Jcurve Master Services Agreement

DEFINITIONS AND INTERPRETATION
1.1 Definitions
In this document, unless the context requires otherwise:

"**Agreement**" means this agreement as amended from time to time, with updates communicated to the customer in writing and, includes the Quotation and each Schedule such as a Statement of Works or Change Order (where applicable).

"**Business Day**" means a weekday other than a local Public Holidays in the country of the Jcurve company listed on your Quotation.

"**Business Hours**" means the hours of 8:30 AM to 17:30 PM (local time) on business days (excluding local Public Holidays) in the country of the Jcurve company listed on your Quotation.

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgement; however, it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"**Contract Date**" means the date the Customer signs the Quotation.

"**Customer**" means the person or organisation specified in the Quotation also referred to in this Agreement as "you".

"**Customer Data**" means any data, documents or other materials provided by you to us.

"**Documentation**" means all training manuals, configuration documents, service levels and user guides supplied with the Software.

"**Effective Date**" means the agreed Project Go Live Date as outlined in the Project Timetable estimate or otherwise agreed between us in writing by which you will have access to the Software.

"**Expenses**" means any out of pocket expenses specified in the Quotation or notified to you in writing.

"**Fees**" means the service fees specified in a Quotation.

"**Installation**" means the process to be undertaken to enable you to have access to the Software.

"**Intellectual Property**" means patents, copyright, registered and unregistered design rights, registered and unregistered trademarks, rights in know-how and confidential information and all other intellectual and industrial property rights (without limitation) and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights and includes any rights exercised under licence.

"**Jcurve**" means the Jcurve entity listed on your Quotation.

"**Loss**" means any Claims, demands, costs, charges, loss or expenses and includes legal fees on a solicitor-client basis.

"**Minimum Specifications**" means the minimum hardware, software and operating system requirements in relation to use of the Software.

"**Quotation**" means the Quotation accompanying this Master Services Agreement, signed by you in addition to any Proposals signed by you specifying the Services provided pursuant to the terms of this Agreement and the relevant Fees and/or Expenses to be charged in relation to such Services.

"**Personal Information**" means Personal Information as defined in legislation in the country of the Jcurve company listed on your Quotation.

"**Project Timeline**" means the estimated Project schedule as outlined in the Statement of Works or Change Order separately agreed between the parties.

"**Related Body Corporate**" has the meaning of a related holding company or related subsidiary.

"**Services**" means any implementation, customization or training services provided to you in accordance with the terms and conditions of this Agreement.

"**Software**" means the software separately outlined in a subscription or software agreement.

"**Support Services**" means the Support Services separately outlined in a support Agreement.

"**Tax**" means a tax, levy, duty, charge or deduction together with any related additional tax, interest, penalty, fine or other charge calculated by reference to the value of anything supplied other than one imposed on net income.

"**Term**" means the period commencing on the Contract Date and continuing for the period(s) described in Quotation.

"**Training**" training sessions provided by us to facilitate your use of the Software.

"**User**" means any employee or contractor engaged by you that uses the Software.

1.2 Words and expressions

In this document, unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) headings are for convenience and do not affect interpretation.

(c) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;

(d) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it.

APPLICABILITY OF THESE TERMS

2.1 The terms and conditions of this Agreement applies to only the Services to be supplied as outlined in the Quotation you have signed. We may make changes to these terms and conditions included in this Agreement from time to time. If we do, we will notify you in writing before they take effect. By signing a subsequent quotation for future Services work and/or payment of further Fees and Expenses due after the date we notify you of a change is deemed acceptance of those changes. If you do not want to accept the changes, you are entitled to terminate this Agreement by written notice to us within 30 days of receiving notice of the relevant changes.

2.2 The terms and conditions for the supply and use of any Software is outlined in a separate subscription or software agreement which where applicable will be separately referred to you.

2.3 The terms and conditions for the supply and use of any Support Services is outlined in the Jcurve Support Agreement which where applicable will be separately referred to you.

