

## BACKGROUND:

- A. Fivecast has the rights to license the Software.
- B. Fivecast will, on the terms and conditions of these Software License Terms, grant the Licensee a license to use the Software and will provide Training in consideration for the Fees and the Licensee's compliance with this Agreement.

## 1. DEFINITIONS

In this Agreement:

**"Agreement"** means this agreement, clauses 1 to 18 of this document, any annexures, and any amendments agreed to in writing by the Parties;

**"Claim"** means, in relation to a Party, a demand, claim, action or proceeding made or brought by or against that Party, however arising and whether present, unascertained, future or contingent;

**"Cloud Services"** means the cloud-based service through which Fivecast stores Licensee Data as is further described in, and subject to the terms of, clause 8.3;

**"Commencement Date"** means the date on which this Agreement commences as specified in a related Order Form;

**"Confidential Information"** means the confidential subject matter of Intellectual Property Rights, financial information and other commercially valuable information in whatever form including unpatented inventions, trade secrets, formula, know-how, discoveries, works, improvements, innovations, ideas, concepts, graphs, drawings, designs, samples, devices, models and other materials which a Party labels or identifies as confidential to it and, in the case of Fivecast, Fivecast's Confidential Information includes the Software and Fivecast Materials (and any part or copy of them). However, the following will not constitute Confidential Information:

- (a) information which as at the date of this Agreement is already legally in the public domain;
- (b) information which after the date of this Agreement becomes part of the public domain otherwise than as a result of an unauthorized disclosure by the receiving Party;
- (c) information which is or becomes available to the receiving Party from a third party lawfully in possession of such information and who has the lawful power to disclose such information to the receiving Party; or
- (d) information which is independently developed by an employee of the receiving Party who has no knowledge of the disclosure to it in accordance with this Agreement;

**"Fees"** means the fees specified in or to be determined in accordance with the terms of the Order Form and the GSA Schedule Pricelist, as payable by the Licensee to Fivecast or its authorized reseller as applicable, including any fees relating to the Software and Training;

**"Fivecast Materials"** means Fivecast's pre-existing or independently developed documents, reports, databases, software, processes, tools and other materials that Fivecast generally uses in connection with the provision of the Software and Training and includes any enhancements or improvements to Fivecast's Materials generally made available by Fivecast to customers.

**"Intellectual Property Rights"** or **"IPR"** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi-conductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world and all other intellectual property rights defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation* of July 1967;

**"Law"** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, whether made by any central government (including any State or Territory government), Commonwealth, or any local government, and includes common law and the principles of equity as applicable from time to time, and any applicable industry codes of conduct;

**"License Period"** means (a) the period from the Commencement Date to the Completion Date specified in the Order Form; and (b) each subsequent 12-month period (if any) for which this Agreement is renewed in accordance with a "Renewal" section of the Order Form;

**"License Term"** means the period from the Commencement Date until the earlier of (a) the expiry of the final License Period; and (b) termination of this Agreement in accordance with its terms;

**"Licensee Data"** is any data created or derived by the Licensee using the Software;

**"Order Form"** means the terms of, and information contained in, an associated order form related to the License of Fivecast software to the Licensee from Fivecast or an authorized reseller of Fivecast Software;

**"Parties"** means the parties to this Agreement and their respective successors and permitted assigns, and **"Party"** means one of them;

**"Permitted Location"** means the location defined in the Order Form;

**"Permitted Use"** means use of the Software by the Licensee in compliance with the terms of this Agreement, for the Permitted Use Cases, and in a manner that complies with (a) all applicable Laws; and (b) the terms and conditions that apply in connection with the use of or access to third party social media sites and platforms or similar and in respect of which the Licensee uses the Software.

**"Permitted Use Cases"** means the permitted use cases set out in the attached 'Fivecast customers and permitted use-cases' table;

**"Software"** means the software licensed to the Licensee on the terms of and subject to this Agreement as is specified in the Order Form, excluding any Fivecast Materials; and

**"Training"** means any training to be provided by Fivecast to the Licensee as specified in an Order Form.

## 1.1 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a person includes a natural person, partnership, body corporate, association, trust, unincorporated body, governmental or local authority or agency or other entity;
- (e) a reference to a clause, paragraph or annexure is to a clause or paragraph of, or annexure to, this Agreement, and a reference to this Agreement includes any annexure;
- (f) if an act required to be done under this Agreement on or by a given day is done after 5pm on that day, it is taken to be done on the following day;
- (g) a reference to \$ or dollar, is to United States currency;
- (h) a reference to an agreement or document is to the agreement or document as amended, replaced or otherwise varied, except to the extent prohibited by this Agreement or that other agreement or document;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form; and
- (k) a reference to "termination of this Agreement" or similar includes any expiration, cancellation, voiding of or mandated cessation of this Agreement however arising.

