

Customer CLICK WRAP SOFTWARE AS A SERVICE AGREEMENT (January 2018)
Copy of the version included in the installation program

This agreement (**Agreement**) contains the terms and conditions that govern Your access to and use of the Services (as defined below) and is an agreement between the Provider (as defined below) and you or the entity you represent (**You or Your**). This Agreement takes effect when You click the "I Accept" button presented with these terms or, if earlier, when You use any of the Services (**Effective Date**). If You are entering into this Agreement for an entity, such as the company You work for, You represent to the Provider that You have legal authority to bind that entity. Please see Section 16 for definitions of certain capitalised terms used in this Agreement.

This is an Agreement for Services. You are not granted a licence to any software by this Agreement. Payment of Your Invoice and Your acceptance of these terms allow You to access the Services through the Internet.

1. Use of the Services.

- 1.1 **Generally.** You may access and use the Services in accordance with this Agreement. You will adhere to all laws, rules, and regulations applicable to Your use of the Services, including the Acceptable Use Policy.
- 1.2 **Access.** The right to use the Services is limited to the number of Users whose details You have registered with the Provider and to the period set out in Your Invoice and for such additional or replacement Users registered with the Provider from time to time in respect of whom You have paid an additional Subscription Fee where applicable.
- 1.3 **Your Responsibilities.** You are responsible for the use of the Services by and any actions of Users and for ensuring that each User complies with this Agreement and other documents referred to in this Agreement.
- 1.4 **Restrictions on use.** You agree not to i) use, copy, modify, make derivative works based upon, link to, or distribute any portion of the Services and their components except as expressly provided in this Agreement; ii) disassemble, reverse engineer, analyze, decompile, modify, convert or otherwise translate any of the Services and their components except as specifically permitted by law without the possibility of contractual waiver; iii) apply any procedure or process to the Services in order to build a competitive product or service; iv) build a product using similar ideas, features, functions or graphics of the Services, or copy any ideas, features, functions or graphics of the Services; v) link to the Services or Applications via the Internet, displaying any content on any other server or wireless or Internet-based device, without properly citing the Provider as the owner or expressed written consent from the Provider; vi) use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that accesses the Services in a manner that sends more request messages to the Provider's servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; or vii) collect or harvest any sensitive information, including personal information and account names, from the Provider.
- 1.5 You agree to use components of the Services only as part of the Services. You agree not to license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party direct access to any Services and their components without the express written consent of the Provider and any attempt to do so is void.

2. Third party Infrastructure.

The Services are provided on a shared third-party infrastructure environment. It is acknowledged that the Provider's contractual obligations hereunder will in part be performed by Microsoft Corporation or such other third-party provider which the Provider may from time to time engage to provide the infrastructure upon which the Services are provided. You acknowledge and agree to act in strict accordance with the additional terms and conditions of the third-party infrastructure provider and its licensors from time to time on the Microsoft web site, the current version of which is set out here <http://azure.microsoft.com/en-us/support/legal/services-terms/> as 'Microsoft Azure Services Terms'.

3. Data

- 3.1 You acknowledge and agree, that the Provider will not (save as set out in the Privacy Policy), at any time, act as Your Data Controller, but will solely comply with laws to the extent applicable to the Provider as a general provider of information technology services and, if applicable, Data Processor who processes the data on behalf of the Data Controller), subject to the following conditions:
 - (a) The Services are not designed to comply with any particular law or regulations. You are solely responsible for complying with laws, rules, and regulations that may be applicable to Your use of the Services.
 - (b) You represent, that none of Your Data, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical, biological weapons, missile projects, or terrorist activities, unless specifically authorized by the United States government or appropriate European body for such purposes. You further represent that Content will not, in whole or part, be controlled under the U.S. International Traffic in Arms Regulation (ITAR). You are prohibited from exporting, re-exporting, diverting transfer, disclosing or permitting access to any portion of the Service, Content, or related Documentation, directly or indirectly, in violation of such export and import laws and regulations.

