

Last updated June 1, 2021

## VIVE BUSINESS SOLUTIONS AGREEMENT

This VIVE Business Solutions Agreement (“**Agreement**”) contains the terms and conditions that govern Your access to and use of the DMS Services and Software described below, and is a legally binding contract between the entity or company you represent (“**You**” or “**Your**”) and the contracting party identified in Section 14 (“**HTC**”). You and HTC may be individually referred to as a “**Party**” and collectively as the “**Parties**”. This Agreement is effective on the date You click to accept or when You begin use of the Software or DMS Services, whichever event occurs first (“**Effective Date**”). You represent that You are lawfully able and have full legal authority to enter into this Agreement (e.g., are competent and of legal age and have full legal authority to bind the entity or company You represent).

### 1. DEFINITIONS

- a) “**Administrators**” means those employees, representatives or agents that You have designated to oversee, control and manage the DMS Services.
- b) “**Authorized Users**” means Your legal entity and Your employees, and independent contractors that access and use the HTC Offerings, provided such independent contractors agree to be bound by terms and conditions no less restrictive than those contained in this Agreement and solely to the extent that they are acting on Your behalf. Authorized Users include Administrators.
- c) “**Authorized Use Limitation**” means the limitation on usage of Paid Subscriptions as measured by the billing metric specified on the Order Form.
- d) “**Customer Data**” means any information: (i) provided by Authorized Users to HTC in the course of accessing and using DMS Services; and (ii) stored in connection with the DMS Services.
- e) “**Device**” means a compatible Vive branded head mounted display (or any other compatible device approved by HTC).
- f) “**Documentation**” means any published manuals and associated documentation (including updates thereto) that relate to the use of the HTC Offerings.
- g) “**Force Majeure**” means an event that arises out of causes beyond HTC’s reasonable control, including, without limitation, acts of God, civil disorder, labor disputes or other industrial disturbances, forces of nature, acts of terrorism or war, any law, decree, regulation or order of any government or governmental body (including courts or tribunals) and delays or outages caused by internet service providers or independent hosting facilities.
- h) “**HTC Offerings**” means, collectively, the Software and the DMS Services.
- i) “**Order Form**” means the order form, purchase confirmation or other documentation setting forth Your purchase of Paid Subscriptions, together with the applicable prices, quantities and Authorized Use Limitations.
- j) “**Paid Subscriptions**” means DMS Services made available on a paid subscription basis for use during a limited subscription period, as further described in an Order Form.
- k) “**Personal Data**” means any information relating to an identified or identifiable individual, including: (i) information that identifies an individual, (ii) information from which identification or contact information of an individual can be derived, (iii) information capable of being associated with individually identifying information or could reasonably be linked, directly or indirectly, with a particular individual (such as device identifier, location data, an online identifier), or (iv) information that can be used to authenticate an individual.
- l) “**Security Incident**” means unauthorized access to or acquisition, use, loss, alteration, destruction, compromise of, or access to Customer Data.

## 2. SOFTWARE AND DMS SERVICES

- a) **Software.** Conditioned upon Your full compliance with (and subject to) all the terms and conditions of this Agreement, HTC grants you the right to access and use: (i) preinstalled firmware and other software provided with Your Device; (ii) PC software HTC makes available for download and use in conjunction with your Devices and the DMS Services; and (iii) any other software designated by HTC (collectively with any Documentation associated with such software, the “Software”).
- b) **DMS Services.** Conditioned upon Your full compliance with (and subject to) all the terms and conditions of this Agreement, HTC grants you the right to access and use the ‘*Vive Business Device Management System*’ available at [link](#) and successor sites (the “**Business Portal**”, and collectively with all the services available therein, the “**DMS Services**”). DMS Services may include, by way of example, one or more of the following services: (i) Device registration; (ii) Authorized User and Administrator account management; (iii) a software and content distribution and license management system; (iv) usage reporting; (v) software downloads; and (vi) access to and activation of additional HTC and third-party business services. Access and use of designated DMS Services may require the purchase of Paid Subscriptions, as may be offered by HTC from time to time.
- c) **System Requirements.** For proper functioning of the HTC Offerings, You will need additional services and equipment (e.g. Devices, computers, internet access, and compatible software) that meets system and compatibility requirements. These system and compatibility requirements may change from time to time, and those changes may affect Your ability to access and use the HTC Offerings (as well as their respective performance). Meeting these system requirements and the associated costs are Your responsibility.

## 3. USING THE HTC OFFERINGS

- a) **Subscription and Other DMS Services.** DMS Services may be provided free of charge, or may be provided via Paid Subscriptions.
- b) **Accounts.**
  - i) VIVE Business Account. Before You can access and use the DMS Services, one of Your Administrators must establish an account with HTC. After creation, such Administrator account will be linked to Your organization and will be used by HTC as the primary means of contacting You (Your “**VIVE Business Account**”). To establish the account, Your Administrator must provide HTC with current, complete and accurate information, including, as may be required, information about Your entity (e.g. entity name, account ID, VAT number/Tax ID, address, contact information, etc.). Your VIVE Business Account may be limited to the country or geographic region from which You access or use DMS Services (“**Territory**”). In the event You operate in more than one Territory, You may be required to establish additional VIVE Business Accounts.
  - ii) Authorized User Accounts. Likewise, before Your Authorized Users can access and use the DMS Services, they must each establish an account with HTC. To create their accounts, Your Authorized Users must provide HTC with current, complete and accurate information. Authorized User accounts may be limited to the Territory, and in such event Your Authorized Users may be required to establish additional VIVE Business Accounts.
- c) **Trials.** Subject to this Agreement and to the terms (if any) presented to You for beta and/or trial use, You may access and use specified HTC Offerings on a trial basis (“**Trial**”). Your use of the Trial will be for the period stated when you accept the Trial, or if no time is stated, for thirty (30) days from the date access is granted. TRIALS ARE PROVIDED BY HTC “AS-IS” WITH NO SERVICE LEVEL

