

End User Licence Agreement for the CustomerMinds Platform

IMPORTANT NOTICE: PLEASE READ CAREFULLY BEFORE USING THE CUSTOMERMINDS PLATFORM.

BY ACCESSING THE PLATFORM YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, WE WILL NOT LICENSE THE PLATFORM AND DOCUMENTS TO YOU AND YOU MUST DISCONTINUE USE.

This licence agreement (the “**Licence**”) is a legal agreement between you and CustomerMinds Limited having its registered office at 20 Harcourt Street, Dublin 2, D02 H364, Ireland which shall include all or any of its subsidiaries, agents, successors or assigns (“**Licensor**” or “**we**”). This Licence will govern your access to the CustomerMinds Which50 platform (the “**Platform**”) and the associated media, printed materials and online or electronic documentation provided therewith (the “**Documentation**”).

1. GRANT AND SCOPE OF LICENCE

- 1.1 In consideration of the ongoing payment of the licence and support fees by your organisation, the Licensor hereby grants to you a non-exclusive, non-transferable, revocable, temporary licence to use the Platform and the Documentation on the terms of this Licence.
- 1.2 Your use of the Platform and the Documentation is subject to the terms of this Licence.

2. RESTRICTIONS

- 2.1 Except as expressly set out in this Licence you undertake:
 - (a) not to copy the Platform or Documentation except where such copying is incidental to normal use of the Platform or where it is necessary for the purpose of back-up or operational security;
 - (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Platform or Documentation;
 - (c) not to make alterations to, or modifications of, the whole or any part of the Platform nor permit the Platform or any part of it to be combined with, or become incorporated in, any other programs;
 - (d) not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Platform nor attempt to do any such things except to the extent that (by virtue of mandatorily applicable copyright law) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Platform with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the Platform with another software program;
 - (ii) is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
 - (iii) is not used to create any software which is substantially similar to the Platform;

- (e) to replace the current version of the Platform with any updated or upgraded version or new release provided by the Licensor under the terms of this Licence immediately on receipt of such version or release; and
- (f) not to provide, or otherwise make available, the Platform in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from the Licensor.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 You acknowledge that all intellectual property rights in the Platform and the Documentation throughout the world belong to the Licensor, that rights in the Platform are licensed (not sold) to you, and that you have no rights in, or to, the Platform or the Documentation other than the right to use them in accordance with the terms of this Licence.
- 3.2 You acknowledge that you have no right to have access to the Platform in source code form or in unlocked coding or with comments.
- 3.3 The integrity of the Platform is protected by technical protection measures (**TPM**) so that the intellectual property rights, including copyright, in the Platform of the Licensor are not misappropriated. You must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in your possession for private or commercial purposes, any means whose intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

4. WARRANTY

- 4.1 You warrant that:
 - (a) you acknowledge that the Platform has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Platform as described in the Documentation meet your requirements; and
 - (b) you acknowledge that the Platform may not be free of bugs or errors and you agree that the existence of any minor errors shall not constitute a breach of this Licence.

5. LICENSOR'S LIABILITY

- 5.1 This Clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:
 - (a) any breach of this Licence however arising;
 - (b) any use made of the Platform or the Documentation by you; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Licence.
- 5.2 Nothing in this Licence shall limit or exclude the liability of either party for:
 - (a) death or personal injury resulting from negligence;
 - (b) fraud or fraudulent misrepresentation, or;

- (c) breach of any terms which, by mandatory applicable law, cannot be excluded by contract.
- 5.3 Without prejudice to Clause 5.2, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of income, loss of business profits or contracts, business interruption, loss of the use of money or anticipated savings, loss of information, loss of opportunity, goodwill or reputation, loss of, damage to or corruption of data or any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.
- 5.4 Subject to Clauses 5.2 and 5.3, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to 100% of the sum paid by your organisation in respect of your subscription to use the Platform.
- 5.5 Subject to Clauses 5.2, 5.3 and 5.4, the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in Ireland.
- 5.6 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Platform and Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Platform and Documentation which might otherwise be implied into, or incorporated in, this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

6. **TERMINATION**

- 6.1 The Licensor may terminate this Licence immediately by written notice to you if:
 - (a) you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so;
 - (b) you commit a breach of this licence which infringes the intellectual property rights of the Licensor; or
 - (c) the licence agreement between Licensor and your organisation is terminated for any reason.
- 6.2 Upon termination for any reason:
 - (a) all rights granted to you under this Licence shall cease;
 - (b) you must cease all activities authorised by this Licence;
 - (c) you must immediately delete or remove the Platform from all computer equipment in your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Platform then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so.

7. **TRANSFER OF RIGHTS AND OBLIGATIONS**

- 7.1 This Licence is binding on you. You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent.
- 7.2 The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of his rights or obligations arising under it, at any time during the term of the Licence.

8. **EVENTS OUTSIDE THE LICENSOR'S CONTROL**

- 8.1 The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under this Licence that is caused by an event outside his reasonable control (a "**Force Majeure Event**").
- 8.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
- (a) strikes, lock-outs or other industrial action;
 - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
 - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (e) impossibility of the use of public or private telecommunications networks;
 - (f) the acts, decrees, legislation, regulations or restrictions of any government.
- 8.3 The Licensor's performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and he will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this Licence may be performed despite the Force Majeure Event.

9. **WAIVER**

- 9.1 If the Licensor fails, at any time during the term of this Licence, to insist on strict performance of any of your obligations under this Licence, or if the Licensor fails to exercise any of the rights or remedies to which he is entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.
- 9.2 A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.
- 9.3 No waiver by the Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

10. **SEVERABILITY**

- 10.1 If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will

to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

11. **LAW AND JURISDICTION**

- 11.1 This Licence shall be governed by and construed in accordance with the laws of Ireland.
- 11.2 Each of the parties to this Agreement irrevocably agrees that the courts of Ireland are to have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement and, for such purposes, irrevocably submits to the non-exclusive jurisdiction of such courts. Any proceeding, suit or action arising out of or in connection with this Agreement (the "**Proceedings**") may therefore be brought in the courts of Ireland.
- 11.3 Each of the parties to this Agreement irrevocably waives any objection to Proceedings in the courts referred to in Clause 11.2 on the grounds of venue or on the grounds of *forum non conveniens*.