SHINOBICONTROLS STANDARD LICENCE AGREEMENT

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1.1. If the Licensee has opted for a free trial of the Software, the Licensor grants to the Licensee a limited, non-exclusive, non-transferable licence to permit a single Licensed Developer (as defined in Clause 2.2) to use the Software free-of charge for a period of thirty (30) days from the date that the Software was downloaded (the "**Trial Period**") solely for the purpose of carrying out an internal evaluation of the Software to determine whether the Licensee wishes to purchase a full licence of the Software.

1.2. The licence granted under Clause 1.1 shall terminate automatically at the end of the Trial Period and the Licensee must make no further use of the Software thereafter, without purchasing a full licence of the Software.

1.3. The Licensee may only benefit from one free trial of the Software. If the Licensee wishes to benefit from additional free trials it must contact the Licensor to request this and Licensor may (in its absolute discretion) decline or agree to any such request. If the Licensor discovers that the Licensee has benefitted from more than one free trial, without obtaining the Licensor's prior written consent, the Licensor reserves the right to charge the Licensee the applicable licence fee for the Software in full.

1.4. The Licensee acknowledges that the trial version of the Software may have limited or restricted functionality and that the Licensor shall be under no obligation to provide technical support in relation to the trial version of the Software.

2. **Full licence**

2.1. If the Licensee has purchased a full licence of the Software, provided that the Licensee has paid the applicable licence fee in full, the Licensor grants to the Licensee, perpetual, non-exclusive, non-transferable licence to do the following:

2.1.1. download and store a copy of the Software and Documentation on the Licensee's own internal computer systems; and

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2.1.3. publish or redistribute relevant parts of the Software in object code form only and only as a fully integrated part or component of a complete Licensee Application.

2.2. The Licensee must purchase a separate licence for each of its developers who are permitted to use the Software in accordance with Clause 2.1.2 above. Each licence purchased enables the Licensee to permit a single named developer who is employed by the Licensee or working as a contractor for the licence (a "**Licensed Developer**") to use the Software to develop Licensee Applications for the Licensee. Each Licensed Developer working directly with the Software must hold a licence. The Licensee agrees to keep up to date records of all Licensed Developers who it has permitted to use the Software and to make such records available to the Licensor on request. The Licensee also agrees to ensure that all Licensed Developers, who it permits to use the Software, comply with the terms and conditions of this Agreement.

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2.4.3. disclaims on behalf of Scott Logic Limited all warranties in respect of the Software and all liability in respect of any losses which may arise from the end user's use of the Software.

2.5. If the Licensee wishes to use the Software in ways which are not permitted by this Clause 1 or the terms and conditions of this Agreement, it must obtain the Licensor's prior written permission. The Licensor may (in its absolute discretion) grant the Licensee such permission (subject to such terms as the Licensor may require) or refuse to do so.

3. **Licensee's undertakings**

3.1. Except as expressly set out in this Agreement or as permitted by any local law, the Licensee undertakes:

    3.1.1.   not to copy the Software or Documentation except where such copying is incidental to or strictly necessary for the licensed use of the Software or where it is necessary for the purpose of back-up or operational security;

    3.1.2.   not to rent, lease, sub-license, loan, sell, resell, translate, merge, adapt, vary modify the Software or Documentation except to the extent expressly permitted under Clause 2.1 above;

    3.1.3.   not to make alterations to, or modifications of, the whole or any part of the Software;

    3.1.4.   not to disassemble, de-compile or reverse engineer nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the Licensee during such activities: (i) is used only for the purpose of achieving inter-operability of the Software with another software program; (ii) is not disclosed or communicated without the Licensor's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and (iii) is not used to create any software which is substantially similar to, or competitive with, the Software. Notwithstanding this Clause 3.1.4, the Licensee agrees that it is required to contact the Licensor prior to undertaking any of the activities set out in this Clause in order to establish whether such activities are in fact required to achieve the desired inter-operability;

    3.1.5.   to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;

    3.1.6.   to supervise and control use of the Software and ensure that the Software is used by its Licensed Developers, employees and representatives and (if appropriate) licensees in accordance with the terms of this Agreement;

    3.1.7.   to include the copyright notice of the Licensor on all entire and partial copies of the Software in any form;

    3.1.8.   not to remove or hide by any means, any watermark images or references to ShinobiControls or the Software from any software which uses the Software.

