

## MBED CLOUD TERMS OF SERVICE

Version dated as of March 29, 2018

### 1. Definitions

For the purposes of this agreement, the initially capitalised words are ascribed the following meanings:

- 1.1 **“Account”** means Customer’s Mbed Cloud account.
- 1.2 **“Account Data”** means information that Customer provides to Arm in connection with the creation or administration of Customer’s Account, for example names, usernames, phone numbers, and email addresses associated with Customer’s Account.
- 1.3 **“Affiliate”** means, with respect to Customer, an entity that controls, is directly or indirectly controlled by or is under common control with Customer, where “control” means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of the relevant entity (but only as long as such entity meets these requirements).
- 1.4 **“Agreement”** means these Mbed Cloud Terms of Service including the Data Protection Annex, Subscription Order(s), Mbed Cloud Services Support Program, and the applicable SLA.
- 1.5 **“API”** means application programming interface.
- 1.6 **“Arm”** means Arm Limited, whose registered office is situated at 110 Fulbourn Road, Cambridge, CB1 9NJ, UK.
- 1.7 **“Confidential Information”** means: (i) any information designated in writing by either party, by appropriate legend, as confidential, (ii) any information which if first disclosed orally is identified as confidential at the time of disclosure and is thereafter reduced to writing and sent to the other party within thirty (30) days after its oral disclosure and designated, by appropriate legend, as confidential, and (iii) any information that, given the nature of the information or circumstances surrounding its disclosure, a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) Subscription Order(s); (b) Login Credentials; (c) Account Data; (d) Device Data; and (e) Device Specific Data.
- 1.8 **“Customer”** means the entity identified as such in the Subscription Order.
- 1.9 **“Customer Application”** means an application developed or used by Customer or its Affiliates, and which utilizes the Services provided via Mbed Cloud. Customer Applications are provided by Customer, and not by Arm; “Customer Application” does not include Mbed Cloud.
- 1.10 **“Customer End Users”** means the individuals or entities Customer permits to either or both: (i) access or use the Device Data; and (ii) access or use the Services under Customer’s Account.
- 1.11 **“Data Protection Annex”** means the data protection annex which sets out the terms and conditions for how Arm processes Personal Data.
- 1.12 **“Device Data”** means any data coming off a device that Customer or Customer End Users provide to Arm via the Services. Device Data does not include Account Data, Device Specific Data or Feedback.
- 1.13 **“Device Specific Data”** means any data about a device that Arm captures from providing the Services to Customer, such as a device ID.
- 1.14 **“Documentation”** means the developer guides, getting started guides, user guides, quick reference guides and other technical and operations manuals and specifications for the Services located at <https://cloud.mbed.com/docs>. The Documentation may be updated by Arm from time to time.
- 1.15 **“Effective Date”** is the last date on which this Agreement is signed by both parties.