2.4 Third Party Software supplied in conjunction with the Software may be subject to separate terms and conditions specified by those manufacturers. Such terms will be provided to you separately in conjunction with your licence of that third party software.

TERM AND LICENCE

3.1 This Agreement will remain in force for the duration of the Term, unless terminated earlier in accordance with clause 14.

OUR OBLIGATIONS

4.1 Installation

(a) We will commence the installation of the Software after receipt of the payment for Services as outlined in the payment terms on the Quotation.

(b) We will make all reasonable efforts to complete the Installation in accordance with the Project Timetable and with all reasonable care, competence and diligence. We will assign sufficient personnel to provide the Services. The Project Timeline is based on the availability of your personal assisting with the project being available. A lack of access to those personal or cancelled meetings by your personal will impact the Project Timeline.

(c) We may choose and substitute personnel assigned by us to provide the Services at any time during the Term.

(d) Where applicable we shall supply such information and guidance as is reasonably required to prepare the site for the Installation of the Software.

(e) We will make such adjustments as are reasonable and necessary to address any issues that you raise in relation to the Installation, provided that you do so within 30 days of the Effective Date.

YOUR OBLIGATIONS

5.1 Installation

(a) You agree to comply with the Project Timeline to be agreed between us.

(b) You will arrange for specified personnel to attend any required sessions as part of the Project.

(c) You will provide all assistance reasonably required by us to complete the Project including any assistance required with the transfer of Customer Data from any legacy software or system previously used by you.

(d) You agree to notify us of the names and contact details of the personnel designated by you to manage the Project and to be your principal point of contact with us during the Term.

(e) You acknowledge that any adjustments requested more than 30 days after the Effective Date that constitute customisation may attract additional Fees. We will notify you in writing of any such additional Fees prior to undertaking the relevant work.

(f) You agree that Installation will be completed at the Effective Date or such other timeline as is agreed between us.

(g) You agree to install all updates made available by us within three months of delivery or of being given notice of the availability of that update either directly or via our Website (where applicable).

(h) You also agree that if we have to undertake further work to complete the Installation solely because of your delay, we will be entitled to charge you additional Fees for that work.

5.2 Equipment (where applicable)

(a) You agree that for the duration of the Term you will comply with the Minimum Specifications for any Software.

(b) You acknowledge that we are in no way responsible for any deficiencies in the hardware or software used by you to access the Software.

5.3 Regulatory Requirements

You acknowledge that it is your responsibility to always ensure that your use of the Software complies with any relevant standards, regulations, laws or industry codes of practice.

5.4 Prohibited conduct

You acknowledge and agree that you will not and you will procure that each User will not:

(a) use the Software and Documentation other than as provided in this Software Agreement;

(b) access or attempt to access the source code of the Software;

(c) copy (other than in the normal operation of the Software), reverse engineer, adapt, decompile, vary or modify the Software or attempt to do so;

(d) use the Software in any unlawful manner to contravene any statute or other law, infringe the rights of any person or in any way likely to expose us to liability;

(e) knowingly transmit any virus or other disabling feature or use another person's name, access codes or other confidential information;

(f) disclose the Login Information to any unauthorised third party; or

(g) permit another person to do any of the above acts.

PAYMENT

6.1 You agree to pay the Fees and Expenses (plus any relevant Taxes) on or before the payment due date as specified in the Quotation(s) or Invoice.

6.2 Fees must be paid within the time period specified in the Quotation.

6.3 Payments made by credit card may be subject to a surcharge. We reserve the right to make changes to this surcharge from time to time or to extend the surcharge to other methods of payment. You will be advised of the surcharge at the time of making payment (immediately before).