AVAILABILITIES, WARRANTIES OR INDEMNIFICATIONS. ANY DATA YOU ENTER OR THAT IS COLLECTED DURING TRIAL USE WILL NOT BE STORED OR AVAILABLE AFTER THE TRIAL ENDS.

#### 4. PROPRIETARY RIGHTS AND LICENSES

- a) **General.** The HTC Offerings are licensed to You and not sold. Except for the licenses set forth herein, nothing herein creates any right of ownership or license in or to HTC's or its licensors' intellectual property. You may not remove or destroy any proprietary or intellectual property markings or notices placed upon or contained within the HTC Offerings.
- b) **HTC Intellectual Property.** HTC and its licensors own the title, copyright, and other intellectual property rights in the HTC Offerings (and all rights embodied therein) and reserve all rights not expressly granted to You in this Agreement. HTC and Vive, the HTC and Vive logos, and other HTC and Vive product and service names referenced in the HTC Offerings are the trademarks of HTC. Any other company names, product names, service names and logos referenced in connection with the HTC Offerings may be the trademarks of their respective owners.
- c) **Software.** During the term of this Agreement (for so long as HTC itself has the requisite rights) and conditioned upon Your compliance with the terms and conditions of this Agreement, the Order Form and Documentation, HTC grants to You a limited, non-sublicensable, non-transferable (except as authorized pursuant to Section 18(g)), non-exclusive, license in the Territory to: (i) use any pre-installed Software only as embedded in Your Devices, and (ii) install and use downloaded Software only in object code form on Your computers and Devices, as applicable.
- d) **DMS Services.** During the term of this Agreement (for so long as HTC itself has the requisite rights) and conditioned upon Your compliance with the terms and conditions of this Agreement, the Order Form and Documentation, HTC grants to You a limited, non-sublicensable, non-transferable (except as authorized pursuant to Section 18(g)), non-exclusive, right in the Territory for Authorized Users to access and use the DMS Services.
- e) **Permitted Uses.** You may only access and use of the HTC Offerings in accordance with the terms herein to help setup, manage, control, and/or operate Your Devices. You do not obtain any rights other than those explicitly provided herein, including intellectual property rights.
- f) **SteamVR; Updates.** Software available under this Agreement may include the SteamVR runtime software ("**SteamVR**") created by Valve Corporation ("**Valve**"). If You download SteamVR from HTC through the Business Portal, HTC may notify Valve of such event. The following shall apply if You use of SteamVR outside of China: (i) if Your corporate security policy prohibits use of software that receives automatic updates through the internet, then HTC may provide You with SteamVR and updates thereto under this Agreement pursuant to Your request; however, (ii) if Your corporate security policy allows use of such automatically updated software, then, upon Your request, HTC may provide You with an initial distribution of SteamVR under this Agreement, but any updates thereto must be obtained directly from Valve under Your own separate agreement with Valve (and such event, Your separate agreement with Valve will govern Your use of SteamVR).
- g) **Third Party Software.** The HTC Offerings may contain other third-party software that is subject to open source or third-party license terms. Open source materials and third-party terms, if applicable, are available at [link](#).

#### 5. LIMITATIONS ON USE

- a) **HTC Offerings.** You may not: (i) decompile, decipher, disassemble, reverse engineer, disable, tamper with or otherwise work around technical limitations of the HTC Offerings, except as expressly permitted by applicable law notwithstanding this limitation; (ii) modify or make any derivative works of the HTC Offerings, in whole or in part; (iii) remove any proprietary notices or

- labels on the HTC Offerings, or any copy thereof; (iv) use the HTC Offerings to infringe the rights of HTC, its affiliates, or any third-party; (v) sell, resell, rent, lease, lend, or sublicense the HTC Offerings; or (vi) make use of the HTC Offerings in any manner not permitted by this Agreement.
- b) **DMS Services.** You may not: (i) send or store code that can harm or result in damage to the DMS Services; (ii) interfere with or disrupt the integrity of the DMS Services or the data contained therein; (iii) attempt to gain unauthorized access to the DMS Services or its related systems or networks; (iv) use the DMS Services in order to cause harm, disrupting operations of a third-party; (v) perform or disclose any benchmark or performance tests on the DMS Services; or (vi) perform or disclose any of the following security testing of the DMS Services: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure not authorized in the Documentation.
  - c) **Hosted Content.** As part of the DMS Services, HTC may offer You the ability to manage licensed software for your Devices, and host software and content ("**Hosted Content**") for You to distribute to Your Authorized Users. If You elect to upload and distribute Hosted Content:
    - i) You are responsible for uploading Hosted Content, providing required product information to users including, but not limited to, terms of use, end user license agreement and/or privacy policies, compatibility requirements, health and safety information, and accurately disclosing all permissions and consents necessary for the Hosted Content to function.
    - ii) You are responsible for determining the jurisdictions in which Hosted Content may be distributed. You must ensure that Hosted Content complies with all applicable country specific laws and regulations.
    - iii) You are solely responsible for support and maintenance of Hosted Content.
    - iv) You are solely responsible for Hosted Content and for any losses or damages that arise based on its use.

