



ENGAGE SOLUTIONS ORDER

Engage Solutions Group Limited
("Engage")
1 Scott Place
2 Hardman Street
Manchester
M3 3AA
Company no: 03780161

[●]
(the "Client")
[ADDRESS]
Company no: [COMPANY
NUMBER]

Effective Date: [●]

This Order is subject to and should be read in accordance with the Standard Terms which are attached to this Order.

Item Type	ID#	Description	Amount	Total
SaaS Subscriptions				
				£
				£
[Additional/Consultancy Services]				
				£
				£

Payment Terms: Subscription Fees due within 30 days of the Effective Date. Services shall be invoiced in arrears for actual hours worked, plus any agreed expenses, and payment will due within 30 days of the date of the invoice. All amounts shown are ex VAT.

Term: 36 months from the Effective Date with self-repeating 12 month terms from the end of the first 12 month term (subject to termination in accordance with the Standard Terms) (the "Term"). Notice of intention not to renew must be received more than 2 months in advance of the next renewal date.

Signature: Name: Title: Date:	Signature: Name: Title: Date:
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ENGAGE SOLUTIONS GROUP LIMITED

STANDARD TERMS

These standard terms (the "Terms") are legally binding on the parties and shall govern all orders executed by the Client for Engage Solutions Group Limited ("Engage") products or services.

The Client should read these Terms carefully before executing any Orders.

- (A) Engage has developed the Employee Engage App (the "**Solution**") to provide a SaaS solution to its customers.
- (B) The Client wishes to use Engage's SaaS Solution and Engage has agreed to provide the Client with the right to access and use Engage's SaaS Solution subject to these Terms.

These Terms and the Order (together, the "**Agreement**") are a legal agreement between the Client and Engage for access to and use of the Services.

Engage grants the Client to right to use and receive the Services on the basis of this Agreement.

AGREED TERMS

1. Definitions

"Business Day" means any day which is not a Saturday, Sunday or a public holiday in the UK;

"Charges" means the charges which the Client shall pay to Engage in accordance with this Agreement which are specified in each Order;

"Client Data" the data and content inputted by the Client or individual users of the Solution for the Purpose including any Client Materials which are inputted or used in respect of the Services and any personal data in respect of which Client is the controller;

"Client Materials" means the Client's name, trade marks, branding, content and all other materials and documentation provided by the Client (whether owned by the Client or its licensors);

"Confidential Information" means information that is proprietary or confidential and is either clearly labelled as such or ought reasonably to be treated as confidential by virtue of its nature or the nature of its disclosure;

"Consultancy Services" means any services specified as such in the Order;

"Documentation" means the documentation describing the Solution's functionality that is provided by Engage for users of the Solution as updated from time to time to incorporate updates to the Solution;

"Effective Date" means the date of entry into this Agreement by the parties as shown on the Order;

"Intellectual Property Rights" patents, petty patents, utility models, trade marks, design rights, applications for any of the foregoing, copyright, moral rights, database rights, semi-conductor topography rights, trade or business names, whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;

"Normal Business Hours" means 9:00am to 5:00pm local UK time each Business Day;

"Order" means the document entitled Engage Solutions Order attached to these Terms or which otherwise references these Terms;

"Purpose" means to facilitate internal communication between the Client and the Client's staff;

"Services" means the services provided by Engage to the Client under this Agreement which consists of:

- (a) the SaaS subscription services as described in the Documentation and Engage's standard customer support services as described in Engage's Maintenance and Support Policy (the "Maintenance and Support Services") which can be found at www.employeeapp.com (the "Maintenance and Support Policy"); and
- (b) any additional services specified in an Order;

"Virus" means any thing or device which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; and

"Warranty Period" has the meaning given in clause 7.1.

2. Client's Right to Use the Employee Engage Solution

2.1 The Client shall have the right to access and use the Solution from the Effective Date throughout the Term (including the right to permit the Client's staff to access and use the Solution for the Purpose).

2.2 The Client shall not knowingly access, store, distribute or transmit any Virus or any material as part of its use of the Services that are illegal, unlawful, defamatory or infringe the rights of any third party and shall ensure that the Client's use of the Services is in accordance with applicable laws and does not infringe any third party rights.

2.3 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Engage.

3. Services

3.1 Engage shall perform the SaaS subscription services in accordance with the Documentation in all material respects and shall perform the Maintenance and Support Services in accordance with the Maintenance and Support Services Policy in all material respects and shall use commercially reasonable efforts to make the Solution available 24 hours a day, 7 days a week.

3.2 Engage and the Client shall have the rights and obligations set out in the Documentation and the Maintenance and Support Policy.

3.3 Access to the Services is only available to the Client subject to the Client's compliance with these Terms and payment of the Charges when due under this Agreement.

4. Client data

- 4.1 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data which it introduces including any consents or licences which are necessary for uploading, use and processing of the Client Data by the Solution.
- 4.2 The Client is fully liable if the Client Data infringes any third party rights (including Intellectual Property Rights) or does not comply with applicable law, and accordingly, the Client shall indemnify, defend and hold harmless Engage for all claims and losses related to such infringement and/or illegality.
- 4.3 If Engage on its own or through any third party has notice that any Client Data is in violation of any law or infringes third party rights (including any Intellectual Property Rights), Engage shall have the unfettered right to immediately suspend access to such data without prior notice and without liability to the Client.

