

**CTX PARTNER AGREEMENT (NORTH AMERICA VERSION)**

This Partner Agreement (the “**Agreement**”) forms a legally binding agreement between you (the “**Partner**”) and **YOUGETITBACK LIMITED (T/A INHANCE TECHNOLOGY)** a company incorporated and existing under the laws of the Republic of Ireland (registered with company number 405131) whose principal place of business is at 5 Cleve Business Park, Monahan Road, Blackrock, Cork, Ireland (“**Inhance**”). This is a partnership agreement for the use by Partner of CTX (as defined below). Inhance remains the owner of CTX as well as of all copies of CTX.

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement the following words shall have the following meanings:

<b>CTX Webpage</b>	means the webpage made available as part of the Inhance website providing information relating to CTX;
<b>CTX</b>	means all or any part(s) of the software used by Inhance and currently referred to as the Content Transfer Application and all updates and amendments thereto. CTX allows content to be transferred between Devices. CTX includes the Specifications and the associated documentation;
<b>Charges</b>	means the charges agreed with Partner under this Agreement as specified in the Order Form;
<b>Commencement Date</b>	means the date when the first Order Form is executed by both parties;
<b>Device</b>	means the supported End User device on which CTX is used;
<b>End User</b>	means any individual consumer licensing CTX for personal use from Inhance as a result of this Agreement;
<b>End User Data</b>	means all data, including personal data, of the End User;
<b>EULA</b>	means Inhance’s end user licence agreement for CTX available as a link on the CTX Webpage;
<b>Force Majeure</b>	any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, compliance with any law or governmental order, rule, regulation or direction, acts of God, war or terrorist activity, riot or civil commotion;
<b>Governing Courts</b>	means the courts of State of Delaware;
<b>Governing Law</b>	means the laws of the State of Delaware;
<b>Inhance IP</b>	means the IP Rights owned or licensed by Inhance including those that exist in CTX and any updates or modifications thereto;
<b>Inhance Support</b>	means support and maintenance services provided by Inhance for CTX;
<b>Initial Term</b>	means the initial term, if any, set out in the Order Form, which must pass before the Agreement may be terminated for convenience by either Party;
<b>IP Rights</b>	means all intellectual property rights, including (without limitation) patents, supplementary protection certificates, petty patents, utility models, trademarks, database rights, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, know-how, trade secrets, techniques and confidential information, customer and supplier lists and other proprietary knowledge and information, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, in each case for their full term, and together with any renewals or extensions;
<b>Order Form</b>	means the online form or hardcopy document incorporating the terms of this Agreement which sets out the specific details of this Agreement including the Charges.
<b>Non Software Failure</b>	means any defect, error or fault in CTX which is caused by (i) CTX having been used by the Partner or End User other than in accordance with the Specifications or its proper intended purpose; (ii) any modification, variation or reconfiguration of CTX unless the same is performed by or on behalf of Inhance or with Inhance’s consent; (iii) any defect in the hardware, network or Device on which CTX is used; (iv) the combination, operation, use or failure of third party or End User proprietary software or networks with which CTX interfaces or is connected; or (v) any virus or worm infecting CTX;
<b>Notice Period</b>	means the relevant notice period for termination for convenience, if any, set out in the Order Form;
<b>Partner Store</b>	means the Partner stores where Partner is authorised to sell CTX as agreed with Inhance; The Partner Store may be an online store identified by website address (“ <b>Online Partner Store</b> ”) or a physical store identified by physical address (“ <b>Physical Partner Store</b> ”);
<b>Services</b>	mean the services provided by Inhance under this Agreement including providing a license and access to CTX and the provision of Inhance Support;

<b>Specifications</b>	means the specifications for CTX as updated and amended by Inhance and as may be included on the CTX Webpage; and
<b>Term</b>	means the period of time starting on the Commencement Date and ending on the date of termination of this Agreement.