## 6. FEES AND PAYMENTS

- a) **Fees for Paid Subscriptions.** Paid Subscription fees are due as set forth in the Order Form. HTC reserves the right to invoice You for any use of the HTC Offerings in excess of the Authorized Use Limitation.
- b) **Payments.** Amounts payable under this Agreement, if any, will be made without setoff or deduction. You agree to pay any sales, value-added or other similar taxes imposed by applicable law.
- c) **Verifying Compliance.** Upon request by HTC, You agree to provide records reasonably requested by HTC to verify Your compliance with the Authorized Use Limitation for Paid Subscriptions during the period You were licensed to use the Paid Subscription and for a period of twelve (12) months after expiration of the subscription term. You agree to allow HTC, or an independent auditing firm reasonably acceptable to You, to conduct an onsite and/or offsite audit within thirty (30) days of HTC providing written notice solely for the purpose of verifying compliance with the terms and conditions of this Agreement. HTC agrees that the audit will be confidential, and commercially reasonable in nature and time.
- d) **Distributors and Other Partners.** In the event You order an HTC Offering through an authorized HTC distributor or other partner, this Agreement shall apply to Your use of the HTC Offering.

## 7. SUPPORT, UPGRADES AND UPDATES

- a) **Support.** Support for HTC Offerings will be provided in a timely and professional manner by qualified support personnel. Support shall consist of:

- i) Access to the HTC support website (currently available at [link](#) ) for online support and access to Documentation, frequently asked questions (FAQs) and other materials, as such are made available by HTC from time to time; and
  - ii) Access to HTC’s help desk and the ability to open and manage support incidents online.
- b) **Upgrades and Updates.** HTC may perform scheduled maintenance, and may make upgrades, updates or other changes to the DMS Services and the DMS Services infrastructure (such as hosting facilities, security and technical configurations, among others). HTC will endeavor to provide You with at least seventy-two (72) hours advanced notice of any downtime required for such upgrades and updates to the DMS Services and the DMS Services infrastructure.

## 8. CUSTOMER DATA, PERSONAL DATA AND SECURITY

- a) **General.** HTC does not claim ownership rights in Customer Data, and treats Customer Data and Personal Data as Confidential Information under this Agreement. HTC will process Customer Data and Personal Data only in accordance with this Agreement or other documented instructions from You. This Agreement constitutes such documented initial instructions and You may provide further instructions during the performance of the DMS Services. Unless otherwise provided in this Agreement, HTC will not access: (i) Customer Data, nor (ii) Personal Data, except in response to support queries or technical issues only if You request or consent to such access in consultation with HTC.
- b) **HTC Use of Personal Data.** HTC: (i) will not sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate Personal Data to a third-party in exchange for monetary or other consideration, and (ii) except as necessary for providing the DMS Services, HTC will not retain, use or disclose Personal Data outside of the direct business relationship between You and HTC.
- c) **Data Processing for Legal Requirements.** HTC may process Customer Data and Personal Data where required to do so by applicable law or requests from regulatory authorities. Unless disclosure is prohibited by applicable laws, HTC will notify You of the legal requirement before processing such data.
- d) **Data Collection.** HTC’s collection and processing of Personal Data will be subject to the Data Processing Appendix in Schedule 1 and HTC’s Privacy Policy available at [link](#). In operating and improving the HTC Offerings, HTC may collect, analyze and modify certain operations data that does not contain Customer Data, including:
- i) computer and Device hardware and software specifications and serial number (or other identifiers);
  - ii) Device performance data and frequency of use data;
  - iii) IP address and related network information;
  - iv) Hosted Content identification information (including version information); and
  - v) click counts on downloaded applications managed by the DMS Services, web visit frequency to the Business Portal, and related usage data.
- e) **Sub-processors.** You hereby authorize HTC to use third-party entities to process Customer Data and Personal Data (collectively “**Sub-Processors**”), provided that:
- i) HTC shall provide the name of all Sub-Processors to You upon request;
  - ii) HTC shall enter into a written agreement with each Sub-Processor that imposes obligations on Sub-Processor that are no less stringent than those required under applicable laws and this Agreement; and
  - iii) HTC remains responsible for breaches of any obligations under this Section 8(e) as a result of Sub-Processor’s behavior.