- 1.16 “**Feedback**” means all suggestions, comments, feedback, ideas, or know-how (whether in oral or written form) relating to the Services, Mbed Cloud and any other software that relates to the Services and that Customer provides to Arm.
- 1.17 “**Fees**” means the fees payable by Customer to Arm for the Services, as set out in the applicable Subscription Order.
- 1.18 “**Intellectual Property**” means: (i) patents, inventions, designs, copyright and related rights, database rights, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (ii) knowhow and Confidential Information; (iii) rights in domain names; (iv) applications, extensions and renewals in relation to any such rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future.
- 1.19 “**Login Credentials**” mean any passwords, authentication keys or security credentials, API keys and certificates that are used by the Customer to enable Customer’s access to the Services.
- 1.20 “**Mbed Cloud**” means the hosted software application Arm uses to make the Services available to its Customers via the applicable APIs.
- 1.20 “**Mbed Cloud APIs**” means the APIs that enable Customer’s Application to interact with Mbed Cloud for the purposes of using the Services.
- 1.21 “**Mbed Cloud Portal**” means the website interface for Mbed Cloud.
- 1.22 “**Mbed Cloud Services Support Program**” means the latest version of the technical operational support services program then in effect for the Services (<https://cloud.mbed.com/support>).
- 1.23 “**Mbed Site**” means either or both <https://www.mbed.com/en/> and <https://cloud.mbed.com/>, including without limitation all sub-domains thereof, and any successor or related site designated by Arm.
- 1.24 “**Personal Data**” means any information relating to an identified or identifiable natural person, and which Arm has received from Customer or Customer End Users under this Agreement.
- 1.25 “**Security Measures**” means the measures set out in the Data Protection Annex, Appendix 1 (Security Measures).
- 1.26 “**Services**” means the services to be provided by Arm to Customer under this Agreement, which consist of providing: (i) access to Mbed Cloud Portal; (ii) access to the Services as specified in the Subscription Order; and (iii) Services Support (defined in Clause 8).
- 1.27 “**SLA**” has the meaning given to such term in Clause 2.2.
- 1.28 “**Subscription Order**” means an order form executed by both parties setting out: (a) the Services; (b) Subscription Term (defined below); (c) Fees; (d) Customer support contact information; and (e) any other terms for using the Services that the parties have agreed upon.
- 1.291 “**Subscription Term**” means the time period during which Arm agrees to make the Services available to Customer as specified in the Subscription Order, unless or until suspended or terminated in accordance with this Agreement.
- 1.302 “**Subsidiary**” means any company the majority of whose voting shares is now or hereafter owned or controlled, directly or indirectly, by a party hereto. A company shall be a Subsidiary only for the period during which such control exists.
- 1.31 “**Website Terms of Use**” means the terms of use for Arm websites <https://www.arm.com/company/policies/terms-and-conditions>, which may be updated from time to time.

## **2. Provision of the Services**

2.1 This Agreement applies to the provision of the Services. The parties will enter into one or more Subscription Orders that contain additional terms and conditions applicable to the provision of the Services. Upon signature by the parties, each Subscription Order is incorporated into this Agreement.

### **Provision of Services**

2.2 Once a Subscription Order has been executed in accordance with the above, Arm will enable Customer to access the Mbed Cloud Portal using Login Credentials. Thereafter Customer will be able to access and use the Services via the applicable Login Credentials during the Subscription Term. Arm shall use reasonable efforts to perform the Services in accordance with the applicable service level agreement (“**SLA**”) (if any). If Arm fails to meet an SLA, Customer’s sole and exclusive remedy is a service credit as set out in the SLA.

### **Customer’s Account**

2.3 Customer will designate one or more individuals within its organization in the Subscription Order to be the point of contact with Arm for the management and support of the Services, and who will be responsible for establishing and managing Customer’s use of the Services.

### **Changes to the Services and Documentation**

2.4 Arm may update the Services and Documentation as it determines necessary to keep up to date with technology developments relevant to the Services and security practices or to add new features and notify Customer in accordance with Clause 2.6. Arm will use reasonable efforts to limit the frequency of any such changes affecting the operation of the Services.

### **Changes to Mbed Cloud APIs**

2.5 Arm may change, discontinue or restrict Mbed Cloud APIs for the Services from time to time. Arm will use commercially reasonable efforts to continue supporting the previous version of such Mbed Cloud APIs for twelve (12) months after the change or discontinuation has been notified to Customer in accordance with Clause 2.6, except if doing so: (a) would pose a security issue or infringe a third party’s Intellectual Property rights, (b) is economically or technically burdensome, or (c) would cause Arm to violate the law.

### **Notification of changes to the Services, Mbed Cloud APIs and Documentation**

2.6 Arm will post notice of all changes to the Services, Mbed Cloud APIs, and Documentation on the Mbed Site or the Mbed Cloud Portal, and for any changes that Arm thinks are material, Arm will use reasonable efforts to notify the designated contact in Customer’s Account by email. Except for emergency changes required to protect the Services, customers or third parties, all changes will take effect within thirty (30) days from the date Arm posts the notices of such changes on the Mbed Site or the Mbed Cloud Portal. Customers’ continued use of the Services is deemed to be acceptance of such changes. Customer acknowledges and agrees that it is Customer’s responsibility to check the Mbed Site and the Mbed Cloud Portal periodically for any relevant notice of changes.