6.4 You acknowledge that we revise our fee scale periodically with the fees payable agreed on each quotation signed.

6.5 We reserve the right with notice, to charge you an additional charge for any additional Services which include:

(a) additional work undertaken by us because of delay on your part;

(b) any query from you that does not relate to the basic functionality of the Software and which is outside the scope of the Support Services, if Support Services have been purchased;

(c) any services required to better utilise, customise or modify, adapt, develop or expand the Software or change its functionality;

(d) on-site attendance at your premises at your request;

(e) issues that are already covered in the Documentation;

(f) issues that reveal that the Minimum Specifications are not satisfied;

(g) issues requiring a response due to the relevant User not having undertaken Training;

(h) requests for additional Training; and

(i) Services that are required outside of Business Hours.

(j) Where additional Services are requested by you and agreed to by us, a Quotation will be issued by us and will apply to the provision of those services. Such Services will only commence once you have agreed to and signed the relevant Quotation issued by us in relation to the additional Services and made the payment as outlined as the payment terms on the quotation. You also agree that we will be entitled to charge you for any Expenses we incur in connection with the provision of those services provided that the details of such Expenses are notified to you in advance and we have obtained your prior written approval to incur that Expense.

6.6 If any payment owing to us is not made by the due date for that payment, we may, without prejudice to our rights under clause 14, suspend the Services or any of our other obligations to you under this Agreement, until we receive such payment from you.

TAXES
7.1 Any amount payable by you in terms of this Agreement is inclusive of taxes as outlined on the Quotation.

INTELLECTUAL PROPERTY
8.1 You acknowledge that:
(a) we own or are licensed to use Jcurve Solutions Limited and its subsidiaries Intellectual Property; and
(b) you must not, during or after the Term, whether directly or indirectly, dispute our ownership of such Intellectual Property.
8.2 You warrant that our use of, or access to, the Customer Data to the extent required to deliver the Services to you will not infringe any third party Intellectual Property rights.
8.3 You agree to notify us as soon as possible if you become aware of any infringement of our Intellectual Property or if you become aware of any Claim made or threatened against you arising from your use of the Software.
8.4 You also agree that we will (at our discretion) have the sole right to defend any infringement claim and to agree any settlements in relation to such a claim and you agree to provide all assistance reasonably required by us in relation to any infringement proceedings brought by or against us, subject to the payment of your reasonable out of pocket expenses.
8.5 We may, if we desire to minimise our liability for any third party Claim, at our option and expense:
(a) substitute in whole or in part, non-infringing software that is substantially similar to that of the allegedly infringing Software;
(b) modify the Software to remove the component the subject of the Claim, provided that the utility remains substantially equivalent; or
(c) obtain for you the right to continue use of the Software.
8.6 If, in our discretion, none of the options set out in 8.5 are commercially reasonable, we may terminate this Agreement with respect to the allegedly infringing Software or component part and refund to you on a pro-rated basis any pre-paid Fees attributable to the allegedly infringing Software or component.

REPRESENTATIONS AND WARRANTIES
9.1 Joint warranties
Each party represents and warrants to the other party as at the Contract Date that:
(a) it has the power and has taken all corporate and other action required to enter into this Agreement and to authorise the execution and delivery of this Agreement and the performance of its obligations;
(b) this Agreement constitutes a valid and legally binding obligation that is enforceable against it; and
(c) the execution, delivery and performance of this Agreement does not violate any existing law or any document or agreement to which it is a party or which is binding on it or any of its assets.

9.2 Jcurve's warranties
We warrant that when providing Services, we shall at all times:
(a) employ appropriate techniques and standards;
(b) engage personnel of suitable training and experience; and
(c) exercise due care, skill and attention.

9.3 No warranty
We do not warrant that:
(a) the operation of the Software will be uninterrupted, virus free or error free or conform to any reliability or performance standards beyond those specified in the Documentation;
(b) the Software or any component thereof will operate and function effectively and accurately if you do not employ the Minimum Specifications;
(c) the Software is fit for any purpose other than the purposes specified in this Agreement;
(d) that information will continue to be available to us to enable us to keep the Software;
(e) that the Software can be integrated with any other software or any network or server.

9.4 When warranties do not apply
The warranties provided in clause 9 will not apply if failure of the Software results from a breach by you of any of your obligations under this Agreement.

