

GUARDIAN MASTER ASSESSMENT AND TRIAL AGREEMENT

Effective 26 May 2020

Seeing Machines Limited, ACN 093 877 331, with its registered address at 80 Mildura Street, Fyshwick, ACT, 2609, Australia. (hereafter "Seeing Machines")

And

The addressee specified in the Order Form (hereafter "Client")

Each a "Party"; together 'the Parties'.

The terms and conditions of this Master Assessment and Trial Agreement (MATA) will govern each Order Form executed by the Parties relating to Seeing Machines' provision of the Products and Services for assessment and trial by the Client as set out in the specific Order Form. The MATA and a fully executed Order Form will form the "Agreement" between the Parties. Each fully executed Order Form will, together with this MATA, form a standalone Agreement. If there is any conflict between this MATA and an Order Form, this MATA will prevail unless the relevant Order Form expressly refers to the specific conflicting term or condition in this MATA and expressly specifies that the Order Form's replacement term or condition applies instead.

1. RECITALS

- 1.1 For the Assessment and Trial Period, the Client wishes to undertake a trial of the Seeing Machines Product and Services.
- 1.2 At the end of Assessment and Trial Period the Parties may enter into written agreement for the purchase of further Guardian products from Seeing Machines.
- 1.3 Seeing Machines reserves the right to update the MATA at any time, effective upon notifying the Client of the updated version of the MATA; however, the Parties' rights and obligations shall be as provided in the version of this MATA available to the Supplier at the time a relevant Order Form is executed.

2. DEFINITIONS

Agreement means this Guardian Master Assessment and Trial Agreement.

Assessment and Trial Period commences from the date of Guardian installation and ends on the date specified in the Order Form.

Charges means the fees and charges for the Products and Services as set out in the relevant Order Form, and as varied by Seeing Machines from time to time.

Confidential Information means any information provided by one Party to the other, or otherwise obtained by that Party (whether oral, written or viewed by inspection) which is marked as "proprietary" or "confidential" or similar language or which the recipient knows or reasonably should know is proprietary or confidential. Confidential Information includes: (a) the terms of this Agreement and any Order Form; (b) Intellectual Property, software, specifications, ideas, concepts, plans, formulas, drawings, procedures, manufacturing instructions, financial information, reports, technical information and forecasts; (c) the Seeing Machines Materials; and (d) information about the Client's operations, finances, End-Users and operator performance.

Consumable Items includes but not limited to batteries, replaceable electronic storage media, cables, cable connectors, protective coatings that are designed to diminish overtime, adhesive mounts, disposable or recyclable packaging of the Products of whatsoever type.

Controller, Commission, Data, Data Subject, Member State, Processing, Personal Data, Personal Data Breach and Supervisory Authority have the same meaning as in the GDPR.

Data Protection Law means: 1) the GDPR insofar as it is applicable; 2) the Australian *Privacy Act 1988* (Cth) insofar as it is applicable; and 3) any other applicable laws relating to data protection and privacy.

Documentation means documents about the Products or Services as provided by Seeing Machines from time to time, and includes: Data Authorisation, Guardian Management Document, Project Management Plan, the Client Configuration Requirements, Fatigue Intervention Plan, Guardian Live Website User Guide, Installation manual, Driver's Guide, or Manager's Guide.

Delivered at Place or DAP means that Seeing Machines is responsible for all risks and costs of delivering Product to Client. Subject to any limitations and exclusions in this Agreement, Client is responsible for all charges after unloading of Product.

End of Assessment and Trial Report means the report provided by Seeing Machines at the conclusion of the Assessment and Trial Period or provided after a fixed period as agreed with Seeing Machines following Guardian implementation.

End-User means each person who has access to, uses or operates the Products, including the Client's Personnel, employees, invitees, agents and subcontracts (but not including Seeing Machines' Personnel). To avoid any doubt, an End-User is a Data Subject.

GDPR means Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data.

Infringement Claim means any claim made against the Client alleging that any part of the Product or Seeing Machines Materials infringes a third party's Intellectual Property Rights.

Intellectual Property or **Intellectual Property Rights** includes copyright, trade mark, design, patents (whether registered or not), trade, business or company names, domain names, or other proprietary rights, Confidential Information or any rights to registration of such rights existing in any country and whether created before on or after the start of the Agreement.

Personnel means a party's officers, employees, agents, representatives and subcontractors.

Product means the Guardian Product as described in this Agreement.

Product Data means any information, data and content (including video and images, GPS and other vehicle data) captured or generated by the Product or in the course of providing the Services,

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including data about End-Users (which may include Personal Data).

Restricted Transfer means:

- a) a transfer of Personal Data to a Processor or Sub-Processor, or
- b) an onward transfer of Personal Data to a Processor or Sub-Processor, or between a Processor or Sub-Processor,

in each case, where in the absence of an adequacy decision pursuant to Article 45(3) GDPR, such transfer would be prohibited by Data Protection Laws in the absence of the Standard Contractual Clauses.