3.2. The Licensee must permit the Licensor its representatives, at all reasonable times and on reasonable advance notice, to inspect and have access to any premises, and to the computer equipment located there, at which the Software or the Documentation is being kept or used, and any records kept pursuant to this

Agreement, for the purpose of ensuring that the Licensee is complying with the terms of this Agreement.

4. **Maintenance and Support Services**

4.1.   The Licensor operates two levels of support and maintenance: "ShinobiCare" and "ShinobiCare Plus". The ShinobiCare service and the ShinobiCare Plus services are referred to collectively in this Agreement as "**Maintenance and Support Services**".

4.2.   The ShinobiCare service entitles the Licensee to access and use such new releases to the Software (in object code form only) as the Licensor may make available from time to time. If the Licensee has purchased a full licence of the Software and paid the applicable licence fee in full, the Licensee is entitled to benefit from the Licensor's ShinobiCare service in relation to that Software for no additional charge for a period of one (1) year from the date that they purchased a full licence of the Software. Thereafter, the Licensee must pay the applicable annual support fee to continue to benefit from the ShinobiCare service.

4.3.   If the Licensee has purchased ShinobiCare Plus and has paid any applicable annual support fees for such service, in addition to having access to new releases of the Software (as described in Clause 4.2) the Licensee shall be entitled to receive technical support services in relation to the Software. Such technical support services shall be provided in accordance with the provisions of Schedule 1.

4.4.   Any new releases of the Software which are made available to the Licensee under Clause 4.2 shall be deemed to be part of the Software and subject to the terms and conditions set out in this Agreement.

5. **Intellectual property rights**

5.1.   The Licensee acknowledges that all intellectual property rights in the Software and the Documentation throughout the World belong to the Licensor, that rights in the Software are licensed (not sold) to the Licensee, and that the Licensee has no rights in, or to, the Software or the Documentation other than the right to use them in accordance with the terms of this Agreement.

5.2.   The Licensee acknowledges that it has no right under this Agreement to have access to the Software in source code form or in unlocked coding or with comments.

5.3.   The integrity of this Software may be protected by technical protection measures ("TPM") so that our intellectual property rights, including copyright, in the Software are not misappropriated. The Licensee must not attempt in any way to remove or circumvent any such TPM, nor to apply, manufacture for sale, hire, import, distribute, sell, nor let, offer, advertise or expose for sale or hire, nor have in its possession for private or commercial purposes, any means whose sole intended purpose is to facilitate the unauthorised removal or circumvention of such TPM.

6. **Warranties**

6.1.   During the Trial Period the Software is made available to the Licensee free of charge on an "AS IS" basis and, to the maximum extent permitted by law, the Licensor disclaims all express or implied warranties, including but not limited to

implied warranties of satisfactory quality, fitness for a particular purposes and non-infringement.

6.2.   If the Licensee has purchased a full licence of the Software, the Licensor warrants that for a period of thirty (30) days after the Licensee has purchased a full licence of the Software (the "**Warranty Period**") the Software will, when properly used, perform substantially in accordance with the functions described in the accompanying Documentation. If, within the Warranty Period, the Licensee notifies the Licensor in writing of any defect or fault in the Software in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from the Licensee having amended the Software or used it in contravention of the terms of this Agreement, the Licensor will, at its sole option, either (i) repair or replace the Software (provided that the Licensee makes available all information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault); or (ii) refund to the Licensee any licence fees paid to use the Software. This Clause sets out the Licensee's sole remedy and the Licensor's sole liability for any breach of the warranty detailed in this Clause 6.1.

6.3.   Notwithstanding Clause 6.2, the Licensee acknowledges that the Software has not been developed to meet the Licensee's individual requirements and that it is therefore the Licensee's responsibility to ensure that the facilities and functions of the Software, as described in the Documentation, meet the Licensee's requirements.

6.4.   Notwithstanding Clause 6.2, the Licensee acknowledges that the Software may not be free of bugs or errors and the Licensee agrees that the existence of any minor errors shall not constitute a breach of this Agreement.

