

360 Feedback Terms & Conditions

1. Applicability of these General Terms

- 1.1 *Scope.* These General Terms apply to the agreement between Customer and Incubane for the use of 360 Feedback.
- 1.2 *Customer's Terms.* Any different or additional terms in any order, blanket instructions, general terms or terms of purchase or other writing from Customer, or references to the same, will be deemed a material alteration of the Agreement. Incubane expressly objects to these and these will be of no force or effect.
- 1.3 *Built on Workday Terms.* Customer acknowledges that prior to downloading and using the Built on Workday App Customer must accept the [Built on Workday Terms](#), which will be provided by Workday to the Customer. The Customer confirms that it has the authority to agree to the Built on Workday terms from Workday notwithstanding anything in Customer's agreement with Workday.
- 1.4 *Order of Precedence.* In the event of any conflict or inconsistency between provisions set forth in any of the following documents, the provisions in the relevant document first listed below will govern:
 - (i) a separate Order
 - (ii) The body of the Agreement
 - (iii) Commercial Terms
 - (iv) Service Level Agreement
 - (v) Description of the Application
 - (vi) These General Terms
 - (vii) Other Agreement Documents

2. General

- 2.1 *Interpretation.* The terms "agree", "consent", "approve", "confirm", "accept", "inform", "notify" and acts of similar meaning will be deemed to be required to be done in writing. The term "including" will be construed without limitation to the generality of the subsequent words. Assumptions, exclusions and qualifications stated by Incubane in relation to the Services will be construed as part of the Agreement and guide its execution and interpretation.
- 2.2 *Marketplace Application Information.* Any reference in this Agreement to Marketplace Application Information applies only where the Customer has acquired the Application through a Click-and-Buy process in the Workday Marketplace. In such case, the relevant Marketplace Application Information will be deemed incorporated into the Agreement solely for that purpose.

Software as a Service Agreement

- 2.3 *Amendments.* From time-to-time, Incubane may amend the Agreement and/or Agreement Documents, including policies referred to – also those from third parties, as indicated by Incubane – and any additional terms and conditions communicated by Incubane in relation to the Services. Incubane will notify Customer of such amendments. Amendments are effective immediately after notification, without retroactive effect. Customer’s continued use of the Services following notification of revised terms means that Customer accepts and agrees to the amendments. If Customer does not agree with the changed terms, Customer’s only remedy is to terminate the Agreement and stop the use of the Services. Fees and terms are subject to correction for typographical or clerical errors.
- 2.4 *Orders and Customer Information.* Customer is responsible for all Customer Information and warrants that Customer Information is complete and accurate. Incubane may rely on the completeness and accuracy thereof, including that an Order meets Customer’s requirements. Customer acknowledges that a failure to do so might detrimentally affect the ability of Incubane to perform its obligations or exercise its rights under the Agreement.
- 2.5 *Personnel.* Customer shall be fully responsible for its Personnel, contractors, representatives, and any other persons to whom it provides access to the Application or Services. Customer shall ensure that such persons comply with the terms of the Agreement as if they were Customer. Any act or omission by such persons will be deemed an act or omission of Customer.

3. Performance of Services

- 3.1 *General.* Dates of performance communicated or confirmed by Incubane are approximate only. Incubane will not be liable for, nor will Incubane be in breach of its obligations to Customer, for any delay in performance, provided, however, that Incubane will use commercially reasonable efforts to meet such dates, failing which Customer’s only remedy is to cancel the Agreement for the non-performed Services. Incubane may change dates for performance for delays due to reasons not attributable to Incubane.
- 3.2 *Implementation.* The implementation approach for the Application is set out in Annex 4 (Implementation Services). The Parties select one option in Annex 4 in the Order. The selected option applies in full and the other option is deleted.
- 3.3 *Deployment.* Customer is responsible for deploying the Application in its Workday Tenant in accordance with the Deployment Guide. Incubane shall provide the Deployment Guide (and updates thereto) as part of the Subscription. Any hands-on implementation or configuration assistance (including tenant access) is not included in the Subscription Fee and, if requested, may be delivered by Incubane as an Additional Service against separate fees and terms. Reference to Annex 4. All implementation activities, responsibilities, and acceptance steps are governed by Annex 4 (Implementation Services).

Software as a Service Agreement

- 3.4 *Acceptance.* If the Parties have agreed on an acceptance protocol for the Service, they shall act accordingly. In all other cases, Customer must notify Incubane of any nonconformity within 7 calendar days after completion or access and/or use of the Service, failing which Customer will be deemed to have accepted the Service as conforming to the Agreement, without prejudice to Customers' warranty rights under the Agreement. Minor non-conformities that do not hinder the overall use of the Service will not entitle Customer to suspend or refuse acceptance of the same. Incubane shall correct these within reasonable time.
- 3.5 *Service Levels.* As part of the Services, Incubane shall provide Customer with a reasonable level of support by means of e-mail or similar mechanism, restricted to clarification questions relating to the installation, configuration and initial access to the Application. All other support, including ongoing use, functional questions, troubleshooting, and issue resolution, is governed by the Service Levels set out in a separate Service Level Agreement.
- 3.6 *Interoperability.* If Customer needs information from Incubane to effect interoperability of the Application with other software, Customer shall submit a written request to Incubane specifying the purpose and the exact (technical) information required. Incubane will inform the Customer of Incubane's decision within a reasonable period, including on the conditions, as the case may be. Customer will be solely responsible for use of non-Incubane applications and/or use of Data in connection therewith.
- 3.7 *Use of APIs.* Customer may use third-party APIs or integration tools to connect the Application with other systems, provided such use remains entirely within Customer's Workday Tenant or is otherwise initiated and controlled by Customer. This includes integrations that involve external API calls, such as connecting to an external Large Language Model (LLM). Customer acknowledges and agrees that any use of APIs, integration tools, third-party applications or custom configurations in connection with the Application will be entirely at Customer's own risk and responsibility, and shall indemnify, defend and hold harmless Incubane from and against any and all claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or in connection with such use. Incubane will have no obligation to support, maintain or verify the accuracy, availability, security, performance or legal compliance of any such implementations, nor any resulting Data flows, system behaviour or outcomes.
- 3.8 *General Amendments.* Incubane may discontinue or amend the working methods, communication systems, Application, Software or any other elements of the Service, and the Documentation, provided that such amendments do not materially affect the performance of the Service.
- 3.9 *Changes.* Incubane may without prior notice to Customer process those Changes that are needed due to (i) changes in applicable laws, regulations or standards, (ii) emergency situations, (iii) incorrect or incomplete Customer Information, or (iv) any breach by Customer of the Agreement. Other Changes will require the Parties' agreement. Incubane may adjust its warranty obligations for Changes, charge for any Additional Services and may adjust Fees for Changes.

Software as a Service Agreement

- 3.10 *Updates.* Incubane may (automatically) implement Updates at any time. Updates are deployed uniformly across all customers and are automatically made available within the Workday Tenant. Customer acknowledges and agrees that such Updates are mandatory and cannot be postponed, refused or rolled back. Incubane does not guarantee that new features or Changes introduced through an Update will maintain full compatibility with previous configurations or usage.
- 3.11 *Upgrades.* Incubane may implement Upgrades from time to time. Upgrades are automatically deployed and become part of the Application without requiring separate activation by Customer. Customer acknowledges and agrees that all Upgrades are mandatory and cannot be deferred, declined or reversed. Incubane does not guarantee that features or functionality introduced, modified or removed as part of an Upgrade will maintain compatibility with previous configurations or usage.
- 3.12 *Customer Assistance.* Customer shall Assist Incubane in such a manner that Incubane can perform its obligations under the Agreement in the most efficient manner and within agreed time schedules in conformity with requirements set by Incubane or otherwise as set out by the Agreement or applicable law. This includes Assisting Incubane in relation to relevant IT infrastructures to connect to and share Data with specified systems and/or services, updating or replacing parts of Services, providing Incubane with alerts or error messages and in case of non-conformity of the Services or security incidents.
- 3.13 *Acknowledgement.* Customer acknowledges and agrees that its purchase of the Services is not contingent on the delivery of any future functionality or features, whether from Incubane or Workday.

