into the Software;

“Intellectual Property Rights” means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database rights, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted under the laws of any country;

“Indemnitee” means the party receiving the benefit of an indemnity under this Agreement from the other party;

“Indemnitor” means the party providing an indemnity under this Agreement to the other party;

“Order Form” means an ordering document, invoice, or online order issued by Gearset specifying the Services subscribed for by Customer, which is agreed between Customer and Gearset, including any addenda and supplements thereto;

“Pilots” means certain features, functionality, technology or software products made available to Customer by Gearset which (i) are not yet made generally available to its customers except as part of a pilot program; and (ii) which are designated as a pilot, beta, preview or under a similar description, and includes any Documentation and Support Services in relation thereto;

“Personal Data” means any information relating to an identified or identifiable natural person;

“Receiving Party” means the party receiving or otherwise obtaining (or whose Representatives receive or otherwise obtain) Confidential Information relating to the other party;

“Renewal” means a renewal of the Subscription for the same duration as the Initial Subscription Period (the Renewal Period) at the end of the Initial Subscription Period and any subsequent Renewal Period;

“Representatives” in respect of each party means their officers, agents, employees, executives, attorneys, accountants, Affiliates, sub-contractors, and auditors;

“Reseller” means any third party authorised by Gearset to sell Subscriptions;

“Service Data” means data and information obtained by Gearset resulting from and relating to Customer’s use or operation of the Services including, but not exclusively, in relation to certain ‘in-product’ actions and activities



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such as 'run a comparison', 'link an org', and 'create continuous integration', as well as device data automatically gathered and transmitted by the user's browser, application logs, and application error reports;

"Service Limitations" means the specified limitations to Customer's use of the Services as applicable to the category of Subscription the Customer selects on purchase, as may be specified in this Agreement, on the Gearset Website and/or the applicable Order Form;

"Services" means access to and use of the Software, the Support Services, and any other services provided by Gearset (including any Pilots or Free Version), as subscribed for or otherwise used by Customer in accordance with the terms of this Agreement, as more particularly described in the Documentation, and subject to any Service Limitations;

"Software" means the online software-as-a-service solution(s) provided by Gearset, including any updates, upgrades and patches released for them by Gearset;

"Subscription" means a subscription for Services as subscribed for by Customer in accordance with the terms of this Agreement and subject to any applicable Service Limitations;

"Subscription Fee" means the fee payable by the Customer under this Agreement (excluding VAT and all other relevant taxes), as detailed by Gearset or Reseller (as the case may be) from time to time including through their respective websites, calculated in accordance with the duration of the Subscription Period, the Services subscribed for, and number of User Licences;

"Subscription Period" means the period of time for which a Subscription is valid, determined by the number of months/years selected by the Customer when purchasing the Subscription (the **"Initial Subscription Period"**), and as may be extended by any Renewal agreed by Customer;

"Subscription Start Date" means the date the Customer purchases a Subscription or the start date of the Subscription specified in the applicable Order Form, if different;

"Support Services" means the support services provided by Gearset, as set out from time to time on the Gearset Website;

"Third-Party Components" means components owned by third parties which are used in the Services;

"User Data" means information and data relating to Authorised Users, but not including login credentials;

"User Licence" means the licences of the type and quantity subscribed for by the Customer which entitle Authorised Users to access and use the Services and the Documentation pursuant to a Subscription;

"Virus" means anything or any 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;

"Working Days" means Monday to Friday, excluding bank and public holidays in England; and

"Working Hours" means 8am to 11pm UK time on Working Days.

2 Evaluation Period

2.1 **Free Trial.** Customer is entitled to a 30-day free trial of the Subscription for the purposes of deciding whether or not the Services meet its requirements ("**Evaluation Period**").