- f) **Cross-Border Data Transfers.** You agree that Customer Data processed by HTC (including its Sub-Processors) may be processed or stored in the United States or any other country where HTC (or its Sub-Processors) operate, and may be transferred outside the country in which You are located as permitted under the applicable data protection laws. If You are located in the Europe Union, and Customer Data is transferred to a third-party country outside European Economic Area, such cross-border data transfer shall subject to the Standard Contractual Clauses (Processors) attached in Schedule 2, unless such third-party country has adequate safeguards in accordance with Article 45 of EU General Data Protection Regulation.
- g) **Your Responsibilities.** You agree as follows with respect to your use of the HTC Offerings:
- i) You will provide all necessary disclosures to Authorized Users regarding the privacy and security of any data collected, used, stored, transferred, or processed in connection with use of the HTC Offerings (including, if necessary, the HTC Privacy Policy available at [link](#)).
  - ii) You are responsible for complying with this Agreement, Your privacy policies and all applicable laws in Your collection, use, storage, transfer and processing of Personal Data.
  - iii) Your information technology platforms and systems used to access and use the HTC Offerings will be at all times compliant with this Agreement and applicable law (including all privacy and data security laws).
  - iv) Your standard of care to comply with Your obligations under this Section 8(g) shall conform to the requirements of applicable laws and industry standard security measures with respect to the sensitivity of the Authorized User data in Your possession or control.
  - v) You will not, without HTC's prior written consent, provide health, credit card or similarly sensitive personal information that imposes any specific data security obligations for the processing of such data.
- h) **Data Deletion.** Upon termination of this Agreement for any reason, You hereby agree and instruct HTC to delete Customer Data and Personal Data stored in HTC servers within a reasonable time period (but not more than ninety (90) days), unless applicable laws require otherwise.
- i) **Security.**
- i) General. HTC's security systems implement physical, organizational and technical safeguards designed order to protect the security, integrity and confidentiality of Customer Data, all as described on Schedule 3. Schedule 3 applies only to the extent that the HTC Services are performed on or from HTC premises. HTC applies the technical and organizational measures set forth in Schedule 3 to HTC's entire customer base receiving the same HTC services. HTC may change the measures set out in Schedule 3 at any time (and without notice) as long as it maintains a comparable or better level of security, or for the purpose of complying with applicable data protection laws.
  - ii) Security Incidents. In the event that HTC determines that a Security Incident will (or is likely to) cause harm to You or an Authorized User, HTC will endeavor to: (1) promptly (but in no event later than may be required by law) provide You notice at the contact email address you assigned; (2) investigate the Security Incident and take reasonable steps to mitigate the impact resulting from the incident; and (3) provide You with the information about HTC's investigation of the Security Incident. Notwithstanding the foregoing, You acknowledge that HTC may be prevented by applicable laws from providing You notices and updates about Security Incidents.
  - iii) Unauthorized Access. HTC is not responsible for unauthorized access, alteration, theft or destruction of Customer Data and Personal Data arising from Your or Authorized Users' actions or omissions in violation of the provisions of this Agreement.
  - iv) Cooperation. At Your request, HTC will cooperate with You in dealing with requests from Authorized Users or regulatory authorities regarding HTC's processing of Personal Data, or

regarding any Security Incident relating to Personal Data. If HTC receives a data subject request from an Authorized User, HTC will notify You as soon as reasonably practical.

- j) **Third Party Products and Services.** If You elect to use the HTC Offerings in connection with third-party products and services (including SteamVR, as described in Section 4(f)), then any resulting data access, collection, use, or disclosure by such third parties' will be governed by Your own separate agreement with that third-party (including their privacy policies). HTC is not responsible for the conduct of these third parties.

## 9. CONFIDENTIAL INFORMATION

- a) **Protecting Your VIVE Business Account.** You are responsible for maintaining the confidentiality of account credentials issued to You by HTC (or which You create Yourself). You are responsible for all activities that occur under Your VIVE Business Account. You will promptly notify HTC about any possible misuse of Your VIVE Business Account or other security incident related to the HTC Offerings at the following e-mail address: [security@htc.com](mailto:security@htc.com), and will mention 'VIVE Business Account' in the subject line. You shall use all physical, administrative, and technical controls, screening and security procedures and other safeguards necessary to securely administer access and use of Your VIVE Business Account and protect against unauthorized access to or use of Your VIVE Business Account or the HTC Offerings.
- b) **NDA.** It is contemplated that each Party may disclose certain information to the other in the course of performing this Agreement. With regards to such information, each Party agrees to comply with and be bound by the terms and conditions of the non-disclosure agreement ("**NDA**") between the Parties (if any), during the term of this Agreement or the term specified in the NDA, whichever is longer. The terms and conditions of the NDA (if any) are incorporated herein by reference. If no such NDA exists, the Parties agree to comply with Sections 9(c)-(e) below.
- c) **Confidential Information.** You and HTC acknowledge that by reason of the relationship established under this Agreement, each Party may have access to and acquire knowledge from, materials, data, systems and other information concerning the operation, business, projections, financial affairs, products, services, customers and intellectual property rights of the other Party that may not be accessible or known to the general public (collectively, "**Confidential Information**").
- d) **Protecting Confidential Information.** Each Party receiving Confidential Information (the "**Receiving Party**") agrees to maintain all such Confidential Information received in any form or medium from the other party (the "**Disclosing Party**"), in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third-party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose Confidential Information to its affiliates, employees, consultants, subcontractors, and advisors on a "need to know" basis, if such third parties agree to maintain the confidentiality of such Confidential Information under terms no less restrictive than those contained herein. The Receiving Party further agrees to use the Confidential Information only for the purpose of performing under this Agreement. In addition, the Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody Confidential Information and which are provided to the Receiving Party hereunder.
- e) **Exceptions.** The Receiving Party's obligations under this Section 9 shall not apply to Confidential Information which: (i) is or becomes a matter of public knowledge through no fault of or action by the Receiving Party; (ii) was rightfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third-party who is lawfully in possession of such Confidential Information without restriction; (iv) is independently developed by the Receiving Party without resort to the Disclosing Party's Confidential Information; or (v) is required by law or judicial order, provided that prior

written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable, and prior to disclosure occurring, in order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent such disclosure.