4. Subscription

- 4.1 *Subscription.* Subject to the terms of the Agreement, notably subject to the payment of all Fees, Incubane grants, and Customer accepts, a non-exclusive, non-sublicensable (except as otherwise permitted herein), non-transferable and revocable limited right to access and use the Application during the Term. This right strictly applies to the use of the Application as made available online and does not extend to the underlying Software or source code, unless expressly agreed otherwise in writing.
- 4.2 *Restrictions.* Customer shall not (and shall not allow others to), except expressly permitted by applicable law, with respect to the Software (including source code or technical components of the Application) or Documentation:
- (i) access or attempt to access the underlying Software or source code.
 - (ii) modify, copy, distribute, sell, lease or create derivative works or otherwise change or commercially exploit Software or Documentation.
 - (iii) reconstruct or derive the source code or the algorithmic nature of the Software by means of reverse engineering, or decode, de-crypt, remove, circumvent, or neutralize any (use) limitations, security measures, other protection, or inject malicious code in the Software.
 - (iv) conduct any load testing or penetration testing on the Software without express prior permission of Incubane, referencing the Agreement.

Software as a Service Agreement

- (v) use Data, the Application, Software and/or Services for any illegal activity or upload any data or content that is illegal, or for which Customer does not have the rights or permissions required for such upload.

4.3 *Customer Responsibilities.* Customer shall and shall procure that its End-Users:

- (i) use the Software and Services only in accordance with the Agreement and the usage rights hereunder, and only for the purpose indicated in the Description of the Application, or, in case no such purpose has been specified, for their intended purpose. Customer shall not rely on the Service or Data for applications or in environments where the use or failure of the Services could lead to death, personal injury, or severe environmental or material damage.
- (ii) maintain appropriate security measures to prevent unauthorized access and use of accounts and Services.
- (iii) immediately (and always within 12 hours) notify Incubane of any security incident.
- (iv) comply with (technical) requirements in Agreement Documents.
- (v) comply with third-party terms applicable to Third Party Materials.
- (vi) keep the Software and Documents confidential;
- (vii) comply - and are required to take all actions reasonably necessary to ensure that Customer and/or its business partners comply - with all applicable (local and international) laws and regulations applicable to the access or use of the Services, including regarding data protection, anti-bribery, anti-corruption, export control, sanctions and restrictive trade practices or boycotts, and Assist Incubane to verify compliance with this section (vii).

4.4 *No Ownership.* Customer will only obtain certain limited user rights with respect to Software and Documentation. Software and Documentation are not sold to Customer by Incubane. Customer does not and will not have or acquire under or in connection with the Agreement any ownership interest in Software or Documentation, or in any related IPR.

5. Data

5.1 *Data.* Customer acknowledges and agrees that the Application and Services operate entirely within Customer's own Workday Tenants and that Incubane does not have, and is not intended to have, any access to Data as stored, entered or processed within that environment. Consequently, Incubane shall not be responsible or liable for:

- (i) the accuracy, completeness or legality of any such Data;
- (ii) the correctness or outcome of any processing of such Data;
- (iii) the loss, corruption or unauthorised disclosure of such Data.

Only where Customer explicitly grants Incubane temporary access to its Workday Tenant for support or troubleshooting purposes may Incubane access such Data, and such access shall be limited in time and scope and subject to Incubane's confidentiality and security obligations.

Software as a Service Agreement

5.2 *Acknowledgement.* Customer acknowledges that Incubane has no access to, and bears no responsibility or liability for, the accuracy, integrity, legality, availability, backup, retention or restoration of any Customer Information or other Data stored or processed in connection with the Application. The Customer further acknowledges that Incubane does not provide any backup, recovery or archiving services. Incubane expressly disclaims any liability for any loss, corruption or unavailability of such Data, regardless of the cause.

6. Term

6.1 *Term.* The Agreement enters into force on the Effective Date and will remain in effect for the duration specified in the Commercial Terms or the Marketplace Application Information. If the Parties have not specified such duration, the initial term will be thirty-six (36) months.

6.2 *Extension.* Unless terminated earlier in accordance with the provisions herein, the Agreement will be automatically extended as set out in the Commercial Terms or the Marketplace Application Information. If no such extension has been specified, the Agreement will be extended by consecutive periods of thirty-six (36) months.

7. Suspension; Termination

7.1 *Termination for Cause.* Either Party may terminate (“*opzeggen*”) the Agreement without any judicial intervention and with immediate effect, in whole not in part, without any liability, if:

- (i) the other Party materially breaches the Agreement and such breach has not been remedied within one (1) months after being notified by the other Party; and/or
- (ii) the other Party becomes insolvent, files for bankruptcy or has bankruptcy proceedings filed against it, makes an assignment for the benefit of creditors, or is placed in receivership, administration or liquidation.
- (iii) Incubane requires an adjustment to the Subscription Fee in accordance with article 9.3 and the Parties fail to reach agreement on the revised Subscription Fee within thirty (30) days after Incubane’s written notice.

7.2 *Suspension and Termination by Incubane.* Without prejudice to section 7.1, Incubane may, with immediate effect and without any liability: (a) suspend (“*opschorten*”) the performance of its obligations under the Agreement, or terminate (“*opzeggen*”) the Agreement; (b) declare all amounts outstanding by Customer immediately due and payable; (c) require payment in advance or other payment terms, in any of the following events:

- (i) in Incubane’s reasonable opinion, the actions, omissions or the financial position of Customer are likely to affect Customer’s ability to perform its obligations under the Agreement;
- (ii) Customer infringes the rights of Incubane and/or Incubane’s Licensors, including Incubane’s and/or Incubane’s Licensors IPR;
- (iii) Customer uses the Application and/or Software for unlawful purposes or for purposes contrary to public policy and public decency;
- (iv) Incubane’s Licensor(s) terminates Incubane’s right to use (parts of) the Application and/or Software; or

Software as a Service Agreement

- (v) Customer ceases, or threatens to cease, to carry on business or the control over or ownership of Customer changes;
- (vi) if required by law or regulation or at the request of a relevant regulatory authority or this is needed in Incubane's discretion to protect the systems of Incubane and/or Customer;
- (vii) the Services are hampered by Third Party Materials or section 23.4 (Force Majeure) applies.
- (viii) if and to the extent Incubane is no longer able to make the Application accessible or available for use due to decisions, instructions or requirements imposed by Workday, including (a) removal of the Application from the Workday Marketplace; (b) termination or suspension of Incubane's participation in the Built on Workday program or the Workday Partner Program; (c) changes to Workday's technical or commercial policies that prevent delivery of the Application; or (d) disabling of developer tooling, integration access or hosting capacity by Workday.