## 2. TERM

- 2.1 This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with any of its terms, continues until completion of the License Term.

## 3. ORDER FORM

- 3.1 The Parties agree that an Order Form is incorporated as part of this Agreement and is binding upon the Parties.
- 3.2 Any provisions identified in the Order Form are incorporated into the terms of this Agreement.
- 3.3 No ordering documents issued by Licensee will be binding on Fivecast and the terms and conditions of any documents issued by Licensee in connection with this Agreement are hereby rejected by Fivecast and will be void.

## 4. SOFTWARE LICENSE

- 4.1 Subject to, and conditioned on Licensee's compliance with, the terms of this Agreement, Fivecast grants to the Licensee a non-exclusive and non-transferable, non-sublicensable license during the License Term to use the Software and Fivecast Materials in the Permitted Location (meaning that all information systems, computers, laptops and other devices on which any part of the Software is installed or which access the Software must be physically located in the Permitted Location) and solely and strictly in accordance with the Permitted Use.
- 4.2 The Licensee agrees that this Agreement does not transfer to the Licensee any Intellectual Property Rights in any of the Software or Fivecast Materials.
- 4.3 The Licensee must not:
  - (a) use the Software or Fivecast Materials for any purpose other than the Permitted Use and must not attempt to avoid or circumvent any technological or other access controls that may operate in connection with any third-party social media site or platform;
  - (b) copy or modify the Software or Fivecast Materials (except during ordinary use permitted under this Agreement, as permitted by applicable laws or to make reasonable copies in disk form bearing the same notices as the original and only for security and backup purposes);
  - (c) remove or tamper with any copyright or other proprietary notices on the Software and Fivecast Materials, fail to reproduce any such notices on copies of the Software and Fivecast Materials that Licensee is permitted to make under this Agreement;

- (d) adapt, extend, develop, enhance or make any other improvements to the Software, Fivecast Materials or any part of them;
- (e) reverse engineer, decompile or disassemble the Software or Fivecast Materials nor use the Software or Fivecast Materials to make derivatives or functionally equivalent software;
- (f) incorporate the Software or Fivecast Materials in any product to be made available commercially;
- (g) sub-license, sell or otherwise distribute the Software or Fivecast Materials;
- (h) allow anyone other than the Licensee's authorized employees to have access to the Software or Fivecast Materials without Fivecast's prior written consent; or
- (i) distribute any results or data produced or derived from use of the Software or Fivecast Materials (i) to third parties (provided that this will not prevent the Licensee from distributing results or data with Commonwealth departments or government agencies where the Licensee is required to do so) or (ii) in a manner which identifies or could reasonably identify Fivecast, the Software or Fivecast Materials.

4.4 The Licensee is responsible for ensuring that only Licensee's authorized employees access the Software and must ensure that Software log-in and password details of Licensee's authorized employees are not shared (a) among Licensee's employees (whether authorized or not) and (b) with any other persons.

4.5 If the Licensee's use of the Software requires entry of login credentials for a social media site, platform or similar ("**Login Credentials**") into the Software, the Licensee is responsible for ensuring that Licensee employees enter Login Credentials authorized by the Licensee. Fivecast does not warrant that the Licensee's use of any social media site, platform or similar in relation to which the Licensee uses the Software will be uninterrupted or error-free and Fivecast is not responsible for any restrictions, bans or account shutdowns which cause any Login Credentials to be suspended, cancelled or otherwise inactive.

## 5. ONLINE PERSONA MANAGEMENT SERVICE

5.1 The provisions of this clause 5 apply if the Order Form specifies that the Licensee will acquire, and Fivecast will provide, the "Online Persona Management Services".

5.2 The Licensee appoints Fivecast as its agent to create the specified number of personas for each specified social media site, platform or similar, as specified in the Order Form, including to accept all terms and conditions of use (or similar) applicable to any social media site, platform or similar.