5. Data Protection

- 5.1 Engage shall process any personal data in respect of which the Client is the controller in accordance with Engage's Data Protection Policy which can be found at www.employeeapp.com (the "**DP Policy**"). Engage and the Client shall have the rights and obligations set out in the DP Policy.

6. Third party providers

- 6.1 The Client acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Engage makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not Engage. Engage recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Engage does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. Engage's obligations

- 7.1 Engage warrants that the Solution will conform to the Documentation in all material respects for a period of 90 days following the Effective Date (the "**Warranty Period**"). Engage shall use commercially reasonable efforts to correct any failure in the Solution to conform to its Documentation during the Warranty Period. If the Solution fails to conform in all material respects to its Documentation during the Warranty Period, and Engage does not remedy such failure within a reasonable time, the Client may terminate the relevant Order(s) during the Warranty Period, or within 90 days after the end of the Warranty Period for failures reported prior to the end of the Warranty Period, by giving Engage written notice. Upon such termination, and as the Client's sole and exclusive remedy for such failure, Engage shall promptly refund to the Client all Charges paid under the relevant Order(s) in respect of the SaaS subscriptions.
- 7.2 Clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services

contrary to Engage's instructions, or modification or alteration of the Services by any party other than Engage or Engage's duly authorised contractors or agents without Engage's consent.

- 7.3 Notwithstanding the foregoing, Engage is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

8. Client's obligations

- 8.1 The Client shall ensure that each individual user of the Services who accesses and uses the Services on behalf of or when under the direction or control of the Client, shall use the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any breach of this Agreement which is caused by an individual user of the Services:

9. Charges and payment

- 9.1 The Client shall pay the Charges to Engage in accordance with the payment terms specified in the Order.
- 9.2 All amounts and fees stated or referred to in this Agreement are:
- 9.2.1 subject to clauses 7.1, 14.3 and the terms of the Order, non-cancellable and non-refundable; and
- 9.2.2 exclusive of value added tax or sales tax if applicable (which shall be paid in addition to the Charges by the Client).
- 9.3 The Client shall have the right to increase the number of individual users of the Services at any time, and where it elects to do so, the Charges shall automatically be increased on a per-individual user basis and calculated on a pro-rata basis for the remainder of the Term
- 9.4 Engage shall be entitled to increase the Charges with effect from the start of each anniversary of the Effective Date by serving no less than 30 days' written notice to the Client. The rate of the annual increase will not exceed the increase in the UK Office for National Statistics' All-Items Retail Price Index for the United Kingdom plus 10%.
- 9.5 If the Client does not pay any undisputed invoice or materially breaches the terms of this Agreement, Engage shall be entitled without liability, upon 30 days written notice to the Client, to suspend Client's access to the Services. If the amounts invoiced remain unpaid at the expiration of such period Engage may terminate this Agreement. In the case of termination or suspension of Services, Engage reserves the right to impose a reasonable reconnection charge if the Client wishes to resume its use of the Services.
- 9.6 If the Client requests the return or recovery of Client Data, Engage may agree to return or (if it can) recover such data but only upon the Client paying Engage its then current daily rate charges for undertaking such work.
- 9.7 Provided that the Client has preapproved such expenses in writing, Engage shall invoice the Client for expenses incurred in providing the Services, such invoices to be paid by the Client in accordance with the payment terms specified in the Order. Engage shall provide receipts for such expenses upon request.

10. Proprietary rights

- 10.1 The Client acknowledges and agrees that Engage and/or its licensors own all Intellectual Property Rights in the Solution and the Services. Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, any Intellectual Property Rights or any other rights or licences in respect of the Solution or the Services.
- 10.2 Engage confirms that it has all the rights in relation to the Solution and Services that are necessary to grant all the rights it purports to grant the Client the right to use the Solution and to use and receive the Services in accordance with this Agreement.

11. Confidentiality

- 11.1 A party's Confidential Information shall not be deemed to include information that:
- 11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 11.1.2 was in the other party's lawful possession before the disclosure;
- 11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 11.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of and performs of its obligations under this Agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.4 The Client and Engage acknowledge and agree that:
- 11.4.1 any information which is specific to the Client arising from the Client's use of the Services (including Client Data) shall be deemed, in accordance with clause 4.1, the exclusive property and Confidential Information of the Client and shall only be used by Engage for the purpose of providing the Services to the Client and subject to the provisions of this clause 11;
- 11.4.2 notwithstanding clause 11.4.1, Engage shall be entitled and shall have the right at all times to use non-personal, macro-level, operational information generated from the Client's use of the Services for the purposes of monitoring, analysing and reporting on trends on an aggregated basis provided always that such analysis shall not incorporate any information which is specific to any of the Client's current or previous employees or customers and in doing so will never disclose the Client's Confidential Information or Intellectual Property Rights to any third party.
- 11.5 This clause 11 shall survive termination of this Agreement, however arising.