7.3 *Consequences of Termination.* Upon termination or expiration of the Agreement:

- (i) Customer shall immediately cease all use of the Application and/or Software.
- (ii) terms destined to survive such termination or expiration will so survive.
- (iii) Customer shall pay all amounts accrued hereunder in accordance with the payment terms of the Agreement. If Incubane terminates the Agreement on the basis of section 7.2, all reasonable costs and expenses incurred by Incubane (including a reasonable profit) for any activities related to work performed by Incubane prior to such termination will be considered due and payable by Customer; and
- (iv) each Party shall cease using Confidential Information received from the other Party and, on the request of, and at the disclosing Party's option, destroy or return all such information, including all derivatives and (digital) copies. Each Party may retain 1 copy of Confidential Information for monitoring compliance with the Agreement or for legal or regulatory requirements.

8. Transition Services

- 8.1 *Request for Transition Services.* In case of termination or expiration of the Agreement, Customer may request Incubane to provide commercially reasonable assistance to support the transition of the Services to either Customer or to a third-party service provider designated by Customer (the "Transition Services").
- 8.2 *Additional Services.* Transition Services are Additional Services and require the Parties' separate agreement regarding scope, duration and applicable Fees. Section 10 applies.
- 8.3 *Workday Dependency.* Incubane shall only be required to provide Transition Services for as long as Customer is entitled to such services under Customer's agreement with Workday, including any applicable retrieval period or transition period granted by Workday.
- 8.4 *Data Responsibility.* Incubane shall not be responsible for the availability, integrity or continuity of Customer Data during the Transition Services. Such responsibility remains with Customer and/or Workday.

Software as a Service Agreement

- 8.5 *Requirements.* Incubane will only be required to perform Transition Services if:
- (i) Customer is not in material breach of the Agreement at the time of the request;
 - (ii) Customer has paid in full all Fees due under the Agreement, excluding any amounts subject to a reasonable and good faith dispute;
 - (iii) Customer has made an advance payment covering Fees for the Transition Services; and
 - (iv) Customer continues to comply with this Agreement throughout the requested transition period and, upon request, confirms such compliance in writing.

- 8.6 *Limitations.* Incubane shall have no obligation to provide any source code, proprietary tools, or documentation beyond what is included in the Documentation of the Application. Transition Services are provided "as-is" and "as available", without warranties or guarantees as to their success or completeness.

9. Fees and payment

- 9.1 *Fees.* All prices and Fees are in United States Dollars (USD) and do not include VAT or any other taxes, duties, levies or other fees, present or future, imposed by any governmental authority ("Taxes"). Customer shall bear all Taxes and Incubane may add Taxes to the price or invoice separately. Customer shall not withhold any Taxes from payments hereunder, except if any governmental authority requires Customer to do so, in which event Customer shall gross up the amounts payable to Incubane such additional Taxes. Incubane is entitled to receive the same net amount as if no such withholding would have been required.
- 9.2 *Exceeding End User Volume.* If the Subscription Fee has been agreed on an End User basis, the Subscription applies to the agreed number of End-Users within Customer's Workday Tenant. If the number of End-Users accessing the Application exceeds the agreed user volume, Incubane may adjust the Subscription Fee accordingly on a pro rata basis for the remainder of the Term.
- 9.3 *Structural Changes.* The Subscription Fee is determined based on factors such as the scope of use, organizational structure, number of End-Users, relevant Workday Tenants and expected business context. If during the Term a material change occurs in Customer's organization or use of the Application, including a merger, acquisition, divestiture, carve out or significant operational expansion, Incubane may adjust the Subscription Fee to reflect such change. Customer shall upon request provide reasonable information to enable Incubane to assess the impact. If Customer does not accept the adjusted Subscription Fee, its sole and exclusive remedy is to terminate the Agreement in accordance with article 7.1 (iii) and cease all use of the Service. This Section 9.3 shall not apply where the Subscription Fee is calculated on a per-End User basis.
- 9.4 *Invoicing.* In consideration of the performance of Services by Incubane, Incubane will invoice Customer for Fees on yearly basis in advance. Customer shall pay invoices in accordance with the Agreement and this section 9, regardless of whether the Application has been accessed or used, or not. Customer shall make payment within 30 days of the date of invoice, without any deduction or (tax)withholding, retention, counterclaim or set-off. Time is of the essence with respect to Customer's payment obligations.

Software as a Service Agreement

- 9.5 *Fee Indexation.* Without prejudice to section **Error! Reference source not found.** and subject to notice, Incubane may adjust Fees as of each 1st April, taking into account the change of the yearly price indexation figure based on the consumer price index (CPI) of all households (2015=100) published by the Centraal Bureau voor de Statistiek (CBS).
- 9.6 *Late Payment.* If Customer fails to make any payment when due, and in addition to any other rights and remedies available to Incubane, (i) all amounts due by Customer will be considered payable and non-disputed, admitted debt; and (ii) Customer must pay Incubane a late payment charge of either 18% per annum or the relevant statutory rate for trade transactions, whichever is higher, on all due amounts until Incubane has received full payment. In addition, Customer shall pay Incubane all costs of payment collection, including attorney's fees.
- 9.7 *Set-off.* Incubane may set off amounts that Incubane owes to Customer against any amounts that Customer owes to Incubane.

10. Additional Services and Fees

- 10.1 *Request and Scope.* Incubane may, upon Customer's written request and subject to mutual agreement, provide Additional Services. Additional Services are not included in the Subscription Fee and will be provided pursuant to a separate Order, governed by the Agreement.
- 10.2 *Fees and Invoicing.* Unless otherwise agreed in writing, Incubane will charge Additional Services on a time-and-materials basis at Incubane's then-current professional services rates, and subject to applicable invoicing and payment terms.
- 10.3 *Right to Decline.* Incubane shall have no obligation to accept any request for Additional Services and may determine, in its sole discretion, whether and when such services can be scheduled and delivered, subject to the availability of qualified personnel and resources.

11. Intellectual Property Rights

- 11.1 *Ownership.* Ownership of IPR in Services, including the Application, Software and Documentation, remains with Incubane, its affiliates, licensors, or suppliers. Any ideas, suggestions, feedback or recommendations by Customer regarding the Services will not be considered Confidential Information and Incubane will be the sole and exclusive owner of all IPR therein. No rights to IPR are conferred to Customer other than explicitly granted by Incubane. Any configuration or deployment of the Software will not affect or diminish Incubane's and/or Incubane's Licensor(s)' rights, title, and interest in and to Software. Customer shall not remove any proprietary rights legends of Incubane or its suppliers in any Software or Documentation.
- 11.2 *Right to use.* Subject to Customer's compliance with the terms of the Agreement, Incubane grants Customer the non-exclusive right under Incubane's IPR to access and use the Services. Customer shall not and shall not work with others to (i) copy, reverse engineer, decompile or modify Services, without authorization from Incubane; and (ii) perform any action that would require any Software, or any derivative work thereof, to be licensed under Open License Terms.

