



AVRIO SOLUTIONS CO. LIMITED,  
Room 601, 6/F Fat Lee Industrial Bldg  
17 Hung To Road  
Kwun Tong, Kowloon  
Hong Kong

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DATE:

## **MASTER SERVICE AGREEMENT**

**Between**

**AVRIO SOLUTIONS COMPANY LTD.**

**and**

**<ABC School>**



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**THIS MASTER SERVICE AGREEMENT** (“Agreement”) is made and entered into on this      day  
of                      2014 (“Effective Date”)

#### **BETWEEN**

- (1) **AVRIO SOLUTIONS COMPANY LTD**, a company duly incorporated in Hong Kong with registered office at Room 601, 6<sup>th</sup> Floor, Fat Lee Industrial Building, 17 Hung To Road, Kwun Tong, Kowloon, Hong Kong (“**AVRIO**”); and
- (2) **<ABC school>**, an educational establishment duly registered under the laws in Hong Kong (Licence Number:                      ) with registered address at \_\_\_\_\_

(hereinafter referred to jointly as “**Parties**” and individually as “**Party**”).

#### **RECITALS**

- (A) AVRIO is an information technology service provider in Hong Kong and provides various IT services and facilities in Hong Kong, including but not limited to, mobile device management services, IT systems integration, configuration, programming, technical support, maintenance, training and development and other value-added services.
- (B) Customer agrees to purchase mobile device management and associated services from AVRIO subject to the terms and conditions of this Agreement.

#### **NOW IT IS HEREBY AGREED AS FOLLOWS:**

##### **1. Definitions and Interpretations**

1.1 In this Agreement the following words have the following meaning:

“**Affiliate**” means, in relation to a Party, the subsidiary or holding company of that Party. The expressions “subsidiary” and “holding company” shall have the same meanings as defined in the Companies Ordinance, Chapter 32 of the Laws of the Hong Kong.

“**AVRIO Equipment**” means equipment (including any software) owned or licensed by AVRIO and placed on Customer Premises by AVRIO for the provision of Service.

“**AVRIO Sold Equipment**” means equipment sold by AVRIO to Customer (including any software licensed to Customer) pursuant to a Service owned or licensed by AVRIO and placed on the Customer Premises by AVRIO for the provision of Service.

“**Charges**” means the fees payable for Service under this Agreement and are further specified in the Order Form and/or the Service Schedule of the relevant Service.

“**Confidential Information**” means this Agreement and any and all written, oral or other tangible or intangible form of information, discoveries, ideas, concepts, know-how (whether patentable or copyrightable or not), research, development, designs, specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, disks, diskettes, tapes, algorithms, software programs, marketing plans or techniques, names, technical, financial or business information, trade secret of a Party which includes but is not restricted to any portion or phase of scientific or technical information, design, process, procedure, formula or improvement which is not



generally available to the public and that gives the one who uses it an advantage over competitors who do not know of or use the trade secret, whether or not marked “Confidential”.

“**Customer Equipment**” means equipment, other than AVRIO Equipment and AVRIO Sold Equipment, used by Customer in connection with Service. It includes, but is not limited to hardware, firmware, mobile devices, wireless connection systems and associated equipment.

“**Customer Premises**” means the location owned or occupied by Customer or its End Users to which AVRIO has agreed to provide Services.

“**Documentation**” means a written and/or electronic technical documentation pertaining to Software and/or Service that is provided by AVRIO to Customer in connection with delivery of the Software and/or Service.

“**End User**” means a Customer employee, agent, client, or person who is authorized by Customer to use the Software and/or Service provided to the Customer by AVRIO.

“**Force Majeure Event**” shall mean, in relation to a Party, an event out of such Party’s reasonable control and not caused by such Party’s default or negligence, including without limitation any flood, fire, lightning, earthquake, storm, explosion, meteor, accident, embargo, blockade, strikes, riot, any kind of war, act of terrorism or of the public enemy, power outage, labour dispute or shortage, or act of God; provided that for the avoidance of doubt, incident in relation to government acts, directives, approvals, consent, laws, regulations or licensing requirement, consummation of contracts with third parties or performance of this Agreement, and any inability to pay amounts due shall not be considered as a Force Majeure Event.

“**Governmental Authority**” means in relation to a Party any relevant government bodies, ministries, agencies, departments, commissions or the like of those countries where such Party and its Affiliate provides Service.

“**Hong Kong**” or “**HKSAR**” means the Hong Kong Special Administrative Region of the People’s of Republic of China.

“**Licensed Device Count**” shall mean the maximum number of registered devices that Customer may have at any time that are managed/monitored by the Software licensed hereunder, such maximum number shall be based on the licence fees paid by Customer as identified in the relevant Service Schedule and/or Order. For the avoidance of doubt, registered devices are those devices which have loaded device Software and which have not been retired.

“**Licence Term**” means the term of the licence granted with respect to the Software as identified in the relevant Service Schedule and/or Order; Licence Term shall commence upon delivery of the Software and shall be subject to the termination rights specified herein.

“**Minimum Commitment Term**” means the minimum duration for each Service or each component of Service, as defined in the relevant Order and/or Service Schedule and commencing from the Service Commencement Date.