12. Liability and Indemnities

- 12.1 Engage shall defend, indemnify and hold harmless the Client, its officers, directors and employees against any claim, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) that the Services infringe Intellectual Property Rights, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- 12.1.1 Engage is given prompt notice of any such claim;
- 12.1.2 the Client provides reasonable co-operation to Engage in the defence and settlement of such claim, at Engage's expense; and
- 12.1.3 Engage is given sole authority to defend or settle the claim.
- 12.2 In the defence or settlement of any claim, Engage may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 20 Business Days' notice to the Client without liability to the Client. In the event of termination any fees pre-paid that relate to any period post termination will be re-funded within seven Business Days of termination.
- 12.3 In no event shall Engage, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 12.3.1 any Client Data;
- 12.3.2 a modification of the Services by anyone other than Engage (or a third party authorised by Engage); or
- 12.3.3 the Client's use of the Services in a manner contrary to the instructions given to the Client by Engage in writing; or
- 12.3.4 the Client's use of the Services after notice of the alleged or actual infringement from Engage or any appropriate authority.
- 12.4 The foregoing and clause 13.4.2 states the Client's sole and exclusive rights and remedies, and Engage's (including Engage's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.
- ## 13. Limitation of liability
- 13.1 This clause 13 sets out the entire financial liability of Engage (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:
- 13.1.1 arising under or in connection with this Agreement;
- 13.1.2 in respect of any use made by the Client of the Services or any part of them; and
- 13.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2 Nothing in this Agreement excludes the liability of either party:
- 13.2.1 for death or personal injury caused by that party's negligence; or
- 13.2.2 for fraud or fraudulent misrepresentation.
- 13.3 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common

law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

13.4 Subject to clause 13.2:

13.4.1 neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any: (i) loss of profits; (ii) loss of business; (iii) depletion of goodwill and/or similar losses; or (iv) loss or corruption of data or information; (v) pure economic loss; , or (vi) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

13.4.2 Engage's total aggregate liability in contract (including in respect of the indemnity at clause 12.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of: £12000 or the total Charges paid during the 12 months immediately preceding the date on which the claim arose (save in respect of any breach of the DP Policy which shall be limited to £500,000 in aggregate).

13.4.3 the Client's total annual aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of: the total Subscription Fees due during the 12 months immediately preceding the date on which the claim arose or the total amount of Charges payable under the Order (being 12 x the monthly charge).

13.5 The limitations and exclusions in this clause 13 shall not apply to non-payment of the Charges by the Client, breach of clause 2.2 or the indemnity at clause 4.2 (and shall not count towards the cap in clause 13.4.3).

14. Term and termination

14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14 commence on the Effective Date and shall continue for the Term, unless:

14.1.1 Client notifies Engage of its decision to terminate this Agreement in accordance with the terms of the Order; or

14.1.2 otherwise terminated in accordance with the provisions of this Agreement.

14.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

14.2.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

14.2.2 the other party ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or undergoes any similar process in any jurisdiction; or

14.2.3 a force majeure event continues, or is anticipated to continue for more than 90 Business Days (as per clause 15 below).

14.3 On termination of this Agreement for any reason:

14.3.1 all licences granted under this Agreement shall immediately terminate;

14.3.2 each party shall make no further use of any documentation and other items (and all copies of them) belonging to the other party;

14.3.3 Engage may destroy any of the Client Data in its possession after giving reasonable notice of its intention to the Client; and

14.3.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14.3.5 any Charges pre-paid that relate to any period post termination will be re-funded within seven Business Days of termination.

15. Force majeure

Neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement by events outside its reasonable control (other than failure to pay the Charges). If such an event prevents Engage from performing the Services, the Client will be entitled to a refund on a pro-rata basis of Charges paid in respect of such period.

16. Waiver

16.1 No failure or delay, on the part of either party in enforcing this Agreement shall be or shall be deemed to be a waiver of or in any way prejudice any right of that party under this Agreement. Any waiver by either party of any of its rights under this Agreement must be in writing.

16.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

17. Severance

If any provision or part provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

18. Entire agreement

Except in respect of any fraudulent misrepresentation, this Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous representations, writings, negotiations or understandings, either written or oral, relating to the subject matter of this Agreement. In the event of any conflict between these Terms and an Order, these Terms shall prevail. Engage shall be entitled to amend the Maintenance and Support Policy, the Documentation and the DP Policy from time to time and the amended documents shall be displayed on Engage's website.

19. Assignment

Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in

any other manner with all or any of its rights or obligations under this Agreement.

20. No partnership or agency

Nothing in this Agreement is intended to create a joint venture, partnership, agency or employment relationship between the parties.

21. Third party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999. Neither party shall require the consent of any third party to vary the terms of or to rescind this Agreement.

22. Notices

- 22.1 Notices shall be in writing and delivered to the other party at its address in the Order (or any other address which it provides). Notices delivered by hand are delivered on the date of delivery and notices sent by first-class post are deemed delivered on the second Business Day after posting.

23. Governing law and jurisdiction

- 23.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 23.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).