- 3.2 Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate applicable law.

4. Access to applications/databases

- 4.1 If the Provider discovers that Your use of the Services is impeding the provision of services by the Provider in any way, or otherwise adversely affecting the infrastructure that the Provider's Services are provided on, You hereby grant the Provider access by proxy login to an application or account so the Provider may investigate applications and/or accounts and the problems that it may be causing. During this investigation, services to said applications and/or accounts may not be accessible.
- 4.2 In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect You and the Provider's systems, or to ensure the integrity and operation of the Provider's business and systems, the Provider may access and disclose any information it considers necessary or appropriate, including, without limitation, User profile information (i.e. name, e-mail address, etc.), IP addressing and traffic information, usage history, and Your Content.

5. Confidentiality

- 5.1 You acknowledge that since the Services use a public Internet environment, the Provider cannot commit to particular confidentiality obligations regarding any Content or Your confidential information You add to or use in the Services. Except as set out herein, the Provider assumes no additional confidentiality obligations regarding Content, regardless of the terms in the Agreement or any separate confidentiality agreement between You and the Provider.
- 5.2 For Services where the Provider specifically has sole access to Infrastructure or Services, or where the Provider or subcontractor personnel have direct access to Content and such Content is clearly identified as confidential to You, the Provider will:
- (a) use the same care and discretion to avoid disclosure of Your confidential information as it uses to avoid disclosure of its own similar information;
 - (b) disclose Your confidential information only to its employees who have a need to know to provide the Services; and
 - (c) disclose Your confidential information to subcontractors who have a need to know to provide the Services and the Provider will have appropriate agreements in place with its subcontractors to meet the confidentiality obligations as set out in this section.
- 5.3 The Provider may disclose Your confidential information to the extent required by law. However, the Provider will, to the extent possible, give You prompt notice to allow You a reasonable opportunity to obtain a protective order.
- 5.4 The Provider is under no obligation in respect of any information identified as Your confidential information that is:
- (a) already in the Provider's possession without obligation of confidentiality;
 - (b) developed independently;
 - (c) obtained from a source other than its exposure during the provision of the Services without obligation of confidentiality;
 - (d) publicly available through no fault of the Provider; or
 - (e) disclosed by You to another without obligation of confidentiality.
- 5.5 The Provider is free to use in its business activities the ideas, concepts and know-how contained in any Content which are retained in the unaided memories of the Provider's employees who have had access to Your confidential information during the performance of the Services.

6. Privacy

- 6.1 Unless otherwise set out in this Agreement and to the extent applicable for the specific Service, the Provider will provide the Services in accordance with its then current version of the Privacy Policy that can be found at the Provider Web Portal.

7. Your Content

- 7.1 **You are solely responsible** for the development, content, operation, maintenance, and use of Your Content. For example, You are solely responsible for:
- (a) the technical operation of Your Content, including ensuring that calls You make to any Service are compatible with then-current APIs for that Service;
 - (b) compliance of Your Content with the Acceptable Use Policy, the Privacy Policy and the law;
 - (c) any claims relating to Your Content; and
 - (d) properly handling and processing notices sent to You (or any of Your affiliates) by any person claiming that Your Content violates such person's rights.
- 7.2 **Other Security and Backup.** You are responsible for properly configuring and using the Services and taking Your own steps to maintain appropriate security, protection and backup of Your Content, which may include the use of encryption technology to protect Your Content from unauthorised access and routine archiving Your Content. Log-in credentials and private keys generated by the Services are for Your internal use only and You may not sell, transfer or sublicense them to any other entity or person, except that You may disclose Your private key to Your agents and subcontractors performing work on Your behalf.

7.3 **User Violations.** You will be deemed to have taken any action that You permit, assist or facilitate any person or entity to take related to this Agreement, Your Content or use of the Services.

