

[VIVERSE/VIVEPORT] is now operated by Viverse Limited. We've updated our Terms of Use to reflect the change on March 31, 2023. While our operating entity has changed, we continue to provide the same services.

Last updated: March 27, 2023

VIVE BUSINESS APPSTORE TERMS OF USE

WELCOME TO THE VIVE BUSINESS APPSTORE ("**APPSTORE**"). PLEASE READ THESE TERMS OF USE ("**TERMS**") CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS. BY USING THE APPSTORE YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE, DO NOT USE THE APPSTORE.

You represent and warrant as follows:

- (A) If You are an individual accessing and using the AppStore and XR Products: (i) that Your access to and use is solely for commercial purposes (i.e., You are not acting as an individual consumer); (ii) that You are of legal age and competent to be contractually bound by these Terms; and (iii) as may be applicable, You have the legal authority to bind to these Terms any Entity on behalf of which (or for whose benefit) You are accessing and using the AppStore and XR Products. "**Entity**" means any company or other organization including for-profit, non-profit and governmental organizations.
- (B) If You are an Entity accessing and using the AppStore and XR Products for commercial purposes: (i) that any individual accepting these Terms on Your behalf is duly authorized to do so; (ii) that You have the legal authority to bind to these Terms any individuals, employees, and contractors to whom you make available the AppStore and XR Products (collectively, "**Authorized Users**"); and (ii) that You will be responsible for the acts and omissions of Authorized Users in connection with their access to and use of the AppStore and XR Products.

These Terms, and any additional terms provided to You ("**Additional Terms**", and collectively with the Terms, the "**Agreement**") are a legal agreement between the contracting party identified in Section 27 ("**We**", "**Us**" or "**Our**"), you as an individual and, as the case may be, the Entity on behalf of which (or for whose benefit) You are accessing and using the AppStore and XR Products ("**You**" or "**Your**"). For clarity, references to "**You**" and "**Your**" also includes Authorized Users.

The Agreement governs use of Our services ("**Services**") that allow You to access, purchase, download, stream and subscribe to software, services and other augmented, mixed and virtual reality products (collectively, "**XR Products**") available on the AppStore. If there is a conflict between these Terms and the Additional Terms, the Additional Terms will govern.

- 1. THE APPSTORE.** The AppStore is accessible via a portal on head-mounted displays ("**Headsets**"), at business.vive.com, or at another location We may make available from time to time. At the AppStore You can access XR Products made available by Us or third-party publishers ("**Publishers**"). We refer to XR Products provided by Publishers as "**Publisher Products**", and XR Products Provided by Us as "**HTC Products**".
- 2. AGE MINIMUM.** You must be 13 years of age or older to use the AppStore. By using the AppStore, You certify that You are 13 years or older. If You are 13 years or older but under the age of majority or age subject to parental consent under the laws of Your country, You should review these Terms with Your parent or guardian.

3. **YOUR ACCOUNT.** A VIVE business account (“**Account**”) is required to use the AppStore. When You register for an Account, You must provide Us with current, complete, and accurate information.
4. **SYSTEM REQUIREMENTS.** To use the AppStore, You will need: (i) a computer and compatible software that meets the system requirements described at the time of purchase; (ii) working internet access; and (iii) a Headset. Your Headset and other devices You use in connection with XR Products you acquire at the AppStore are referred to as Your “**Devices**”. We may change the AppStore’s system requirements from time to time. Note the display quality of XR Products may vary from Device to Device, and may be affected by a variety of factors, including, for example, Your location, internet congestion, and the speed of Your internet connection. Also, not all XR Products are compatible with every make and model Headset. The costs You incur in meeting the AppStore’s system requirements, and all other costs associated with Your use of the AppStore, are solely Your responsibility.
5. **PAYMENTS.**
- a) **Payment Processors.** We may use a third-party to process payments on the AppStore, and may also allow an authorized reseller to manage and control such payments (collectively, “**Payment Processor**”).
 - b) **Terms of Sale.** In addition to the terms of the Agreement, Your purchases at the AppStore may be also subject to terms of sale presented to You at the time of purchase. Please read those terms of sale carefully. If the terms of sale are between You and a Payment Processor, then You agree that We will be a third-party beneficiary to those terms of sale.
 - c) **Payment Method.** Charges that You incur on the AppStore (e.g. purchase prices, taxes and applicable transaction fees) will be charged to the payment method You authorize on Your Account. By accepting these Terms, You authorize Us or Our Payment Processor to facilitate the payment of such charges, to use the payment method You designate, and, where applicable, to AppStore the payment-related information You provide. You may be billed for XR Products in advance or at the time of purchase (or shortly thereafter). In the event the payment method You designate cannot be verified, is invalid, or is not otherwise acceptable, We or Our Payment Processor may collect applicable charges using any payment method that We or Our Payment Processor has on file. If all payment methods on file are declined, We or Our Payment Processor may cancel or suspend Your XR Product purchase. You can use Your Account settings to update Your designated payment method.
 - d) **Order Confirmation.** After You complete a purchase on the AppStore, You will receive a written or online order form, purchase confirmation or other documentation setting forth Your purchase and the applicable prices, quantities and Authorized Use Limitation (as described in Section 7(c)) for the XR Products purchased. We reserve the right to invoice You for any use of XR Products in excess of the Authorized Use Limitation.
 - d) **Price Changes and Fees.** We and Publishers reserve the right to change XR Product prices in any manner and at any time, in Our and Publisher’s sole discretion. Unless the Order Confirmation states otherwise, for XR Products sold on a subscription basis: (i) fees are based on the purchased and not Your actual usage; (ii) the number of subscriptions purchased cannot be decreased during the applicable subscription term; and (iii) the terms of the Order Confirmation, including pricing, apply only to Your initial subscription term. Upon any renewal, Our then-current published provisions and pricing structure shall apply.
 - e) **No Refunds.** Except as may be required by applicable law, all transactions on the AppStore are final. The AppStore does not allow returns, replacements, or refunds, and purchases may not be transferred or redeemed in whole or in part. If You encounter technical problems preventing Your use of XR Products on the AppStore, and such problems are Our fault, Your sole remedy is either