“**Order**” means the Order Form, placed by Customer requesting for Service, which is accepted upon countersigned by AVRIO.

“**Order Form**” means the form specifying the information required by AVRIO when Customer places a request for Service.



“**Personal Data**” has the same meaning as defined in the Personal Data (Privacy) Ordinance, Chapter 486 of the laws of HKSAR.

“**Service**” means any services provided by AVRIO pursuant to an accepted Order and the relevant Service Schedule where applicable.

“**Service Commencement Date**” means, in respect of each Service to be provided under this Agreement, (a) the date on which AVRIO notifies Customer that such Service is available for use, or (b) the date when Customer or its End Users first use such Service or any part of such Service, whichever is the earlier.

“**Service Schedule**” means the Service Schedule for a Service that is appended to this Agreement on the Effective Date (and those subsequently signed by the Parties stated to be part of this Agreement) which describes the Service to be provided to Customer, any Minimum Commitment Period to purchase Service and any specific rates, terms and conditions for the provision of Service to Customer. The Service Schedule may be added or revised from time to time by mutual agreement of the Parties and in accordance with the terms of this Agreement.

“**Service Test**” means the test on Service carried by Customer before the Service Commencement Date.

“**Software**” means any computer programs which Customer has purchased licences from AVIRO hereunder as identified in the relevant Service Schedule or Order to enable the use of Service.

- 1.2 A reference in this Agreement to an ordinance, law or regulation includes any amendment, replacement or re-enactment and includes any by-laws, rules, regulations, orders, notices, directions, consents or permissions of the Governmental Authority made under it and any condition imposed by it.
- 1.3 Headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.
- 1.4 References in this Agreement to Clauses and Schedules are references to clauses of and schedules to this Agreement.
- 1.5 Unless the context otherwise requires, the singular includes the plural, the masculine gender includes the feminine and neuter genders and vice versa.

## 2. **Order of Precedence**

In the event of any conflict or inconsistency between the terms of this Agreement, the order of precedence shall be as follows:

- (1) Order
- (2) Service Schedule
- (3) this Agreement

## 3. **Term & Duration**

- 3.1 Unless otherwise terminated earlier in accordance with this Agreement, this Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of Two (2) years (“**Initial Term**”). Upon expiry of the Initial Term, this Agreement shall automatically renew on a monthly basis unless and until either Party gives the other



Party one (1) month's prior written notice of termination.

- 3.2 Each Service shall have a Minimum Commitment Term as specified by AVRIO in the Order and/or Service Schedule. Unless otherwise specified and/or in the absence of mutual agreement between the Parties, the Minimum Commitment Term shall be twelve (12) months from the Service Commencement Date.
- 3.3 Unless the Parties agree otherwise as evidenced in the Order and/or Service Schedule, upon expiry of Minimum Commitment Term, the Service will automatically renew on a monthly basis (each a "**Renewed Term**") unless and until terminated by either Party upon thirty (30) days written notice prior to the end of the Minimum Commitment Term or Renewed Term.

#### **4. Service to be Provided**

The Service to be provided hereunder shall be agreed between the Parties from time to time. Details of the Service are set out in the Service Schedule attached to this Agreement or in the Service Schedule hereafter agreed and signed by the Parties making reference to this Agreement.

#### **5. Ordering, Provisioning and Testing of Service**

- 5.1 The Service to be provided by AVRIO to Customer under this Agreement shall be on a non-exclusive basis.
- 5.2 To place an order for Service, Customer shall sign and submit an Order Form to AVRIO. AVRIO shall confirm the accuracy of information on the Order Form and availability of Service requested. Counter-signature and delivery of the Order Form by AVRIO to Customer shall constitute an acceptance of the order for Service.
- 5.3 Unless otherwise specified in an Order or Service Schedule, AVRIO shall commence provisioning of Service upon receipt of full payment of Service Charges as set out in relevant Service Schedule or Order.
- 5.4 AVRIO shall have the option to deliver Service in whole or in part electronically where technically feasible and practicable.
- 5.5 Once the Service is available for testing by Customer, AVRIO shall inform Customer in writing via email that Customer shall conduct Service Test before the Service Commencement Date. Service Test shall be performed by Customer with assistance from AVRIO if necessary.

#### **6. Obligations of the Parties**

- 6.1 Customer shall be responsible for:
- (a) payment of all Charges for its use of Service in a timely manner in accordance with Clause 8;
  - (b) payment of all additional fees or charges arising from its own requests for and/or usage of services above and beyond its entitlement as set forth in the applicable Service Schedule or Order;
  - (c) upgrading and maintaining Customer Equipment to ensure technical compliance,



compatibility and inter-workability with the Service;

- (d) conducting Service Test;
- (e) obtaining and maintaining in force all necessary licences and permits, and complying with any laws, directives, regulations and conventions which may be applicable to the possession or use of Service by Customer or End Users.
- (f) accepting AVRIO's recommendation and decision to change to such new product or product family to enable continuation of Service, if any product or product family forming an integral part of the Service are discontinued, obsolete, or superseded by a new product or product family.