Order Form means a purchase order, order form, or any other document submitted by the Client (and accepted by Seeing Machines in writing) consenting to the provision of Products or Services for the purposes of assessment and trial.

Scheduled Delivery has the meaning given by clause 3.6.

Schedule of Installation means the agreement between the Client and Seeing Machines on the dates when hardware is to be installed and commissioned into service.

Seeing Machines Materials means materials created by or on behalf of Seeing Machines and provided to Client in the course of performing this Agreement including the Documentation, Software, designs, drawings, Specifications, reports generated by the Products or about the performance of the Products, and materials or reports provided as part of the Services.

Services means the service of installing the Products, and ongoing monitoring, reporting and support, as described in this Agreement, and any additional services as agreed by both Parties in writing in a work order, contract or other document.

Software means all software provided by Seeing Machines to the Client, including any software that may be embedded or integrated into any Products and any 'software as a service' or hosted software services, including Guardian in-vehicle system software and Guardian Live.

Specifications means the written specifications for the manufacture and performance of the Products as published by Seeing Machines from time to time.

Standard Contractual Clauses means the international data transfer model contracts for the transfer of personal data to third countries as released by the European Commission.

Sub-Processor means any entity appointed by or behalf of Seeing Machines to Process personal Data, in connection to this Agreement.

Warranty Period means the period set out in an Order Form.

3. SUPPLYING PRODUCTS & SERVICES

3.1 **Scheduling.** Upon agreement to a Schedule of Installation or additional services, the Client must provide Seeing Machines a minimum (72) seventy-two hours' notice of intention to reschedule or cancel those Services otherwise the Client agrees to pay Seeing Machines' non-recoverable/refundable costs as follows:

- 3.1.1 costs associated with sub-contractors where Seeing Machines has engaged a sub-contractor to provide Services or additional services, up to the monetary amount mentioned in the Order Form;
- 3.1.2 costs associated with travel, accommodation and car hire; and
- 3.1.3 upon being notified of the non-recoverable/refundable costs, the Client agrees to provide Seeing Machines an Order Form within (3) three days, otherwise Seeing Machines may invoice the Client for non-recoverable/refundable costs under this Agreement.

3.2 **Discharge of Services.** Upon Seeing Machines and the Client agreeing to a Schedule of installation, and Seeing Machines Personnel or sub-contractors attending a site or agreed location to deliver those Services, Seeing Machines is taken to have fully performed the agreed Services if any of the following applies:

- 3.2.1 the Client vehicles are unavailable as agreed;
- 3.2.2 the Client staff are unavailable for Guardian certification

training if required; or

3.2.3 the Client fails to supply 3G SIM cards that meet the specified requirements.

3.3 **End of Assessment.** The Client agrees that after the Assessment and Trial Period or the provision of the End of Assessment and Trial Report, whichever comes first, Seeing Machines reserves the right:

- 3.3.1 to cease providing the Services;
- 3.3.2 commence invoicing (30) thirty days from the day after last day of the Assessment and Trial Period; and
- 3.3.3 invoice the Client for costs incurred in removing the equipment and returning it to Seeing Machines as agreed in the Agreement.

3.4 **No future obligation.** The Parties acknowledge that this Agreement is for the Assessment and Trial Period only, and neither Party will be obliged to purchase or supply any other products or services, unless and until they execute a separate written agreement.

3.5 **Cancellation.** The Client may not cancel, reschedule or modify an Order Form, or postpone a delivery date, unless the Client makes a written request which is approved in writing by an authorized Seeing Machines representative. Seeing Machines may impose conditions before accepting Client's request, including that the Client pays for Product already manufactured, expenses already committed, overhead costs, unearned discounts (billback) and storage costs. For any order that is cancelled or modified, Client shall have no rights in or to partially completed Products.

3.6 **Scheduled Delivery.** Upon confirming a Order Form, Seeing Machines will use commercially reasonable efforts to make the Products available for delivery to the Client, and/or to provide the Services, by the date/s agreed in writing, however these dates are targets only and Seeing Machines will not be liable for late delivery.

3.6.1 **Incoterms.** Unless otherwise specified in this Agreement or Order Form, delivery terms are Delivered-at-Place (DAP) to the Client's registered address, or any other location as agreed between the Parties in writing.

3.6.2 **Defective Shipments.** The Client will notify Seeing Machines in writing of any visible defects, quantity shortages or incorrect Product shipments within one week of receiving the shipment. Otherwise the Client is deemed to waive any rights to return Products based on visible defects, shortages or incorrect shipments. Seeing Machines reserves the right to request evidence of defective shipments. Seeing Machines shall not be obligated to replace any defective Products and the Parties may negotiate any alternate solution such as (but not limited to) volume adjustments.

3.6.3 **Return.** The Client may only return a Product as expressly set out in the limited warranty in clause 6.1 or by written agreement from Seeing Machines. Seeing Machines is not required to accept any return unless the Client requests in writing and Seeing Machines consents in writing to the return and provides a Return Material Authorization (RMA) number.