to receive: (i) replacement XR Products or (ii) a refund of the price You paid for the XR Products (as determined by Us or Our Payment Processor).

- f) **Taxes.** If Your use of the AppStore is subject to any type of use or sales tax, duty or other governmental tax or fee ("**Taxes**"), then We or Our Payment Processor may charge You for those Taxes. Applicable Taxes may be presented at checkout. You are responsible for any Taxes due with respect to Your use of the AppStore.
- g) **Errors.** We strive to be as accurate as possible and eliminate errors on the AppStore. However, We do not represent or warrant that descriptions or pricing information on the AppStore are accurate, complete, reliable, current, or error-free. We and Our Payment Processor reserve the right to correct errors and revise Your orders accordingly (which may include charging the correct price), or to cancel orders and refund any amounts charged.
- h) **Verifying Compliance.** Upon Our request, You agree to provide Us records reasonably requested to verify Your compliance with the Authorized Use Limitation limitations both during the period You were licensed to use the products, and for a period of twelve (12) months after expiration or termination of Your rights to use the products. You agree to allow Us, or an independent auditing firm reasonably acceptable to You, to conduct an onsite and/or offsite audit within thirty (30) days of Us providing written notice solely for the purpose of verifying compliance with the terms and conditions of the Agreement. We agree that the audit will be confidential, and commercially reasonable in nature and time.
- e) **Distributors and Other Partners.** In the event You order XR Products through one of Our authorized distributors or other partner, the terms of the Agreement will apply to Your use of the purchased XR Products (except in the case of Publisher Products, which shall also be subject to the Publisher Terms).

6. TRIALS AND PROMOTIONAL CODES.

- a) **Trials.** Subject to this Agreement and to the terms (if any) presented to You for beta or trial use, You may access and use specified XR Products 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. In addition to the Agreement, Trials may also be subject to the Publisher Terms presented when you obtain Publisher Products. TRIALS ARE PROVIDED BY US "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.
- b) **Promotional Codes.** From time to time and in Our sole discretion, We may offer You promotional codes that can be redeemed for XR Products ("**Promotional Codes**"). Promotional Codes may only be used to redeem XR Products on the AppStore. Your ability to redeem Promotional Codes may be subject to additional restrictions as determined by Us in Our sole discretion.
- c) **Restrictions.** Except as may required under applicable law, Promotional Codes: (i) are not redeemable for cash, reloadable or refundable, and may not be resold, exchanged, transferred for value, used to purchase gift cards or applied to prior purchases; (ii) may only be redeemed in their country of origin and for the currency in which they were issued. If the redeemed value of a Promotional Code is insufficient to make a purchase on the AppStore or Viveport, You will need to use another form of payment to supplement Your purchase.
- d) **No Improper Use.** You may not use Promotional Codes in any manner that is fraudulent, deceptive or unfair, or in any manner that is otherwise harmful to Us or other users on the AppStore. If We suspect Promotional Codes were obtained, used, or applied to Your Account fraudulently, unlawfully, or otherwise in violation of these Terms, We reserve the right, without notice or refund, to: (i) cancel or limit orders, and bill alternative forms of payment, and (ii)

suspend or terminate Your Account or Your ability to use the AppStore. If We close Your Account as provided in this Section 6(d), We will not be required to refund the value of any Promotional Codes issued to You.