6.2 AVRIO shall be responsible for:

- (a) reviewing and confirming as soon as commercially practicable the Order Form placed by Customer;
- (b) providing Service to Customer from the Service Commencement Date pursuant to the relevant Order or Service schedule;
- (c) using its commercially reasonable endeavors to resume the normal operation of Service with the least practicable delay in the event of interruption to Service;
- (d) providing options at such Charges to be agreed between the Parties for additional support and software maintenance, such as major and minor revision of software maintenance, or guidance on use of software over telephone or remote means. Details of such optional Service will be set out in separate Service Schedule or Order.

6.3 The Parties agree that Service does not include provision of any backups of any information stored in Customer Equipment. Customer shall back up any information stored in the Customer Equipment and hold AVRIO harmless for any loss, damages or claims arising out of or in connection with its use of Service, including but not limited to loss of information stored in Customer Equipment.

6.4 Each Party shall ensure that it:

- (a) obtains and maintains all licences, approvals, consents or authorizations of the Government Authority that are necessary for it to perform its obligations under this Agreement; and
- (b) complies and remains in compliance at all times with all relevant laws, rules, ordinances, regulations and obligations of the Government Authority during its provision or use of Service (as the case may be).

6.5 Neither Party shall have any liability under this Agreement for failure to comply with its obligations in any case where the other Party does not comply with any such relevant laws, rules, ordinances, regulations or obligations or does not obtain necessary licenses, consents, authorizations or approvals from the Governmental Authority, unless such failure was within the control of such Party.

## 7. Use of Service

7.1 Customer agrees and acknowledges that:



- (a) it shall use Service for its internal use only;
  - (b) it shall not use Service in any way that may contravene applicable laws, or for any unlawful purposes;
  - (c) it shall not use Service to send, receive, or download messages or materials that are illegal, inappropriate or in violation of intellectual property rights of AVRIO or third parties;
  - (d) it shall be solely responsible for the content of and any harm resulting from its installation and use of information and applications on AVRIO mobile device member services;
  - (e) it shall not (i) resell, assign, transfer or sublicense Service; (ii) conduct automated functionality tests or load tests on Service; (iii) attempt to gain access to data that is not its own data; or (iv) use a disproportionate amount of AVRIO mobile device member services that may cause interruptions or degradation of Service.
  - (f) it shall not use Service in a manner which is fraudulent, deceptive or misleading;
  - (g) it shall remain responsible for any access and use of Service by its End Users, all charges so incurred and shall ensure compliance with all terms and conditions of this Agreement by End Users; and
  - (h) it shall keep an updated list of End Users, and ensure only current End Users may have access to the Service.
- 7.2 During the Licence Term, AVRIO grants Customer a non-exclusive, non-transferable and non-sublicensable licence of Software in connection with the use of Service in accordance with the relevant Documentation. Customer shall not and shall not permit any End User to use the Software in excess of or beyond the feature set(s), Licence Term, Licensed Device Count, site(s) and/or other restrictions/limitations described in this Agreement. Customer may also maintain a reasonable number of copies of the Software on its systems for backup and recovery purposes where applicable.
- 7.3 Software is licensed and not sold. AVRIO and its licensors shall own and retain all right, title, and (except as expressly licensed hereunder) interest in and to Software and all copies or portions thereof, and any derivative works thereof (whoever created). All suggestions or feedbacks provided by Customer or End Users to AVRIO with respect to Software shall be AVRIO's property and deemed Confidential Information of AVRIO, and Customer hereby assigns the same to AVRIO.
- 7.4 So far as may be permitted by relevant law and regulation, it is agreed that AVRIO will have no liability and Customer will make no claim in respect of any matter arising from any use of Service which is contrary to Clauses 7.1 and 7.2 and/or AVRIO's specific reasonable instructions.
- 7.5 Except as may be otherwise specifically provided under this Agreement, the obligations and responsibilities of AVRIO under this Agreement are solely to Customer and not to any third party or End Users. Customer will keep harmless and will indemnify AVRIO, its Affiliates, officers, employees, agents and subcontractors against any liabilities or costs arising from any and all claims by any third party or End Users in connection with the use of Service.