6.5.   The Licensor warrants that it shall perform any Maintenance and Support Services in accordance with this Agreement using reasonable skill and care. If the Licensor fails to perform the Maintenance and Support Services accordance with this warranty, the Licensor will, at its sole option, either (i) remedy or resolve the defective performance of the Maintenance and Support Services or re-perform the Maintenance and Support Services in question for no additional charge (provided that the Licensee makes available all information that may be necessary to assist the Licensor to do so); or (ii) refund to the Licensee any fees the Licensee has paid for the Maintenance and Support Services in question. This Clause sets out the Licensee's sole remedy and the Licensor's sole liability for any breach of the warranty detailed in this Clause 6.5.

7.   **Licensor's Liability**

7.1.   Nothing in this Agreement shall limit or exclude the liability of either party for death or personal injury resulting from negligence or for fraud, fraudulent misrepresentation.

7.2.   Subject to Clause 7.1, the Licensor's liability for losses suffered by the Licensee arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall (to the fullest extent permitted by law) exclude: (a) loss of income; (b) loss of business profits or contracts; (c) business interruption; (d) loss of the use of money or anticipated savings; (e) loss of information; (f) loss of opportunity, goodwill or reputation; (g) loss of, damage to or corruption of data; or (h) any indirect or consequential loss or

damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

7.3. Subject to Clause 7.1, the Licensor's maximum aggregate liability under or in connection with this Agreement, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall be limited to a sum equal to the licence fees and any maintenance and support fees paid by the Licensee to the Licensor under this Agreement.

7.4. This Agreement sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software and Documentation and any Maintenance and Support Services. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Agreement. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

8. **Term and Termination**

8.1. If the Licensee has opted for a free trial of the Software, this Agreement shall come into force on the date that the Licensee downloaded the trial version of the Software and (unless terminated earlier in accordance with Clause 8.3) shall continue until the end of the Trial Period.

8.2. If the Licensee has purchased a full licence of the software this agreement shall commence on the date that the Licensee purchased a full licence of the Software and shall continue indefinitely unless and until terminated in accordance with Clause 8.3.

8.3. The Licensee may terminate this Agreement at any time by destroying the Software and Documentation together with all copies in any form. The Licensor may terminate this Agreement immediately by written notice to the Licensee if the Licensee fails to comply with any term or condition set out in this Agreement or commits a material or persistent breach of this Agreement.

8.4. Upon termination or expiry of this Agreement for any reason:

8.4.1. all rights granted to the Licensee under this Agreement shall cease;

8.4.2. the Licensee must cease all activities authorised by this Agreement;

8.4.3. the Licensee must immediately pay to the Licensor any sums due to the Licensor under this Agreement; and

8.4.4. the Licensee must immediately delete or remove the Software and Documentation from all computer equipment in its possession or under its control and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software and Documentation then in the Licensee's possession, custody or control and, in the case of destruction, certify to the Licensor that this has been done.

9. **Confidentiality**

9.1. Each party may in connection with this Agreement, have access to information provided by the other party that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information ("**Confidential Information**"). A party's Confidential Information shall not include information that:

9.1.1. is or becomes publicly known through no act or omission of the receiving party; or

9.1.2. was in the other party's lawful possession prior to the disclosure; or

9.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

9.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or

9.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

9.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose, other than as may be strictly necessary to exercise its rights or to perform its obligation under this Agreement.

9.3. Each party agrees to take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10. **Transfer of rights and obligations**

10.1. This Agreement is binding on the parties and on their respective successors and assigns.

10.2. Except as expressly provided in this Agreement, the Licensee may not transfer, assign, charge, sell, resell or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, without the Licensor's our prior written consent.

10.3. The Licensor may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, at any time during the term of the Agreement.

11. **Notices**

11.1. All notices given by the Licensee to the Licensor under this Agreement must be sent to "ShinobiControls Support" by email to info@shinobicontrols.com or by post to Scott Logic Limited, 3rd Floor, 1 St James' Gate, Newcastle upon Tyne NE1 4AD. The Licensor may give notice to the Licensee using any email address or postal address provided when the Licensee downloaded the Software or by contacting the Licensee at its principal place of business. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be

sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

12. **Waiver**

12.1. If the Licensor fails, at any time during the term of this Agreement, to insist on strict performance of any of the Licensee's obligations under this Agreement, or if the Licensor fails to exercise any of the rights or remedies to which the Licensor is entitled under this Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the Licensee from compliance with such obligations.