- e) **Expiration.** Promotional Codes are subject to the expiration date provided at the time the code was issued. If no expiration date is provided, Promotional Codes expire twelve (12) months from the date of issuance unless a longer or different period is required under applicable law, in which case such period shall apply. Expired Promotional Codes are non-redeemable and non-refundable, and cannot be used if You delete Your Account.

7. ACCESS TO AND USE OF XR PRODUCTS.

- a) **General.** XR Products are made available subject to Our sole discretion. In some instances, for example, XR Products may be removed with or without notice from the AppStore if they are no longer offered by Us or the Publisher. The availability of XR Products may vary between countries and the catalog of available XR Products on the AppStore may vary over time. Not all aspects and features of XR Products may be available in Your country of residence.
- b) **Digital Rights Management.** XR Products on the AppStore may be protected with digital rights management (“DRM”). We and Publishers may utilize DRM to enable Your use of XR Products and to monitor use to ensure compliance with licensing rights granted to You under the Agreement.
- c) **Limits on Use.** XR Products available on the AppStore may be subject to limitations based on the applicable billing metric, including, without limitation, as applicable, limits on the number of Authorized Users, number of devices, or the amount of time You may access and use particular XR Products (“**Authorized Use Limitation**”). Authorized Use Limitations, if any, will be described in the applicable Publisher Terms (for Publisher Products), in the product description, at the time of purchase or in the Order Confirmation. In order to enforce Authorized Use Limitations, We may record and store the unique device identifier numbers of Your Devices in connection with DRM activities.

- 8. **RATINGS.** Publisher Products on the AppStore may include age and content ratings provided by Publishers. We do not guarantee that: (i) Publisher Products ratings are accurate; (ii) Publisher Products do not contain objectionable content; and (iii) Publisher Products comply with applicable law.

- 9. **BACKING UP CONTENT.** The AppStore may offer You the ability to back-up XR Products or other content. Even if such back-up feature is available on the AppStore: (i) We do not guarantee that XR Products or other content and information You AppStore or access will not be removed, damaged, corrupted, lost, or unavailable, (ii) We do not guarantee that XR Products or content will be accurately or fully backed up, and (iii) You are still responsible for backing up XR Products or other content and information that You store or access using the AppStore. Note that XR Products that You upload or download on one Device may not be available to You on other Devices.

10. PUBLISHER PRODUCTS

- a) **Publisher Terms.** Much of the XR Products available on the AppStore are Publisher Products, and are not licensed by Us. Instead, Publisher Products are provided solely pursuant to the end user license agreement, privacy policy and any other terms entered into between You and the Publisher (collectively, “**Publisher Terms**”). In the event of any conflict between Publisher Terms and the provisions of these Terms, these Terms will govern.
- b) **No Default or Pass-Through License Terms.** You are required to enter into Publisher Terms for any Publisher Products you obtain via the AppStore. The Agreement does not grant You rights to use Publisher Products.

- c) **Publisher Products.** The Publisher, not Us, is solely responsible for Publisher Products. We: (i) make no representations or warranties with respect to Publisher Products; and (ii) have no responsibility or liability with respect to Your use of Publisher Products, or any features or functionality contained in such products. Any claims You have with respect to Publisher Products shall be against the Publisher, not Us.
- d) **Our Rights.** You agree that We: (i) are a third-party beneficiary of Publisher Terms; (ii) are entitled to the rights and benefits of Publisher Terms; and (iii) may enforce Publisher Terms provisions as if We were a party to them.

11. OUR LICENSES. Conditioned upon Your full compliance with (and subject to) all the terms and conditions of the Agreement, We grant to You a limited, personal, non-transferable, non-exclusive, revocable license to use the AppStore and HTC Products for Your internal commercial or business purposes during the applicable license period, and, in other cases, for as long as We have rights to provide You HTC Products. In some instances, HTC Products on the AppStore may be subject to alternate use terms (i.e., not the Agreement). We will alert You if Your use of HTC Products is not subject to the terms of the Agreement.

12. LICENSE LIMITATIONS. Your license to XR Products available on the AppStore is granted subject to Your timely payment of applicable fees. If You violate the Agreement or Publisher Terms, We may immediately terminate Your access to the AppStore and to XR Products (and to Your Account, at Our discretion) without refund to You. The licenses granted to HTC Products are conditioned upon Your agreement not to:

- a) work around any technical limitations on the AppStore or in HTC Products, or attempt to disable, bypass, defeat, or otherwise circumvent the DRM or any content protection system implemented in HTC Products;
- b) attempt to access source code for the AppStore or HTC Products and/or reverse engineer the HTC Products, except as expressly required by applicable law;
- c) sell, rent, lease, redistribute, broadcast, transmit, communicate, modify, create derivative works, sublicense or assign rights granted by the AppStore or to any HTC Products to any third party without authorization;
- d) remove any proprietary notices or labels on the AppStore or HTC Products;
- e) display the AppStore as part of any public performance or display even if no fee is charged;
- f) use the AppStore or any HTC Products to infringe Our rights or those of any third party, or use the AppStore in any way that does not comply with applicable laws; and
- g) make use of the AppStore or any HTC Products in any manner not permitted by the Agreement.