### **Upgrading from an Evaluation Agreement**

2.7 If Customer has previously signed up to the Mbed Cloud Terms of Service (Limited Use) agreement, such agreement automatically terminates when this Agreement is signed by the parties.

## **3. Data Protection**

3.1 Arm collects data that can be categorized as Account Data, Device Data and Device Specific Data, and each of these categories may contain both Personal Data and non-Personal Data.

3.2 Arm processes Account Data, Device Data and Device Specific Data in accordance with this Agreement and Arm’s privacy policy (<https://www.arm.com/company/policies/privacy>) (“**Privacy Policy**”).

3.3 Customer will ensure that Customer’s and Customer End Users’ use of Device Data, Device Specific Data, and the Services, does not violate any of the Website Terms of Use or any applicable law or regulation. For the avoidance of doubt, as between the Customer and Arm, the Customer is solely responsible for compliance with any applicable law and regulation related to the manner in which Customer or Customer’s End User uses the Services, including without limitation the storage, transfer and processing of Device Data and Device Specific Data, and the location(s) where such processing occurs.

- 3.4 Customer shall not use the Services to process special categories of Personal Data, including personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person), data concerning health or data concerning a natural person's sex life or sexual orientation.

**Use of Device Specific Data**

- 3.5 Notwithstanding Clause 13 (Confidential Information), Arm may retain and use Device Specific Data for internal analytical purposes including to: (i) improve Mbed Cloud and the Services; or (ii) to develop new products and services.

Arm may make information derived from its analysis of Device Specific Data publicly available, provided that the publicized information does not include any Device Specific Data that has not been anonymized by aggregation or other methods. For the purposes of this Agreement, aggregated and anonymized Device Specific Data means Device Specific Data that: (i) has been aggregated with other data; and (ii) does not contain information that identifies Customer or Customer End Users. For the sake of clarity, aggregated and anonymized data is not Customer Confidential Information.

<b>4. Customer Responsibilities</b>
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**Customer Account**

- 4.1 Customer is responsible for all activities that occur under Customer's Account (whether by Customer, Customer End Users or otherwise) and for maintaining the security of the Login Credentials. The Login Credentials generated by the Service are for Customer's internal use only and Customer will not sell, transfer, or sub-licence them to any other entity or person, except that Customer may disclose Customer's Login Credentials to Customer's subcontractors performing work on Customer's behalf. If Customer becomes aware of any unauthorized use of its Account or Login Credentials, Customer will notify Arm as promptly as possible. Except solely to the extent caused by Arm's failure to implement and maintain the Security Measures, Arm is not responsible for unauthorized access to Customer's Account.

**Customer End Users**

- 4.2 Customer is responsible for Customer End Users' use of Device Data and the Services. Customer will ensure that all Customer End Users comply with Customer's obligations under this Agreement and that the terms of Customer's agreement with each Customer End User is consistent with this Agreement. If Customer becomes aware of any breach of Customer's obligations under this Agreement caused by a Customer End User, Customer will immediately suspend access to the Device Data and Services by such Customer End User. Customer is responsible for acts and omissions of its Customer End Users relating to this Agreement as though they were Customer's own.

**Customer Security**

- 4.3 Customer is responsible for properly configuring, implementing and using the Services and otherwise taking appropriate action to secure and protect Device Data in a manner that will provide appropriate security and protection, which might include the use of encryption technology to protect Device Data from unauthorized access. Except with respect to Arm's express obligations set out in this Agreement, Customer is solely responsible for any damage or losses caused by unauthorized destruction, loss, interception, or alteration of Device Data, Device Specific Data and Account Data by unauthorized persons.