- 1.2. In this Agreement (except where the context otherwise requires):
- 1.2.1. use of the singular includes the plural and vice versa and the use of any gender includes the other genders; and
  - 1.2.2. any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3. In this Agreement, references to a 'sale' or "purchase" of CTX by Partner, or to 'making CTX available' or similar phrasing suggesting a supply from Partner to End User, shall mean that the End User purchases from Partner the right to acquire a license to CTX from Inhance. Partner does not at any time acquire a copy of or make available CTX or any activation code applicable to CTX.

## **2. PARTNER AUTHORISATION**

- 2.1. This Agreement allows Partner to sell licenses for CTX to End Users through the Partner Stores on the terms of this Agreement. The terms of this Agreement will be incorporated into any Order Form signed by the Partner.
- 2.2. Partner shall be entitled to describe itself as an "Inhance Partner" but shall not represent itself as an agent of Inhance for any purpose, nor pledge Inhance's credit or give any condition or warranty or make any representation on Inhance's behalf or commit Inhance to any contracts. Further, the Partner shall not without Inhance's prior written consent make any representations, warranties, guarantees or other commitments with respect to the specifications, features or capabilities of CTX which are inconsistent with those contained in the promotional material supplied by Inhance (including, without limitation, the EULA and the Specifications) or otherwise incur any liability on behalf of Inhance howsoever arising.
- 2.3. CTX should only be provided to End Users. The Partner shall only sell CTX directly through the Partner Stores and shall not sell it through a sales agent or to a sub-distributor or reseller without the express written permission of Inhance.
- 2.4. The relationship of the parties under the Agreement shall be, and at all times shall remain, one of independent contractors, and not that of employer and employee, partners, franchisor and franchisee, joint ventures, or principal and agent, and no fiduciary relationship exists between the parties. Each party is, and shall perform its obligations under this Agreement as, an independent contractor and, as such, shall have and maintain complete control over all of its respective employees, agents and operations.
- 2.5. Nothing in this Agreement shall restrict Inhance from providing CTX to third party customers and resellers in the normal course of its business and Inhance is not responsible for any uses that such customers or resellers make of CTX.

## **3. LICENCE GRANTED BY INHANCE**

- 3.1. Subject to the terms and conditions of this Agreement, Inhance grants Partner a personal, non-exclusive, internal and non-transferable licence to sell CTX through the Partner Store (the "**Partner Store License**").
- 3.2. The Partner Store License allows any Partner operating from a Physical Partner Store to:
- 3.2.1. use CTX in the Partner Stores for the benefit of End Users; and
  - 3.2.2. install CTX on Devices.
- 3.3. Each Physical Partner Store selling CTX will require a personal Partner Store License. In some cases where Partner Stores operate mobile teams an additional Partner Store License will be required for such mobile teams as agreed in the relevant Order Form.
- 3.4. The number of Partner Store Licenses required for any Partner operating an Online Partner Store will be agreed on a case by case basis as described in the relevant Order Form.
- 3.5. Partner may promote or advertise CTX in accordance with the Specifications.
- 3.6. Partner shall remove or amend any promotion, advertising or literature that is not in accordance with Specifications at the reasonable request of Inhance.
- 3.7. Partner is not authorised to sub license CTX or enter into the EULA for CTX directly or indirectly with End Users. When the Partner has sold CTX to the End User, Inhance shall enter into the EULA directly with the End User.
- 3.8. Inhance's obligations to End Users shall be limited to the requirements and obligations set out in the EULA notwithstanding anything to the contrary agreed between the End User and the Partner.

## **4. INHANCE RESPONSIBILITIES**

- 4.1. Inhance shall:

- 4.1.1. provide such information and assistance to Partner as Partner may reasonably request from time to time in connection with the use of CTX;
- 4.1.2. not participate in any illegal, deceptive or unethical practices; and
- 4.1.3. not make representations, warranties, claims or guarantees to any third party about Partner, its business or affairs, that are false or misleading.
- 4.2. Inhance shall provide Inhance Support to the Partner and the End User on and subject to the terms of this Agreement and the EULA.
- 4.3. Inhance shall use commercially reasonable endeavours to make CTX available 24 hours a day, seven days a week, except for planned maintenance (carried out during such times which are notified to the Partner) and unscheduled maintenance.
- 4.4. Inhance will make a "Contact Us" form available as part of the Inhance Support to allow the Partner or End Users ask questions about CTX.