## **8. Charges, Billing and Payment**





- 8.1 The Charges for Service, including but not limited to installation fee, monthly service fee and other expenses, are set out in and will be calculated in accordance with the applicable Order and/or Service Schedule. AVRIO will issue invoice to Customer covering relevant Charges for Service upon countersigning the Order Form. Upon receipt of such invoice, Customer shall settle full invoiced amount within thirty (30) days and before Service Commencement Date.
  - 8.2 Charging for monthly service fee and other expenses will begin on the Service Commencement Date. For Charges which are usage-based, Charges will be calculated in accordance with details recorded by, or on behalf of, AVRIO. Unless otherwise specified in an Order or Service Schedule, AVRIO shall, on the 1st day of each month, issue invoice to Customer covering Charges for the current month.
  - 8.3 Customer must pay all invoices in full within thirty (30) days upon receipt of AVRIO's invoice without any set-off, counterclaim or deduction. Where applicable, AVRIO may set-off any amounts it owes to Customer against any amounts owed by Customer to AVRIO under this Agreement. AVRIO may, at its sole discretion, charge interest from the due date, on any past due amounts at a per annum rate of two (2) percent above the best lending rate of the Hong Kong and Shanghai Banking Corporation on a daily basis.
  - 8.4 Unless otherwise provided in the Order and/or the Service Schedule, AVRIO will invoice Charges and Customer will pay all Charges in Hong Kong Dollars. Charges are exclusive of applicable value-added, sales, use, excise, customs, duties or other taxes including but not limited to value added tax and withholding tax, fees or surcharges (including but not limited to regulatory fees or surcharges) ("**Taxes**"), relating to the sale, purchase, transfer of ownership, delivery, installation, license, use or processing of AVRIO Equipment and/or AVRIO Sold Equipment or provision of Service under this Agreement. Each Party shall be responsible to pay such Taxes, if any, which it is liable to pay under the applicable law in connection with or as a result of the signing of this Agreement.
  - 8.5 In the event that payment of any amount of the Charges becomes subject to withholding tax, levy or similar payment obligation on sums due to AVRIO under this Agreement, such withholding tax shall be borne and paid by Customer.
  - 8.6 Customer will promptly, but in no event later than thirty (30) days from the date of invoice, notify AVRIO in writing of any dispute to the invoice, together with all the information relevant to the Dispute, including the invoice in Dispute, the disputed amount, reason of Dispute and the facts on which Customer relies to support the Dispute. If no Dispute is raised within thirty (30) days from the date of invoice, Customer irrevocably waives all rights to raise Dispute it may otherwise have or had to do so.
  - 8.7 Customer must pay all undisputed amount of an invoice in accordance with Clause 8 unless the disputed amount is less than five percent (5%) of the invoice amount in which case Customer must pay for the invoice in full. Where the disputed amount is equal to or more than five percent (5%) of the invoice amount, Customer must pay the undisputed amount in full.
  - 8.8 The Parties shall cooperate with each other to resolve any disputed invoice. Any disputed amount, which is subsequently determined or resolved to be sustained but has already been paid by Customer, shall be credited to Customer in the invoice for the next month. If the disputed amount is not sustained, Customer shall pay such amount promptly with interest at a rate determined in the manner described in Clause 8.3 from the date on which payment of the invoice was due until full payment.
- 9. AVRIO Equipment and AVRIO Sold Equipment**
- 9.1 If in the opinion of AVRIO, installation of AVRIO Equipment or AVRIO Sold Equipment at



Customer Premises is necessary for AVRIO to provide Service, Customer shall prior to installation work by AVRIO at its own expenses,

- (a) prepare the location for installation, including but not limited to providing adequate space, IT facilities and systems, heating and cooling, and electrical power;
- (b) obtain all necessary consents, including consents for any necessary alterations to Customer Premises;
- (c) provide AVRIO or AVRIO's agents and/or subcontractors with reasonable access to the location for installation and maintenance;
- (d) provide a suitable and safe working environment in accordance with relevant industry standards;
- (e) provide any electricity and telecommunication connection points required by AVRIO; and
- (f) take all such necessary actions as directed by AVRIO to enable provision of the Service by AVRIO to Customer.

9.2 Customer is responsible for AVRIO Equipment and must not move, add to, modify or in any way interfere with AVRIO Equipment, nor allow anyone else (other than those authorized by AVRIO) to do so. Customer will be liable to AVRIO for any loss of or damage to the AVRIO Equipment, except where the loss or damage is due to fair wear and tear or is caused by AVRIO or anyone acting on behalf of AVRIO.

9.3 Unless otherwise agreed, risk in all AVRIO Sold Equipment shall pass to Customer on delivery to Customer by AVRIO in accordance with the terms of this Agreement. Title in all AVRIO Sold Equipment shall pass to Customer upon payment in full to AVRIO of the price for AVRIO Sold Equipment.

9.4 Upon termination of a Service or this Agreement for any reason, Customer shall within seven (7) days return all AVRIO Equipment in good working condition to AVRIO and shall pay the replacement cost of the AVRIO Equipment to AVRIO upon demand if failing to do.

## 10. Connection of Customer Equipment to Service

10.1 Customer must ensure that any Customer Equipment connected to or used with Service is connected and used in accordance with any instructions, safety and security procedures applicable to that equipment.

10.2 Customer must ensure that any Customer Equipment attached (directly or indirectly) to Service is technically compatible with Service and approved for that purpose under any applicable laws and regulations. Customer shall be responsible for upgrading Customer Equipment to support Service and providing suitable operation environmental that comply with applicable laws and regulations.

## 11. Third Party Service Provider

It may be necessary under specific circumstances for AVRIO to obtain Service (in whole or in part) directly from a third party service provider pursuant to a separate agreement ("**Third Party Service Agreement**"). At the request of Customer, AVRIO may arrange Third Party Service Agreement to be negotiated for and on behalf of Customer. Upon Customer's acceptance of all the terms and conditions in the Third Party Service



Agreement, AVRIO may act as an agent of Customer whereby its responsibility will be limited to performance of the specific obligations as set forth in the applicable Order Form and will not assume any liability under the Third Party Service Agreement. Customer will indemnify AVRIO for any claims, expenses, damages, costs or liabilities that AVRIO may incur under such Third party Service Agreement, including without limitation, any cancellation penalties or liquidated damages incurred if all or a portion of the applicable Service is terminated or cancelled.