5.3 The Licensee authorises Fivecast to disclose that it is the agent of the Licensee with respect to the creation of personas as contemplated in clause 5.2 where a third party makes a request, allegation, claim or demand to or against Fivecast in connection with the use of the social media site, platform or similar, or where otherwise required by law. Before Fivecast makes any such disclosure, Fivecast will give the Licensee notice of the disclosure (if permitted by law) to enable the Licensee, at the Licensee's cost, to seek a protective order or other remedy to prevent or limit the disclosure.

## 6. TRAINING

6.1 Fivecast will provide the Training as described in the Order Form and in accordance with the dates specified in the Order Form.

6.2 Fivecast will, if using or accessing the Licensee's premises or facilities, comply with all reasonable directions and procedures specified by the Licensee relating to work health and safety and security in operation at that site.

## 7. FEES AND EXPENSES

The Licensee will pay the Fees to Fivecast or its authorized reseller as specified in the Order Form and within thirty (30) days of receipt of an invoice from Fivecast.

## 8. LICENSEE DATA AND CLOUD SERVICES

8.1 The Licensee shall own the Licensee Data and Fivecast shall provide the Cloud Services to store the Licensee Data for the Licensee.

8.2 The Licensee acknowledges that the Software is a discovery tool and the Licensee Data should not be used for evidentiary purposes. All information provided by the Software should be verified by the primary source of the information.

8.3 In providing Cloud Services, Fivecast will use commercially reasonable efforts to ensure that Licensee Data is stored in accordance with generally acceptable levels of security processes and protections and will be readily available to the Licensee. However, the Licensee acknowledges that the Cloud Services are dependent on third party cloud service providers engaged by Fivecast for the purpose of using the service provider's cloud platform to provide storage of Licensee Data and that Fivecast is subject to contractual terms and conditions with such third party that may impact the Cloud Services. The Licensee acknowledges that the Cloud Services may be impacted through changes implemented by third party cloud service providers and agrees to comply with Fivecast's reasonable directions relating to the Cloud Services that may be made from time to time.

8.4 Clauses 8.2 and 8.3 survive termination of this Agreement.

## 9. CONFIDENTIAL INFORMATION

9.1 Each Party will keep all Confidential Information of the other Party confidential and will not, without the prior written consent of the other Party, disclose or permit the same to be disclosed to any third party.

9.2 Each Party will use all reasonable endeavors (including, but not limited to, labels or verbal notification) to ensure that the other Party is aware of the confidential nature of Confidential Information at the time of disclosure.

9.3 Each Party will ensure that its officers, employees and agents comply with the obligations of confidentiality imposed upon it by this clause 9 as if personally bound by such obligations.

9.4 Fivecast personnel may only view the Licensee Data as required for support and maintenance of the Software.

9.5 This clause 9 survives termination of this Agreement.

## 10. NO PUBLICATION / PUBLICITY

10.1 Neither Party may use the name of the other Party without previously having obtained the specific written consent of the relevant Party and the use of the name of a Party is subject to any conditions attaching to such consent and General Services Acquisition Regulation (GSAR) 552.203-71.

10.2 Unless the prior express written permission of the other Party has been obtained, a Party will not make or permit to be made any statement related to:

- (a) this Agreement;
- (b) a Party; or
- (c) any information obtained by a Party under this Agreement or through use of the Software or Fivecast Materials that may in any way identify the other Party.

10.3 This clause 10 survives termination of this Agreement.

## 11. WARRANTY DISCLAIMER

11.1 Fivecast warrants that the SOFTWARE and Services will, for a period of sixty(60) days from the date of your receipt, perform substantially in accordance with SOFTWARE and Services written materials accompanying it. **EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, To the extent permitted by law and without limiting any other specific terms of this Agreement, Fivecast makes no warranties, whether express, implied, statutory or otherwise, including, without limitation, warranties of merchantability, fitness for a particular purpose or non-infringement warranties in relation to the Software and services provided pursuant to this Agreement.**

11.2 This clause 11 survives termination of this Agreement.

## 12. LIMITATION OF LIABILITY

12.1 **Subject to clause 12.2, Fivecast's liability, in the aggregate, under or in connection with this Agreement, however caused, and under any theory of liability (including whether in contract, tort, equity, statute or otherwise) will not exceed an amount equal to the total Fees paid by the Licensee.**