3.7 **Sub-contracting.** Subject to the Data Protection and Privacy Schedule attached to this MATA, Seeing Machines may subcontract its obligations to provide Products or perform Services, however Seeing Machines remains responsible to the Client for the performance of its obligations.

3.8 **Training.** The Client agrees that any technicians undertaking Guardian certification training will complete all prerequisite training including, but not limited to, online training, prior to Seeing Machines delivering training. The Client agrees to provide technicians with the appropriate tools and equipment to complete installations (to include a laptop which is required to complete software configuration during installation).

3.8.1 The Client agrees that Seeing Machines reserves the right to withhold Guardian certification should a technician fail to complete online training requirements, fail to attend site with the appropriate tools and equipment or fails to meet the required levels of competency assessed during on job training.

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3.8.2 Seeing Machines reserves the right to charge the Client for training as per this Agreement, whether the Client's technicians are certified to install Guardian Systems or not.

4. TITLE & RISK

4.1 **Title.** Seeing Machines shall retain all right, title, and interest in the Products. Client agrees not to claim any rights in the Products and shall not assign, convey, encumber, mortgage, or otherwise dispose of the Products or permit it to be subject to any legal process without prior written consent of Seeing Machines, and any attempt to do so shall be null and void. Client will take all steps and execute all instruments as may be reasonably necessary or desirable to certify Seeing Machines' ownership in the Products. Seeing Machines may place identification on the Products as Seeing Machines deems appropriate to indicate its ownership of the Product.

4.2 **Security Interest in Products Sold.** Seeing Machines reserves a purchase money security interest and lien in Products sold to the Client under an Order Form, in the amount of the purchase price of such Products. In a default by the Client of any obligation to Seeing Machines, Seeing Machines shall have the right, in addition to all other rights and remedies, to repossess Products sold to the Client physically, or, if the functionality exists, and after giving the Client at least two days' written notice, to remotely disable or deactivate Products for which payment is overdue. The Client agrees to make the Products available to Seeing Machines for repossession. The security interest will be satisfied by payment in full. A copy of the invoice and/or these terms may be filed with appropriate authorities at any time as a financing statement, to further perfect Seeing Machines' security.

4.3 **Risk.** In accordance with DAP incoterms, the risk in the Products during transit and unloading will be borne by Seeing Machines. Upon completion of unloading of Products risk passes to Client.

4.4 **Insurance.** Seeing Machines will ensure that during the term of this Agreement, Seeing Machines has in place public liability insurance in the amount of AUD \$10 million and product liability insurance in the amount of AUD \$10 million, against claims by third parties. On request, Seeing Machines will provide a certificate of currency confirming the insurance cover in place.

5. CLIENT RESPONSIBILITIES

5.1 **SIM cards.** The Client is responsible for providing 3G SIM cards for each Guardian system in accordance with the technical specifications provided by Seeing Machines. Each SIM card provided by the Client will have the minimum of 2 gigabytes of data per month. The Client agrees that Seeing Machines is not responsible for any charges related to SIM cards.

5.2 **Installation.** The Client is responsible for coordinating access to facilities and vehicles in accordance with the Schedule of Installation. The Client agrees to have the hardware installed in each vehicle by drilling and securing the equipment onto the dash or other parts of the vehicle.

5.3 **Facilities.** If the Client is to provide facilities for the delivery of Services, the following shall apply:

5.3.1 **Access to Services.** The Client will provide Seeing Machines' Personnel adequate access to water, amenities, electrical power, and reasonable conditions in which Services are performed, including but not limited to shade from the sun and reasonable shelter from environment conditions such as hot and cold climates.

5.3.2 **Access to Vehicles.** The Client will provide Seeing Machines' Personnel with access to vehicles to install the equipment in accordance with the Schedule of Installation.

5.3.3 **On-Site Safety.** If the Client provides Seeing Machines' Personnel with use of, or access to, materials, systems, sites or facilities owned or controlled by the Client or End-Users: (a) the Client will take all reasonable steps to ensure that such facilities provide a safe working environment; (b) the Client will notify Seeing Machines Personnel of any policies and procedures relating to safety, health and personal conduct which apply at the site; and (c) Seeing Machines' Personnel must comply with those policies and procedures.

5.4 **Acceptance of Products.** The Client is responsible for accepting the installation of the Product in writing, at the time of installation. The Client has (30) thirty days from the date of installation to advise

Seeing Machines of any identified defects related to the installation of the Product.

5.5 **Use of the Products.** The Client will use and operate (and will ensure that End-Users use and operate) the Products in a safe manner, for the purpose for which they were intended, and in accordance with any Documentation or instructions provided by Seeing Machines. The Client must only use service Personnel approved by Seeing Machines to install, commission and for all maintenance items relating to the Products and must only use Consumable Items or spare parts approved by Seeing Machines. The Client must not tamper with or attempt to repair, re-program or maintain the Products unless approved by Seeing Machines.

5.6 **Change Management.** The Client is responsible for ensuring that each End-User of the Products and Services is made aware of the Products and Services, and their organisational role in supporting and using the Products and Services.