## 12. Suspension of Service

12.1 AVRIO may, without terminating this Agreement and without liability (solely as a result of exercising its right), immediately suspend whole or part of Service under this Agreement until it deems fit if:

- (a) the Customer is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (other than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of the Customer);
- (b) Customer fails to pay any sums due under this Agreement or any Order for more than seven (7) days;
- (c) Customer commits a breach of any material obligation under this Agreement;
- (d) AVRIO is obliged to suspend whole or part of Service in compliance with an order, instruction or request of the Government Authority, emergency services organization or other competent authority;
- (e) AVRIO needs to safeguard the integrity and security of its IT network or Service and/or repair, maintain or enhance the performance of its IT network or Service; or
- (f) AVRIO needs to repair a fault in its IT network or systems as a result of any unplanned outage or any other reason beyond AVRIO's reasonable control.

12.2 If it is necessary for AVRIO to suspend whole or part of Service it provides under this Agreement under Clause 12.1(d), (e) and (f), it shall use its commercially reasonable endeavours to resume the Service as soon as commercially practicable. If AVRIO fails to resume the Service in full within thirty (30) days after suspension under Clause 12(d), (e) and (f), either Party may give not less than thirty-day prior written notice to the other to terminate the applicable Service without any liability to the other provided that the Customer shall pay any Charges accrued up to the date of termination to AVRIO.

12.3 Where AVRIO suspends whole or part of Service under Clauses 12.1(b) and (c), Charges for the relevant Service will continue to accrue during the period of suspension. If AVRIO suspends whole or part of Services pursuant to Clause 12, AVRIO shall not be precluded to exercise its right to terminate this Agreement at any time in respect of that or any other event.

## 13. Termination

13.1 **Termination By AVRIO:** AVRIO may immediately terminate an Order and/or this Agreement, it by serving prior written notice on Customer if Customer:

- (a) fails to pay any Charges due and payable under this Agreement and such Charges



- remains outstanding after AVRIO giving five (5) days' written notice to Customer;
- (b) commits a non-remediable breach of any material obligation under this Agreement; or
  - (c) commits a remediable breach of any material obligation under this Agreement and fails to remedy such breach after receiving thirty (30) days' written notice to do so;
- 13.2 In the event of termination of an Order and/or this Agreement under Clause 13.1, without affecting any rights or remedies at law or in equity available to AVRIO or its Affiliates Customer agrees that:-
- (a) AVRIO may attach, take possession of and/or remove any AVRIO Equipment and unpaid AVRIO Sold Equipment located in AVRIO's premises in connection with the applicable Service; and
  - (b) Customer shall pay, in addition to all Charges accruing prior to termination of this Agreement, the termination charges in accordance with Clause 13.3 below.
- 13.3 Except for termination pursuant to clause 13.4, without affecting any other rights and remedies AVRIO may have at law or in equity, Customer shall pay the following termination charges in the event of termination of any Order or this Agreement :-
- (a) All installation fee (whether waived or not), monthly service fees and any other expenses properly accrued up to and including the date of termination; and
  - (b) the total amount of monthly service fees for the remaining unexpired Minimum Commitment Term of the relevant Service.
- 13.4 **Termination By Customer:** If AVRIO fails to perform a material obligation under of this Agreement and has not remedied such failure after receiving thirty (30) days' written prior notice to do so, Customer may terminate the applicable Service. Customer will not be liable for any Charges accrued on the Services from the date of termination. If the failure of a Service is solely caused by AVRIO's gross negligence or willful misconduct not by any other factors, Customer will not be liable for any Charges after the termination of such Service. In any event, termination of Service is Customer's sole and exclusive remedy under this Agreement for breach by AVRIO.
- 13.5 Save as otherwise specified in this Agreement, either Party may terminate any Order or this Agreement by prior written notice if:
- (a) at the end of (i) the Minimum Commitment Period of a Service or (ii) the Renewed Term of this Agreement, upon thirty (30) days prior written notice to the other subject to payment by Customer to AVRIO of any sums due, including outstanding Charges for such Service so terminated; or
  - (b) any Force Majeure Event continues for thirty (30) days or more pursuant to Clause 17.3; or
  - (c) the other Party is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (other than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of such other Party).
- 13.6 For the avoidance of doubt, termination of one Order will not affect the Parties' rights and



obligations with regard to other Orders made under this Agreement.