**Customer Applications, device software and devices**

- 4.4 Customer is solely responsible for the development, implementation, operation, support and maintenance and security of the following used in conjunction with the Services: (a) each Customer Application; (b) the software used on each Customer device; and (c) each Customer device.

**Customer's network**

- 4.5 Customer is solely responsible for procuring and maintaining its network connections and telecommunication links from its systems to Arm's or third-party data centers. Arm disclaims all liability and responsibility in respect of any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

<b>5. Intellectual Property; Use of Software; Feedback; Third Party Cloud Services</b>
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### **Intellectual Property**

- 5.1 Except as expressly set forth in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's Intellectual Property. As between the parties, Customer owns all the Intellectual Property in Device Data, and Arm and its licensors owns all the Intellectual Property in the Device Specific Data, the Services and Mbed Cloud.

### **Software for use on or with devices**

- 5.2 Arm will make available certain software in connection with the Services (via Mbed Cloud Portal, the Mbed Site or through GitHub). This software will be licensed to Customer under a separate licence agreement, which will either be an open source licence or an Arm proprietary licence. If the software does not include its own licence terms, Customer may use the software during relevant Subscription Terms in or with Customer's devices for use with the Services.

### **Restrictions**

- 5.3 Customer shall not, except as may not be prohibited under applicable law: (i) reverse engineer, decompile or otherwise attempt to derive source code from Mbed Cloud; (ii) reproduce, modify, or prepare derivative works of any of Mbed Cloud or Documentation; or (iii) distribute or display any of Mbed Cloud or Documentation other than to Customer End Users; or (iv) share, rent or lease the Services. The Customer shall use all reasonable endeavors to prevent unauthorized access to, or use of, the Services, and, in the event of such unauthorized access or use, shall promptly notify Arm. Customer is responsible for ensuring that Customer End Users comply with this Clause 5.3.

### **Customer Feedback**

- 5.4 If Customer provides any Feedback to Arm or its Subsidiaries Arm may use that information without obligation to Customer, and Customer hereby irrevocably assigns to Arm all right, title, and interest in that Feedback. Customer shall do all such things including signing all documents or other instruments necessary to confirm or vest in Arm the rights hereby assigned.

### **Third Party Cloud Services**

- 5.5 Customer acknowledges that Customer may transfer Device Data and Device Specific Data via Mbed Cloud to a third-party cloud provider for the use of such third party's cloud services and that Customer does so entirely at its own risk. Arm makes no representation or warranty of any kind in respect of any third-party's cloud services and shall have no liability whatsoever for the Device Data or Device Specific Data while it is being transmitted from Mbed Cloud to the third party's cloud.

## **6. Fees and Payment Terms**

### **Invoicing and payment terms**

- 6.1 Arm will invoice Customer for the Fees set out in the applicable Subscription Order. Customer shall pay all Fees in the currency specified in the invoice within thirty (30) days after receipt of the invoice. Customer's monthly Fees will be calculated based on Customer's usage of the Services from the first to the last day of the calendar month. All amounts payable under this Agreement are non-refundable and shall be made without setoff or counterclaim, and without any deduction or withholding. Arm may charge Customer interest at the lesser of the rate of 1% per month and the maximum amount permitted by law on all late payments.

### **Taxes**

- 6.2 Customer shall pay all amounts due under this Agreement in full without any deduction or withholding. Without limiting the foregoing, in the event that payment of any sums due to Arm under this Agreement becomes subject to any deduction or withholding in respect of or on account of tax, Customer shall pay to Arm such additional sum as may be required in order that the net amount actually received and retained by Arm under this Agreement (after such deduction or withholding has been made) shall be equal to the full amount that would have been received and retained by Arm had no such deduction or withholding been required to be made.