6. PRICE & PAYMENT

6.1 **Charges.** The Client will pay Seeing Machines the Charges, in the amounts, currency and installments as specified in the Order Form.

6.2 **Schedule of Installation.** The Client agrees to enter into a Schedule of Installation with Seeing Machines that identifies the dates and the rate at which the Product will be installed into the Client vehicles.

6.3 **Invoicing.** Seeing Machines will invoice the Client for Products upon shipment as specified in the Order Form. Seeing Machines will invoice the Client for the first month of Services 30 days from the end of the calendar month Product was shipped. Seeing Machines will raise invoices for Services at the end of each calendar month for the remainder of the Assessment and Trial Period. (For example, Product is shipped on 10 February. Seeing Machines will invoice for the first month of Services on 30 March. The next Service invoice will be raised on 30 April and continue for the Assessment and Trial Period). Seeing Machines may elect to invoice the Client from any Seeing Machines Group entity. Seeing Machines may elect to separately invoice any partial delivery. The Client must nominate an email contact for the receipt of invoices.

6.4 **Expenses.** Unless specified otherwise, the Client will reimburse Seeing Machines for all expenses reasonably incurred by Seeing Machines in providing the Products and/or Services, including travel, car-hire, accommodation and per-diem expenses at cost plus a 5% administration fee. Seeing Machines will seek the Client's consent before incurring any expense over the monetary amounts shown in the Pricing Schedule per Product installation, whichever is the greater, and will provide reasonable supporting details of all such expenses on its invoices.

6.5 **Payment terms.** The Client will pay all amounts within 30 days from the invoice date (i.e. net 30 days). If any payments are overdue Seeing Machines may suspend supply of Products and/or Services. As a condition of any subsequent supply, Seeing Machines may vary the Client's payment terms.

6.6 **Pre-payment or security of payment.** Seeing Machines may charge interest on late payments at the rate of 10% per annum, calculated daily from the due date.

6.7 Taxes.

6.7.1 **Tax.** Where Seeing Machines is obliged to charge, pay or account for a value added tax, goods and services tax, sales tax or other similar consumption tax or is subject to any customs, import, tariff or similar duty as part of the sale of Products and/or Services, the invoiced price shall be increased by the amount of such tax or charge.

6.7.2 **Withholding Tax.** The Client must make all payments for Charges under this agreement to Seeing Machines without any withholding or deduction, unless required by law.

6.7.3 If a law requires the Client to deduct or withhold an amount on account of Taxes from any payment made by the Client, then the Client must:

a) make that required withholding or deduction and pay the required amount to the relevant taxing authority within the time allowed and in the minimum amount required by law;

b) provide Seeing Machines with the original receipts for that payment to the relevant taxing authority (or any other

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evidence reasonably satisfactory to Seeing Machines); and

- c) pay an additional amount to Seeing Machines (and the Pricing under the Order Form to this Agreement is increased) so that, after making all required withholdings or deductions, Seeing Machines receives an amount equal to the payment it would have received if those withholdings or deductions had not been required.

6.8 Translation. The Client agrees to pay costs associated with services to translate Seeing Machines' Materials, Services, Documentation and training into any language other than English. Seeing Machines agrees to provide a quote to the Client before commencement of translation services, except if the case of communication with the Seeing Machines 24/7 Support Center. The Client agrees to issue a Order Form within 7 days of acceptance of a quote or an invoice in relation to communication with the Seeing Machines 24/7 Support Center. To avoid any doubt, for Seeing Machines to supply Services the Client will:

- 6.8.1 pay translation costs associated with preparing a pre-recorded fatigue notification in another language as quoted by Seeing Machines or agree to use of the English version,
- 6.8.2 pay translation costs associated with delivery of interpreter support for Seeing Machines' Materials and Services in another language as quoted by Seeing Machines or agree to use of the English version, and
- 6.8.3 pay translation costs associated with Guardian certification training and management familiarization in another language as quoted by Seeing Machines or agree to use of the English version.

7. WARRANTY

7.1 Product Warranty. Subject to the rest of this clause, Seeing Machines warrants to the Client that each Product will: (a) conform in all material respects with its Specifications; and (b) be free from material failures due to manufacturing, material or workmanship defects. The Product Warranty does not cover Consumable Items, fair wear and tear or faults caused by the Client or End-Users, such as not using the Product according to its Documentation, not installing or maintaining it using approved service Personnel, tampering with the Product, removing it from the vehicle or damaging cables or other components. The Product is only designed for use in registered vehicles operating on public roads and is not designed or warranted for use in off-road or specialty vehicles. The Client acknowledges that the Specifications are likely to change from time to time and that changes to the Specification do not extend the Warranty Period. Upon the Client's request, Seeing Machines will confirm to the Client the details of the then-current Specifications. The Product Warranty only applies to Products manufactured by Seeing Machines. For other Products, Seeing Machines will pass through to the Client the benefit of any manufacturer's warranty to the extent Seeing Machines is able to do so.