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- 2.2 **Access to Free Trial.** During the Evaluation Period, Gearset grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to access and use the Documentation and the Services during the Evaluation Period only in accordance with this Agreement for the sole purpose of deciding whether or not the Services meet the Customer's requirements.
- 2.3 **End of the Free Trial.** If the Customer decides that the Services do not meet its requirements, or otherwise does not wish to enter into a paid-up Subscription or continue using the Free Version, then any rights granted to the Customer under this Agreement shall immediately cease and the Customer shall immediately cease use of the Services and the Documentation.
- 2.4 **Continued use of the Services.** If, in the Customer's sole opinion, the Services have met its requirements, and the Customer wishes to continue to use the Services beyond the end of the Evaluation Period, the Customer can decide whether to: (i) purchase a Subscription; or (ii) default to a limited functionality, Free Version. Once the appropriate Subscription has been obtained, or if Customer continues to use a Free Version this Agreement shall continue to govern the relationship between the parties.

3 Gearset Responsibilities

- 3.1 **Provision of Purchased Subscription.** In consideration of payment of the Subscription Fee, as specified in the applicable Order Form, Gearset grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to access and use the Documentation and the Services during the Subscription Period only in accordance with this Agreement and subject to any applicable Service Limitations.
- 3.2 **Provision of Services.** During the Subscription Period, Gearset will provide the Services and make available the Documentation to the Customer in accordance with and subject to the terms of this Agreement. In providing the Services, Gearset shall:
- 3.2.1 use reasonable commercial efforts to make the Software available 24 hours a day, 7 days a week, except for (i) scheduled maintenance (of which Gearset shall endeavour to give advance electronic warning), and (ii) any unavailability (including unplanned maintenance) caused by circumstances beyond Gearset's reasonable control; and
- 3.2.2 provide Support Services to Customer with reasonable skill and care, and use reasonable commercial efforts (i) to make the Support Services available during Working Hours and (ii) to respond to all support requests within 1 Working Day.
- 3.3 **Protection of Customer Data.** Gearset will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described on the Gearset Website. Those safeguards will include, but will not be limited to: (i) measures designed to prevent unauthorised access to or disclosure of Customer Data (other than by Customer or Authorised Users), (ii) implementing and maintaining systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly testing or otherwise monitoring the effectiveness of such systems, and procedures (i.e. vulnerability scans and penetration tests), and (iii) identifying internal and external risks and assessing the sufficiency of any systems and procedures in place to control these risks. Gearset shall not materially decrease the overall security of the Services during any Subscription Period.
- 3.4 **Processing of Personal Data.** Gearset processes Personal Data (including any User Data that constitutes Personal Data) in accordance with the terms and conditions of the privacy notice on the Gearset Website from time to time. To the extent that Customer Data includes Personal Data, the terms of the Data Processing Addendum on the Gearset Website shall apply and are incorporated herein by reference.
- 3.5 **Service Data.** Gearset shall have the right to collect, extract, compile, synthesize and analyze Service Data. To the extent any Service Data is collected or generated by Gearset, such data will be solely owned by Gearset and may be used by Gearset for any lawful business purpose without a duty of accounting to Customer or its recipients. To the extent that such Service Data contains any Personal Data, the provisions of clause 3.4 shall apply.



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4 Use of Services and Documentation, Customer Responsibilities, Pilots