12.2. A waiver by the Licensor of any default shall not constitute a waiver of any subsequent default.

12.3. No waiver by the Licensor of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Licensee in writing.

13. **Severability**

13.1. If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

14. **Entire agreement**

14.1. This Agreement and any document expressly referred to in it represents the entire agreement between the parties in relation to the licensing of the Software and Documentation, supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

14.2. The parties to this Agreement each acknowledge that, in entering into this Agreement, neither party has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between the parties before entering into this Agreement except as expressly stated in this Agreement.

14.3. Neither of the parties shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Agreement (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Agreement.

15. **Rights of Third Parties**

15.1. No person who is not a party to this Agreement may enforce any term of this Agreement and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

16. **Law and jurisdiction**

16.1. This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.

Schedule 1

ShinobiCare Plus – Technical Support Terms

These ShinobiCare Plus – Technical Support Terms form part of the ShinobiControls Standard Licence Agreement (the "**Agreement**") to which they are appended and are applicable to you if you have purchased the Licensor's ShinobiCare Plus service (the "**Service**"). Capitalised terms not defined in this Schedule shall have the meaning given to those terms in the body of the Agreement.

1. **Provision of the Services**

1.1. Provided that the Licensee has paid the applicable annual support fee for the provision of the Service in advance, the Licensor will supply the Services detailed in Section 2 below in relation to the Software.

1.2. The Licensee must have purchased and hold a valid licence to use the Software, in order to receive the Services. Accordingly, the Licensor shall have the right to refuse to provide the Services if the Licensee does not hold a valid licence to use the Software, or if the Licensee breaches the terms of the Agreement, or if the Agreement is terminated for any reason.

2. **Services Provided**

2.1. The Services provided under this Support and Maintenance Agreement shall comprise the following:

2.1.1. access to new releases to the Software (which are made available as part of Licensor's standard ShinobiCare services) as detailed in clause 4.2 of the Agreement;

2.1.2. unlimited email support for the Licensed in relation to their use of the Software;

2.1.3. initial response on receipt of a support request within one (1) business day (in the UK);

2.1.4. escalation to the product development team for the resolution of issues where required;

2.1.5. provision of emergency hotfixes in the event of critical bugs.

2.2. All Services detailed in this Section 2 shall be provided only in respect of the Software (as defined in the Agreement) and not in relation to any other software products developed, licensed or sold by the Licensor. In addition, all Services detailed in this Section 2 shall be provided only to the Licensed Developers (as defined in Licence Agreement).

3. **Hours of Support**

3.1. Barring unforeseen interruptions or planned exceptions, access to all web-based online documentation and receipt of email support requests will usually be accepted 24 hours a day, 365 days a year. However, unless otherwise agreed in writing between the parties, the Licensor gives no guarantees as to such

availability. Email support requests will only be dealt with during business hours (in the UK).

4.   **Response Times**

4.1.   The Licensor undertakes to use reasonable endeavours to respond to email support requests by the end of the following business day (in the UK). This time is the elapsed time between the receipt of the support request and a written or verbal confirmation of its receipt being made to the Licensee. The time taken to resolve the subject of the support request, if such resolution is undertaken, is not specified or guaranteed.

5.   **Licensor's Responsibilities**

5.1.   The Licensor will use reasonable endeavours to resolve support requests made by the Licensee to the Licensee's satisfaction. The Licensor, however, gives no guarantee that it can or will solve all support requests presented by the Licensee (beyond the warranties explicitly provided to the Licensee in the Agreement).

5.2.   The Licensor shall not be responsible for any issue which is caused by:

5.2.1.   the Licensee's improper use, improper configuration, or custom alteration or extension or modification of the Software;

5.2.2.   the Licensee's use of the Software with hardware or software outwith the specifications defined in the Licence Agreement or Documentation, or not supplied or supported by the Licensor;

5.2.3.   the Licensee's failure to install an update to the Software which includes a fix to the issue; or

5.2.4.   the Licensee's use of the Software in a manner outwith the terms of the Agreement or these Technical Support Terms and Maintenance Agreement.

5.3.   The Licensor shall not be responsible for providing support in relation to any issue to the extent that the Licensee has modified the Software in any way.

6.   **Customer's Responsibilities**

6.1.   The Licensee is deemed to be responsible for all issues not directly related to the Software including, but not limited to, other software, hardware, operating systems, networking, file systems and databases.

6.2.   Where appropriate documentation exists to adequately cover the support request, the Licensee may be directed to such documentation as a resolution of the support request.