## **7. Temporary Suspension**

- 7.1 Arm may suspend Customer's or any Customer End User's ability to access or use any portion or all of the Services, if Arm determines:

- a. Customer or a Customer End User's use of the Services: (i) poses a security risk to Arm, Mbed Cloud, the Mbed Site, the Mbed Cloud Portal, the Services or any third party, (ii) could adversely impact Arm's systems, Mbed Cloud, the Mbed Site, the Mbed Cloud Portal, the Services or the systems or data of a third-party cloud provider or any other Arm customer, (iii) could subject Arm, its Subsidiaries, or any third party to liability, or (iv) could be fraudulent;
- b. Customer is, or any Customer End User is, in breach of this Agreement; or
- c. Customer has ceased to operate in the ordinary course of business, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

7.2 Arm will endeavor to provide as much notice as is reasonably practicable in the circumstances, and revoke any suspension as soon as practicable after the circumstances causing the suspension are resolved.

**Effect of Suspension**

7.3 If Arm suspends Customer's right to access or use any portion of or all of the Services pursuant to Clause 7.1:

- a. Customer will remain responsible for all Fees Customer incurs during the period of suspension; and
- b. Customer will not be entitled to any service credits under the applicable SLA for any period of suspension.

<b>8. Services Support</b>
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8.1 Subject to payment of the Fees, Arm shall, during the Subscription Term, provide to Customer technical operational support in accordance with the Mbed Cloud Services Support Program ("**Services Support**").

<b>9. Term; Termination; Expiry</b>
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**Term of this Agreement**

9.1 This Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with Clause 9.3 or 9.4 below.

**Subscription term and renewal**

9.2 Arm will provide the Services to Customer for the relevant Subscription Term(s). Upon expiration of any Subscription Term, the parties may renew the relevant Services for successive periods of at least one (1) year each (each, a "**Renewal Term**") at such rates as may be mutually agreed in writing between the parties.

**Termination by Either Party**

9.3 Without prejudice to any other right or remedy which may be available to it, either party shall be entitled to terminate immediately this Agreement or any Subscription Order by giving written notice to the other, if the other party:

- a. has committed a material breach of any of its obligations under this Agreement or such Subscription Order which is not capable of remedy; or
- b. has committed a material breach of any of its obligations under this Agreement or such Subscription Order which is capable of remedy but which has not been remedied within a period of sixty (60) days following receipt of written notice to do so; or
- c. any circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order; or
- d. makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to an administration order; or
- e. has an order made against it, or passes a resolution, for its winding-up (except for the purposes of amalgamation or reconstruction) or has a receiver or similar officer appointed over all or substantially all of its property or assets.

**Termination by Arm**

9.4 Arm may terminate this Agreement or a Subscription Order immediately upon notice to Customer in order to comply with applicable law.

**Effect of Termination/Expiry**

- 9.5 Upon termination or expiry of this Agreement, or termination or expiry of any Subscription Order:
- a. Subject to Clause 9.6, all Customer's (and Customer End Users') rights immediately terminate;
  - b. Customer remains responsible for all Fees Customer has incurred up to the date of termination or expiry, and any outstanding Fees, whether or not such Fees have become due at the date of termination or expiry;
  - c. Customer will immediately return or, if instructed by Arm, destroy all Arm Confidential Information in Customer's possession; and
  - d. Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 9.6 Clauses 1 (Definitions), 3.5 (Use of Device Specific Data), 5.4 (Customer Feedback), 6 (Fees and Payment Terms), 9.5 (Effect of Termination/Expiry), 11 (Limitation of Liability), 12 (Indemnity), 13 (Confidential Information), and 15 (Miscellaneous) shall all survive termination of this Agreement.