- 4.1 **Usage Restrictions.** The Customer shall: (i) only use the Services for its internal business purposes and in accordance with the terms and conditions of this Agreement and the applicable Documentation; (ii) not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole of or any part of the Software or the Documentation or incorporate the Software into any other program or use any Integrated Third Party Service not supported by Gearset; (iii) not access all or any part of the Services or Documentation in order to build a product or service which competes with the Services; (iv) not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or Documentation available to any third party except the Authorised Users; (v) not attempt to obtain, or assist third parties in obtaining, access to the Services or Documentation, other than as provided under this clause 4; and (vi) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services or Documentation and, in the event of any such unauthorised access or use, promptly notify Gearset.
- 4.2 **Authorised Users.** In relation to the Authorised Users, the Customer undertakes that: (i) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Licences it has purchased; (ii) it will not allow or suffer any User Licence to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services (including under a subsequent reassignment) without the written permission of Gearset; and (iii) it will ensure that all Authorised Users keep their login credentials confidential, shall be primarily responsible for any activity carried out using those login credentials and shall notify Gearset of any unauthorised access to the Services using those login credentials.
- 4.3 **Customer Responsibilities.** The Customer shall not, and shall ensure that Authorised Users do not: (i) distribute or transmit any Viruses into or via the Software; (ii) interfere or attempt to interfere with Gearset's network or the provision of services to any of the Gearset's other customers including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; (iii) attempt to probe, scan, penetrate or test the vulnerability of Gearset's systems or network; (iv) access the Services and Documentation in an unauthorised manner, including any attempt to breach Gearset's security or authentication measures; or (v) publish, store, distribute or transmit any material during the course of its use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or in a manner that is otherwise illegal or causes damage or injury to any person or property.
- 4.4 **Customer Obligations.** The Customer shall: (i) provide Gearset with all necessary co-operation in relation to this Agreement; (ii) comply with all applicable laws and regulations with respect to its activities under this Agreement; (iii) ensure that the Authorised Users use the Services and Documentation in accordance with the terms and conditions of this Agreement; (iv) be responsible for any acts or omissions (A) of any Authorised User, or (B) resultant from access to the Services in breach of the provisions of clause 4.2, which, in either case, would constitute a breach of this Agreement if they were an act or omission of Customer.
- 4.5 **Suspension.** To the extent and only for so long as Gearset believes it to be reasonably necessary, Gearset may suspend the Subscription and access to the Services without liability if: (i) it identifies an attack on the Customer's account, or any attempt to access or manipulate the Customer's account by a third party without the Customer's consent; (ii) Gearset reasonably believes suspension of the Subscription (or any part of it) is necessary to protect Gearset's network or its other customers' use of the Software or Support Services or to limit its or the Customer's potential liability in the event of any unlawful or suspected unlawful activity by any user of the Customer's Subscription (whether or not an Authorised User) or any third party claim against Gearset or Customer; or (iii) Gearset is required by law or by a regulatory or government body to suspend the Customer's access to the Subscription (or any part of it). Gearset reserves the right, without liability to the Customer or prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of clause 4.3 and/or to suspend the access of any Authorised User who causes the Customer to breach the provisions of clauses 4.1 and/or 4.2 and/or 4.3. Gearset will use reasonable efforts to inform Customer of any



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suspension (including the reasoning), and to restore access, as soon as reasonably possible, but Customer acknowledges and accepts that prior notice may not always be practicable.

- 4.6 **Pilots.** Gearset may make Pilots available to Customer from time to time, at no additional cost. Customer may choose to (or choose not to) access and use any Pilots at its sole discretion. Pilots are provided “as is” and “as available” and the provisions of 3.2, 9.1, and 11.2 shall not apply in respect of Customer’s use of any Pilot. Gearset reserves the right to discontinue and remove access to any Pilot at any time, but it shall use reasonable efforts to inform any Customer using the Pilot in advance through the Software.

5 Fees and Payment

- 5.1 **Fees and Payment.** Subject to clause 5.3, the Subscription Fee (together with any applicable levies, duties and/or taxes imposed on the Customer in its jurisdiction including, but not limited to, value added tax, sales tax, use tax and withholding tax) shall be due and payable by the Customer. The Subscription Fee shall be paid in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. Customer is responsible for providing complete and accurate billing and contact information.

- 5.2 **Overdue Charges.** If the Subscription Fee or any other sum payable under this Agreement is 30 days or more overdue, Gearset reserves the right to terminate the Subscription and prevent the Customer from accessing and/or using the Services immediately until such amounts are paid in full. Gearset will not exercise its rights under this clause if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

- 5.3 **Resellers.** Where the Customer has procured a Subscription or is making payment through a Reseller, the terms of this clause 5 shall apply, regardless of any different payment terms offered by the Reseller.

6 Term and Termination

- 6.1 **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all of Customer’s Subscriptions have expired or have been terminated.

- 6.2 **Term of Purchased Subscriptions.** Each Subscription shall commence on the Subscription Start Date and, unless terminated earlier in accordance with this clause 6, shall continue for the Subscription Period as specified when purchasing the Subscription and/or as specified in the applicable Order Form.