7.2 Services Warranty. Subject to the rest of this clause 7, Seeing Machines warrants to the Client that the Services will be provided: (a) promptly, carefully, exercising all due care, skill and judgment, in an efficient and professional manner and in accordance with generally accepted professional and business practices; and (b) using appropriately trained and skilled Personnel.

7.3 Exclusions. Each of the Product Warranty and Service Warranty ceases to apply where: (a) the Client does not comply with its obligations set out in this Agreement, including any Client Responsibilities set out in this Agreement; (b) the Client knew of the failure (which would otherwise be a breach of warranty) prior to purchase; or (c) the fault or defect (which would otherwise be a breach of warranty) is caused by factors outside Seeing Machines' reasonable control.

7.4 Warranty Claims. Any claim under the Product Warranty or Service Warranty must be made as soon as reasonably practical after the Client or End-User becomes aware of the potential claim. A claim made after the Warranty Period is not covered by the Product Warranty. To make a claim under the Product Warranty the Client must: (a) notify Seeing Machines via support@seeingmachines.com (or other email or website nominated by Seeing Machines from time to time), specifying in detail the nature of the Warranty claim; and (b) permit Seeing

Machines to inspect and test the Product claimed to be defective. The Client shall pay the costs of shipping the allegedly defective Product to Seeing Machines (although these costs may be reimbursed under clause 7.5).

7.5 Remedy. Where Seeing Machines accepts a claim is covered by the Product Warranty or Service Warranty, Seeing Machines will - at its own cost - take all reasonable steps to promptly remedy the claim, such as repairing or replacing defective Products, or re-performing Services. Seeing Machines (a) will credit the Client for reasonable shipping expense for Product returned to Seeing Machines for warranty service in compliance with these terms; but (b) will not bear shipping expense and will return to sender any Product returned without obtaining prior authorization and RMA number or otherwise not covered by the Product Warranty. As part of its RMA process, Seeing Machines may issue a new or refurbished replacement Product, which is warranted for the remainder of the original Product's Warranty Period. If, after Seeing Machines has assessed the returned Product, the fault is not covered by the Product Warranty, the Client agrees to pay for Seeing Machines' costs of handling the RMA and investigating the claim, repairing or replacing the Product (at Seeing Machines' then-current price list), and all shipping charges. The Client agrees that where Seeing Machines can rectify the warranty claim within a reasonable time, Seeing Machines will not be liable for damages caused by the breach of warranty.

7.6 Implied Warranties: To the fullest extent allowed by law, Seeing Machines excludes all other warranties, express, implied or statutory including fitness for purpose. If this Agreement is subject to laws which do not allow Seeing Machines to exclude implied warranties, any implied warranties are limited in duration to the Warranty Period.

8. INTELLECTUAL PROPERTY

8.1 Ownership. The Client acknowledges that: (a) Seeing Machines retains ownership of all Intellectual Property Rights in the Seeing Machines Materials and all Intellectual Property Rights used or embodied in a Product; (b) any Software is licensed, not sold, to the Client; and (c) no manufacture to the Client's specifications entails ownership by or conveyance to the Client of any property right in any invention.

8.2 License to Client. Subject to the Client complying with the terms of this Agreement, Seeing Machines grants to the Client a non-exclusive, personal, non-transferable license to use, copy and distribute to End-Users (but not to modify) the Seeing Machines Materials, solely to the extent necessary for the Client and End-Users to use the Products and/or Services in accordance with this Agreement, and subject to clause 10 (Confidentiality). The Client must not (and must ensure that End-Users do not) alter, reverse engineer, disassemble, decompile or copy any Product or Software. The Client may not sub-license the Seeing Machines Materials to any third party except: (a) to a related body corporate of the Client (subject to the same restrictions as the license granted to the Client); or (b) with Seeing Machines' prior written consent. Licensing costs to the Client are bundled with the Service costs.

8.3 Third Party Software. The Software may include third party software which may be subject to additional or different terms or conditions. To the extent that any third-party software terms conflict with any of these terms, the third-party software terms will prevail with respect to the Client's use and distribution of the applicable third-party software.

9. INFRINGEMENT CLAIMS

9.1 Defend or Settle. Subject to the rest of this clause 9, Seeing Machines will arrange for the defense or settlement of any Infringement Claim and Seeing Machines shall pay or arrange for the payment of the Client's reasonable lawyer's fees and any damages and costs awarded against the Client in respect of such Infringement Claim (but Seeing Machines shall not be liable for any indirect or consequential loss or damage arising in connection with such Infringement Claim). Seeing Machines' obligations are contingent upon the Client: (a) promptly notifying Seeing Machines in writing of any actual or threatened Infringement Claim; (b) cooperating with Seeing Machines in defense of any such claim; (c) taking commercially reasonable steps to mitigate any loss or liability caused by the Infringement Claim; and (d) not settling any Infringement Claim without Seeing Machines' prior written consent. This clause constitutes Seeing Machines' sole liability and the Client's sole remedy (whether under this Agreement or otherwise)

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in connection with any actual, suspected or alleged infringement of any third-party Intellectual Property Rights.