#### 14. Warranty and Disclaimer

- 14.1 AVRIO provides a limited warranty for its Service as more specifically set out in the applicable Service Schedule and/or Order, if any. Except for the limited warranty set out in this Agreement, AVRIO excludes and Customer waives all representations, conditions, terms and warranties, whether express, implied or collateral, arising by operation of law or otherwise, including but not limited to implied warranties, terms or conditions of satisfactory, quality or fitness for a particular purpose.
- 14.2 **Software Warranty** For a period of ninety (90) days from the date of initial delivery of the Software to Customer, AVRIO warrants that the Software materially conforms to its published specifications described in the relevant Documentation. This limited warranty extends only to Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of AVRIO and its suppliers and licensors under this limited warranty will be, at AVRIO's option, repair or replacement of the Software, or if repair or replacement is not possible, to refund the licence and any associated support and maintenance fees paid for the non-conforming Software upon the return and removal of all relevant Software from Customer Equipment.
- 14.3 **Hardware Limited Warranty** Customer is aware that Software shall only be used on equipment containing and meeting the specifications specified by AVRIO in relevant Documentation and that Customer may purchase such hardware separately through third parties. If Customer has ordered and received AVRIO Sold Equipment from AVRIO, then the hardware warranty and remedies described in relevant Service Schedule or Order shall apply.
- 14.4 **Restrictions** The express warranties specified above do not apply if the applicable Software, AVRIO Equipment, AVRIO Sold Equipment, or any portion thereof: (i) has been altered, except by AVRIO or its' authorized representatives or its contractors; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or Documentation; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (iv) is licensed, for beta, evaluation, or testing purposes. Additionally, the warranties set forth herein only apply to the original licensee who provides notice of a warranty claim within the warranty period specified herein and does not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by AVRIO.
- 14.5 **DISCLAIMERS.** EXCEPT FOR THE WARRANTIES EXPRESSLY DESCRIBED HEREIN, THE SOFTWARE, AVRIO SERVICES, AVRIO EQUIPMENT AND/OR AVRIO SOLD EQUIPMENT ARE PROVIDED "AS IS", AND AVRIO AND ITS LICENSORS PROVIDE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED WITH REGARD TO THE SAME. EXCEPT AS EXPRESSLY SPECIFIED IN THIS AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, OR ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY AVRIO, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. FURTHER, AVRIO AND ITS LICENSORS DO NOT WARRANT THE RESULTS OF USE OF THE SOFTWARE OR THAT THE SOFTWARE IS BUG/ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. THIS DISCLAIMER OF WARRANTY



CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. IN ADDITION, DUE TO CONTINUAL DEVELOPMENT OF NEW TECHNIQUES FOR INTRUDING UPON/ATTACKING MOBILE DEVICES AND SOFTWARE, AVRIO DOES NOT WARRANT THAT THE SOFTWARE OR ANY EQUIPMENT, SYSTEM, OR NETWORK ON WHICH THE SOFTWARE IS USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. AVRIO DOES NOT WARRANT THAT ANY SERVICES CONNECTING TO THE SOFTWARE PROVIDED BY THIRD PARTIES OR ANY DATA PROVIDED BY SUCH THIRD PARTIES WILL BE FREE FROM ERRORS OR INTERRUPTIONS OF SERVICE.

## **15. Limitation of Liability**

15.1 Nothing in this Agreement excludes or restricts in any way either Party's liability for death or personal injury resulting from negligence of that Party or its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation.

15.2 Subject to Clause 15.1, neither Party shall be liable to the other or to any third party, whether in contract, tort, under statute or otherwise, for any of the following types of loss or damage arising under or in relation to this Agreement or any part of it:

- (a) any loss of profits, business contracts, anticipated savings, goodwill, or revenue; and/or
- (b) any loss or corruption or destruction of data; and/or
- (c) any special, indirect or consequential loss or damage whatsoever; and/or
- (d) any loss arising from the transmission of viruses,

whether or not that Party was advised in advance of the possibility of such loss or damage.

15.3 AVRIO's liability to Customer for failure to provide Service in accordance with the relevant Service Schedule shall be limited to the amounts payable to Customer by way of performance credits as set out in the Service Schedule and/or the Order.

15.4 Subject to Clauses 15.1, 15.2 and 15.3 and any limitation of liability as set out in the relevant Service Schedule or Order Form, either Party's liability to the other Party for any cause of actions howsoever arising under this Agreement and/or any applicable Order Form shall be limited to the amounts paid and payable by the Customer to AVRIO under the applicable Order Form within 6 months preceding the date the cause of action arose.

## **16. Confidentiality**

16.1 The Parties agree to keep and procure to be kept secret and confidential of the Confidential Information disclosed by the other Party pursuant to this Agreement or during the course of negotiations relating to it. Each Party shall be entitled to reveal Confidential Information relating to the other Party only to its directors, officers, employees, professional advisors and their employees, contractors and their employees and financiers providing funding to it and its advisors so far as necessary to enable them to perform their duties for the purpose of this Agreement. Each Party shall require its directors, officers, employees, professional advisors and contractors to observe the obligation of confidentiality contained in this Clause 16.

16.2 Each Party shall not at any time divulge, disclose or otherwise furnish to any third party any Confidential Information relating to the affairs or business of the other Party. Each





Party shall not reproduce any Confidential Information in any kind without the written consent of the other Party.

16.3 This Clause 16 shall not apply, however, to any part of the Confidential Information which:

- (a) was already known to the receiving Party prior to receipt thereof;
- (b) was acquired by the receiving Party from a third Party having the right to convey the Confidential Information to the receiving Party without any obligation of confidentiality not to disclose the same;
- (c) is approved for release by prior written authorization by the owner of the Confidential Information;
- (d) is in the public domain other than in breach of this Agreement;
- (e) is legally required to be disclosed.