Software as a Service Agreement

- 11.3 *IP Claims.* If Customer receives an IP Claim, Customer must notify Incubane, give Incubane full and exclusive authority to handle the IP Claim, at the cost of Incubane, and reasonably Assist Incubane. Incubane will only compensate costs and expenses by Customer in relation to such IP Claim, that Incubane has approved. In addition to the indemnity under section 11.4 (IP Indemnity), the only remedy that Incubane will provide for IP Claims, at its option, is either: (i) procuring for Customer the right to use the Service; or (ii) providing a non-infringing equivalent replacement or modification of the Service that is not subject to that IP Claim; or (iii) making an appropriate refund of amounts paid by Customer as compensation for suspension or termination of the Agreement pursuant to section 11.5 (Limitation).
- 11.4 *IP Indemnity.* If an IP Claim results in legal proceedings against Customer, then, subject to section 16 (Liability), Incubane will reimburse Customer for any final award of damages by a competent court holding that Customer's use of Services in accordance with the Agreement, directly infringe any third-party IPR and such infringement is exclusively attributable to such Customer's use of the Services.
- 11.5 *Limitation.* To limit liability for IP Claims, Incubane may suspend performance of the Agreement, or, if the remedies in section 11.3 (IP Claims) under (i) and (ii) are not reasonably available, terminate the Agreement without liability for such termination.
- 11.6 *Exclusions.* Incubane will have no obligations or liability and Customer shall indemnify Incubane in accordance with section 17 (Customer Indemnification) for IP Claims: (i) that result from compliance with Customer Information or changes made by, on request, or on behalf of Customer; (ii) that result from a combination of the Service with materials, or a process, not supplied by Incubane; or (iii) in case of a breach by Customer of the Agreement, including section 11.3 (IP Claims).
- 11.7 *Customer Obligations.* Customer shall:
- (i) take all reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access; and
 - (ii) promptly notify Incubane in writing if Customer becomes aware of: (a) any actual or suspected infringement, misappropriation, or other violation of IP Rights in or relating to the Software or Documentation; or (b) any claim that the Software or Documentation, including any production, use, marketing, sale, or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates, or otherwise violates the IP Rights or other rights of Incubane or Incubane's Licensor(s).
- 11.8 *Remedies.* If the Software, or any part of the Software, is, or in Incubane's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party IP Right, or if Customer's use of the Software is enjoined or threatened to be enjoined, Incubane may, at its option and sole cost and expense:
- (i) obtain the right for Customer to continue to use the Software as contemplated by the Agreement;
 - (ii) modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing equivalent features and functionality, and such modified or replacement software will constitute Software under the Agreement;
- or

Software as a Service Agreement

- (iii) if, after Incubane's exercise of commercially reasonable efforts, none of the remedies set forth under (i) or (ii) is reasonably available to Incubane, terminate the Agreement, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Customer, in which event: (i) Customer shall cease all use of the Software immediately on receipt of Incubane's notice; and (ii) provided that Customer and Incubane fully comply with the post-termination obligations, Incubane shall promptly refund to Customer, on a pro rata basis, the share of any Subscription Fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

11.9 *Third-Party Enforcement.* Customer agrees that Incubane's Licensor(s) are entitled to enforce the terms of the Agreement directly against Customer as necessary to protect Incubane's Licensor(s) and or their licensor(s)' IPRs or any rights under the Agreement.

12. Audit rights

12.1 *Audit Right.* Incubane may, upon reasonable prior notice and no more than once per twelve (12) month period (unless a prior audit revealed material non-compliance), audit Customer's use of the Services to verify compliance with the terms of the Agreement.

12.2 *Audit Procedure.* Audits may be conducted remotely through digital access to relevant systems and Data, or on Customer's premises, at Incubane's discretion. Incubane may conduct the audit itself or appoint an independent third-party auditor bound by confidentiality obligations and during normal business hours and in a manner that does not unreasonably interfere with Customer's operations. Customer shall cooperate in good faith with the audit and shall provide reasonable access to relevant records, systems, and Personnel to facilitate the review.

12.3 *Costs.* Incubane shall bear its own costs of the audit unless the audit reveals material non-compliance by Customer, including but not limited to unauthorized users or materially excessive usage. In such case, Customer shall reimburse Incubane for the reasonable costs of the audit, and Incubane shall be entitled to invoice Customer for any applicable Fees relating to such unauthorized or excessive use, retroactively from the date the non-compliance began, plus applicable interest.

12.4 *Confidentiality.* Any information obtained during the audit shall be considered Confidential Information and used solely for the purposes of enforcing compliance.

13. Promotion and Publicity

13.1 *General References.* With written permission, each Party may reference the other Party's name, logo, and the general nature of their business relationship in its marketing materials, customer presentations, investor communications, case studies, or on its website, provided that such use is accurate, professional, and does not disclose any Confidential Information or misrepresent the scope of the relationship, unless the other Party has submitted a written objection.

Software as a Service Agreement

- 13.2 *Customer Promotion.* Customer may, subject to compliance with the Agreement and applicable branding guidelines provided by Incubane, publicly promote its use of the Application, including by sharing feedback, screenshots, testimonials, or use cases, provided that such content does not imply endorsement by Incubane unless explicitly approved in writing. Incubane may promote the Application and Customer's use thereof under the same terms.
- 13.3 *Co-Branded Content.* For any detailed promotional content (including co-branded campaigns, joint press releases, interviews, or case studies), the Parties shall consult one another in advance and obtain mutual written approval prior to publication. Such approval shall not be unreasonably withheld or delayed.
- 13.4 *Revocation.* Either Party may, upon written notice, revoke the other Party's right to reference its name and logo in future promotional content. Following such notice, the other Party shall promptly cease new uses and make reasonable efforts to remove existing references from public-facing materials where technically and commercially feasible.
- 13.5 *No Obligation.* Nothing in the Agreement shall be construed as an obligation for either Party to provide endorsements, testimonials, or joint marketing support, nor as an indication of partnership or affiliation beyond the scope of the contractual relationship established herein.
- 13.6 *No License.* Nothing in this section 13 shall be construed as granting, by implication or otherwise, any license or right to use, reproduce, modify, or distribute the other Party's intellectual property, except as expressly permitted for the purposes of promotion in accordance with the Agreement.

14. Assignment

- 14.1 *No Customer Assignment.* Customer shall not assign the Agreement (in whole or in part), or any rights or obligations thereunder, without consent of Incubane, which consent Incubane shall not unreasonably withhold. Any assignment without Incubane's consent will be null and void.
- 14.2 *Incubane Assignment.* Incubane may delegate, subcontract, assign or otherwise transfer any of its rights (including receivables) and obligations under the Agreement without consent. If consent is required by law, Customer hereby agrees to give its consent and to Assist Incubane in respect thereto.

15. Limited Warranty

- 15.1 *Warranty.* Incubane will use commercially reasonable efforts to provide the Services in conformance with the Agreement, including (i) complying with Service Levels if specified; (ii) maintaining safeguards appropriate for protecting the security, integrity, and confidentiality of Customer Information and Data; (iii) utilizing generally accepted industry tools and practices to provide the Services that do not contain any "time bombs", "worms", "viruses", "Trojan horses", or similar.