9.2 **Rectify.** If an Infringement Claim has been made or threatened or Seeing Machines considers the Product or Seeing Machines Materials may infringe any third party's rights, Seeing Machines has the option to: (a) modify the Product or Seeing Machines Materials (at Seeing Machines' expense) so it becomes non-infringing; (b) obtain a license for the Client (at Seeing Machines' expense) to continue using the Product or Seeing Machines Materials; or (c) terminate the license of the infringing Seeing Machines Material and refund all of the Charges paid by the Client for the infringing Product or Seeing Machines Material.

9.3 **Exclusions.** Seeing Machines shall have no liability or obligation in respect of Infringement Claims arising from: (a) use of a superseded or altered release of the Software if infringement would have been avoided by the use of a current unaltered release of the Software that Seeing Machines had provided to the Client; (b) Products, Seeing Machines Materials or Services that are modified after delivery without Seeing Machines' written consent, where the infringement would not have occurred but for such modification; (c) a combination of Products, software, processes or materials other than those provided for or specified by Seeing Machines, and the infringement would not have occurred but for such combination; (d) Products, materials or Services being marketed, sold, used, or serviced outside of the scope of the license granted to the Client by Seeing Machines; or (e) any Infringement Claim asserted by a related body corporate of the Client.

10. CONFIDENTIALITY

10.1 **Obligations.** Where a Party (recipient) receives Confidential Information from the other Party (discloser) in the course of performing this Agreement, the recipient must: (a) keep the information confidential; (b) not use, disclose or reproduce the information for any purpose other than the purposes of this Agreement; and (c) ensure that its Personnel Data do not do, or omit to do anything, which if done or omitted to be done by it, would breach this clause. The obligations under this clause 910 continue after the termination of this Agreement.

10.2 **Permitted use.** Notwithstanding clause 10.1, the recipient may use or disclose the information to the extent necessary to comply with any law or the requirements of a regulatory body (including a stock exchange), or to obtain professional legal, insurance or accounting advice, or for use in legal proceedings regarding this Agreement.

10.3 **Exceptions.** Clause 10.1 does not apply to Confidential Information which: (a) is in or becomes part of the public domain other than through breach of an obligation of confidence; (b) was known to the recipient at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; (c) was independently developed by the recipient; (d) is acquired from a third party who was entitled to disclose it. (e) the Client and Seeing Machines agree to disclosing to another party.

11. PRIVACY

The Client consents to Seeing Machines collecting, using and where necessary disclosing the personal information the Client has provided to Seeing Machines in accordance with the Seeing Machines Privacy Policy (available at <https://www.seeingmachines.com/privacy-policy/>) and the Data Protection and Privacy Schedule (attached to this MATA) for the purpose of discharging its obligations under this Agreement and Order Form.

12. OWNERSHIP & USE OF PRODUCT DATA

12.1 Seeing Machines acknowledges that the Client retains ownership of all Product Data and related Intellectual Property Rights. The Client represents and warrants that it is the owner or authorized licensor of the Product Data and related Intellectual Property Rights and has the rights to grant the license in clause 12.4.

12.2 Seeing Machines will retain diagnostic data for a period of (2) two months. All other data (video, trip and event data) will be retained for a period of (12) twelve months.

12.3 The Client agrees that it will only use the Product Data to the extent necessary for the Client's internal business purposes, such as workplace safety management & improvement and staff training & performance management, and such use is subject to clause 10 (Confidentiality). The Client agrees that it will not commercially exploit, sell, transfer or license the Product Data to any third party

except: (a) to a related body corporate of Client (subject to the same restrictions as this clause); or (b) with Seeing Machines' prior written consent.

12.4 The Client hereby grants to Seeing Machines an exclusive, perpetual, worldwide, royalty-free, irrevocable and transferable license (and right to sub-license) to use, copy, modify and commercially exploit Product Data or statistical or aggregated information based on or related to any Product Data (including by selling, licensing or distributing to third parties) subject to Seeing Machines complying with clause 12.2. Seeing Machines agrees to take all reasonable steps to anonymise such data, including ensuring that any references which identify the Client or End-User have been removed. The Client acknowledges that in certain circumstances, Seeing Machines may be required by law or court order to release Product Data and/or Personal Data relating to End-Users.

13. LIABILITY

13.1 **No other warranties.** The Product Warranty and the Service Warranty are the only warranties given by Seeing Machines, and constitute Seeing Machines' sole liability and the Client's (and End-User's) sole remedy regarding any claimed defect in the Products, Seeing Machines Materials and/or Services

13.2 **Disclaimer.** The Client (for itself and on behalf of each End-User) acknowledges and agrees that: (a) while the Products and Services are intended to help contribute to safer vehicle operation, Seeing Machines does not guarantee that all high risk events, unsafe driving, collisions or other events will be prevented as a result of using the Products and/or Services; (b) Seeing Machines does not warrant that the Product and/or Software will perform error free or uninterrupted or that the Product or Services will detect all possible fatigue or distraction events; (c) even with the Product installed and operating correctly, the Client and End-User retain the responsibility for safely operating their vehicles.