8. Fees and Payment

8.1 **Payments and Taxes.** Unless otherwise set out in the respective Invoice, the total nonrefundable, noncancellable services fees for each Subscription are to be fully prepaid at the beginning of the respective term, or, if applicable, any renewal term. You will pay all sales, use, VAT, and other consumption taxes, personal property taxes and other taxes (other than those based on the Provider's net income) unless You provide satisfactory proof of exemption.

8.2 **Pricing.** The Provider reserves the right to modify the pricing for any Service at any time for any renewal term and will notify You accordingly.

9. Temporary Suspension

9.1 **Generally.** The Provider may suspend Your or any User's right to access or use any portion or all of the Services immediately upon notice to You if the Provider determines:

(a) Your or a User's use of or subscription to the Services (i) poses a security risk to the Services or any third party, (ii) may adversely impact the Services or the systems or Content of any other Provider customer, (iii) may subject the Provider, or any third party to liability, or (iv) may be fraudulent;

(b) You are, or any User is, in breach of this Agreement, including if any payment due from You is outstanding for more than 15 days; or

(c) You have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

9.2 **Effect of Suspension.** If the Provider suspends Your right to access or use any portion or all of the Services You remain responsible for:

(a) all fees and charges You have incurred during the period of suspension;

(b) any applicable fees and charges for any Services to which You continue to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension;

The Provider's right to suspend Your or any User's right to access or use the Services is in addition to its right to terminate this Agreement pursuant to Section 10.

10. Term and Termination

10.1 **Term.** The term of this Agreement will commence on the Effective Date and will continue for the term set out in the applicable Invoice subject to earlier termination as set out in Section 10.2.

10.2 Termination.

(a) **Termination for Convenience.** You may terminate this Agreement for any reason by providing notice and closing Your account for all Services for which there is an account closing mechanism.

(b) **Termination for Cause.**

(i) **By Either Party.** Either party may terminate this Agreement for cause upon 30 days advance notice to the other party if there is any material default or breach of this Agreement by the other party which is capable of remedy, unless the defaulting party has remedied the material default or breach within the 30 day notice period.

(ii) **By the Provider.** The Provider may terminate this Agreement immediately upon notice to You (A) for cause, if any act or omission by You or any User results in a suspension described in Section 9.1, (B) if the Provider's relationship with a third party partner who provides software or other technology the Provider uses to provide the Services expires, terminates or requires the Provider to change the way the Provider provides the software or other technology as part of the Services, (C) in order to comply with the law or requests of governmental entities.

10.3. Effect of Termination.

(a) **Generally.** Upon any termination of this Agreement:

(i) all Your rights under this Agreement immediately terminate;

(ii) You remain responsible for all fees and charges You have incurred up to and including the date of termination, together with fees and charges for in-process tasks completed after the date of termination;

(iii) the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after termination shall remain in full force and effect.

(b) **Post-Termination Assistance.** Unless the Provider terminates Your use of the Services pursuant to Section 10.2(b), during the 30 days following termination:

(i) the Provider will not erase any of Your Content as a result of the termination;

(ii) You may retrieve Your Content from the Services only if You have paid any charges for any post-termination use of the Services and all other amounts due; and

(iii) the Provider will provide You with the same post-termination data retrieval assistance that the Provider generally makes available to all customers.

11. Proprietary Rights

- 11.1 **Your Content.** As between You and the Provider, You own all right, title, and interest in and to Your Content. Except as provided in this Section 11, the Provider obtains from You no rights under this Agreement to Your Content, including any related intellectual property rights. You consent to the Provider's use of Your Content to provide the Services to You and any Users. The Provider may disclose Your Content to provide the Service Offerings to You or any Users or to comply with any request of a governmental or regulatory body.
- 11.2 **Adequate Rights.** You represent and warrant to the Provider that: (a) You own all right, title, and interest in and to Your Content; (b) You have all rights in Your Content necessary to grant the rights contemplated by this Agreement; and (c) none of Your Content, or Users use of Your Content or the Services will violate the Acceptable Use Policy.
- 11.3 **Service Licence.** As between You and the Provider, the Provider or its licensors own and reserve all right, title, and interest in and to the Services. The Provider grants You a limited, revocable, nonexclusive, nonsublicensable, nontransferable licence to do the following during the Term: (i) access and use the Services solely in accordance with this Agreement; and (ii) copy and use the Provider Content solely in connection with Your permitted use of the Services. Except as provided in this Section 11.3, You obtain no rights under this Agreement from the Provider or its licensors to the Services, including any related intellectual property rights.