Software as a Service Agreement

- 15.2 *Remedies.* If there is any nonconformity of Services with section 15.1, as only remedy: (i) Incubane will correct, re-perform or supplement such Service in accordance with Service Levels, specified for such nonconformity, if any; or (ii) when no Service Levels apply to a nonconformity, Incubane will use reasonable commercial efforts to correct, re-perform or supplement such nonconformity within a reasonable time; failing which Customer may terminate the subscription in respect of the affected portion or functionality of the Service.
- 15.3 *Exclusions.* Incubane does not warrant that Services operate uninterrupted, are fit for purpose, free from defects, errors, bugs and security vulnerabilities and exclude any remedy in respect thereof and, in addition, for any non-conformity: (i) caused by planned downtime (including for maintenance, updating and repair purposes); (ii) caused by a violation by Customer or Customer's End-Users' of the Agreement; or (iii) of Services for which Incubane does not have a valid subscription, has not paid all amounts due and/or for which not all Updates provided by Incubane have been implemented. Further, warranties do not apply if (a) Customer is in breach of the Agreement; or (b) in case of Force Majeure.
- 15.4 *Third Party Materials.* Unless Incubane explicitly states otherwise, Incubane does not supply, support, or warrant any third-party platforms or components, including Workday. Customer acknowledges that Workday is a third-party service over which Incubane has no control or responsibility. The Services are designed to run within Customer's own Workday Tenant, and Incubane provides no warranty as to the availability, stability, performance, security or suitability of Workday or its components. Any use of Workday or other third-party materials is subject solely to the applicable terms and conditions between Customer and such third party.
- 15.5 *Compatibility.* Customer acknowledges that the Services are designed to be compatible only with the Workday platform and other software and systems explicitly identified in the Agreement. Incubane does not warrant compatibility with any other platforms, systems, or configurations.
- 15.6 *Additional and Free Services.* Unless agreed otherwise, Additional Services and free of charge Services are provided AS IS and AS AVAILABLE, without warranty or support of any kind.
- 15.7 *Disclaimer.* The foregoing warranties are in lieu of all other warranties. TO THE MAXIMUM EXTENT PERMITTED BY MANDATORY APPLICABLE LAW, Incubane AND ITS SUPPLIERS DO NOT MAKE ANY OTHER WARRANTIES (EXPRESS OR IMPLIED) OR HAVE OTHER OBLIGATIONS OR LIABILITY WITH RESPECT TO NONCONFORMITY IN SERVICES.
- 15.8 *Warranty Process.* Customer must make any claims under warranty as soon as possible but not later than 30 days after discovery. Customer must Assist Incubane and give Incubane all information reasonably necessary to assess a warranty claim. Any tests by Customer to determine whether a Defect exists, require Incubane's consent. Where applicable, Customer must give free access to its facilities for remedial warranty efforts.
- 15.9 *Sole Remedy.* This section 15 sets out all of Incubane's obligations and constitutes Customer's only remedy and Incubane's entire liability in connection with any non-conformity of Services. This applies whether a claim, however described, is based on contract, warranty, indemnity, tort or extra-contractual liability (including negligence), strict liability or otherwise, and will only be applicable to Customer.

Software as a Service Agreement

16. Limited Liability

- 16.1 *Limitation of Liability.* The total, aggregate liability (including any indemnities, penalties or liquidated damages) of Incubane arising out of or in connection with the Agreement will be limited per 12 months term of the Agreement to an amount equivalent to 20% of the Fee paid during that Term for the specific Service to which the event giving rise to the liability relates.
- 16.2 *Excluded liabilities.* In no event will Incubane be liable for any lost profits, lost savings, loss of Data, loss or damage to software, loss of reputation, loss of goodwill, loss of business opportunities, fines imposed by regulatory bodies and/or contractual penalties or other compensation payable by Customer to its customer or to any third parties, indirect, incidental, punitive, special or consequential damages, whether or not such damages are based on tort, warranty, neglect, contract or otherwise - even if Incubane has been advised, or is aware, of the possibility of such loss or damages. No liability will exist for damages in case of Force Majeure, for Services that Incubane provides free of charge or where Customer has failed to take appropriate measures to limit such damages.
- 16.3 *Specific Exclusions.* In no event will Incubane be liable for damages based on or arising from activities carried out or delivered on or in the following areas:
- (i) any liability incurred under the laws of the United States or Canada;
 - (ii) environmental or pollution-related damage, except to the extent explicitly covered by mandatory law;
 - (iii) loss or damage resulting from acts of war, terrorism, civil unrest, or natural disasters including earthquakes, floods, and volcanic eruptions;
 - (iv) loss or damage caused by asbestos, genetically modified organisms, electromagnetic or biochemical weapons; and/or
 - (v) errors in professional advice, consultancy or calculations.
- 16.4 *Time Limits.* Customer forfeits the right to assert or pursue a claim in connection with the Agreement if Customer has not given Incubane notice of such claim within 30 days from the date of the event giving rise to the claim, and has not started legal proceedings within 1 year from the date of that notification.
- 16.5 *Third Parties.* This section 16 will also apply to the benefit of Incubane Personnel and its successors and assigns, and they may invoke this section directly against Customer.
- 16.6 *Entire Liability.* The Agreement sets forth Customer's sole remedy and Incubane's entire obligation and liability for any breach of any Incubane condition, warranty, representation or non-conformity of the Service or Documentation set forth in the Agreement and/or Agreement Documents. An essential purpose of these limited, exclusive liabilities and remedies is the allocation of risks between Incubane and Customer, which allocation is reflected in the Fees. The exclusions and limitations of liability only apply to the extent permitted by applicable mandatory law.

Software as a Service Agreement

17. Customer Indemnification

17.1 *Indemnity.* Customer shall indemnify, defend and hold harmless Incubane, its affiliates and their respective Personnel, successors, and assigns from and against, all losses, liabilities, third-party claims, costs, expenses and damages (including attorney's fees and other legal, collection or recovery costs) arising out of or in connection with: (i) a breach by Customer of the Agreement; (ii) any use, application, installation, or any modification of the Software or Services, or integration thereof into other products or services, all not authorized by Incubane, by either Customer, its affiliates or their respective Personnel, (iii) any IP Claims resulting from any of the events set forth in section 11.6 (Exclusions).

18. Confidentiality

18.1 *Confidentiality.* Each Party shall keep any Confidential Information received from the other Party confidential by employing adequate procedures for safeguarding Confidential Information at least as rigorous as a Party uses for its own confidential information but no less than a reasonable degree of care. The receiving Party shall use Confidential Information only for the purposes of, and in accordance with, the Agreement. The receiving Party may provide its Personnel, affiliates, permitted subcontractors, agents and third party suppliers (each, a "*Permitted User*") with access to the Confidential Information on a strict need-to-know basis only. The receiving Party shall ensure that each Permitted User is bound to keep confidential all Confidential Information to at least the standards applicable to the receiving Party under the Agreement, and the Receiving Party will be liable towards the disclosing Party under this Agreement for any failure of a Permitted User to adhere to such standards as if it were a failure by the receiving Party itself. All Confidential Information and any copies thereof will remain the property of the disclosing Party.

18.2 *Excluded information.* This section does not apply to any information which the receiving Party can demonstrate: (i) is in or subsequently enters the public domain other than as a result of a breach of this section 18 or a breach of equivalent confidentiality undertakings of a Permitted User; (ii) has been or is subsequently received by the receiving Party from a bona fide third party who is under no confidentiality obligation in respect of that information; (iii) has been or is subsequently independently developed by the receiving Party without use of the Confidential Information; or (iv) was previously known to the receiving Party free from any obligation to keep it confidential.

18.3 *Required by Law.* This section 18 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that the responding Party shall first have given notice to the other Party and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued.

Software as a Service Agreement

19. Privacy and Use of Data

19.1 *Data Protection Laws.* Parties shall comply with Applicable Data Protection Laws in relation to their respective responsibilities under the Agreement. If Incubane Processes Personal Data as a Controller, it will act in accordance with its Privacy Policy. If Incubane Processes any Personal Customer Data as a Processor, Parties shall enter into a separate data processing agreement that governs such processing in accordance with Article 28 of the GDPR.

20. Artificial Intelligence (AI)

20.1 *Optional AI Features.* Customer may choose to use AI Features. To enable AI Features, Customer must connect the Application with a third-party LLM provider by supplying its own API key.

20.2 *Responsibility.* Customer is solely responsible for (i) entering into and maintaining a valid agreement with the chosen LLM provider, (ii) ensuring lawful use of AI Features, including compliance with Applicable Data Protection Laws, Workday's Responsible AI Guidelines and Customer's own internal policies, and (iii) configuring, validating and monitoring AI output before using it in its business processes.

20.3 *Disclaimer.* Customer acknowledges and agrees that any LLM service is provided by an independent third-party provider. Incubane does not provide, host, or operate LLM services and does not process Customer personal Data for AI purposes. Incubane only provides the technical capability for the Application to connect with Customer's chosen LLM provider, and any data exchange with such LLM is initiated and controlled by Customer.