- 6.3 **Cancellation of Subscriptions.** Customer may elect to cancel any Subscription at any time by notifying Gearset in writing. The cancelled Subscription will automatically terminate at the end of the applicable Subscription Period.

- 6.4 **Termination for Cause.** This Agreement may be terminated immediately by either party if the other commits a material or persistent breach of any term of this Agreement and that breach (if capable of remedy) is not remedied within 30 days of written notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Agreement with immediate effect). If this Agreement is terminated by the Customer in accordance with this clause 6.4, Gearset will refund Customer any prepaid fees covering the remainder of the Subscription Period after the effective date of termination.

- 6.5 **Effect of Termination of this Agreement.** Upon the termination of this Agreement, all Subscriptions shall immediately expire, and Customer will no longer have the right to access the Software or the Support Services and shall immediately cease using all Documentation.

- 6.6 **Effect of Expiry or Termination of Subscriptions.** Upon the termination or expiry of any Subscription (including as a result of the termination of this Agreement), access to the Software and Support Services subscribed for shall cease, and the Customer shall immediately cease using all Documentation, save to the extent that it is required for any continuing Subscription(s).



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6.7 **Surviving Provisions.** Upon termination or expiry of this Agreement all rights granted to Customer under this Agreement shall immediately terminate, but the following provisions of this Agreement shall remain in full force and effect: 1, 6.5, 6.6, 6.7, 7, 8.1, 8.3, 10, 11 and 12. Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.

7 **Confidentiality**

7.1 **Ownership of Confidential Information.** Each party retains all ownership rights in and to its Confidential Information.

7.2 **Protection of Confidential Information.** Each party undertakes to the other, in relation to that other party's Confidential Information that, except and to the extent otherwise permitted in clause 7 of this Agreement, it will (and will procure that its Representatives will): (i) hold all Confidential Information in complete and strict confidence; (ii) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (iii) only disclose Confidential Information to those of its Representatives who need to know the information for the purposes of this Agreement, provided that they inform such Representatives of the confidentiality provisions of this Agreement and, as soon as reasonably practicable, the confidential nature of the Confidential Information and at all times remain responsible for their Representatives' compliance with the obligations of confidentiality set out in this Agreement, and liable for any loss or damage whatsoever caused by the failure of any of its Representatives to comply with the terms of this Agreement; (iv) not use, copy, or reproduce Confidential Information for a purpose outside the scope of this Agreement (including, but not limited to, any competitive or commercial purpose) without the prior written approval of the Disclosing Party; (v) implement appropriate security practices against any unauthorised copying, use, disclosure (where in oral, written, or any other form), access, and damage or destruction of the Confidential Information; and (vi) promptly notify the other party if it suspects or becomes aware of any unauthorized copying, use, or disclosure of the Confidential Information in any form.

7.3 **Compelled Disclosure.** Neither party shall be restricted from disclosing the other party's Confidential Information or any part of it as may be required pursuant to a judicial or other lawful government order or otherwise by law, but only: (i) to the minimum extent required to comply with such requirement; and (ii) subject to the party obliged to comply with such requirement giving the other party as much notice of the terms of the order as may be legally permissible and reasonably practicable; and (iii) provided that it makes reasonable efforts to ensure that the Confidential Information disclosed is handled in a confidential manner.

7.4 **Exemptions.** Nothing in this clause 7 shall prevent: (i) Gearset from disclosing the Software or the Documentation, and providing services similar to the Services, to any third party; or (ii) the Customer from disclosing the Software or Documentation to such of its employees, sub-contractors, Affiliates, and advisors as is necessary for the Customer to be able to exercise its rights and comply with its obligations under this Agreement.

7.5 **Duration.** The obligations and restrictions in this clause 7 will survive for 3 years after the termination or expiry of this Agreement.

7.6 **Prior Agreement.** If the Customer has entered into a prior separate confidentiality agreement with Gearset (a "**Prior Agreement**") then, notwithstanding any terms of the Prior Agreement to the contrary, the parties hereby agree that any Prior Agreement is hereby terminated and the terms of this clause 7 shall apply to any Confidential Information held by either party under the terms of the Prior Agreement.