16.4 Both Parties must comply with any law, regulation and enactment in respect of Personal data of the relevant Government Authority when dealing with information given to the other Party under this Agreement.

16.5 Each Party agree that the entirety of this Clause 16 shall survive after the expiration or termination of this Agreement for a period of two (2) years and shall return or dispose any Confidential Information exchanged or disclosed by the other Party.

16.6 It is acknowledged by the Parties that a violation of this Clause 16 would cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate and injunctive relief may be available for a breach of this Clause 16.

## **17. Force Majeure**

17.1 Notwithstanding any other provision of this Agreement, neither Party shall be liable for failure to perform its obligations under this Agreement (save for the obligation to pay Charges) caused by or resulting from Force Majeure Event.

17.2 The Party affected by the Force Majeure Event will be granted a reasonable extension of time to perform its duties and obligations under this Agreement if:

- (a) it notifies the other Party as soon as reasonably practicable of the Force Majeure Event and of the period for which the performance of its duties and obligations are expected to be delayed or prevented; and
- (b) it takes all reasonable steps to minimize the effects of the Force Majeure Event.

17.3 Both Parties agree that they shall be in good faith and use their best endeavors to minimize the effects of the Force Majeure Event. Should the Force Majeure Event or a series of Force Majeure Event continue for a continuous period of thirty (30) days, either Party may serve a prior written notice to terminate this Agreement with immediate effect. In the event that this Agreement is terminated under this Clause 17.3 and notwithstanding any other provision of this Agreement, Customer shall only be liable to pay all the outstanding Charges accrued up to and including the date of Termination.

17.4 In the event of:

- (a) a refusal or delay by a third party to supply to AVRIO a hardware, software, or service relevant to the Service and where there is no alternative service available at reasonable costs; or



- (b) AVRIO being prevented by restrictions of a legal or regulatory nature from supplying Service,

AVRIO will have no liability to Customer for failure to supply Service. Customer may, as a result of such event, terminate the affected Service with no obligation to pay the total amount of monthly service fee for the balance of the Minimum Commitment Period of the affected Service and any other charges in relation to the affected Service accrued after the date of termination.

## 18. Notices

- 18.1 Each notice, demand or other communication to be given or made hereunder shall, except as otherwise provided herein, be given in writing and delivered personally or sent by pre-paid post or by facsimile or email transmission to the Party at its address set out below (or such other address, facsimile numbers as a Party has by three (3) days' prior written notice specified to the other Party):-

**To CUSTOMER:**

Postal Address:

Fax: +852

Email:

Attention:

**To AVRIO:**

Postal Address: Room 601, 6<sup>th</sup> Floor, Fat Lee Industrial Building,  
17 Hung To Road, Kwun Tong, Kowloon, Hong Kong

Fax: +852

Email:

Attention:

- 18.2 Any notice, demand or other communication given in accordance with this Agreement is deemed to be received, in the absence of evidence of earlier receipt:
- (a) if delivered personally, on delivery;
  - (b) if sent by pre-paid post, seven (7) days after the date of posting; and
  - (c) if sent by facsimile or email, on the next working day following transmission.

## 19. Assignment

- 19.1 Customer shall not assign or transfer any or all of its rights and obligations under this Agreement to any third party. AVRIO may at any time assign or transfer any or all of its rights and obligations under this Agreement to any person without the Customer's agreement.
- 19.2 This Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.
- 19.3 AVRIO may subcontract the performance of any of its obligations under this Agreement to its Affiliates, but without relieving any of its obligations under this Agreement. Customer agrees and understands that it may need to interact directly with a subcontractor for ordering, provisioning or maintaining the subcontracted Service.

## 20. Miscellaneous

- 20.1 **Entire Agreement:** This Agreement (including relevant Document, Annexes,





- Schedules, Order Forms and such other agreement as may be amended or added from time to time) constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and merges any and all prior written and oral agreements, promises, understandings, statements, representations, warranties, indemnities and covenants regarding the subject matter hereof.
- 20.2 **Change:** No amendment or variation of this Agreement shall be effective unless agreed in writing and signed by duly authorized representatives of both Parties.
- 20.3 **Inducement:** The Parties acknowledge and agree that they have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into this Agreement.
- 20.4 **No Waiver:** Either Party's failure to insist upon strict performance of the terms of this Agreement or to exercise any rights or remedies hereunder shall not waive any of its rights to require strict performance of such terms, to assert any of the same rights, or to rely on any such terms any time thereafter. No waiver of any right hereunder shall be deemed effective unless in writing signed by the Parties against which the waiver is disclaimed. No waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future such rights or other rights arising under this Agreement.
- 20.5 **Severance:** In the event that one or more of the provisions herein shall for any reason be held to be illegal or unenforceable by a court of competent jurisdiction or telecommunications regulator, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable; provided, however, that this Agreement as revised is consistent with the Parties' original intent. The remaining provisions shall remain in full force and effect and the Parties may promptly negotiate a replacement provision, if necessary.
- 20.6 **Survival of Obligations:** Any provision of this Agreement which are, expressly or by implication, intended to survive expiration or termination of this Agreement, shall survive expiration or termination of this Agreement.
- 20.7 **Data Protection:** Each Party shall strictly comply with the applicable laws and regulations regarding telecommunications services and data privacy. Each Party shall only process the Personal Data of the other Party in accordance with the instructions of the other Party and shall take appropriate technical and organizational measures against unauthorized or unlawful possessing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data.
- 20.8 **Publicity:** Neither Party shall issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of this Agreement or the supplies or services to be provided under this Agreement without obtaining prior written approval from the other Party.
- 20.9 **Independent Contractor:** Except where a principal-and-agent relationship is expressly established in writing under Clause 11 hereinabove, each Party is an independent contractor of the other Party and nothing in this Agreement shall constitute the Parties as principal and agent, partners, joint ventures, or employer and employee. Either Party has no authority to bind the other Party to any obligation whatsoever.
- 20.10 **No Intellectual Property Rights:** Nothing in this Agreement creates in a Party any intellectual property rights in the Marks of the other Party. For purposes of this Agreement, the term "**Marks**" means corporate or trade names, logos, trademarks, patents, copyrights, or service marks, or other symbols that serve to identify and distinguish a Party or its products from its competitors.