20.4 *AI Output.* Customer acknowledges and agrees that AI-generated content is created automatically and may contain inaccuracies, biases or inappropriate results. Such output is intended solely for support and productivity purposes and shall not be relied upon without appropriate human review and validation. AI output shall not be considered professional, legal, financial, HR or other advice, nor a substitute for Customer's own independent judgment. Customer remains fully responsible for any reliance on, or use of, AI-generated output in its business processes, including for compliance with laws, internal policies and decision-making.

20.5 *No Guarantee or Liability.* Incubane does not guarantee the accuracy, completeness, suitability or fitness for purpose of AI-generated output. To the maximum extent permitted by law, Incubane disclaims all liability for any decisions, actions or outcomes resulting from Customer's use of AI-generated content.

21. EU AI Act, roles and obligations

21.1 *Purpose.* This Application uses optional assistive AI. It is not used for automated decision making about people. It is designed and operated as a limited-risk system under the EU AI Act.

21.2 *Roles.* For the AI capability, Customer acts as AI provider and deployer when connecting its own LLM service. Incubane is the application vendor and integrator. The LLM vendor remains responsible for model operation.

Software as a Service Agreement

- 21.3 *Incubane obligations.* Incubane will:
- ship the Application to run inside Customer's Workday tenant, with technical controls documented in Annex 3
 - provide transparency on inputs, outputs, and limitations of the AI feature, and
 - avoid any design that would place the system in a high-risk or prohibited category.
- 21.4 *Customer obligations.* When enabling AI, Customer will:
- select and contract the LLM service and keep it compliant,
 - implement Article 52 transparency for end users and keep human in the loop,
 - validate and approve AI outputs before use, keep records, and monitor for misuse,
 - perform a DPIA where required and meet GDPR controller duties, and
 - disable the AI feature if legal, policy, or risk requirements are not met.
- 21.5 *Transparency notice.* Customer will show an in-product message when users invoke AI, for example: "This 360 Feedback summary was generated with the organization's AI model. Please review and adjust before saving. You remain responsible for the final content."
- 21.6 *Documentation.* The Parties incorporate Annex 3 by reference. The Fact Sheet describes the system's purpose, risk classification, oversight, data handling, and controls.

22. Open Source Software

- 22.1 *Inclusion of Open Source.* The Application may include Open Source Software, in which event Incubane will identify such components and their applicable license terms in the Documentation or in a separate open source notice file.
- 22.2 *License Terms.* Each Open Source Software component is governed by its own license terms. Customer shall use such components in compliance with the applicable open source license, and nothing in this Agreement restricts the rights granted to Customer under such licenses.
- 22.3 *No Additional Rights.* Except as required by the applicable open source license, Customer obtains no rights to source code or underlying software. Customer shall not (and shall not permit others to) extract, isolate or reverse engineer any Open Source Software components included in the Application.
- 22.4 *Source Code Availability.* To the extent required under an applicable open source license, Incubane will make the corresponding source code available upon written request.
- 22.5 *Disclaimer.* In the event that Incubane provides Open Source Software, it will do so on an AS IS basis and exactly in the same form as provided by the original authors or rightholders of such Open Source Software to Incubane. Incubane does not make any warranties regarding Open Source Software and disclaims any liability for issues arising from or related to Customer's use of such components.

23. Miscellaneous

- 23.1 *No Waiver.* The fact that a Party does not exercise any right or does not use any legal remedy does not constitute a waiver of that right or remedy.

Software as a Service Agreement

- 23.2 *Entire Agreement.* The Agreement constitutes the entire agreement between the Parties and supersedes any and all previous representations, understandings, discussions, proposals or agreements with respect to the subject matter hereof.
- 23.3 *Severability.* If a provision of the Agreement is found to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement will remain valid, enforceable and in full effect and Parties will work together to find a replacement provision that best reflects the original intention of the provision concerned.
- 23.4 *Force Majeure.* Neither Party will be liable for a failure or delay in fulfilling their obligations under an Agreement if caused by Force Majeure. In such event, the affected Party may temporarily suspend its performance until the Force Majeure has been resolved. However, the payment obligations of Customer will remain unaffected. If a Force Majeure has lasted or is reasonably expected to last for a period of at least 3 consecutive months, Incubane may terminate the Agreement affected by such Force Majeure (in whole or in part) without liability.
- 23.5 *Governing Law.* The laws of the Netherlands govern the Agreement, without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply.
- 23.6 *Disputes.* The courts of Utrecht will have exclusive jurisdiction over any legal action arising out of or related to the Agreement that cannot be settled through consultation in good faith, provided that either Party may bring an action to a court of local competent jurisdiction to seek injunctive or other equitable relief available to that Party in accordance with applicable law.

24. Definitions

- 24.1 *Definitions.* The following defined terms apply to the Agreement with the meaning set out below:

"Additional Services" means any Services provided by the Incubane to the Customer that are not included in the scope of the standard Subscription Services, including but not limited to implementation assistance, configuration, customization, integration with third-party systems, training, Data migration, or support services beyond standard service levels;

"Agreement" means the Software as a Service Agreement between Customer and Incubane, consisting of the body of the Agreement, the Commercial Terms, the General Terms, the Service Levels, the Description of the Application, and any other Agreement Documents. In case of a Click-and-Buy contracting flow, "Agreement" includes the Marketplace Application Information together with the General Terms, the Service Levels, and any other applicable Agreement Documents;

"Agreement Documents" means any statement of work(s), Marketplace Application Information, Orders, terms of use or end-user license agreements, supplement terms and addenda, Documentation and other documents included or referenced to by Incubane in relation to the Agreement;

Software as a Service Agreement

<i>"AI Features"</i>	means optional functionalities of the Application powered by third-party Large Language Model ("LLM") services, which may be connected by Customer through its own API key;
<i>"Applicable Data Protection Laws"</i>	means all data protection and privacy laws and regulations applicable to the processing of personal Data under the Agreement, including (where applicable) the GDPR, its national implementing legislation, and any other similar laws, rules or regulations relating to Data protection, privacy, electronic communications, or the processing of personal Data, each as amended, replaced or superseded from time to time;
<i>"Application"</i>	means the Built on Workday application developed by Incubane and made available to Customer through the Built on Workday Marketplace, as identified in the Commercial Terms or Marketplace Application Information and described in the Description of the Application;
<i>"Application Specification Sheet"</i>	means the functional and technical description of the Application, including its features, specifications, operational requirements and any external integrations, as set out in Annex 1 to the Agreement, or, in case of a Click-and-Buy contracting flow, in the applicable Marketplace Application Information;
<i>"Assist (or Assistance)"</i>	means any support, cooperation, making available technically competent Personnel, access, tools, facilities, information or any other assistance, as the context requires, that Incubane (and its Personnel) may reasonably require from Customer to perform its obligations and/or enforce its rights under the Agreement;
<i>"Change"</i>	means any change in respect of the Agreement, including changes in the Services or Application, or the quality, specification, quantity, or performance (including sequence, quantities or timing) in respect of Services;
<i>"Click-and-Buy"</i>	means the online acquisition of the Application by the Customer through acceptance of the ordering flow in the Workday Marketplace without negotiation or execution of a separate written agreement between the Parties;
<i>"Commercial Terms"</i>	means the part of the Agreement that sets out the commercial and practical conditions of the Subscription, including scope of use, Subscription Fees, Term, renewal conditions, and other Application-specific details. In case of an enterprise contracting flow, the Commercial Terms are set out in Part A of the Agreement. In case of a Click-and-Buy contracting flow, the Commercial Terms are included in the Marketplace Application Information;