8 **Intellectual Property Rights**

8.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Gearset and its licensors reserve all right, title and interest in and relating to the Services, including all of their related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

8.2 **Customer Data.** The Customer shall own all right, title and interest in and to all of the Customer Data, and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The



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Customer hereby grants to Gearset a non-exclusive, sub-licensable license to use, store, edit, reproduce, modify and copy the Customer Data solely as necessary for Gearset to provide the Services.

- 8.3 **Use of Customer Trademarks.** The Customer hereby grants to Gearset, for so long as Customer holds an active Subscription and for so long as is reasonable required thereafter to remove references as promptly as possible) a worldwide, non-exclusive, royalty-free, fully paid-up license to use Customer's name and logo (as found on the Customer's primary website) on the Gearset Website and in Gearset's marketing material to advertise that Customer is a customer of Gearset. In the event that Customer does not agree to any such use, they shall notify Gearset in writing.

9 Warranties

- 9.1 **Gearset Warranties.** Subject to the provisions of clause 9.2, Gearset warrants that (i) the Services will be provided, in all material respects, in accordance with the relevant Documentation (ii) the use of the Services and Documentation in accordance with the terms of this Agreement will not knowingly infringe any copyright belonging to any third party; (iii) it owns or otherwise has sufficient rights in the Services and Documentation to grant to Customer the rights granted herein; (iv) it has all rights, permits, licenses, qualifications and consents necessary to perform its obligations hereunder; (v) it will perform its obligations under this Agreement in a professional and workmanlike manner in accordance with generally accepted industry standards and all laws and regulations applicable to Gearset; and (vi) it shall not knowingly introduce any Virus into the Software.

- 9.2 **Limits of Warranties.** Gearset: (i) does not warrant that the Customer's use of the Services will be uninterrupted or error-free, that the Services and/or the results achieved by the Customer through the use of the Services will meet the Customer's requirements, or that Customer's use of the Services will comply with Customer's own obligations under the laws and regulations applicable to Customer (Gearset instead offers a free Evaluation Period, as set out in clause 2, for the Customer to assess the suitability of the Services for its needs); (ii) 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 Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 9.3 **Exclusion of Warranties.** Gearset does not provide any representation, guarantee or warranty of any kind (whether express or implied) in relation to Customer's use of (a) any Services during the Evaluation Period, (b) any Pilot, (c) any Integrated Third Party Service, or (d) any use of the Services other than in accordance with the terms and conditions of this Agreement, and in each case (a to d) all other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.

- 9.4 **Disclaimers.** EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS", AND ALL CONDITIONS, REPRESENTATIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION AS TO QUALITY, PERFORMANCE OR FITNESS OR SUITABILITY FOR PURPOSE OR NON-INFRINGEMENT) IN RESPECT OF THE SERVICES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

10 Third Party Claims

- 10.1 **Indemnification by Gearset.** Subject to clauses 10.2, 10.3, and 11.2, Gearset will defend Customer against, and indemnify Customer against any damages that are finally awarded by a court of competent jurisdiction to be paid as a result of, any Claim made, threatened or brought against Customer alleging that the copyright of a third party has been infringed by virtue of: (i) Customer's use of the Services in accordance with the terms of this Agreement; or (ii) Gearset's use of Third-Party Components (each a "**Claim Against Customer**").

- 10.2 **Resolving Claims.** In the event of a Claim Against Customer, Gearset shall have the right in its absolute discretion and at its own expense: (i) to procure the right for the Customer to continue using the Services in accordance with the terms of this Agreement; (ii) to make such alterations, modifications or adjustments to the Services so that they become non-infringing; or (iii) to replace the Services with non-infringing services, in each case provided that there is no material decrease in the scope or functionality of the Services. If Gearset is



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unable to resolve a Claim Against Customer by taking one of the actions under clause this clause 10.2, Gearset shall have the right to terminate this Agreement upon repayment to the Customer of the Subscription Fee for Services paid for but not yet rendered as of the effective date of termination on a pro rata basis and, together with the indemnity granted in clause 10.1 above, such right shall be the Customer's sole and exclusive remedy under this Agreement in respect of any such Claim Against Customer.