13. SUPPORT, UPDATES AND UPDATES.

- a) **Publisher Products.** We have no obligation to and may not provide support or updates for Publisher Products.
- a) **HTC Products.** Unless specified in a separate agreement between You and We, support for HTC Products will be provided in a timely and professional manner by qualified support personnel. Support shall consist of:
 - i) Access to Our support website (currently available at [link](#)) for online support and access to documentation, frequently asked questions (FAQs) and other materials, as We make the, available by from time to time; and
 - ii) Access to Our help desk, including the ability to open and manage support incidents online.
- b) **Upgrades and Updates.** We reserve the right to make changes to the AppStore, at any time and in Our sole discretion. We may also perform scheduled maintenance, upgrades, and updates to the AppStore and its infrastructure (such as hosting facilities, security and technical

configurations, among others). You agree that We may check Your Devices to determine Your version of software associated with the AppStore, and may update the software as may be necessary for Your continued use of the AppStore.

14. CONFIDENTIAL INFORMATION.

- a) **Protecting Your Account.** You are responsible for maintaining the confidentiality of Account credentials We issue You (or which You create Yourself). You are responsible for all activities that occur under Your Account. You will promptly notify Us about any possible misuse of Your Account or other security incident related to the Services and XR Products at the following e-mail address: security@htc.com, and will mention '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 Account and protect against unauthorized access to or use of Your Account, the Services and XR Products.
- b) **NDA.** It is contemplated that You and We may disclose certain information to each other in the course of performing the Agreement. With regards to such information, You and We agree to comply with and be bound by the terms and conditions of the non-disclosure agreement ("**NDA**") between the You and We (if any), during the term of the Agreement or the term specified in the NDA, whichever is longer. The terms and conditions of the NDA (are incorporated herein by reference. If no such NDA exists, You and We agree to comply with Sections 14(c)-(e) below.
- c) **Confidential Information.** You and We acknowledge that by reason of the relationship established under the Agreement, You and We 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 either You or We 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 the 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 14 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.

15. CUSTOMER DATA, PERSONAL DATA AND SECURITY

- a) **Definitions.** As used in the Agreement:
- i) **“Customer Data”** means any information: (1) Your Authorized Users provide Us in the course of using the Services and HTC Products; and (2) stored in connection with the Services and HTC Products;
 - ii) **“Personal Data”** means any information relating to an identified or identifiable individual, including: (1) information that identifies an individual, (2) information from which identification or contact information of an individual can be derived, (3) 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 (4) information that can be used to authenticate an individual;
 - iii) **“Security Incident”** means unauthorized access to or acquisition, use, loss, alteration, destruction, or compromise of Customer Data; and
 - iv) **“Analytics Data”** means anonymized high-level metrics on device types, device identifiers, network information (such as IP address), location data, time zone settings, language, click counts on applications and related usage data, all directly related to usage of the Services and XR Products. For the avoidance of doubt, Analytics Data does not include Customer Data, Your Confidential Information, and Personal Information (collectively, **“Excluded Data”**).
- b) **General.** We do not claim ownership rights in Customer Data, and We treat Customer Data and Personal Data as Confidential Information under the Agreement. We will process Customer Data and Personal Data only in accordance with the Agreement or other documented instructions You may provide. The Agreement constitutes such documented initial instructions and You may provide further instructions during Your use of the Services and HTC Products. Unless otherwise provided in the Agreement, We 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 Us.
- c) **Our Use of Personal Data.** We: (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 Services and HTC Products, We will not retain, use or disclose Personal Data outside of the direct business relationship between You and We. You can review and change Your privacy and security setting in Your Account profile, such as opt in/out to receive marketing communication from Us.
- d) **Data Processing for Legal Requirements.** We may process Personal Data where required to do so by applicable law or requests from regulatory authorities. Unless disclosure is prohibited by applicable laws, We will notify You of the legal requirement before processing such data.
- e) **Data Collection.** Our collection and processing of Personal Data will be subject to the Data Processing Appendix in Schedule 1 and Our Privacy Policy (see [link](#)). In addition to Our Privacy Policy, We may provide You a privacy statement (disclosed at or before collecting Your Personal Data) which explains Our collection and use of Personal Data, including: (i) what Personal Data is collected, (ii) how Personal Data is being collected and used, and (ii) the purpose of Personal Data usage, among others. We may provide Your Personal Data to Payment Processors for the purposes of processing Your transactions and/or provisioning Services and XR Products.
- f) **Analytics Data.** You grant US for Our use a worldwide, non-exclusive, royalty-free license to aggregate and compile Analytics Data (as so aggregated and compiled, **“Aggregated Data”**) with

similar usage data of other customers, so long as: (i) such aggregation or compilation omits any data that would enable the identification of You, Your customers, or any individual, company, or organization; and (ii) We do not review the content of Excluded Data when performing such aggregation and compilation. We shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on the Aggregated Data, and as between You and We, We shall own all compilations of the Aggregated Data, including all reports, statistics or analyses created or derived therefrom.