Software as a Service Agreement

<i>"Confidential Information"</i>	means information of a confidential and/or proprietary nature, provided in whatever form or medium, which relates to either Party's products, services, technology, business plans, customers, specifications, costs, prices, business opportunities, know-how, trade secrets, inventions, algorithms, software programs, schematics and any other business or technical information, to the extent that such information is marked as "confidential" or "proprietary" (or words with similar import) or the confidential or proprietary nature is reasonably apparent under the circumstances. All documents or agreement entered into pursuant to the Agreement and all software and accompanying operating Documentation and manuals are Confidential Information;
<i>"Customer Information"</i>	means (i) all information, instructions, Assistance, and Customer Data provided by Customer to Incubane in relation to the Agreement, performance or use of the Services, including fitness for particular use, specification, configuration or other requirements of the Services, and functionality, compatibility and interoperability with other products; (ii) any content, materials, Data and information that Customer enters into the Service and/or is accessible to Incubane in the performance of a Service or the Agreement.
<i>"Data"</i>	means all digitally stored information collected, processed, generated and/or stored by or via the Application and/or the Services, including Processed Data, processed results, and any derivatives thereof, whether provided by Customer or generated as a result of the Agreement;
<i>"Deployment Guide"</i>	means the Documentation provided by Incubane, including updates thereto, that describes the prerequisites, configuration parameters, installation steps and operational guidelines for deploying and enabling the Application within Customer's Workday Tenant;
<i>"Documentation"</i>	means any manuals, instructions, readme files and other information in connection with the Application and/or the Services that Incubane has made or will make available to Customer as described in the Commercial Terms or that Incubane has posted on its website, all as Incubane may update from time to time;
<i>"Effective Date"</i>	means the effective date as specified in the Commercial Terms;
<i>"End-User"</i>	means any individual who is authorized by Customer, through Customer's Workday Tenant, to access and use the Application, whether as an employee, contractor or other natural person acting under Customer's control and responsibility;
<i>"Extension"</i>	means the extension as defined in article 6.2;

Software as a Service Agreement

<i>"Fee"</i>	means any amount payable by Customer to Incubane under the Agreement in consideration for the Services, including the Subscription Fee as set out in the Agreement or agreed in a separate Order;
<i>"Force Majeure"</i>	means any event beyond the reasonable control of a Party, including war, civil unrest, acts of terrorism, epidemics, fire, natural catastrophes and extreme weather conditions, strikes, industry-wide shortages, breakdown of plant or machinery, fault or loss of electricity or (generic) connectivity supply, cyber-attacks, (cyber)terrorism, or any non-performance by Incubane's suppliers caused by any such event;
<i>"GDPR"</i>	means the General Data Protection Regulation (2016/679);
<i>"IP Claim"</i>	means a claim by a third party that a (part of a) Service infringes third-party IPR;
<i>"Intellectual Property Rights" or "IPR"</i>	means patents, utility models, registered and unregistered designs, copyrights, database rights, trademarks, domain names, trade secrets, know-how, semiconductor IC topography rights and all registrations, applications, renewals, extensions, combinations, divisions, continuations, or reissues of any of the foregoing;
<i>"Incubane's Licensor"</i>	means a third-party that has granted Incubane the rights to use, integrate, and/or distribute proprietary software as a component or module within the Application;
<i>"Marketplace Application Information"</i>	means the description of the Application, including its features, functionalities, usage parameters, subscription options, pricing, support entitlements, and any other information published by Incubane in the Workday Marketplace and made available to the Customer at the time of purchase or subscription;
<i>"Open Source Software"</i>	means any software components distributed with the Application that are licensed under open source license terms;
<i>"Order"</i>	means any written confirmation by Incubane of Customer's request for Services under the Agreement, including by email, which specifies the scope, duration and applicable Fees for such Services;
<i>"Personnel"</i>	means in relation to a Party, any officer, employee, agent, subcontractor, independent contractor or other personnel employed, used, assigned or engaged by that Party;
<i>"Service"</i>	means all services provided by Incubane under the Agreement, including Subscription Services and Additional Services;

Software as a Service Agreement

<i>"Service Levels"</i>	means specific, measurable performance standards, such as availability, response times or resolution targets, that supplement or deviate from those set out in this Agreement, if and to the extent expressly agreed in a separate Service Level Agreement (SLA);
<i>"Software"</i>	means all computer programs, source code, object code, modules, algorithms, databases, and related technical documentation used by Incubane in the development, delivery and/or operation of the Application, including but not limited to backend systems, middleware, and interfaces;
<i>"Statistics"</i>	means the technical and usage analytics sent from the Application to Incubane and/or Incubane's Licensor(s);
<i>"Subscription"</i>	means the right to access and use the Application as described in article 4.1 of the Agreement;
<i>"Subscription Fee"</i>	means the Fee payable by Customer to Incubane for the Subscription Services, as specified in the Agreement;
<i>"Subscription Service"</i>	means the Services provided by Incubane under the Subscription, including access to the Application, Updates, Upgrades and Service Levels, as further specified in the Agreement;
<i>"Term"</i>	means the term as defined in the Agreement;
<i>"Third Party Materials"</i>	means any products, services (including utilities, data and/or software services), data or software provided by a third party (including supply of energy, cloud hosting services, connectivity and/or communication services);
<i>"Update"</i>	means a modification to the Application, including improvements, enhancements, bug fixes or technical adjustments, which does not constitute an Upgrade;
<i>"Upgrade"</i>	means a new version of the Application made available by Incubane that includes material changes in core architecture, structure or functionality beyond routine Updates. An Upgrade may replace existing features, introduce substantial new capabilities, or otherwise affect the way the Application operates or is used;
<i>"Workday Production Alias"</i>	means the unique identifier assigned by Workday to the Customer's production environment;
<i>"Workday Tenant"</i>	means the isolated instance of the Workday environment licensed to Customer by Workday under a separate agreement between Customer and Workday, within which the Application is provisioned and used, and which is associated with the Workday Production Alias as specified in the Agreement.

Software as a Service Agreement

Annex 1: Application Specification Sheet

1) Summary and Purpose

The 360 Feedback app enables structured multi-rater feedback inside Workday. It collects input from peers, direct reports, (matrix) managers, and optional external reviewers, then delivers aggregated insights to support development, reviews, and coaching. It runs natively in Workday and avoids third-party workarounds.

Primary outcomes

- Broader perspective on strengths and growth areas.
 - Better input for performance reviews and talent decisions.
 - Simple administration with visibility and control for HR.
-

2) Functional Scope

2.1 Core Capabilities

- Start a 360, select a template, define the subject, add reviewers. Ability to gather anonymously.
- Collect feedback through Workday, responses are consolidated for analysis.
- View results in an aggregated dashboard with clear themes.
- Use results for performance reviews, coaching, or development plans.

2.2 Notable Features

- There are various reviewer types that can be set on template level.
 - Anonymity options with built-in privacy rules to encourage honest input.
 - Template-based questionnaires, customizable per audience.
 - Reminder nudges to improve response rates.
-

3) Roles and Permissions

Roles are configurable

- HR/Administrators: configure templates, policies, anonymity rules, reviewer rules, and AI prompt templates. End users do not see or edit prompts.
- Reviewers: complete assigned questionnaires.

Software as a Service Agreement

- Subject of 360: can see a summary of themes in the assessment.
-

4) Data Processing

4.1 Inputs

- Responses captured from the selected questionnaire template. Customers can build their own templates.