12. Changes

- 12.1 **Agreement and Service Changes.** The Provider may from time to time add new options or functions to its Services, or in its reasonable discretion, change Agreement terms or withdraw existing options or functions of the Services, in whole or in part. The Provider will notify You of any such new or changed Services, terms or withdrawals and the effective date of such changes by posting a notice in the Provider Web Portal or providing notice directly to the Account Administrator using current contact information as provided by You. You are responsible for logging into the Provider Web Portal periodically to review any such change notifications. Notwithstanding the above, if the Provider withdraws a Service in its entirety from the market, the Provider will provide at least three months' written notice to You.
- 12.2 **Acceptance of Changes.** You acknowledge agreement to any of the above changes to the Agreement or the Services by, after the effective date of a respective change, i) continuing to use or renewing Your subscription to the Services, ii) allowing automatic renewal of the Services; or iii) otherwise by signing (in writing or electronically, where permitted) an applicable revised attachment or other change authorization mechanism that the Provider may provide (such as on-line acceptance).
If You do not accept a change, You are responsible for discontinuing use of affected Services prior to the effective date of the change or providing written notice of Your intent not to renew at least thirty days prior to a renewal date.
- 12.3 **Changes of Acceptable Use Policy.** The Provider reserves the right to change its Acceptable Use Policy from time to time. Changes will be made by posting a new version at the Provider Web Portal. You agree to periodically review the website for changes to the Acceptable Use Policy. You agree to and accept any modified terms by continuing to use the Services after the changes are posted and effective. A change will take effect upon the effective date specified in such notice or posting.

13. Limitation of Liability

- 13.1 This clause 13 sets out the entire financial liability of the Provider (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You:
(a) arising under or in connection with this Agreement;
(b) in respect of any use made by You of the Services and Documentation or any part of them; and
(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2 Except as expressly and specifically provided in this Agreement:
(a) You assume sole responsibility for the results You obtain from the use of the Services and the Documentation and for conclusions drawn from such use. The Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Provider by You in connection with the Services, or any actions taken by the Provider at Your direction;
(b) 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; and
(c) the Services and the Documentation are provided to You on an "as is" basis.
- 13.3 Nothing in this agreement excludes the liability of the Provider:
(a) for death or personal injury caused by the Provider's negligence; or
(b) for fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.2 and clause 13.3:
(a) the Provider shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or

for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

(b) the Provider's total aggregate liability in contract (including in respect of the indemnity at clause 14.2), 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 125% of the total subscription fees paid by You during the 12 months immediately preceding the date on which the claim arose.

(c) Any claim, demand or cause of action relating to this Agreement will be deemed barred and forever waived if legal action or arbitration is not commenced with respect to such claim, demand or cause of action within two (2) years after the aggrieved party first acquires actual notice of such claim, demand or cause of action.

14. Indemnity

14.1 You shall defend, indemnify and hold harmless the Provider against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your use of the Services and/or Documentation, provided that:

(a) You are given prompt notice of any such claim;

(b) the Provider provides reasonable co-operation to You in the defence and settlement of such claim, at Your expense; and

(c) You are given sole authority to defend or settle the claim.

14.2 The Provider shall defend You, Your officers, directors and employees against any claim that the Services or Documentation infringe any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:

(a) the Provider is given prompt notice of any such claim;

(b) You provide reasonable co-operation to the Provider in the defence and settlement of such claim, at the Provider's expense; and

(c) the Provider is given sole authority to defend or settle the claim.