- g) **Sub-processors.** You hereby authorize Us to use third-party entities to process Customer Data and Personal Data (collectively “**Sub-Processors**”), provided that:
 - i) We shall provide the name of all Sub-Processors to You upon request;
 - ii) We 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 the Agreement; and
 - iii) We remain responsible for breaches of any obligations under this Section 15(g) as a result of Sub-Processors’ behavior.
- h) **Cross-Border Data Transfers.** You agree that Customer Data We process (including any Sub-Processors) may be processed or stored in the United States or any other country where We (or the applicable 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 European Union, and Customer Data is transferred to a third-party country outside the 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.
- i) **Your Responsibilities.** You agree as follows with respect to your use of the Services and XR Products:
 - i) You will provide all necessary disclosures to Authorized Users regarding the privacy and security of Customer Data and Personal Data (including, if necessary, Our Privacy Policy and Publishers’ privacy of policies) (see link).
 - ii) You are responsible for complying with the Agreement, the Publisher Terms, 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 Services and XR Products will be at all times compliant with the Agreement the Publisher Terms, and applicable law (including all privacy and data security laws).
 - iv) Your standard of care to comply with Your obligations under this Section 15(i) shall conform to the requirements of applicable laws and industry standard security measures with respect to the sensitivity of Authorized Users data in Your possession or control.
 - v) You will not, without Our 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.
- j) **Data Deletion.** Upon termination of the Agreement for any reason, You hereby agree and instruct Us to delete Customer Data and Personal Data stored in Our servers (or the servers of Our service providers) within a reasonable time period (but not more than ninety (90) days), unless applicable laws require otherwise.
- k) **Security.**
 - i) **General.** Our 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 Services are performed on or from Our premises. We apply the technical and organizational measures set

forth in Schedule 3 to Our entire customer base receiving the same products and services We provide. We 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 We determine that a Security Incident will (or is likely to) cause harm to You or Authorized Users, We 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 Our investigation of the Security Incident. Notwithstanding the foregoing, You acknowledge that We may be prevented by applicable laws from providing You notices and updates about Security Incidents.
- iii) **Unauthorized Access.** We 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 the Agreement.
- iv) **Cooperation.** At Your request, We will cooperate with You in dealing with requests from Authorized Users or regulatory authorities regarding Our processing of Personal Data, or regarding any Security Incident relating to Personal Data. If We receive a data subject request from Authorized Users, We will notify You as soon as reasonably practical.
- l) **Third Party Products and Services.** If You elect to use the Services and XR Products in connection with third-party products and services, or purchase any Publisher Products, then any resulting data access, collection, use, or disclosure by such third parties' and Publishers will be governed by Your own separate agreement with that third-party and Publisher, including their Publisher Terms. We are not responsible for the conduct of third parties.

16. ACCEPTABLE USE POLICY

- a) **Code of Conduct.** You may not use the AppStore and XR Products for improper purposes, including any use that violates Our [Code of Conduct](#).
- b) **Violations of the Agreement.** If We suspect that the Agreement has been violated, We may institute legal action and cooperate with law enforcement authorities in bringing legal proceedings against those responsible. You agree to cooperate with Us in investigating suspected violations by You or others, unless applicable law prohibits Us from requiring You to cooperate. You authorize Us to install and use monitoring solutions designed to assist in identifying or tracking activities that We consider to be illegal or in violation of the Agreement.

17. USER GENERATED CONTENT

- a) **General.** The AppStore may offer features that allow You to create and submit content accessible and viewable by other users on the AppStore. Your content may include, for example, ratings and reviews of the AppStore and XR Products, postings, streams or other transmissions of Your content such as pictures, photographs or other information (collectively, "**User Generated Content**"). Except as prohibited by applicable law, You grant Us a royalty free, sublicensable, perpetual license to use, distribute, copy, modify, display, and publish User Generated Content. You hereby waive, to the extent permitted by applicable law, all claims, including any moral or patrimonial rights against Us, or any third party's lawful use of User Generated Content.
- b) **Sharing User Generated Content.** If You choose to share User Generated Content outside the AppStore, such distribution may be subject to a third party's terms of use and privacy policy. You are solely responsible for User Generated Content shared outside the AppStore.
- c) **Your Obligations.** You agree that: (i) Your submission of User Generated Content is voluntary and is solely Your responsibility; (ii) User Generated Content must not infringe the rights of any other

party, must not violate any laws, and must not contribute to or encourage infringing or otherwise unlawful conduct; (iii) User Generated Content must not be obscene, objectionable, or in poor taste; and (iv) You have obtained all necessary rights and licenses to submit User Generated Content.