12.2 **To the extent permitted by Law, Fivecast will not be liable to the Licensee for:**

- (a) **any special, consequential, incidental, indirect or punitive damages; or**
- (b) **any lost profits or lost revenues, or for any loss of data or loss of use of data,**

**arising out of or in connection with this Agreement, however caused, and under any theory of liability (including whether in contract, tort (including negligence), equity, statute or otherwise), and even if Fivecast has been advised of the possibility of any of the foregoing. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.**

12.3 The Licensee acknowledges, agrees and represents to Fivecast that the Licensee accepts it is solely responsible for ensuring its use of the Software and Fivecast Materials (including the manner in which it uses them) complies with all Laws and all terms of use, terms of service or similar terms applicable to any social media site, platform or similar in relation to which the Licensee uses the Software or Fivecast Materials, and to the extent that Licensee has purchased the Online Persona Management Services, any use of the Licensee Designated Sites by Fivecast. Without limiting any other provision of this Agreement, the Licensee releases Fivecast from any and all liability the Licensee incurs as a result of any Claim made against the Licensee and which alleges its use of the Software or Fivecast Materials does not comply with any Law or any social media site, platform or other online site or service (including any Licensee Designated Site) and the terms of use, terms of service and similar term of any such site, platform or service (including any Licensee Designated Site).

12.4 Reserved.

12.5 This clause 12 survives termination of this Agreement.

## 13. RESOLUTION OF DISPUTES

13.1 The Parties agree to co-operate and to use all reasonable endeavors to resolve any disputes or differences between them ("**Disputes**").

- 13.2 Reserved.
- 13.3 Nothing in this clause will prevent a Party from seeking interlocutory relief in courts of appropriate jurisdiction.
- 13.4 This clause 13 survives termination of this Agreement.
- 14. TERMINATION**
- 14.1 As contemplated in clause 2, this Agreement will terminate at the end of the License Term subject to the exercise by a Party of any other right of termination set out in this Agreement.
- 14.2 Notwithstanding any other right a Party has to terminate this Agreement, the Parties may mutually agree to terminate this Agreement by written agreement at any time.
- 14.3 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Fivecast shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- 14.4 If this Agreement is terminated and regardless of the basis for such termination:
- (a) all licenses granted by Fivecast to the Licensee under this Agreement terminate immediately on the date of termination and, without limiting the foregoing:
    - (i) the Licensee must on the date of termination immediately cease all use of Software and Fivecast Materials and permanently and irrevocably delete any Software and Fivecast Materials from all information systems, computers, laptops and other devices on which any Software and/or Fivecast Materials is stored; and
    - (ii) within 7 days of the date of termination, the Chief Information Officer (or analogous position) of the Licensee must provide written certification to Fivecast which confirms that all Software and Fivecast Materials (including all copies) used by the Licensee and its personnel have been permanently and irrevocably deleted;
  - (b) termination will not affect the rights or obligations which have accrued up to the date of termination and any other rights and obligations which under the terms of this Agreement are expressed to survive termination;
  - (c) Fivecast will cease any Licensee Data accessible to Fivecast will be permanently deleted by Fivecast within one (1) month of termination; and
  - (d) any Confidential Information of a Party will immediately be returned to that Party, including all copies thereof (provided that this is subject to the specific requirements in clause 14.4(a) which applies to the Software and Fivecast Materials and clause 14.4(c) which applies to Licensee Data).

## 15. TAXATION

- 15.1 Fivecast its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

## 16. NOTICES

- 16.1 Any notice, demand or other communication required to be given or made in writing under this Agreement will be deemed duly given or made if sent by email to the address set out in the Order Form. An email sent under this clause is deemed to be delivered on receipt of a read receipt from the receiver or, if no read receipt is delivered, five days after the notice has been sent by email. The sender will keep a record of the notice and the date on which it was sent. [Note to Fivecast: The 'deemed receipt' aspect of this provision would require someone to be monitoring the inbox of the relevant contact
- 16.2 Either Party may change its nominated contact person or email address for the purposes of this Agreement by giving notice of such change to the other Party within fourteen days of the change.

## 17. GOVERNING LAW

This Agreement is governed by the Federal laws of the United States.