14.3 In the defence or settlement of any claim, the Provider may procure the right for You to continue using the Services, replace or modify the Services so that they become noninfringing or, if such remedies are not reasonably available, terminate this agreement on 2 days' notice to You without any additional liability or obligation to pay liquidated damages or other additional costs to You.

14.4 In no event shall the Provider, its employees, agents and subcontractors be liable to You to the extent that the alleged infringement is based on:

(a) a modification of the Services or Documentation by anyone other than the Provider; or

(b) Your use of the Services or Documentation in a manner contrary to the instructions given to You by the Provider; or

(c) Your use of the Services or Documentation after notice of the alleged or actual infringement from the Provider or any appropriate authority.

14.5 The foregoing and clause 13.4 (b) states Your sole and exclusive rights and remedies, and the Provider's (including the Provider's employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. General Terms

15.1 **Governing Law & Jurisdiction.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including noncontractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. You irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including noncontractual disputes or claims).

15.2 **Severability.** If any provision of these terms is found invalid or unenforceable, it will be enforced to the extent permissible and the remainder of this Agreement will remain in full force and effect.

15.3 **Waiver.** The failure of a party to prosecute its rights with respect to a breach hereunder will not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.

15.4 **Entire Agreement.** These terms and conditions are the entire agreement between You and the Provider regarding the use of the Services. No other communication, whether written or oral, will be deemed to supplement or supersede these terms and conditions unless made in writing and signed by both the Account Administrator and an authorised representative of the Provider.

15.5 **Language.** These terms are drafted in the English language. If these terms are translated into any other language, the English language version shall prevail.

16. Definitions.

Acceptable Use Policy: the Provider's acceptable use policy as set out in the Provider's Web Portal.

Account Administrator: the individual nominated by You as Your representative as stated in the Invoice or elsewhere having authority to act on Your behalf in respect of all matters relating to these

terms and Your use of the Services; including an individual nominated by You to the Provider in writing as a replacement representative from time to time.

APIs: Application Programming Interfaces.

Content: software (including machine images), data, text, audio, video, images or other content.

Data: all data, tables, information, text, drawings, codes, diagrams, images or sounds which are embodied in any electronic or tangible medium, including compilations of any of the foregoing, and which are processed by, or a product of, the Services.

Data Controller: meaning a person who, either alone or jointly or in common with other persons, determines the purposes for which and the manner in which any personal data are, or are to be processed.

Data Processor: in relation to personal data, means any person (other than an employee of the Data Controller).

Documentation: the Provider's on-line help, the user guides, and other technical and operations manuals and specifications for the Services located at the Provider Web Portal as such documentation may be updated by us from time to time.

Effective Date: the date upon which the Provider receives payment of the sum specified in the applicable Invoice or, if earlier, the date upon which You first have access to the Services.

Individual: each individual authorised to use the Services for whom the Provider has supplied You with login details together with their individual discrete password.

Invoice: the Provider's invoice for Your Subscription and each renewal or extension thereof.

Privacy Policy: the Provider's privacy policy as set out in the Provider's Web Portal.

Provider: Lanner Group Limited and/or its nominated provider as stated in Your Invoice.

Provider Content: Content the Provider or any of its affiliates make available in connection with the Services or on the Provider Web Portal to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology but not including the Services.

Provider Web Portal: the Provider's web site through which You will access the Services and any successor or related site designated by the Provider.

Services: Those web services made available by the Provider from time to time for which You have subscribed.

Site: the location or locations from which Users are permitted to access the Services as specified in Your Invoice.

Subscription Fee(s): the annual fees payable for access to the Services calculated by reference to the number of Users for whom You have from time to time subscribed as set out in each Invoice.

User: You and any Individual or entity that directly or indirectly through You: (a) accesses or uses Your Content; or (b) otherwise accesses or uses the Services as specified in Your Invoice.

WSDLs: Web service description languages.

You: means you and or the entity you represent and the words Your, Yours and like expressions shall be interpreted accordingly.

Your Content: Content You or any User (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services or otherwise transfer, process, use or store in connection with Your use of the Services.