- 10.3 **Limitation of Indemnification.** The indemnity provided under clause 10.1 shall not apply in respect of any Claim (a) which does not cite the Services as the basis of the Claim; or (b) arising as a result of or in connection with or attributable to: (i) any configurations or modifications made to the Services by the Customer or on the Customer's behalf (other than by Gearset); (ii) the combination of the Services with any third party software, components, environment or platform not expressly permitted by Gearset; (iii) the use of any Services during the Evaluation Period; (iv) the use of any Pilot or Free Version; or (v) any other use of the Services in breach of this Agreement.
- 10.4 **Indemnification by Customer.** In the event of any Claim made, threatened or brought against Gearset, attributable to the use of or access to the Services by the Customer other than in accordance with this Agreement (a "**Claim Against Gearset**"), the provisions of clauses 9.1 and 10.1 shall not apply, and the Customer shall indemnify Gearset against all liabilities, costs and expenses which Gearset may incur as a result of such Claim Against Gearset.
- 10.5 **Indemnification Procedure.** The indemnity obligations in clause 10.1 and 10.4 do not apply unless the Indemnitee (i) promptly notifies the Indemnitor of the threat or notice of such a Claim; (ii) does not make any admission as to liability or compromise or agree any settlement of the Claim without the prior written consent of the Indemnitor (which shall not be unreasonably withheld or delayed), or otherwise prejudice Indemnitor or any other third party's defence of such Claim; (iii) gives Indemnitor, or such person as Indemnitor shall direct, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from the Claim; and (iv) gives Indemnitor, and other third parties as Indemnitor shall direct, all reasonable assistance with the conduct or settlement of any such negotiations or litigation.
- 10.6 **Sole remedy.** The provisions of this clause 10 set out the Indemnitee's exclusive remedy, and the Indemnitor's sole liability, in relation to any Claims referred to in this clause 10.

11 Limitation of Liability

- 11.1 Nothing in this Agreement shall exclude or restrict the liability of either party (the "**Defaulting Party**") to the other for (i) death or personal injury resulting from the negligent act of the Defaulting Party; (ii) any fraudulent misrepresentation by the Defaulting Party; (iii) any other liability to the extent that it cannot be limited or excluded by law; or (iv) any amounts due from Customer to Gearset pursuant to clause 5.
- 11.2 **Limitation of Liability.** SUBJECT TO THE PROVISIONS OF CLAUSES 11.1, 11.3 AND 11.4, THE AGGREGATE LIABILITY OF EACH PARTY, TOGETHER WITH ALL OF ITS AFFILIATES, WHETHER IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE CUSTOMER'S USE OF THE SERVICES SHALL BE LIMITED IN RESPECT OF ALL CLAIMS ARISING TO THE SUBSCRIPTION FEE PAID (OR PAYABLE IF NOT YET PAID) BY THE CUSTOMER TO GEARSET UNDER THIS AGREEMENT IN RESPECT OF THE SERVICES GIVING RISE TO THE LIABILITY PROVIDED IN THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.
- 11.3 **Exclusion of Consequential and Related Damages.** SUBJECT TO THE PROVISIONS OF CLAUSE 11.1, IN NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE IN RESPECT OF: (i) LOSS OF PROFITS, ANTICIPATED SAVINGS, REVENUE, GOODWILL OR BUSINESS OPPORTUNITY; (ii) WASTED EXPENDITURE; (iii) LOSS OR CORRUPTION OF DATA OR COST OF RESTORATION OF DATA OR FOR USE OF ANY RESULTS OBTAINED BY USE OF THE SOFTWARE; OR (iv) ANY INDIRECT, CONSEQUENTIAL, FINANCIAL OR ECONOMIC LOSS OR DAMAGE, COSTS OR EXPENSES, WHATEVER OR HOWEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE CUSTOMER'S USE OF THE SERVICES, EVEN IF THE FIRST PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