#### 10. REPRESENTATIONS, WARRANTY AND DISCLAIMERS

- A) **Hosted Content.** You represent and warrant that you have all intellectual property rights, including all necessary patent, trademark, trade secret, copyright or other proprietary rights, in and to Your Hosted Content. You agree that You will not submit Hosted Content that is copyrighted, protected by trade secret or otherwise subject to third-party proprietary rights, including patent, privacy and publicity rights, unless You retain all necessary licenses to do so.
- B) **WARRANTY.** HTC WARRANTS THAT PAID SUBSCRIPTIONS WILL MATERIALLY CONFORM TO THEIR DOCUMENTATION DURING THE TERM OF THE PAID SUBSCRIPTION. IF IT IS ESTABLISHED THE WARRANTY HAS BEEN BREACHED, HTC WILL, AT ITS OPTION: (I) USE REASONABLE EFFORTS TO CURE THE DEFECT; OR (II) REPLACE THE PAID SUBSCRIPTIONS WITH PAID SUBSCRIPTIONS THAT MATERIALLY CONFORM TO THE SPECIFICATIONS IN THE DOCUMENTATION. IN THE EVENT HTC, CANNOT, AFTER COMMERCIALY REASONABLE EFFORTS, ACHIEVE THE REMEDIES IN (A) OR (B), HTC MAY TERMINATE THE PAID SUBSCRIPTION AND PROVIDE A REFUND OF PRE-PAID, UNUSED FEES CALCULATED AGAINST THE REMAINDER OF THE SUBSCRIPTION TERM AS OF THE EFFECTIVE DATE OF SUCH TERMINATION. YOU MUST REPORT THE ALLEGED BREACH OF WARRANTY WITH REASONABLE SPECIFICITY IN WRITING WITHIN THIRTY (30) DAYS OF ITS OCCURRENCE TO BENEFIT FROM THIS WARRANTY AND THE REMEDIES STATED HEREIN.
- C) **DISCLAIMERS.** THE WARRANTY PROVISIONS SET FORTH ABOVE ARE THE EXCLUSIVE REMEDY FOR HTC'S PAID SUBSCRIPTIONS WARRANTY AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES UNDER APPLICABLE LAW OR AVAILABLE FROM HTC. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE HTC OFFERINGS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND THE ENTIRE RISK OF USE REMAINS WITH YOU. HTC AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT. IN PARTICULAR, HTC, ITS SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT THE HTC OFFERINGS: (I) WILL MEET YOUR REQUIREMENTS OR WILL WORK WITH ANY THIRD-PARTY HARDWARE, SOFTWARE, APPLICATIONS OR THIRD-PARTY SERVICES; (II) WILL BE AVAILABLE OR PROVIDED ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; (III) OR ANY INFORMATION OR CONTENT OBTAINED THROUGH IT WILL BE ACCURATE, COMPLETE, OR RELIABLE; OR (IV) OR THAT ANY DEFECTS OR ERRORS THEREIN WILL BE CORRECTED.
- D) **HEALTH AND SAFETY.** THERE ARE IMPORTANT HEALTH AND SAFETY WARNINGS AND INSTRUCTIONS FOR USE OF THE DEVICES WHICH ARE AVAILABLE AT VIVE.COM. YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND THESE WARNINGS AND INSTRUCTIONS. HTC MAY UPDATE OR REVISE THESE WARNINGS AND INSTRUCTIONS, SO PLEASE REVIEW THEM PERIODICALLY. ADDITIONAL HEALTH AND SAFETY WARNINGS AND INSTRUCTIONS MAY BE PROVIDED BY THIRD-PARTY MANUFACTURERS AND LICENSORS IN RELATION TO THEIR PRODUCTS AND SERVICES. YOU ARE SOLELY RESPONSIBLE FOR PROVIDING ADEQUATE WARNINGS AND INSTRUCTIONS TO YOUR ADMINISTRATORS AND USERS AND COMPLYING WITH ALL APPLICABLE LAWS IN THE OPERATION OF YOUR BUSINESS.
- E) **FIRMWARE UPDATES.** DURING ANY FIRMWARE UPDATE TO YOUR DEVICES, DO NOT UNPLUG ANY CABLES FROM YOUR DEVICE (OR OTHERWISE POWER OFF THESE DEVICES) UNTIL THE



UPDATE IS FULLY COMPLETE. FAILURE TO COMPLY COULD DAMAGE YOUR DEVICE AND ANY RESULTING DAMAGE MAY NOT BE COVERED BY YOUR WARRANTY.

#### 11. INDEMNIFICATION

- a) **General.** To the maximum extent permitted by law, You agree to defend, indemnify and hold harmless HTC, its affiliates and their respective directors, officers, employees, subcontractors, and agents, from and against any and all third-party claims, actions, suits or proceedings (each, a “Claim”), as well as any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or relating to (i) Your use of the HTC Offerings in violation of this Agreement, (ii) any allegation that Your use of the HTC Offerings (including Your Hosted Content) infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy, (iii) Your breach of the representations, warranties or covenants set forth herein, and (iv) damage to tangible property, bodily injury or death sustained as a result of Your use of the HTC Offerings.
- b) **Indemnity Procedures.** HTC will provide You prompt notice of any Claim, and will provide reasonable assistance in its defense or settlement. You will not consent to the entry of a judgment or settle any Claim without HTC’s prior written consent, if such entry of judgment or settlement arises from or is part of any of any criminal action, suit, or proceeding, or contains a stipulation to or admission or acknowledgment of any liability or wrongdoing on the part of HTC, or requires any specific performance or non-pecuniary remedy by HTC. You will use counsel reasonably satisfactory to HTC to defend each Claim. If HTC reasonably determines that a Claim might adversely affect HTC, HTC may take control of the defense at its expense (and without limiting Your indemnification obligations). Your obligations under this Section 11 are independent of Your other obligations under this Agreement.