- d) **Our Rights.** We reserve the right to not display User Generated Content and to remove or edit any such content, at any time in Our sole discretion and without any notice or liability.
- e) **Our Responsibilities.** We have no responsibility or liability for User Generated Content, and no obligation to screen, secure, maintain, edit or monitor such content.

18. IP OWNERSHIP. We and Our licensors and suppliers own the title, copyright, and other intellectual property rights in the AppStore and HTC Products, and reserve all rights not expressly granted. Marks displayed on the AppStore associated with HTC Corporation, Viverse and their associated logos are Our trademarks. Any other company names, product names, service names, and logos displayed on the AppStore are the trademarks of their respective owners and may not be used without permission.

19. FEEDBACK. Aside from User Generated Content, We may offer You the ability to submit comments, suggestions, ideas or other information about the Services and HTC Products (collectively, “**Feedback**”). Submission of Feedback is voluntary. free to use, disclose, reproduce, license, or otherwise distribute Feedback, without any obligation to You. In addition, to the extent permitted by applicable law, You agree to not enforce any “moral rights” in and to Feedback.

20. TERMINATION. The Agreement will automatically terminate upon Your breach of any its provisions. You may terminate the Agreement at any time by cancelling Your Account. Termination of the Agreement will not entitle You to any refunds. If the Agreement is terminated for any reason, You must immediately stop using the AppStore. The terms and conditions of the Agreement that by their sense and context are intended to survive termination hereof will so survive, including the following Sections: 7, 9-12, and 14-37. We reserve the right to change, remove, delete, restrict or block access to, or stop providing all or any part of the AppStore at any time without notice.

21. HEALTH AND SAFETY. THERE ARE IMPORTANT HEALTH AND SAFETY WARNINGS AND INSTRUCTIONS THAT YOU MUST READ BEFORE USING YOUR DEVICES ON THE APPSTORE. YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND UNDERSTAND THOSE WARNINGS AND INSTRUCTIONS.

22. DISCLAIMER OF WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, THE APPSTORE AND XR PRODUCTS (COLLECTIVELY, “**OFFERINGS**”) ARE PROVIDED “AS IS,” “WITH ALL FAULTS” AND “AS AVAILABLE” AND THE ENTIRE RISK OF USE AND PERFORMANCE, REMAINS WITH YOU. WE AND OUR SUPPLIERS AND LICENSORS DO NOT MAKE ANY REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESS, IMPLIED, OR STATUTORY AND HEREBY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT. IN PARTICULAR, WE AND OUR SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT THE 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) WILL CONTAIN INFORMATION OR CONTENT THAT IS ACCURATE, COMPLETE, OR RELIABLE; OR (IV) WILL BE CORRECTED IF ANY DEFECTS OR ERRORS ARE DISCOVERED. YOUR USE OF THE OFFERINGS IS AT YOUR OWN RISK, AND YOU WILL

BE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS THAT RESULTS FROM YOUR USE. USE OF THE OFFERINGS MAY AFFECT THIRD-PARTY HARDWARE, SOFTWARE, APPLICATIONS, DEVICES, OR SERVICES. YOU MAY HAVE ADDITIONAL RIGHTS UNDER YOUR LOCAL LAWS THAT THE AGREEMENT CANNOT OVERRIDE. IN PARTICULAR, TO THE EXTENT LOCAL LAWS IMPLY STATUTORY TERMS WHICH CANNOT BE EXCLUDED, THOSE LAWS ARE DEEMED INCORPORATED INTO THE AGREEMENT, BUT OUR LIABILITY FOR A BREACH OF THOSE LAWS IS LIMITED IN ACCORDANCE WITH AND TO THE EXTENT PERMISSIBLE UNDER SAID LOCAL LAWS.