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- 11.4 **Limitation of Liability for the Evaluation Period, Free Version and Pilots.** SUBJECT TO THE PROVISIONS OF CLAUSE 11.1, THE SOLE LIABILITY OF GEARSET TO THE CUSTOMER IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER'S USE OF (i) THE SERVICES DURING THE EVALUATION PERIOD; (ii) THE FREE VERSION OR (iii) ANY PILOT, SHALL BE LIMITED TO £5.00 AND FOR THE AVOIDANCE OF DOUBT CLAUSES 10.1 AND 11.2 OF THIS AGREEMENT SHALL NOT APPLY IN RESPECT OF SUCH USE.
- 11.5 **Risk Allocation.** The warranties, disclaimers and limitations of liability set out in this Agreement allocate the risks associated with this Agreement between the parties. This allocation is reflected in the pricing of the Services and is an essential element of the basis of the bargain between the parties.
- 12 General Provisions**
- 12.1 **Waiver.** The failure or delay of either party to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter. Neither party shall be liable for any delay in or for failure to perform its obligations under this Agreement, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including, without limitation, fires, strikes, insurrection, riots, embargoes, or regulations of any civil or military authority.
- 12.2 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes, cancels and replaces all prior agreements, licences, negotiations and discussions between the parties relating to it, and shall prevail over the Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, any purchase order, confirmation of order or any other documentation provided by Customer. The Customer confirms and acknowledges that it has not been induced to enter into this Agreement by, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) not expressly incorporated into it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 12.3 **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 12.4 **Revisions.** Gearset reserves the right to revise the terms of this Agreement by updating this Agreement on the Gearset Website, and the Customer's continued use of the Software or Services after such an update shall be deemed to constitute acceptance of any revised terms in relation to all of Customer's active Subscriptions and any other use of the Software or Services. Gearset shall not exercise this right to materially reduce its obligations or the functionality of the Services, and will use reasonable endeavours to inform the Customer, but the Customer is advised to check the Gearset Website periodically for communications concerning such revisions. If Customer does not agree to any changes to this Agreement, it must immediately cease use of the Software, Services and Documentation and may terminate all Subscriptions by giving written notice to Gearset within 14 days of the change having been made. Following such termination, Gearset shall refund any Subscription Fees for Services paid for but not yet rendered for the period after the effective date of termination, on a pro rata basis.
- 12.5 **Assignment.** The Customer may not assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of Gearset, which shall not be unreasonably withheld or delayed.
- 12.6 **Third Party Beneficiaries.** The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement or operate to give any third party the right to enforce any term of this Agreement.
- 12.7 **Anti-corruption.** Each party shall: (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including, but not limited to, the UK Bribery Act 2010; (ii) have and maintain in place throughout the Subscription Period its own policies and procedures designed to ensure compliance with anti-bribery and anti-corruption laws, as appropriate; and (iii) promptly report to the other party any request



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or demand for any undue financial or other advantage of any kind made or received by it in connection with the performance of this Agreement.

- 12.8 **Severability.** If any provision of this Agreement shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.
- 12.9 **Notices.** Any notice to be given under this Agreement shall be in writing. Notices for Gearset shall be sent by post to Gearset's registered office address from time to time, with a copy sent by email to legal@gearset.com. Notices for the Customer shall be sent either by email or by post to any address that may have been provided by the Customer to Gearset. For the purposes of this clause, "post" shall mean registered post with guaranteed next day delivery, for post within the UK only, or an overnight service from an internationally recognised courier service, for international post. Any such notice or other document shall be deemed to have been served: if delivered by email - 24 hours after delivery; and if sent by post - upon the expiration of two (2) Working Days after posting or collection by the courier.
- 12.10 **Governing Law and Jurisdiction.** 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 laws of England. The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Despite the limitations in this clause, nothing shall prevent either party from seeking the remedies of injunctions, specific performance or other equitable relief in any appropriate court for any breach of confidentiality or infringement of Intellectual Property Rights, in which cases the parties agree that damages alone may not be an appropriate remedy.