## **5. RESPONSIBILITIES OF PARTNER**

- 5.1. Partner shall perform and comply with all of its obligations under this Agreement.
- 5.2. Partner represents, warrants and undertakes that it shall:
  - 5.2.1. conduct its activities under this Agreement in a manner that reflects favourably on the good name, goodwill and reputation of Inhance;
  - 5.2.2. avoid deceptive, misleading or unethical practices that are, or might be, detrimental to Inhance, CTX or the public and shall not publish or employ, or co-operate in the publication or employment of, any false, misleading or deceptive advertising material or other representations with regard to Inhance or CTX;
  - 5.2.3. comply with all applicable laws and regulations of the Territory including (among others) the laws pertaining to data protection.
  - 5.2.4. comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption. When marketing and using or selling CTX, Partner shall not directly or indirectly pay, offer, promise or give or authorise to pay, offer or give money or anything of value to any employee or official of a government or department thereof, political party or candidate for political office or to any employees or officials of public international organizations, or to any other person while being aware of or having a belief that such money or item of value will be passed on to one of the above, to influence any act or decision by such person or by any governmental body for the purpose of obtaining, retaining or directing business or to otherwise obtain an improper advantage. Partner will not undertake any action that may cause Inhance to be in breach of the rules and regulations of anti-corruption legislation of any country;
  - 5.2.5. comply with all applicable laws, regulations and sanctions relating to the sending of emails, texts or notifications to End Users ("Communications") including (where applicable) the Telephone Consumer Protection Act (the "TCPA"), the CAN SPAM Act of 2003, Canadian Anti-Spam Legislation (CASL) and the Do-Not-Call Improvement Act (collectively the TCPA, CAN SPAM Act, CASL and Do-Not-Call Act are referenced herein as the "Communications Acts"). Partner shall be responsible for obtaining all necessary licenses, consents and permissions, including those from End Users, which are required under the Communications Acts.
  - 5.2.6. retain sales and service personnel sufficiently trained to perform its obligations under this Agreement, including but not limited to knowledge of the industry and CTX. Partner shall ensure that Partner's employees or representatives engaged in installing CTX are qualified and competent to do so, are knowledgeable of the Specifications, features and advantages of CTX and are capable of demonstrating the use and capabilities of CTX and their applications to End Users;
  - 5.2.7. not grant any End User a warranty greater than the warranty granted by Inhance for CTX as set out in the EULA. Any such grant shall be Partner's own responsibility, and shall not be binding upon Inhance;
  - 5.2.8. refrain from amending or varying the terms of the EULA and ensure that End Users are aware of the terms of the EULA; and
  - 5.2.9. ensure that all End Users provided with CTX are individual consumers and not companies.
- 5.3. Inhance will provide and Partner shall attend a training course by webex on the use of CTX. Any training required by Partner in addition to this may be chargeable by Inhance.
- 5.4. Partner confirms that it has the right and authority to bind any business, branch or franchise company on whose behalf this Agreement is accepted and the Services are purchased.

## **6. CTX APPLICATION INSTALLATION PROCESS**

- 6.1. CTX may be made available by Partner to End Users through the Partner Stores upon signature of the Order Form.
- 6.2. The CTX Webpage will be Inhance branded. Information relating to CTX may be made available on the CTX Webpage.

CTX will be available for download from the relevant third party app store for the Device (the “**App Store**”).