13.3 **Exclusion of Indirect Loss.** To the fullest extent allowed by law, Seeing Machines excludes all liability for any plant-down-time, loss of Product, loss of revenue, loss of profit, loss of or damage to reputation, loss of anticipated savings or benefits, or any indirect, special or punitive loss, damage, cost or expense or other claims for consequential compensation, incurred by or awarded against Client or an End-User arising directly or indirectly under or in connection with this Agreement or the performance or non-performance of this Agreement, or from the design, manufacture, sale, delivery, resale, repair, replacement or use of any Products or the furnishing of any Service and whether arising under this Agreement, statute, in tort (for negligence or otherwise), or on any other basis in law or equity.

13.4 **Liability Limit.** To the fullest extent allowed by law, the liability of Seeing Machines for any and all claims relating to Products or Services is limited at Seeing Machines' option to: (a) In the case of Products: repairing or replacing the Products or paying the cost of supplying equivalent Products; (b) in the case of Services: providing the Services again or paying the cost of supplying equivalent Services. In no event will Seeing Machines' aggregate liability arising out of, connected with, or resulting from the performance or non-performance of this Agreement or from the design, manufacture, sale, delivery, resale, repair, replacement or use of any Products or the furnishing of any Service, and whether arising under this Agreement, statute, in tort (for negligence or otherwise), or on any other basis in law or equity exceed the total of all Charges paid by the Client to Seeing Machines under this Agreement.

13.5 **Contribution.** The liability of Seeing Machines shall be reduced proportionately to the extent that the Client's acts or omissions causes or contributes to, directly or indirectly, the loss or damage for which Seeing Machines is liable.

13.6 **Limitation period.** Any action by the Client against any member of Seeing Machines in relation to the supply of Products and/or Services must be commenced within two years after the cause of action has accrued.

14. TERM & TERMINATION

14.1 This Agreement begins on the acceptance of the Order Form by Seeing Machines and continues for:

- (a) the entire Assessment and Trial Period; or
- (b) for any period, the Client is using Products and/or receiving any Service or license beyond the Assessment and Trial Period, whichever is the longer.

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- 14.2 Either Party may terminate this Agreement if: (a) a Party (the Breaching Party) breaches this Agreement and does not remedy the breach within two month of written notice by the other Party; (b) a Party breaches any term of this Agreement which cannot be reasonably remedied (including a breach of confidentiality or Intellectual Property); or (c) a Party becomes bankrupt or subject to an event of insolvency.
- 14.3 Upon termination under clause 14.2, and the Client is the Breaching Party the Client will pay the remainder of the Agreement value to Seeing Machines (including Product, Services and licensing for the remainder of the Assessment Period).
- 14.4 Upon the Client terminating this contact for any reason, other than described in clause 14.2, the Client will pay the remainder of the Agreement value to Seeing Machines (including Product, Services and licensing for the remainder of the Assessment Period).
- 14.5 Upon Seeing Machines terminating this contract for any reason, other than described in clause 14.2, the Client will pay Seeing Machines any fees or expenses owed and accepted by the Client in writing up to the date of termination.
- 15. LIMITATIONS ON ASSISTANCE**
- 15.1 **Limitations on assistance.** Any Seeing Machines Materials and training provided under this Agreement or otherwise, are not intended to be comprehensive and are not to be construed as legal advice. The contents of Seeing Machines Materials and training is intended for information purposes only and Seeing Machines makes no warranty, or claim or representation, express or implied, in relation to any Seeing Machines Materials or training provided to the Client. Whilst Seeing Machines Materials and training will be formulated with all due care, Seeing Machines is not liable to the Client for the use of such Seeing Machines Materials or training.
- 16. GENERAL**
- 16.1 **Entire Agreement.** This Agreement contains everything the Parties have agreed in relation to the matters it deals with. Client acknowledges it has not relied on any warranty or representation by any person or entity except for the warranties or representations specifically stated in these terms.
- 16.2 **Counterparts.** The exchange of a fully executed Order Form (in counterparts or otherwise) email will be sufficient to bind the Parties to the Agreement and will be evidence of the Client's acceptance of the MATA and the formation of the Agreement.
- 16.3 **Assignment.** Neither party may assign any of its rights and obligations under this Agreement.
- 16.4 **Interpretation.** In this Agreement, words like including, for example, such as or similar expressions are to be interpreted as meaning including, without limitation. If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected. If this Agreement or any Order Form is translated into another language, then to the extent permitted by law, the English language text will prevail. The provisions of this Agreement are the result of negotiations between the Parties; accordingly, this Agreement shall not be construed in favor of or against either Party by reason of the extent to which the Party prepared it.
- 16.5 **Third Party Beneficiaries.** This Agreement confers rights and remedies on each member of Seeing Machines including Seeing Machines Limited, incorporated in Australia (ACN 093 877 331). No other third party has rights or remedies under this Agreement.
- 16.6 **Variation & Waiver.** No variation of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement. The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 16.7 **Governing Law.** This Agreement is governed by the laws of the Australian Capital Territory. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts located there (and courts of appeal) provided that each Party shall have the right to enforce a judgment of those courts in a jurisdiction in which the other Party is incorporated or in which it has any assets. The UN Convention for International Sale of Products shall not apply to this Agreement.