9.5 Status of warranties
All representations and warranties in this Agreement remain in full force and effect during the Term.

LIABILITY OF JCURVE
10.1 To the fullest extent permitted by law, we expressly exclude all terms, representations and warranties that otherwise would be implied by law into this Agreement.

10.2 Where any term or condition imposing liability is implied through the operation of any law, and that term or condition cannot be excluded, our liability for a breach of such a term or warranty will be limited, at our option, to any one of the following:
(a) the supplying of the Services again; or
(b) A refund for the amount of Services paid; or
(c) the payment of the cost of having the Services supplied again.

10.3 If we are held or found to be liable to you for any matter relating to or arising in connection with this Agreement, whether based on an action or claim in contract, negligence, tort or otherwise, our maximum aggregate liability will be an amount equal to the fees that you have paid to us as outlined in the last quotation for Services which has been signed and paid.

10.4 Notwithstanding anything else in this Agreement, we expressly exclude liability for:
(a) indirect, special, incidental, or consequential loss or damage which may arise in respect of this Agreement or use of the Software or other equipment or property;
(b) loss of profit, business, revenue, goodwill or anticipated savings;
(c) any Claim made against you by any third party arising from your use of the Software (other than a Claim that the Software infringes their Intellectual Property); and
(d) the outcomes of any use of the Software.

10.5 Except to the extent required by any applicable law or regulation, including but not limited to the *Competition and Consumer Act 2010* (Cth) (or any legislation which amends or repeals that law) for Australian customers, the remedies set forth in this paragraph are your sole and exclusive remedies, and our sole and exclusive liability for the failure of the Software to conform to the Documentation.

FORCE MAJEURE
11.1 No failure or omission by either party to carry out or observe any of the terms and conditions of this Agreement shall give rise to any claim against it or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond its control including but not limited to acts of God, war (whether declared or not), sabotage, riot, insurrection, terrorist action, civil commotion, labour disturbance, acts or omissions of telecommunications operators, national emergency (whether in fact or in law), martial law, fire, flood, cyclone, earthquake, landslide or explosion affecting or referable to a party's obligations under this Agreement ("Force Majeure Event").

CONFIDENTIALITY
12.1 For the purposes of this Agreement, "Confidential Information" means all non- public information or documents which either party receives or produces in connection with this Agreement and includes without limitation, the Software, the Documentation and any working papers, proposal or tender document, information and methodologies prepared by us prior to the conclusion of this Agreement, but does not include any information which:
(a) is or becomes generally available to the public other than as a result of a breach of this clause;
(b) is known to either party prior to entering into discussions regarding this Agreement; or
(c) either party acquires on a non-confidential basis from a third party entitled to disclose it.

12.2 Neither party may disclose Confidential Information about or belonging to the other without the other's prior written consent.

12.3 Notwithstanding the above, either party may disclose Confidential Information:
(a) to a Related Body Corporate in relation to the provision of the Software;
(b) to their insurers or legal advisors provided that the Confidential Information remains confidential;
(c) if required to do so by law, rule or regulation;
(d) if required for the proper performance of its obligations under this Agreement; or

(e) Notwithstanding any other provision of this clause 12, you agree that we may reference your use of the Software in our advertising and promotional materials.

PRIVACY AND CUSTOMER DATA

13.1 Where access to the Software is provided via a Hosted Solution, we undertake to take reasonable measures to provide a secure environment for receipt and transmission of information. However, since use of the Software depends in part on third parties such as telecommunications carriers whose performance is outside of our control, we disclaim all liability for damages arising from the failure of the Software due to such third parties' performance. We also disclaim all liability for damages arising from the disclosure or dissemination of information during transmission to or from the Software, although such information shall be encrypted while in transmission. Notwithstanding anything to the contrary express or implied, we will have no responsibility for delays or errors related to the Software caused by systems or components outside of our network, including but not limited to your hardware, software and/or networking systems, telecommunications systems, Internet access, telephone access lines and telephone and communications equipment. As soon as is reasonably possible, we will notify you of any actual, attempted or threatened breaches in security, or unauthorised or suspicious access to the Software indicating that an individual may have damaged, or intends to damage the Software or gain unauthorised access to the Software in a way that would adversely affect your information, including any corruption, loss or mis-transmission of data, or any breach of data security during transmission and storage. In the event of any such security breach, we will perform a root cause analysis to identify the cause of such security breach and shall, on an expedited basis, provide you with a report detailing the cause of such a security breach.