#### 12. LIMITATIONS OF LIABILITY

- a) **LIMITATIONS.** IN NO EVENT WILL HTC OR ANY HTC SUPPLIER OR LICENSOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, GOODWILL, ANTICIPATED SAVINGS, LOSS OR CORRUPTION OF DATA OR BUSINESS INTERRUPTION) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE HTC OFFERINGS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF HTC AND ITS SUPPLIERS AND LICENSORS UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT YOU PAID FOR HTC OFFERINGS DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.
- b) **NO FAIL SAFE PERFORMANCE.** THE HTC OFFERINGS WERE DESIGNED FOR SYSTEMS THAT DO NOT REQUIRE FAIL-SAFE PERFORMANCE. HTC IS NOT LIABLE FOR USE OF THE HTC OFFERINGS IN ANY DEVICE OR SYSTEM IN WHICH A MALFUNCTION WOULD RESULT IN FORESEEABLE RISK OF INJURY OR DEATH TO ANY PERSON.
- c) **CLAIMS BARRED.** UNLESS THE FOLLOWING LIMITATION IS PROHIBITED BY APPLICABLE LAW, YOU AGREE THAT ANY DISPUTE MUST BE COMMENCED OR FILED WITHIN ONE (1) YEAR OF THE DATE THE DISPUTE AROSE, OTHERWISE THE UNDERLYING CLAIM IS PERMANENTLY BARRED (WHICH MEANS THAT YOU WILL NO LONGER HAVE THE RIGHT TO ASSERT SUCH CLAIM REGARDING THE DISPUTE).

#### 13. TERM AND TERMINATION

- a) **Term.** The term of this Agreement will commence on the Effective Date and remain effective until terminated.

- b) **Termination for Breach.** A Party may terminate this Agreement for material breach by the other Party, provided that in each instance of a claimed breach: (i) the non-breaching Party notifies the breaching Party in writing of such breach within thirty (30) days of its occurrence, and (ii) the breach is not cured within thirty (30) days of receipt of such notice. In the event of an undisputed, uncured material breach by HTC, You will be entitled to a refund of any pre-paid unused fees. The refund will be based on a pro-rata share of the remainder of the term of Your Paid Subscription, calculated as of the effective date of such termination. If this Agreement is terminated by HTC due to Your breach, the due dates of all invoices to be issued will be accelerated so that such invoices become due and payable on the effective date of termination.
- c) **Suspension and Termination by HTC.** HTC may suspend or terminate Your access to the HTC Offerings (in part or in whole) immediately if HTC determines: (i) Your use of the HTC Offerings poses a security risk or otherwise adversely impacts the HTC Offerings; (ii) Your use of the HTC Offerings is fraudulent or subjects HTC to infringement liability; (iii) You are in breach of this Agreement; or (iv) in order to comply with the law or a government request.
- d) **Effect of Suspension or Termination.** If Your access and use of the HTC Offerings is suspended or terminated, then: (i) any licenses granted pursuant to this Agreement will immediately terminate; and (ii) each Party will return all confidential information of the Party in its possession (or certify to the destruction thereof). At Your request, and for a period of up to sixty (60) days after the end of the applicable subscription term, HTC will make available Your data then hosted in the HTC Offerings (as applicable) for the purpose of retrieval by You. At the end of such sixty (60) day period, and except as may be required by law, HTC will delete or otherwise render inaccessible any of Your data and that remains in the HTC Offerings.

14. **CONTRACTING PARTY, GOVERNING LAW AND JURISDICTION FOR RESOLVING DISPUTES.** The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. The party with which You are contracting is set forth in the chart below. The governing law for this Agreement will depend on the country in which You are located in (as set forth below), regardless of any applicable conflict of law principles to the contrary. Your location is Your residence if You are an individual or Your principal place of business if You are a legal entity. Terms related to initiating and handling disputes between the Parties are referenced below.

| <b>Your location</b>                                                   | <b>You are contracting with:</b>   | <b>Governing law is:</b>           | <b>For resolving disputes, see the following sections:</b> |
|------------------------------------------------------------------------|------------------------------------|------------------------------------|------------------------------------------------------------|
| North or South America                                                 | HTC America Content Services, Inc. | State of Washington, United States | Section 15                                                 |
| Europe, Middle East or Africa                                          | HTC America Content Services, Inc. | England and Wales                  | Section 16                                                 |
| Australia, New Zealand, or Asia (except for China and the Middle East) | HTC America Content Services, Inc. | Taiwan                             | Section 17                                                 |