- 23. DISCLAIMER OF CERTAIN DAMAGES.** IN NO EVENT WILL WE OR ANY SUPPLIER OR LICENSOR BE LIABLE FOR: (I) ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, DIRECT, INDIRECT, OR PUNITIVE DAMAGES; (II) LOSS OF PROFITS, BUSINESS, GOODWILL, ANTICIPATED SAVINGS, OR USE; (III) LOSS OR CORRUPTION OF DATA, CONFIDENTIAL INFORMATION, OR OTHER INFORMATION; (IV) BUSINESS INTERRUPTION; (V) PERSONAL INJURY; (VI) PROPERTY DAMAGE; (VII) LOSS OF PRIVACY; (VIII) FAILURE TO MEET ANY DUTY OF GOOD FAITH OR REASONABLE CARE; (IX) NEGLIGENCE; AND (X) ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER. THESE LIMITATIONS APPLY EVEN IF SUCH DAMAGES ARISE OUT OF, ARE BASED ON, RESULTS FROM, OR ARE IN ANY WAY RELATED TO THE AGREEMENT AND THE OFFERINGS, EVEN IF WE OR ANY SUPPLIER OR LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS, OR LIABILITY FROM INTENTIONAL ACTS (INCLUDING FRAUD, FRAUDULENT MISREPRESENTATION, AND FAILURE TO DISCLOSE DEFECTS), PRODUCT LIABILITY, OR FOR DEATH OR PERSONAL INJURY. NOTHING IN THIS SECTION 23 WILL BE INTERPRETED AS EXCLUDING LIABILITY WHICH CANNOT UNDER APPLICABLE LAW BE EXCLUDED IN THOSE JURISDICTIONS. IF YOU LIVE, OR ARE OTHERWISE SUBJECT TO THE LAWS OF ONE OF THOSE JURISDICTIONS, ANY STATUTORY ENTITLEMENT AVAILABLE TO YOU WILL BE DEEMED LIMITED TO THE EXTENT (IF AT ALL) PERMISSIBLE UNDER THOSE LAW AND, IF LIMITATIONS ARE NOT PERMITTED, THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 23 MAY NOT APPLY TO YOU.

- 24. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND TO THE EXTENT THEY ARE NOT EXCLUDED OR DISCLAIMED, OUR AND OUR SUPPLIERS' AND LICENSORS' MAXIMUM, AGGREGATE LIABILITY TO YOU, AND YOUR EXCLUSIVE REMEDY UNDER THE AGREEMENT FOR ANY AND ALL DAMAGES, INJURIES, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING OUT OF, BASED ON, RESULTING FROM OR IN ANY WAY RELATED TO THE OFFERINGS WILL BE LIMITED TO THE AMOUNT YOU PAID TO USE THE AFFECTED OFFERINGS IN THE PRIOR YEAR.

THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THE OFFERINGS, OR THE PROVISION (OR FAILURE) TO PROVIDE SUPPORT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES.

EXCEPT FOR DISPUTES IN WHICH EITHER YOU OR WE SEEK TO BRING AN ACTION IN SMALL CLAIMS COURT, YOU AND WE AGREE THAT ANY DISPUTE MUST BE COMMENCED OR FILED BY YOU OR WE WITHIN ONE (1) YEAR OF THE DATE THE DISPUTE AROSE, OTHERWISE THE UNDERLYING CLAIM IS PERMANENTLY BARRED (WHICH MEANS THAT YOU AND WE WILL NO LONGER HAVE THE RIGHT TO ASSERT SUCH CLAIM REGARDING THE DISPUTE).

- 25. INDEMNIFICATION.** You will defend, indemnify, and hold Us harmless, together with Our directors, officers, employees, agents, partners, suppliers, and licensors (collectively, "**Indemnified Parties**") and will keep Us and the Indemnified Parties indemnified from any third party claim or demand,

including reasonable attorneys' fees, relating to or arising from: (i) Your unauthorized use of the Offerings; (ii) any violation by You of the Agreement; (iii) Your violation of any another party's rights or applicable law; or (iv) any User Generated Content or Feedback.

26. RESTRICTED USE. The Offerings were not designed for systems that require fail-safe performance. You may not use the Offerings in any device or system in which a malfunction would result in foreseeable risk of injury or death to any person. This includes operation of nuclear facilities, aircraft navigation or communication systems and air traffic control.

27. CONTRACTING PARTY, GOVERNING LAW AND RESOLVING DISPUTES. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. The party with which You are contracting is set forth in the chart below. The governing law for the 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.

Your location	You are contracting with:	Governing law is:	For resolving disputes, see the following sections:
North or South America	Viverse limited	State of Washington, United States	Section 28
Europe, Middle East or Africa	Viverse limited	England and Wales	Section 29
Australia, New Zealand, or Asia (except for China and the Middle East)	Viverse limited	Taiwan	Section 30

28. DISPUTE RESOLUTION FOR PERSONS LOCATED IN NORTH AND SOUTH AMERICA. If You are located in North or South America, the terms in this Section 28 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 28 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 28 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 28 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 28 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) We may submit any Dispute relating to Our intellectual property rights to any court of competent jurisdiction; and (b) any Dispute concerning the enforceability of this Section 28 shall be resolved by a court having jurisdiction in King County, Washington, U.S.A. (rather than by a Section 28 Arbitrator), and each Party agrees to submit to the personal jurisdiction of such courts, as may be permitted by applicable law.