- 6.3. The Partner will use or provide the End User with the relevant Partner Store activation number provided by Inhance (the “**Partner Store ID**”) in order to download CTX. Inhance may be automatically notified each time the Partner Store ID is used.
- 6.4. Inhance reserves the right to amend the Partner Store ID at its discretion on thirty (30) days written notice to the Partner or immediately in the event that Inhance suspects a security breach, misuse or overuse of the Partner Store ID.
- 6.5. The End User will have the option of downloading CTX while at the Physical Partner Store (the “**Partner Install**”) or self-installing CTX away from the Physical Partner Store or through the Online Partner Store (the “**End User Install**”) using the Partner Store ID. In the event of an End User Install the End User must be informed that the Partner Store ID may expire at any time.
- 6.6. In order to install CTX the End User will need to access the App Store. Partner acknowledges that the End User will not be able to download CTX without an App Store account.
- 6.7. Partner acknowledges that the terms of the EULA are not negotiable and shall not be amended or modified by the End User. In the event of a Partner Install at a Physical Partner Store, Partner warrants and represents that:
  - 6.7.1. it shall be responsible for ensuring that it has all necessary, agreements, consents, licenses and permissions necessary to enable Partner to complete the Partner Install;
  - 6.7.2. the Partner staff member will not accept the EULA on behalf of the End User; and
  - 6.7.3. the Partner is responsible for handing the End User Device to the End User so that the End User can personally accept the EULA on the End User Device as part of the Partner Install.
- 6.8. The CTX Webpage will include a link to the EULA and other relevant terms and conditions.
- 6.9. Inhance reserves the right, in its sole discretion and without liability to Partner, to add to and/or remove any part of CTX provided Inhance shall provide Partner with thirty (30) days’ notice in the event that it removes any significant features of CTX.
- 6.10. Inhance may from time to time notify Partner of additional, updated or new requirements for CTX compliance with which will be a condition of Inhance’s continued provision of CTX to Partner. Partner agrees to comply with such requirements as to which it has received notice from Inhance.
- 6.11. Inhance shall not be responsible or liable for any delay or failure of CTX which result from the actions or processes of third parties.
- 6.12. Partner shall maintain clear and accurate records relating to the use of the Partner Store ID, the number of Devices sold in the Partner Store (where relevant) and all End Users provided with the Partner Store ID. Such records shall be made available for inspection upon request by Inhance.
- 6.13. Each Partner Store will have a separate Partner Store ID and Partner Store License. Partner accepts as a condition of this Agreement that it can only provide the Partner Store ID of each Partner Store to customers of that Partner Store. Each Partner Store shall keep their Partner Store ID secure and confidential and shall not disclose it to other Partner Stores.

## **7. CHARGES AND PRICING**

- 7.1. The Charges for the Services will be agreed with the Partner in writing and set out in the Order Form. The Order Form may be updated to reflect an increase in Partner Store Licenses or a reduction in Partner Store Licenses where requested in writing by Partner. Any changes will be effective the month following the month in which the request is made and agreed by the parties in the updated Order Form.
- 7.2. The Charges for the Services exclude applicable sales taxes which will be payable by Partner in addition to the Charges specified in the invoice.
- 7.3. Partner will pay Inhance monthly for each Partner Store License or will pay a monthly flat fee as specified on the Order Form.
- 7.4. Inhance will invoice the Partner monthly in advance for the Services during the Term and Partner shall pay each invoice within thirty (30) days of the date on the invoice.

## **8. AMENDMENTS TO THIS AGREEMENT**

- 8.1. Inhance may revise this Agreement from time to time including in the following circumstances:
  - 8.1.1. to make changes to how payment is made;
  - 8.1.2. to make changes to relevant laws and regulatory requirements; and
  - 8.1.3. to make changes to the Specifications.
- 8.2. Whenever this Agreement is revised in accordance with this clause, Inhance shall give Partner notice of this in writing.