## **10. Warranties**

- 10.1 Customer represents and warrants that it will comply with all laws, rules, and regulations applicable to its use of the Services.
- 10.2 Arm warrants that the Services will perform substantially in accordance with the Documentation and as described on the Mbed Site. If Customer identifies a non-conformance with this warranty, informs Arm in accordance with the Mbed Cloud Services Support Program and Arm can verify such non-conformance, Arm will use reasonable efforts to correct any non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of this Clause 10.2 and shall not apply to the extent that any non-conformance is caused by use of the Services contrary to Arm's instructions, or modifications or alteration of the Services by any third party other than Arm.
- 10.3 Notwithstanding the above, Arm: (i) does not warrant that Customer's use of the Services will be uninterrupted or error-free; or (ii) that the Services will meet Customer's requirements; or (iii) that the Device Data will be secure or not otherwise lost or damaged. Arm is not responsible for any delays, delivery failures, or any other damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services may be subject to limitations, delays or other problems inherent in the use of such communications facilities. As stated in Clause 2.2, the only remedy for breach of an SLA, is the service credits set out in the applicable SLA.
- 10.4 Except as set out above, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement and the Services are provided to the Customer on an "as is" basis.

## **11. Limitations of Liability**

- 11.1 SUBJECT TO CLAUSE 11.3, ARM SHALL NOT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE FOR ANY LOSS OF PROFIT, BUSINESS, REVENUE, ANTICIPATED SAVINGS, GOODWILL, LOSS OR CORRUPTION OF DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF ARM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2 SUBJECT TO CLAUSES 11.1 AND 11.3, ARM'S AGGREGATE LIABILITY UNDER AND/OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE, SHALL NOT EXCEED THE TOTAL FEES PAID TO ARM UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST RELEVANT CLAIM.
- 11.3 NOTHING IN THIS AGREEMENT SHALL OPERATE TO EXCLUDE LIABILITY FOR: (i) DEATH OR PERSONAL INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE; OR (ii) FRAUD OR FRAUDULENT MISREPRESENTATION.

## **12. Indemnity**

- 12.1 Customer shall defend and indemnify Arm and its Subsidiaries against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Device Data, Device Specific Data or devices as used in connection with the Services and Customer's use of third party cloud services in conjunction with the Services.
- 12.2 If Arm reasonably believes the Services might infringe a third party's Intellectual Property, then Arm may, at its sole option and expense: (a) procure the right for Customer to continue using the Services; (b) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative. If Arm determines the above is not commercially reasonable, then Arm may suspend or terminate Customer's use of the impacted Services.

## **13. Confidential Information**

### **Protection**

- 13.1 Except as expressly provided by Clauses 13.2 and 13.3, each party shall maintain in confidence the Confidential Information disclosed by the other party and apply security measures no less stringent than the measures that such party applies to its own similar information, but not less than a reasonable degree of care, to prevent unauthorized disclosure and use of the Confidential Information.

### **Permitted disclosures**

- 13.2 Each party may disclose Confidential Information to its Subsidiaries and service providers, and its Subsidiaries and service providers may use such information, in each case solely for the purposes of this Agreement. Each party will be liable for any breach of its obligations under Clause 13 that is caused by an act, error or omission of any such Subsidiary or service provider.
- 13.3 Either party may disclose Confidential Information received from the other party in the following circumstances:
- a. disclosure to third parties to the extent that the Confidential Information is required to be disclosed pursuant to a court order or as otherwise required by law, provided that the party required to make the disclosure promptly notifies the other party upon learning of such requirement (unless restricted by law) and has given the other party a reasonable opportunity to contest or limit the scope of such required disclosure (including but not limited to making an application for a protective order);
  - b. disclosure to nominated third parties under written authority from the original discloser of the Confidential Information; and
  - c. disclosure to the receiving party's legal counsel, accountants or professional advisors to the extent necessary for them to advise upon the interpretation or enforcement of this Agreement.

### **Excepted information**

- 13.4 Except with respect to Personal Data, the provisions of this Clause 13 shall not apply to information which:
- a. is known to and has been reduced to tangible form by the receiving party prior to its receipt provided that such information is not already subject to any obligations of confidentiality; or
  - b. is in the public domain at the time of receipt or later becomes part of the public domain without breach of the confidentiality obligations in this Agreement; or
  - c. is received from a third party without any breach of any obligation of confidentiality in respect of such information provided that such information is not subject to any continuing obligations of confidentiality; or
  - d. was independently developed without use of or reference to the other party's Confidential Information.