DATA PROTECTION & PRIVACY SCHEDULE

Processing data and data security

Roles: The Parties agree that for the purposes of Data Protection Laws Seeing Machines acts on instructions from the Client.

Seeing Machines Responsibilities. Seeing Machines will:

- i. comply with all Data Protection Laws in the Processing of Personal Data,
- ii. not Process or cause to be Processed Personal Data other than on documented Client instructions unless Processing is required by Data Protection Laws or other laws to which Seeing Machines is subject, in which case Seeing Machines shall to the extent permitted by Data Protection Laws or other laws inform the Client to which the Personal Data relates of that legal requirement before Processing the Personal Data,
- iii. taking into account the nature of the Processing, Seeing Machines will implement appropriate technical and organisational measures, insofar as possible, to respond to requests to exercise Data Subject rights under Data Protection Laws,
- iv. provide reasonable assistance to the Client in responding to requests to exercise Data Subject rights under Data Protection Laws,
- v. promptly notify the Client if Seeing Machines receives a request from a Data Subject in respect of Personal Data and ensure that it does not respond to that request except on documented instructions from the Client or as required by Data Protection Laws or other laws to which Seeing Machines is subject, in which case Seeing Machines will to the extent permitted by Data Protection Laws or other laws inform the Client of that legal requirement before responding to the request,
- vi. promptly notify the Client upon Seeing Machines becoming aware of a Personal Data Breach and provide reasonable assistance in the event of an investigation related to the Personal Data Breach, each Party at its own costs, and
- vii. will take reasonable steps to ensure the reliability of any employee and agent, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data, as strictly necessary for the purposes of the contract, and to comply with Data Protection Laws in the context of that individual's duties to Seeing Machines, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Assistance. The Client and Seeing Machines agree to provide reasonable mutual assistance with any data protection impact assessment, and prior consultations with Supervising Authorities which the Client or Seeing Machines considers to be required by Data Protection Laws, each Party at its own costs.

Appointment of Sub-Processor. Seeing Machines agrees with respect to each Sub-Processor, it will:

- i. prior to the Sub-Processor Processing Personal Data, carry out reasonable due diligence to ensure that the Sub-Processor is capable of providing the level of protection for Personal Data required under Data Protection Laws; and
- ii. ensure that the agreement between Seeing Machines and Sub-Processor is governed by a written enforceable contract including terms which offer at least the same level of protection for Personal Data as those set out in Data Protection Laws.

Deletion of Return of Personal Data.

- i. Subject to this term, Seeing Machines will delete Personal Data consistent with the Guardian Live 12 months deletion cycle and ensure the deletion of all copies of Personal Data, unless Processing is required by Data Protection Laws or other laws to which Seeing Machines is subject, in which case Seeing Machines shall to the extent permitted by Data Protection Laws or other laws inform the Client to which the Personal Data relates of that legal requirement before Processing the Personal Data.
- ii. Upon request Seeing Machines will provide written certification, by email or otherwise, to the Client that it and each Sub-Processor has fully complied with this term within 7 days of cessation of services involving the Processing of Personal Data.

Restricted Transfers.

- i. **Standard Contractual Clauses.** Seeing Machines and the Client agree to enter into the Standard Contractual Clauses in respect of any Restricted Transfer of Personal Data.
- ii. **Effect:** The Standard Contractual Clauses shall come into effect on the Parties becoming a party to them, or commencement of a Restricted Transfer of Personal Data.

Client Responsibilities. The Client will:

- i. comply with all Data Protection Laws and surveillance laws in the Processing of Personal Data, which the Client or End-

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User is subject;

- ii. provide such notices to End-Users as reasonably required to comply with the notice requirements under Data Protection Laws. Such notices are to include, but not limited, to: 1) Data Subject rights under Data Protection Laws; 2) categories of Personal Data processed pursuant to this Agreement, including Special Category; and 3) information about Processors and Sub-Processors pursuant to this Agreement;
- iii. promptly notify Seeing Machines on becoming aware of a Personal Data Breach in relation to Product Data and provide reasonable assistance in the event of an investigation related to the Personal Data Breach, each Party at its own costs;
- iv. have obtained informed consent, including explicit consent as required, from End-Users prior to, or at the time, the End-User uses Products and/or Services pursuant to this Agreement; and
- v. evidence End-User consent as reasonably required by Seeing Machines in the provision of Products and/or Services, or as required by Data Protection Laws or other laws to which Seeing Machines is subject.

Direction and Authority to process and transfer personal data. The Client agrees:

- i. to Seeing Machines transferring and Processing Personal Data in Australia, the United Kingdom and the United States of America; and
- ii. that in the provision of Services under this Agreement, the Sub-Processors disclosed by Seeing Machines upon request by the Client are authorised to Process Personal Data in accordance with the provisions of this Agreement.