15. **DISPUTE RESOLUTION FOR PERSONS LOCATED IN NORTH AND SOUTH AMERICA.** If You are located in North or South America, the terms in this Section 15 shall apply. The Parties agree to waive any right to a jury trial and the right to have any dispute, controversy or claim arising out of or relating to this Agreement (“**Disputes**”) resolved in any court, including a small claims court, and instead agree to resolve Disputes exclusively by binding, confidential arbitration. In the event the Parties are unable

to resolve a Dispute themselves, then following thirty§ (30) days' notice by one Party to the other Party, the Dispute shall be resolved by binding arbitration administered according to the American Arbitration Association Commercial Arbitration Rules. There shall be three (3) arbitrators (collectively, "**Section 15 Arbitrators**") with one arbitrator to be selected by each Party and the third arbitrator to be selected by the other two arbitrators. The Parties agree that the Section 15 Arbitrators shall have the exclusive authority to resolve all Disputes (including the arbitrability of any Dispute and any claim that all or any part of the terms and conditions in this Agreement are void), and they agree to be bound by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. Binding arbitration shall be conducted in the English language and shall take place in Seattle, Washington, U.S.A. The Parties shall bear arbitration costs equally, and the prevailing Party (as determined by the Section 15 Arbitrators) in any such arbitration or any judicial enforcement shall be entitled to its reasonable legal fees and costs in addition to any award ordered by the Section 15 Arbitrators. Disputes may not be brought as a class arbitration, class action lawsuit, or any other type of representative proceeding, and must be commenced or filed within one (1) year after the event that gave rise to the Dispute occurred (otherwise the Dispute is permanently barred). Notwithstanding the foregoing, the Parties agree that: (a) HTC may submit any Dispute relating to HTC's intellectual property rights to any court of competent jurisdiction; and (b) any Dispute concerning the enforceability of this Section 15 shall be resolved by a court having jurisdiction in King County, Washington, U.S.A. (rather than by a Arbitrator), and each Party agrees to submit to the personal jurisdiction of such courts, as may be permitted by applicable law.

16. **DISPUTE RESOLUTION FOR PERSONS LOCATED IN EUROPE, MIDDLE EAST OR AFRICA.** If You are located in Europe, Middle East or Africa, the terms in this Section 16 shall apply. Except for obtaining injunctive or similar relief from a court of competent jurisdiction or in respect of any claim by HTC in relation to any sums owed or alleged to be owed to HTC by the You, any Dispute shall be finally decided by binding arbitration conducted in English and in accordance with the then-current Rules of Conciliation and Arbitration of the International Chamber of Commerce ("**ICC**"). There shall be three (3) arbitrators (collectively, "**Section 16 Arbitrators**") with one arbitrator to be selected by each Party and the third arbitrator to be selected by the other two arbitrators. The arbitration shall be conducted in London, England. Any award issued by the Section 16 Arbitrators shall be final and non-appealable for the Parties and may be enforced in any court of competent jurisdiction, and each Party agrees and consents to the exercise of jurisdiction over it by any such court. The Parties shall bear the costs of such arbitration equally, and the prevailing Party (as determined by the Section 16 Arbitrators) in any such arbitration or any judicial enforcement shall be entitled to its reasonable legal fees and costs in addition to any award ordered by the Section 16 Arbitrators.
17. **DISPUTE RESOLUTION FOR PERSONS LOCATED IN AUSTRALIA, NEW ZEALAND, OR ASIA (EXCEPT FOR CHINA AND THE MIDDLE EAST).** If You are located in Australia, New Zealand, or Asia (except for China and the Middle East), the terms in this Section 17 shall apply. All Disputes shall be settled by arbitration in Taipei in the Mandarin Chinese language in accordance with the Taiwan Arbitration Act and the then-governing Arbitration Rules of the Chinese Arbitration Association, Taipei. The Parties shall bear the costs of such arbitration equally, and the prevailing Party (as determined by the arbitrators conducting the arbitration) in any such arbitration or any judicial enforcement shall be entitled to its reasonable legal fees and costs in addition to any award ordered in the arbitration proceeding.

## 18. MISCELLANEOUS

- a) **Notices.** HTC may amend the terms of this Agreement from time to time. HTC will provide You notices of these modifications through the Business Portal. Modifications will become effective, and will be deemed accepted on the date specified in the notice, which will be no sooner than thirty (30) days after the modifications are posted (except modifications required by law or that do not materially restrict Your license rights to use Software, which will be effective immediately). Your continued access to or use of the DMS Services following the effective date of the revised terms means that You accept and agree to the revised terms. If You do not agree with the modifications, You must terminate Your use of the HTC Offerings and this Agreement, which will be Your sole and exclusive remedy.
- b) **Additional Products and Services.** The DMS Services may provide You with access to additional products and services provided by HTC and/or third parties. If You choose to use those products and services, separate terms of use, terms of sale, and/or end user license agreements may apply.
- c) **Feedback.** If You provide oral or written comments, suggestions, ideas, plans, notes, and drawings, or other information about the HTC Offerings or related services (“**Feedback**”), HTC is free to use, disclose, reproduce, license, or otherwise distribute that Feedback, without any obligations to You.
- d) **Force Majeure.** HTC is not liable for any delay for failure to perform any obligation under this Agreement where the delay or failure results from Force Majeure.
- e) **Independent Contractors.** The Parties are independent contractors and are not employees, agents or legal representatives of the other Party. Neither is authorized to bind the other, act as an agent for the other or otherwise act in the name of or on behalf of the other Party.
- f) **Export Laws.** As applicable, each Party will comply with all relevant export laws and regulations in connection with this Agreement.
- g) **Assignment.** Either Party may assign its rights or obligations under this Agreement if the assuming Party agrees in writing to be bound by the terms of this Agreement. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- h) **Third Party Beneficiaries.** The Parties hereto acknowledge that this Agreement is not intended to and shall not create any third-party beneficiaries, unless otherwise explicitly set forth herein.
- i) **Severability.** If a court of competent jurisdiction holds any term, covenant or restriction of this Agreement to be illegal, invalid or unenforceable, the remaining terms, covenants and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.
- j) **Final Agreement.** This Agreement constitutes the entire, final, complete and exclusive agreement between You and HTC and supersede all previous agreements or representations, written or oral, with respect to the subject matter of this Agreement. You and HTC expressly agree that the terms of this Agreement shall control over any additional, different, or conflicting terms. Notwithstanding the foregoing, if there is any conflict between this Agreement and any other agreement between You and HTC which pertains to the same subject matter and which was duly signed by authorized signatories of both Parties, then such duly signed agreement shall control to the extent of any conflict.
- k) **English Language.** This Agreement was originally written in English. If this Agreement is translated into other languages, the English version will control to the extent of any conflict.
- l) **Survival.** Sections 4(a), 4(b), 4(g), 5, and 9-18 will survive any expiration or termination of this Agreement.