## 18. MISCELLANEOUS PROVISIONS

- 18.1 This Agreement may not be amended except as may be agreed in writing by the Parties.
- 18.2 This Agreement will not be assignable by the Licensee, except with the prior written consent of Fivecast.
- 18.3 In accordance with 552.212-4(f), No Party will be liable for a failure to meet any of its obligations under this Agreement (other than any failure to pay any amounts which are payable under this Agreement) to the extent this arises from an event or circumstance which is beyond the reasonable control of the affected Party, provided that the affected Party gives written notice of the delay to the other Party as soon as possible after the affected Party becomes aware of the delay or expected delay.
- 18.4 Nothing in this Agreement creates a relationship of partnership, joint venture, employment or agency between the Licensee and the other Party.
- 18.5 Each word, phrase, sentence, paragraph and clause (a "provision") of this Agreement is severable and if a court determines that a provision is unenforceable, illegal or void, then the court may sever that provision without affecting the validity of the other provisions of this Agreement.
- 18.6 No failure by a Party to exercise, or any delay by a Party in exercising, any right, power or remedy of a Party will operate as a waiver nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy.

## SUPPORT

SUPPORT	
Support Email	<a href="mailto:support@fivecast.com">support@fivecast.com</a>
Support levels & response	<p>Technical Support will be available during business hours, Monday through to Friday, 9:00am to 5:00pm in the following time zones:</p> <ul style="list-style-type: none"> <li>Australian-based Licensees: Australian Central Standard Time or Australian Central Daylight Time</li> <li>USA-based Licensees: USA Eastern Standard Time (EST) or Eastern Daylight Time (EDT)</li> </ul> <p>Fivecast will endeavor to respond to all support requests within one business day.</p>
Version Maintenance & Bug Fixes	<p>Fivecast will provide error corrections, bug fixes, patches, version maintenance and updates to the Software strictly only to the extent available in accordance with Fivecast's release schedule. The Licensee acknowledges that the Software works with third party social media sites and platforms and changes on such platforms may impact on the operability of the Software. In response to changes on third party social media sites and platforms, Fivecast will use commercially reasonable efforts to update the Software and resolve any operability errors within a reasonable period of time, however Fivecast is not liable in any way for any operability issues of the Software or any other adverse impacts arising as a result of any changes made to third party social media sites and platforms.</p>

# Fivecast customers and permitted use-cases

Customer type & description	Permitted use-cases
<b>Law Enforcement Agencies</b> City, provincial, county, state & federal police/sheriffs	<ul style="list-style-type: none"> <li>• Intelligence gathering or investigation on persons or groups of interest connected to an intelligence or law enforcement investigation and/or who have provided consent.</li> <li>• Event detection and monitoring of public events and/or locations for the purpose of ensuring public safety.</li> <li>• Integrity investigations into staff, or staff of other agencies subject to the relevant agency's powers.</li> <li>• Establishing a person's or group's online presence, including linking multiple online accounts to an identity.</li> <li>• Identifying potential risks to public safety based on an online footprint of an individual or group.</li> <li>• Online audience segmentation based on their online reaction to issues concerning public safety.</li> <li>• Insider threat detection.</li> <li>• Identifying potential risks to an individual, group or public safety based on an online footprint of an individual or group, for example to mitigate fixated threats or undertake close personal protection services.</li> </ul>
<b>National Security Agencies</b> Federal security, intelligence or defence agencies	
<b>Other Government Agencies</b> Other government agencies with an intelligence/investigative function such as Crime Commissions, Corrections, Tax office investigation teams or fraud investigation teams	
<b>Private Sector Contractors</b> Intelligence contractors/advisors engaged to provide intelligence to law enforcement/ national security End-Users	<ul style="list-style-type: none"> <li>• Provision of services to law enforcement, national security or other government agencies where the services are consistent with the approved use-cases above.</li> </ul>
<b>Corporate security companies or dedicated security units within large enterprises</b> Companies or internal corporate security units in commercial enterprises providing private protective security advice to individuals or companies for legal and proper commercial purposes.	<ul style="list-style-type: none"> <li>• Event detection and monitoring of events and/or locations for the purpose of ensuring safety of an individual, group or public safety relevant to the company's staff, customers or facilities.</li> <li>• Identifying potential physical or reputational risks to an individual, group or public safety based on an online footprint of an individual or group.</li> <li>• Insider threat and personnel security vetting corporate risks associated with fraud or other malicious insider action or potential physical or reputational threats to commercial supply chains.</li> </ul>