13.2 Disclosure and use of any Personal Information by the parties is subject to the *Privacy Act 1988* (Cth) ("Privacy Act") for Australian Customers and Privacy laws in effect in the country of the Jcurve company listed on your Quotation.

13.3 Each party will comply with the privacy laws applicable to that party's performance of its obligations under this Agreement.

13.4 You warrant that use and disclosure of Personal Information by us in accordance with the terms of this Agreement will not result in a breach of the Privacy Act by either of us.

13.5 You are responsible for ensuring that if a third party is required to disclose Personal Information to us for the purposes of this Agreement on your behalf or at your request, such disclosure by the third party complies with the Privacy Act.

13.6 If we are required to retain any Personal Information by law:
(a) you have taken all steps to ensure that we are permitted to do so; and
(b) on reasonable notice, and the payment of a reasonable charge, we will make such information available for inspection by you and your auditors.

TERMINATION

14.1 We may terminate this Agreement immediately by written notice:
(a) if you commit a breach of a material provision of this Agreement that:
(i) if capable of being remedied, is not remedied within 90 days of the date of notice from us specifying the breach and requiring it to be remedied; or
(ii) is not capable of remedy;
(b) if we are required to do so to comply with any law, order, instruction or direction issued to us by any governmental, legal, judicial, regulatory or other like body; or

14.2 You may terminate this Agreement:
(a) On 90 days prior written notice at any time during the Term in accordance with your rights under clause 2.1 if we notify you of a change to the terms and conditions; or
(b) at any time during the Term, immediately by written notice if we commit a breach of a material provision of this Agreement which:
(i) if capable of remedy has not been remedied within 90 days of notice from you specifying the breach and requiring it to be remedied; or
(ii) is not capable of remedy.

14.3 Either party may terminate this Agreement by notice in writing immediately:
(a) if the other party is subject to bankruptcy or insolvency proceedings or, becomes insolvent, makes any composition or arrangement with or assignment for the benefit of its creditors, or goes into either voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over its assets, or anything analogous to the foregoing occurs in respect of that party; or

(b) if either party is unable to perform for a period of 60 days or more due to the occurrence of a Force Majeure Event.

CONSEQUENCES OF TERMINATION

15.1 If this Agreement is terminated by you, you will immediately pay to us the amount of all Fees and Expenses due for payment under the Quotation between Jcurve and the Customer;

15.2 If this Agreement is terminated for any of the reasons specified in clauses 14.1(a) or 14.3(a), you agree to pay to us the reasonable costs (including legal costs) incurred by us as a result of termination within 7 days of written demand by us.

15.3 Following termination, we:

(a) may charge a reasonable sum for work performed which has been authorised by you in respect of which no sum has been previously charged;

(b) will be regarded as discharged from any further obligations under this Agreement; and

(c) may pursue any additional or alternative remedies provided by law.

15.4 If we cancel this Agreement other than for cause, we will issue you with a credit or refund the Fees paid by you in respect of any unexpired portion of the Term relating to Services not yet supplied.

15.5 In the event that this Agreement is terminated and there are no outstanding Fees and Expenses, we will give all reasonable assistance to enable you to transition to another provider (where applicable) at your request and subject to payment of an agreed Fee for providing that Service.

15.6 Termination of this Agreement does not affect any accrued rights or remedies of either party.

15.7 Clauses 8, 9, 12 and 15 survive termination of this Agreement.

ELECTRONIC MAIL

16.1 We may send documents and information to you electronically. You acknowledge that we are not liable in respect of:

(a) any error, omission or loss of confidentiality arising from an electronic communication;

(b) any unauthorised copying, recording or interference with a document;

(c) any delay or non-delivery of a document; or

(d) any damage caused to your system or files by such electronic transmission (including by any computer virus).