- m) **Notices.** HTC may provide any notice to You under this Agreement by posting such notice on the Business Portal or sending an email to any address associated with your VIVE Business Account. All notices to HTC must be by personal delivery or overnight courier (effective when received) to:

HTC Corporation  
Attn: General Counsel  
No. 88, Section 3, Zhongxing Road  
Xindian Dist., New Taipei City 231  
Taiwan

With a copy to:

HTC America Inc,  
Attn: Legal Department  
308 Occidental Avenue South, Suite 300  
Seattle, Washington 98104  
United States

## SCHEDULE 1

### DATA PROCESSING DETAILS

**1. SUBJECT-MATTER OF THE PROCESSING:**

Personal Data of Authorized Users (and other individuals identified in Section 5 below) is used to provide the DMS Services as described in the Agreement.

**2. NATURE AND PURPOSE OF THE PROCESSING:**

- Collection
- Recording
- Disclosure
- Deletion
- Alteration
- Restriction
- Use

**3. DURATION OF PROCESSING:**

Processing of Personal Data by HTC shall be for the term of the Agreement, provided that Personal Data shall not be processed for longer than is necessary for the purpose for which it was collected or is being processed (except where a statutory exception applies).

**4. PERSONAL DATA IN SCOPE:**

HTC may process the following types/categories of Personal Data:

- Contact details for Authorized Users, including (but not limited to) first name, last name, email address, and organization name and address.
- Online data (e.g. website usage, browsing activities and preferences and other web traffic data); and
- Personal Data: (i) contained within email and web communications sent to or from employee or users of the Your network, and (ii) contained within technical and support requests raised by or on Your behalf.

**5. PERSONS AFFECTED (DATA SUBJECTS):**

The group of data subjects affected by the processing of their Personal Data consists of:

- Authorized Users;
- Your employees, representatives, customers, vendors any other business contacts (including senders and recipients of emails, as applicable); and

- Permitted Sub-processors and data recipients.

SCHEDULE 2

**STANDARD CONTRACTUAL CLAUSES (PROCESSORS)**

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

**Name of the data exporting organisation:** \_\_\_\_\_

**Address:** \_\_\_\_\_

Tel.: ..... ; fax: ..... ; e-mail: .....

Other information needed to identify the organisation

.....

(the **data exporter**)

And

**Name of the data importing organisation:** HTC Corporation (and its affiliates)

**Address:** No. 88, Section 3, Zhongxing Road, Xindian Dist., New Taipei City 231, Taiwan

e-mail: .....

Other information needed to identify the organisation:

.....

(the **data importer**)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the **Clauses**) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in the Data Processing Details Appendix above.

**1. Definitions**

For the purposes of the Clauses:

**'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'** and **'supervisory authority'** shall have the same meaning as in Directive 95/46/EC of the



European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

**'the data exporter'** means the controller who transfers the personal data;

**'the data importer'** means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

**'the subprocessor'** means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

**'the applicable data protection law'** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established, namely the law of England and Wales;

**'technical and organisational security measures'** means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## **2. Details of the transfer**

The details of the transfer and in particular the special categories of personal data where applicable are specified in the Data Processing Details (Schedule 1) set forth above and forms part of these Clauses.

## **3. Third-party beneficiary clause**

3.1 The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

3.2 The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3.3 The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by

contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

- 3.4 The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### **4. Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Schedule 3 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Schedule 3, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance

with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

## **5. Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Schedule 3 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession

of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Schedule 3 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

## **6. Liability**

- 6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.
- 6.3 The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
- 6.4 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

## **7. Mediation and jurisdiction**

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8. Cooperation with supervisory authorities**

8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

## **9. Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

## **10. Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

## **11. Subprocessing**

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under

the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

- 11.2 The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
- 11.3 The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the law of England and Wales.
- 11.4 The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

## **12. Obligation after the termination of personal data processing services**

- 12.1 The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 12.2 The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

### **SCHEDULE 3**

#### **TECHNICAL AND ORGANIZATIONAL SECURITY MEASURES**

The physical, organizational and technical safeguards which HTC has implemented for the HTC Offerings are set forth in HTC Corporate Information Security Policy.