29. 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 29 shall apply. Except for obtaining injunctive or similar relief from a court of competent jurisdiction or in respect of any claim by Us in relation to any sums owed or alleged to be owed to Us 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 with one arbitrator to be selected by each Party and the third arbitrator to be selected by the other two arbitrators (collectively, "**Section 29 Arbitrators**"). The arbitration shall be conducted in London, England. Any award issued by the Section 29 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 29 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 29 Arbitrators.

30. 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 30 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.

31. INTELLECTUAL PROPERTY NOTICE AND TAKEDOWN PROCEDURES. You agree to respect Our intellectual property rights, and those of Publishers and other third parties. If You believe that material available on the AppStore and HTC Products infringes the copyright of any third party, please notify Our copyright agent by using the notice procedure described within the Intellectual Property Infringement Policy link [here](#). After receiving notice, We may remove or disable access to any potentially infringing material. We have the right to terminate any Account or use of the AppStore for infringement of Our or others' intellectual property rights.

32. LEGAL EFFECT; ENGLISH LANGUAGE. If the laws of the country where You reside do not allow it, the Agreement does not change Your rights under those laws. Also, You may have rights under those laws that are in addition to, or different from, the rights set forth in the Agreement. The official text of the Agreement and any Schedule or other document annexed hereto or any notices given or accounts or statements required hereby shall be in English. In the event of any dispute concerning the

construction or meaning of the Agreement, reference shall be made only to the Agreement as written in English and not to any other translation into any other language.

- 33. COMPLIANCE WITH LAW; EXPORT REGULATIONS.** You will comply with all national and international laws, rules and regulations that apply to Your use of the AppStore and XR Products, as well as end-user, end-use, and destination restrictions issued by U.S. or other governments.
- 34. FORCE MAJEURE.** We are not liable for any delay for failure to perform any obligation under the Agreement where the delay or failure results from Force Majeure. "**Force Majeure**" means an event that arises out of causes beyond Our reasonable control, including, without limitation, acts of god, civil disorder, labor disputes or other industrial disturbances, pandemics, epidemics, 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.
- 35. GENERAL.** The section titles in these Terms are used solely for Your and Our convenience and have no legal or contractual significance. The term "including" or "includes" means "including, without limitation," whether or not specified to be without limitation. Our failure to act with respect to a breach by You does not waive its rights to act with respect to subsequent or similar breaches. No waiver of any provision of the Agreement will be effective unless it is in a signed writing, and no waiver will constitute a waiver of any other provisions or of the same provision on another occasion. If a court of competent jurisdiction holds any term, covenant or restriction of the 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. You may not assign, transfer or sublicense Your rights under the Agreement. The Agreement will be binding upon all of Our successors and assigns.
- 36. ENTIRE AGREEMENT.** These Terms, any Additional Terms, and all agreements or policies incorporated by reference herein comprise the entire agreement governing Your use of the AppStore and XR Products.
- 37. NOTICES.** Viverse may modify these Terms and any Additional Terms from time to time. We may, but are not required to, provide You notice of these modifications through the Services or via other means We select. Your continued use of the AppStore following the posting of revised Terms or Additional Terms means that You accept and agree to those revised Terms or Additional Terms. Modifications will become effective and will be deemed accepted on the date they are posted. If You do not agree with the modifications, You must terminate Your use of the Services, which will be Your sole and exclusive remedy.

39. CONTACT INFORMATION. If You have any questions about these Terms, please direct all notices and correspondence to:

Viverse Limited
Attn:Legal Department
10 Earlsfort Terrace, Dublin 2,
Dublin, D02 T380,
Ireland

with a copy to:

Viveport Digital Corporation
Attn: Legal Department
No. 88, Section 3, Zhongxing Road
Xindian Dist., New Taipei City 231
Taiwan

SCHEDULE 1

DATA PROCESSING DETAILS

1. SUBJECT-MATTER OF THE PROCESSING:

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

2. NATURE AND PURPOSE OF THE PROCESSING:

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

3. DURATION OF PROCESSING:

Our processing of Personal Data 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:

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

- Identity data about Authorized Users, including (but not limited to) first name, last name, date of birth, gender, email address, and organization name and address.
- Usage data (e.g. location, timezone settings, language, device information)
- Event or conference meeting information;
- User Generated Content; and
- Personal Data: (i) contained within 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 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: Viverse Limited (and its affiliates)

Address: 10 Earlsfort Terrace, Dublin 2, Dublin, D02 T380, Ireland

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 Member State' means one of the twenty-seven (27) member states that make up the European Union;

'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

'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 Services and HTC Products are set forth in HTC Corporate Information Security Policy.