DISPUTES

17.1 Except where a Claim relates to a debt or injunctive relief is sought, the parties must use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement.

17.2 Any dispute or difference which arises between the parties and which cannot be resolved under clause 17.1 shall, by notice by either party to the other, be referred to compulsory mediation under the following provisions:

(a) For Australian Customers:

(i) such dispute shall be settled by a mediator appointed by agreement of the parties, or, in the absence of agreement by a suitably qualified independent mediator appointed by the President of the New South Wales Law Society as requested by either of the parties, the costs of which will be borne equally between the parties; and

(ii) the mediation shall be conducted in Sydney, Australia.

(b) For Customers outside Australia, in accordance with the accepted legal practices in effect in the country of the Jcurve company listed on your Quotation.

17.3 Except where a Claim relates to a debt or injunctive relief neither party may commence proceedings in any Court to enforce its rights under this Agreement, without first conducting a mediation in accordance with clause 17.2.

17.4 The parties shall continue to perform their obligations under this Agreement in all respects as if no dispute had arisen pending the final resolution of any dispute or difference.

EMPLOYEES

18.1 Neither party shall during the Term or for the 12 month period following the date of termination of this Agreement, solicit for employment, whether directly or indirectly through an associated or subsidiary company or otherwise, any person who is employed by the other party.

NOTICES

19.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("Notices") given by a party under or in connection with this Agreement must be:

(a) in writing;

(b) signed by a person duly authorised by the sender or, where transmitted by email, sent by a person duly authorised by the sender;

(c) directed to the intended recipient's address; and

(d) hand delivered or transmitted by email to that address.

19.2 Receipt

A Notice given in accordance with this clause is taken as having been given and received:

(a) if hand delivered, on delivery; or

(b) if transmitted by email, on transmission of the email.

If the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the Notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

19.3 Address of parties

Unless varied by notice in accordance with this clause 19.3, the parties' addresses are as stated in the Quotation. All communications from you to us should be marked for the attention of the relevant Jcurve employee you have held discussions with about the matter.

GENERAL

20.1 Entire agreement

This Agreement combined with any Statement of Works or Change Order constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities are replaced by this Agreement and have no further effect (except for the purposes specified in clause 12).

20.2 Priority

If this Agreement conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency unless the inconsistency relates to the Statement of Works or Change Order, in which case the Statement of Works or Change Order prevails to the extent of the inconsistency.

20.3 Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

20.4 Severability

If any part or all of any provision of this Agreement is, or becomes, illegal or unenforceable it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

20.5 Amendment and Variation

This Agreement may only be validly varied, modified, amended or added to if the variation is in writing, and is authorised and signed by an authorised signatory of each party.

20.6 Assignment

Neither party may assign its rights and remedies nor transfer its obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

20.7 Waiver

Waiver of any power or right under this Agreement:

(a) must be in writing signed by the party entitled to the benefit of that power or right; and

(b) is effective only to the extent set out in that written waiver.

20.8 Rights, remedies additional

Any rights and remedies that a person may have under this document are in addition to and do not replace or limit any other rights or remedies that the person may have.

20.9 Execution of this Agreement

By signing the quotation for the Services discussed, you understand and agree that you have accepted the terms of this Agreement for those Services.

20.10 Governing law and jurisdiction

This Agreement will be governed by and construed in accordance with the laws in force in one of the following locations: State of New South Wales (Australia) or Singapore or Taguig City (The Philippines). The laws in force is dependent on the registered location of the Jcurve subsidiary to which your contract is entered with. If the location is not clear please speak to your Jcurve representative. Each party submits to the exclusive jurisdiction of the courts of that location, which is either New South Wales (Australia), Singapore or Taguig City (Philippines).

Effective from: January 2022