**9. INHANCE IP**

- 9.1. The Inhance IP and all copies thereof, including translations, compilations, derivative works and partial copies, are and shall at all times remain the property of Inhance or its licensors. Inhance acknowledges that it owns or licenses the Inhance IP and all registrations and applications throughout the world but makes no warranties regarding the validity or enforceability of the Inhance IP. Partner will acquire no rights in or to Inhance IP by virtue of this Agreement, Partner's activities under it, or any relationship Partner may have with Inhance.
- 9.2. Partner acknowledges and agrees that documents, records or other materials provided or made available to Partner by or on behalf of Inhance and any amendments additions or changes to them including any IP Rights created by Partner as a result of this Agreement and the use of CTX, shall be owned by and remain within the ownership of Inhance and be considered Inhance IP and nothing in this Agreement or otherwise shall confer on Partner any right, title or interest in respect of such Inhance IP. Partner shall do and execute or arrange for the doing or execution of, each necessary act, document and thing that Inhance may consider necessary or desirable to perfect the right, title and interest of Inhance in any Inhance IP.
- 9.3. Partner warrants and undertakes that it will not itself, or through any parent, subsidiary, affiliate, vendor, agent, End User or other third party:
- 9.3.1. modify or copy the Inhance IP except as expressly provided for in this Agreement;
  - 9.3.2. decompile, disassemble or reverse engineer the Inhance IP in whole or in part;
  - 9.3.3. transfer, rent, loan, lease, sublicense or otherwise distribute the Inhance IP to any third party, except as otherwise expressly authorised herein; or
  - 9.3.4. write or develop any derivative software or any other software program based upon the Inhance IP or any Confidential Information of Inhance.

**10. WARRANTY**

- 10.1. Inhance warrants CTX only to the extent set forth in this Agreement and the EULA. Inhance's warranties are subject to all of the terms and conditions set forth in the EULA, including, but not limited to, exclusive remedies and limitations of liability.
- 10.2. No warranty by Inhance will extend to situations where CTX has been:
- 10.2.1. subjected to misuse, neglect, power failures or surges, lightning, fire, flood or accident;
  - 10.2.2. used, repaired or altered contrary to Inhance's instructions; or
  - 10.2.3. improperly installed, stored, or maintained.
- 10.3. Inhance does not warrant that the operation of CTX will be continuous over any specified period of time or error- free. Partner acknowledges and agrees that:
- 10.3.1. CTX has not been developed to meet Partner or End User's particular requirements and that it is therefore Partner's responsibility to ensure that the facilities and functions of CTX meet Partner and End User requirements;
  - 10.3.2. CTX may not be free of bugs or errors;
  - 10.3.3. in order for CTX to operate fully, the Device on which it is used will need to be connected to certain wireless and/or communication based technologies and generally Devices must be using the same network. There may be delays, limitations and other problems inherent in the use of the internet and electronic communication. Inhance is not responsible for any delays, failures or other damage resulting from such problems;
  - 10.3.4. the battery life of a Device may diminish more quickly when using CTX;
  - 10.3.5. use of CTX may result in temporary or permanent loss or damage to a Device and the information stored on the Device including the End User Data;
  - 10.3.6. internet transmissions are never completely private or secure. Partner understands that any End User Data that is sent using CTX may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 10.4. Although CTX is designed to be reasonably secure, Inhance makes no express or implied warranty that CTX is immune from or can prevent fraudulent intrusion, unauthorised use or disclosure or loss of proprietary information. Partner is solely responsible for undertaking or advising the End User to undertake all necessary back-up procedures to ensure that data integrity can be maintained in the event of loss of End User Data and other information for any reason
- 10.5. The foregoing warranty is in lieu of and excludes all other express and implied warranties, including but not limited to warranties of merchantability, satisfactory quality and fitness for a particular purpose.

**11. LIMITATION OF LIABILITY**

- 11.1. Nothing in this Agreement shall exclude, restrict (or prevent a claim being brought in respect of) any liability of a party for:

- 11.1.1. death or personal injury caused by the negligence of that party;
- 11.1.2. any fraudulent pre-contractual misrepresentations on which the other party can be shown to have relied; or
- 11.1.3. any other liability which by the Governing Law cannot be limited or excluded.
- 11.2. Inhance shall not be liable to the Partner in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, even if such losses and/or damages were foreseen, foreseeable or known:
  - 11.2.1. loss of revenues, profits, contracts, business or anticipated savings;
  - 11.2.2. loss of, damage to, or corruption of data;
  - 11.2.3. any loss of opportunity, goodwill or reputation; or
  - 11.2.4. any special or indirect or consequential loss or damage.
- 11.3. Subject to clause 11.1 and clause 11.2, the liability of each party, whether arising under contract, tort (including negligence) or otherwise is as follows:
  - 11.3.1. in respect of the indemnities given by Partner at clause 12 is unlimited;
  - 11.3.2. if liability is in connection with breach of this Agreement, the liability of each party shall not exceed, for any and all events, the Charges under this Agreement in the twelve (12) months immediately preceding the claim.
- 11.4. For the Term of this Agreement both parties shall undertake to procure and maintain insurance cover with reputable insurers in such amounts as may be reasonably required from time to time.

## **12. INDEMNITIES**

- 12.1. Inhance shall defend and indemnify Partner against all costs, including reasonable legal fees arising from a claim that CTX used pursuant to this Agreement infringes the copyright of a third party provided that:
  - 12.1.1. Partner notifies Inhance in writing within thirty (30) days of the claim;
  - 12.1.2. Partner makes no admissions without Inhance's prior written consent;
  - 12.1.3. Inhance is given immediate and sole control of the defence of such claim and all related settlement negotiations; and
  - 12.1.4. Partner provides Inhance with all reasonable assistance, information, and authority necessary to perform the above.
  - 12.1.5. Inhance shall have no liability for any claim of infringement or otherwise resulting from a Non Software Failure.
- 12.2. In the event that CTX is finally held by a court of competent jurisdiction or is believed by Partner to infringe as provided in clause 12.1, Inhance shall have the option, at its own expense and in its sole discretion, to:
  - 12.2.1. modify or amend CTX or the infringing part of CTX in order to avoid any infringement;
  - 12.2.2. procure for the Partner and End User the right to continue using CTX or infringing part of CTX; or
  - 12.2.3. substitute CTX or infringing part of CTX with other software reasonably suitable.
- 12.3. This clause 12 states Inhance's entire liability arising from any infringement of copyright of any third party.
- 12.4. Partner shall indemnify and hold harmless each of Inhance and its affiliates, and the directors, officers, employees, customers, licensors, and contractors of Inhance and such affiliates, and the successors and assigns of any of the foregoing (the "**Inhance Indemnitees**"), from and against any and all liabilities, damages, settlements, claims, actions, suits, proceedings, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and other expenses of litigation) incurred by any Inhance Indemnitee based upon:
  - 12.4.1. the infringement or misappropriation of any IP Rights including Inhance IP;
  - 12.4.2. a breach by Partner of any of its representations, undertakings or warranties in this Agreement including those set out at clause 5.2;
  - 12.4.3. the negligence, or illegal or wilful misconduct, of Partner in connection with this Agreement or CTX;
  - 12.4.4. any failure of Partner to honour its obligations to the End User including the obligation to obtain End User consent to the EULA in accordance with clause 6.7;
  - 12.4.5. any representations, warranties, or covenants made with respect to CTX, beyond the EULA; or
  - 12.4.6. the marketing, promotion, commercialisation or use of CTX other than in accordance with this Agreement.

## **13. CONFIDENTIALITY**

- 13.1. Each of the parties shall keep confidential and shall not disclose to any person any information, whether in written or any other form, disclosed to it (the "**Receiving party**") by or on behalf of the other party (the "**Disclosing party**") in the course of the discussions leading up to or the entering into or performance of this Agreement and which is identified as confidential or is clearly by its nature confidential including, but not limited to, information relating to CTX and the Charges relating thereto ("**Confidential Information**") except insofar as the Confidential Information:
  - 13.1.1. is required by a person employed or engaged by the Receiving party in connection with the proper performance of this Agreement; or
  - 13.1.2. is required to be disclosed by law or by regulation, provided that the Disclosing party shall notify the Receiving

party of the information to be disclosed and of the circumstances in which the disclosure is alleged to be required as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure.