- 20.11 **Industrial Term:** The words and phrases not specifically defined herein shall have the meaning generally understood in the information technology industry. This Agreement shall be construed in accordance with its fair meaning and not for or against either Party on account of which Party drafted this Agreement.
- 20.12 **Dispute Resolution:** In the event of a dispute, difference, claim or controversy arising between the Parties in connection with or relating to this Agreement or an Order (“**Dispute**”), the aggrieved Party shall notify the other Party in writing (“**Dispute Notice**”) and provide a brief description of the nature of the Dispute and, if applicable, details of any monetary sum involved. The Parties agree that their authorized agents shall discuss and negotiate the issues with informal escalation within the Parties’ organizations as necessary to pursue and achieve resolution as expeditiously as possible. Unless the Parties otherwise agree in writing, any Dispute that is not settled amicably within sixty (60) days from the date of issue of the relevant Dispute Notice, either Party may refer the Dispute to the Hong Kong International Arbitration Centre (“HKIAC”) for arbitration in Hong Kong according to the Domestic Arbitration Rules of HKIAC by one (1) arbitrator. The arbitrator shall be nominated by HKIAC provided that such arbitrator should be familiar with the telecommunications and/or information technology sector. The arbitration proceedings shall be conducted in English. Each Party shall bear its own fees and costs of arbitration.
- 20.13 **Governing Law & Disputes:** This Agreement shall be governed by and construed in accordance with the laws of Hong Kong without giving effect to the principles of conflict of law. The Parties shall, subject to Clause 20.12, submit to the exclusive jurisdiction of Hong Kong courts.



AVRIO SOLUTIONS CO. LIMITED,  
Room 601, 6/F Fat Lee Industrial Bldg  
17 Hung To Road  
Kwun Tong, Kowloon  
Hong Kong

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**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed. Each Party warrants and represents that its respective signatories whose signatures appear below have been and are on the date of signature duly authorized to execute this Agreement.

**For and on behalf of  
AVRIO SOLUTIONS COMPANY LTD**

**For and on behalf of  
<ABC School>**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



## **ANNEX 1: SERVICE SCHEDULE 1**

### **Mobile Device Management Service**

#### **1. Scope of Initial Service**

- 1.1 Initial on-site setup of mobile device management platform**
- 1.2 Installation, configuration, programming and integration of mobile devices**
- 1.3 Licence (non-transferable) for individual mobile devices**
- 1.4 Service testing and acceptance**
- 1.5 On-site Training**
- 1.6 Maintenance and Support (remote hand)**

#### **2. Service Term (Minimum Commitment Term: 2 school Terms)**

#### **3. Service Charges**

**Unit Price: HK\$ 2,400.12 per mobile device covering license for 2 school Terms**



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**ANNEX 2: ORDER FORM**

**Mobile Device Management Service**

**1. Scope of Initial Service**

- 1.1 Initial on-site setup of mobile device management platform
- 1.2 Installation, configuration, programming and integration of mobile devices
- 1.3 License (non-transferable) for individual mobile devices
- 1.4 Service testing and acceptance
- 1.5 On-site Training
- 1.6 Maintenance and Support (remote hand)

**2. Service Term (Minimum Commitment Term: 2 School Terms )**

Free Trial: Now to 31 July, 2014

**3. Total Number of Mobile Devices : XXX units**

**4. Service Charges**

Unit Price: HK\$ XXX per mobile device (covering license for 2 school Terms)

Total Price: HK\$ XXX

**NOTE: Full payment of Service Charges for the Service Term should be made of before Service Commencement Date.**

For and on behalf of  
AVRIO SOLUTIONS COMPANY LTD

For and on behalf of  
<ABC School>

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



AVRIO SOLUTIONS CO. LIMITED,  
Room 601, 6/F Fat Lee Industrial Bldg  
17 Hung To Road  
Kwun Tong, Kowloon  
Hong Kong

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**ANNEX 2: ORDER FORM**

**(For subsequent service outside the Scope of Initial Service to be agreed by the Parties)**

**For and on behalf of  
AVRIO SOLUTIONS COMPANY LTD**

**For and on behalf of  
<ABC School>**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_