## **14. Marketing**

- 14.1 Customer agrees that it shall not make any public communication, statement, announcement or press release with respect to this Agreement and/or Customer's use of the Services without Arm's prior written approval.

- 14.2 Arm may disclose that Customer is a customer of the Services and include Customer's name, trade mark and/or brand in a list of Arm's customers, online or in promotional materials. For this purpose, only, Customer will provide Arm with its logo.
- 14.3 Other than as stated above in this Clause 14, neither the Customer nor Arm shall use the name, crest, logo, trade mark or registered image of the other or the other's group companies in promotional material or in connection with the use or provision of the Services without the prior written consent of the other party.

## 15. Miscellaneous

### **No assignment**

- 15.1 Neither party shall assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other party. An assignment shall be deemed to include, without limitation: (i) any transaction or series of transactions whereby a third party acquires, directly or indirectly, the power to control the management and policies of the party, whether through the acquisition of voting securities, by contract or otherwise; or (ii) the sale of more than fifty percent (50%) of the party's assets whether in a single transaction or series of transactions.

### **Force Majeure**

- 15.2 Neither party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond either party's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

### **Independent Contractors**

- 15.3 Arm and Customer are independent contractors, and neither party is an agent of the other for any purpose or has the authority to bind the other.

### **No Third-Party Beneficiaries**

- 15.4 The UK Contracts (Rights of Third Parties) Act 1999 and any legislation amending or replacing that Act shall not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation arising under or in connection with this Agreement and nothing in this Agreement shall confer on any third party the right to enforce any provision of this Agreement.

### **U.S. Government Rights**

- 15.5 The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If Customer is using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue its use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

### **Export Compliance**

- 15.6 The Services and Arm's Confidential Information provided under this Agreement are subject to U.K., European Union, and U.S. export control laws and regulations, including the U.S. Export Administration Act and its associated regulations (hereafter collectively referred to as "**Export Regulations**"). Customer agrees to comply fully with all such Export Regulations, and Customer will not, either directly or indirectly, export in breach of the Export Regulations, Arm's Confidential Information received under this Agreement, nor any direct products thereof: (i) to any country, company or person subject to export restrictions or sanctions under the Export Regulations; or (ii) for any prohibited end use, which at the time of export requires an export license or other governmental approval, without first obtaining such license or approval. Delivery of the Services, and Arm's Confidential Information is subject to Arm's receipt and the continued validity of any export licenses, forms or other export authorization that may be required during the Subscription Term of any Subscription Order. Customer agrees that any delay, denial, or revocation of an export authorization that impacts delivery will not constitute a breach of contract by Arm.

### **Notice**

- 15.7 **To Customer.** Arm may provide any notice to Customer under this Agreement by: (i) posting a notice on the Mbed Site; or (ii) sending a message to the email address then associated with Customer's Account. Notices

Arm provide by posting on the Mbed Site will be effective upon posting and notices Arm provide by email will be effective when Arm sends the email. It is Customer's responsibility to keep its email address up to date.

**To Arm.** To give Arm notice under this Agreement, Customer must contact Arm by email at [support@mbed.com](mailto:support@mbed.com).

**Language.** All communications and notices to be made or given pursuant to this Agreement must be in the English language.

**No Waivers**

- 15.8 Failure or delay by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

**Severability**

- 15.9 The provisions contained in each section and sub-section of this Agreement shall be enforceable independently of each of the others and if a provision of this Agreement is, or becomes, illegal, invalid or deemed unenforceable by any court or administrative body of competent jurisdiction it shall not affect the legality, validity or enforceability of any other provisions of this Agreement. If any of these provisions is so held to be illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it legal, valid or enforceable.

**Governing Law**

- 15.10 The validity, construction and performance of this Agreement (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

**Entire Agreement**

- 15.11 This Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right of remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement.

**Conflicting Terms**

- 15.12 If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: Subscription Order(s), the Terms of Service (including the Data Protection Annex), the Mbed Cloud Services Support Program, and the SLA.