- 13.2. Any disclosure of Confidential Information permitted under clause 13.1 shall be in confidence, shall only be to the extent that any persons to whom the information is disclosed needs to know the same for the performance of their duties and the Receiving party shall be obliged to procure that all such persons are aware of the obligation of confidentiality in this Agreement and undertake to comply with it.
- 13.3. The Receiving party hereby undertakes to the Disclosing party to use the Confidential Information disclosed to it by the Receiving party solely in connection with the performance of this Agreement and not otherwise for its own benefit or the benefit of any third party.
- 13.4. Confidential Information does not include information which:
- 13.4.1. is or becomes generally available to the public otherwise than as a direct or indirect result of disclosure by the Receiving party or a person employed or engaged by the Receiving party contrary to their respective obligations of confidentiality; or
- 13.4.2. is or was made available or becomes available to the Receiving party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure.
- 13.5. Without prejudice to any other rights or remedies that the Disclosing party may have, the Receiving party acknowledges and agrees that if the Confidential Information is used or disclosed other than in accordance with the terms of this Agreement, the Disclosing party may, without proof of special damage, be entitled to an injunction, specific performance or other equitable relief for any threatened or actual Breach of the provisions of this clause, in addition to any damages or other remedy to which it may be entitled.
- 13.6. The Disclosing party warrants that, so far as it is aware, it has the right to disclose the Confidential Information to the Receiving party and the right to authorise the Receiving party to use the same in accordance with the terms of this Agreement.

#### **14. ASSIGNMENT AND SUBCONTRACTING**

- 14.1. Partner acknowledges that Inhance has appointed it in reliance upon the qualifications, business reputation, and financial soundness of itself and its controlling persons and management. Partner may not assign its rights or subcontract its obligations under this Agreement, or assign or delegate any right or obligation arising under the Agreement, without the prior written consent of Inhance.
- 14.2. Inhance may subcontract any or all of the work to be performed by it under the Agreement, but shall retain the responsibility for the subcontracted work. Inhance may assign the Agreement, in whole or in part, to any of its affiliates or to any entity to which Inhance may sell, transfer, convey, assign or lease all or substantially all of its rights with respect to CTX.

#### **15. TERM AND TERMINATION**

- 15.1. This Agreement shall commence on the Commencement Date and shall continue until terminated by either party in accordance with the terms of this Agreement, subject always to earlier termination in accordance with this clause 15.
- 15.2. If there is an Initial Term set out in the Order Form, the Agreement may not be terminated for convenience until after the Initial Term has elapsed at which point the Agreement may be terminated by either Party by giving the other party written notice of termination expiring at the end of the relevant Notice Period set out in the Order Form.
- 15.3. If there is no Initial Term set out in the Order Form, the Agreement may be terminated for convenience by either Party at any time by giving to the other Party written notice of termination expiring at the end of the relevant Notice Period set out in the Order Form.
- 15.4. If there is no Notice Period specified in the Order Form, the relevant notice period shall be ninety (90) days.
- 15.5. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party:
- 15.5.1. is guilty of gross misconduct or incompetence;
- 15.5.2. is convicted of any criminal offence; or
- 15.5.3. becomes bankrupt or enters into or makes any arrangement or composition with or for the benefit of its creditors generally.
- 15.6. Nothing in clause 15.5 applies to a solvent liquidation or arrangement when the party concerned is solvent for the purpose of reconstruction or amalgamation.
- 15.7. Either party may at any time by notice terminate this Agreement with immediate effect if the other commits any material or continued or repeated serious breach of this Agreement provided that, if the breach is capable of remedy, the party in breach shall be given thirty (30) days to remedy the breach before termination is possible.

- 15.8. Inhance may terminate this Agreement on twenty-four (24) hours' notice, or without notice where necessary, upon the occurrence of any of the following:
- 15.8.1. if Partner is in breach of any of the provisions in this Agreement relating to Inhance IP or Confidential Information; and
  - 15.8.2. if Partner fails to pay Inhance under this Agreement and Partner fails to cure such breach or violation within ten (10) days after notice of such breach is given to Partner.
- 15.9. Any expiry or termination of this Agreement will not affect any accrued rights or liabilities of either party up to and including the date of such expiry or termination nor will it affect the coming into force or continuation in force of any other clauses and provisions of this Agreement which are expressly or by implication intended to come into force or continue in force on or after such termination including: clause 1 (Definitions and Interpretation), clause 3 (Licence granted by Inhance) , clause 9 (Inhance IP), clause 11 (Limitation of Liability), clause 12 (Indemnities), clause 13 (Confidentiality), clause 15 (Term and Termination), clause 16 (Data Protection), clause 19 (General).
- 15.10. Upon the termination of this Agreement, Partner shall:
- 15.10.1. stop using and selling CTX and discontinue all use of Inhance IP relating to such activities;
  - 15.10.2. be prevented from providing CTX to End Users;
  - 15.10.3. cease holding itself out, in any manner, as an authorised partner of Inhance; and
  - 15.10.4. return to Inhance, or destroy at Inhance's request, all Confidential Information and all promotional materials supplied by Inhance.

## **16. DATA PROTECTION**

- 16.1. All End User Data collected by Inhance or Partner in respect of End Users shall be shared jointly by Inhance and Partner as required, however for the avoidance of doubt nothing in this Agreement is intended to transfer any aspect of ownership in any data (including End User Data) collected by either party independently of this Agreement.
- 16.2. Subject to clause 16.1, the Parties shall act as data controllers "in common" pursuant to the Data Protection Act 1988 (Ireland) (the "DPA") solely for the purposes of End User Data collected in respect of End Users and each of the parties warrants to the other that it has all requisite registrations and notifications under the DPA necessary for the carrying out of its obligations under this Agreement and will maintain such registrations and notifications throughout the Term of this Agreement and will comply with the provisions of the DPA in relation to the End User Data and as otherwise required by law. References in this Clause to "data processor" and "data controller" shall have the meanings defined in the DPA.
- 16.3. The Parties shall be severally liable in respect of claims made by End Users in respect of End User Data stored by Partner and Inhance.
- 16.4. Each Party is responsible for its use of any End User Data. Partner agrees that Inhance may collect and use anonymised information based on the End User Data, for example the number of photos or videos transferred using CTX and information about the Device and related software, hardware and peripherals for services that are internet-based or wireless to improve its products and to provide CTX.

## **17. FORCE MAJEURE**

If either party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, that party (the "**Claiming party**") shall forthwith and in any event within one (1) business day serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall subject to service of such notice have no liability in respect of any delay in performance or any non-performance of any obligation under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to Force Majeure.

## **18. SEVERABILITY**

- 18.1. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 18.2. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.

## **19. GENERAL**

- 19.1. Except insofar as this Agreement expressly provides that a third party may in his own right enforce a term of this Agreement, a person who is not a party to this Agreement has no right to rely upon or enforce any term of this



Agreement.

- 19.2. This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement is not effective until each party has executed at least one counterpart.
- 19.3. In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.
- 19.4. Any notice or other document to be served under this Agreement shall be in writing and may be delivered or sent by post or facsimile process to the party to be served at the address set out in the introductory paragraphs of this Agreement provided that copies of such notice may also be sent by email.
- 19.5. No modification or variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement.
- 19.6. Partner agrees that Inhance may publicise the existence of this working relationship as a statement of fact. The extent of such publicity can include the development and distribution of a press release, a posting on the Inhance website and social media and inclusion in Inhance collateral materials. Inhance agrees to apply industry standard practices to all publicity to ensure the highest levels of accuracy and editorial quality.
- 19.7. This Agreement and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement. All other terms and conditions, including any pre-printed terms and conditions contained on any order form or correspondence originated by Partner shall not form part of this Agreement and shall have no effect.
- 19.8. Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty, understanding, promise or assurance (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall operate to limit or exclude any liability for fraud.
- 19.9. The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the Governing Law.
- 19.10. Each party irrevocably agrees to submit to the exclusive jurisdiction of Governing Courts over any claim, dispute or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.