4.2 Processing and Outputs

- The app aggregates and anonymizes results where configured.
- AI generates a summary of themes mentioned in the answers. Output is a concise theme summary based on Customer prompt. Output has to be reviewed by user and explicitly generated and reviewed.

4.3 Workday Data

- Workday variables used: none by default.

4.4 Optional Context

- Retrieval-augmented context is not applicable for this app.
-

5) AI Capabilities

5.1 Function

- AI creates summaries for users. Human in the loop is required for generation and approval to ensure compliance with AI Act.

5.2 Models

- Default model path: customer-provided LLM endpoint.
- External model support: major LLMs are supported e.g. OpenAI.
- The app does not train models on customer data.

5.3 Prompt Governance

- AI prompts are fully configurable by the Admin. End users do not access prompts.
- AI features can be toggled off if required.

5.4 Cost Driver Guidance

Software as a Service Agreement

- Token usage varies by the number and type of questions and the number of assessors.
 - Customer is responsible for covering all costs related to model and tokens.
-

6) Configuration

- Templates: create and manage question sets per population or purpose.
 - Reviewer rules: define allowed reviewer categories.
 - Anonymity: enable privacy and grouping rules.
 - Notifications: enable Workday notifications
 - AI: enable or disable; edit admin-only prompts; set the model endpoint per enterprise policy.
-

7) Integrations and Access

- Native to Workday for setup and usage
 - Prebuilt integration with LLM
-

8) Security, Privacy, and Compliance

- Data remains in the customer Workday tenant and connected enterprise systems as configured.
 - Anonymity options reduce exposure of individual reviewer identity in results.
 - No model training on customer data by default. Customer selects the LLM path and governs data transfer to the model endpoint.
 - Admins control prompts and can disable AI features entirely if required.
-

9) Non-Functional Requirements

- Availability: aligned to Workday tenant availability.
- Performance: responsive for typical review volumes in corporate populations; final throughput depends on reviewer counts and AI token budgets.

Software as a Service Agreement

- Scalability: supports increasing numbers of templates, subjects, and reviewers in line with Workday scale guidelines.
 - Auditability: admin-level change logs process entries.
-

10) Assumptions and Customer Responsibilities

- Customer provides governance for anonymous settings and reviewer policies.
 - Customer configures the LLM endpoint and approves data processing with that provider.
 - Customer manages distribution lists and communication strategy for reminders.
-

11) Out of Scope

- Behavioral or leadership coaching services.
 - Custom analytics outside the standard result summaries unless explicitly added to the SOW.
 - Building non-Workday UIs or portals.
 - Training of third-party models on customer data.
-

12) Implementation Overview

- Setup: enable app, configure templates, reviewer rules, anonymity, and AI options.
- Pilot: run with a selected population; validate anonymity rules and AI summaries.
- Rollout: enable reminders, finalize governance, and publish usage guidance.
- Handover: admin guide and prompt catalog delivered to customer team.

Software as a Service Agreement

Annex 2: Service Level Agreement

This Service Level Agreement ("SLA") sets out the Service Levels and applicable support provisions for the Application delivered by Incubane and forms an integral part of the Agreement.

1. Definitions

1.1 *Definitions.* Capitalized terms used in this SLA but not defined herein have the meaning given to them in the General Terms. The following defined terms apply specifically to this SLA:

" <i>Application Support Contact</i> "	means the person designated by Customer as primary contact for submitting Incidents and liaising with Incubane support;
" <i>Business Day</i> "	means Monday through Friday, 09:00–17:00 CET, excluding official Dutch public holidays;
" <i>Defect</i> "	means a malfunction in the Application that results in a degradation of Functionality;
" <i>Functionality</i> "	means the degree to which the Application is available for use within Customer's Workday Tenant and processes Data correctly, in accordance with the specifications described in the Documentation;
" <i>Incident</i> "	means an alleged malfunction of the Application, which may qualify either as a Defect or as a request for Additional Services;
" <i>Responsible Executive</i> "	means the Incubane representative designated to oversee the delivery of the Services at a strategic level and to act as final escalation point for governance or dispute resolution matters under this SLA;
" <i>Service Delivery Manager</i> "	means the Incubane representative designated to coordinate day-to-day service delivery, manage support operations, and act as the primary point of escalation for operational matters under this SLA.

2. Support

2.1 *Basic Support.* Customer may submit Incidents through the ticketing system designated by Incubane. Basic Support covers clarification questions related to the installation, configuration, and initial access to the Application.

2.2 *Application Support Contact.* Only Customer's Application Support Contact(s) are authorized to submit Incidents and communicate with Incubane support.

2.3 *Extended Support.* Any support requests beyond Basic Support, including functional questions, ongoing use, troubleshooting, or issue resolution, fall outside the scope of Basic Support. Such requests may be delivered by Incubane as Additional Services, subject to separate fees and terms.

Software as a Service Agreement

2.4 *Escalation.* Incubane will designate a Service Delivery Manager as primary escalation point. Escalation beyond the Service Delivery Manager is possible to the Responsible Executive at Incubane.

3. Incidents

3.1 *Reporting.* Customer shall report Incidents by submitting a ticket via the designated ticketing system. Each report must include a clear description of the issue, the proposed priority level, and any supporting details reasonably required for assessment.

3.2 *Classification.* Upon receipt, Incubane will classify the Incident into one of the following categories:

Priority	Category	Description
1	Critical – total loss	Complete outage of the Application or a critical business process, affecting all End-Users.
2	High – partial loss	Material loss of Functionality for a significant group of End-Users or business processes.
3	Medium – degraded Service	Reduced performance or Functionality without critical impact on core processes.
4	Low – individual Incident	A minor Defect or irregularity affecting one or few End-Users, without material impact.
	Change request	A request for change or enhancement that is not the result of a Defect.

3.3 In the event of disagreement, Incubane’s classification of the Incident prevails.

3.4 *Resolution.* Incubane may implement a temporary workaround to restore Functionality. Following such workaround, the priority may be downgraded accordingly. Permanent resolution will be delivered in line with the applicable targets set out in Section 4.

4. Response and Resolution Targets

4.1 *Incident Handling.* Response and resolution of Incidents takes place during Business Days.

4.2 *Planned Changes.* Implementation of planned disruptive changes will take place during weekends (Saturday 21:00 – Sunday 07:00 CET and Sunday all day CET).

4.3 Based on the priority assigned to an Incident, the applicable response times, change planning times, and recovery targets as set out below shall apply within the Service Window (as defined in Section 4.1 and 4.2). All timelines start from the moment the Incident is validly submitted by Customer in accordance with Article 3.1.

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Priority	Response time	Resolution target
1	16 hours	Within 1 Business Day after first response
2	Before end of next Business Day	Within 5 Working Days after first response
3	2 Business Days	Within 10 Working Days after first response
4	3 Business Days	To be agreed on a case-by-case basis
Change request	4 Business Days	To be agreed on a case-by-case basis

5. Governance

Role	Party	Name and contact
Service Delivery Manager	Incubane	To be shared by e-mail
Responsible Executive	Incubane	To be shared by e-mail
Application Support Contact	Customer	To be shared by e-mail

6. Assumptions and Limitations

- 6.1 The Application runs entirely within Customer's Workday Tenant. Incubane does not control the Workday platform and shall not be responsible for downtime, authentication issues, performance degradation, or availability problems caused by Workday or its ecosystem.
- 6.2 Incubane is shall not be responsible for:
- (i) the quality, completeness, or accuracy of Customer Data;
 - (ii) security incidents or breaches caused by Customer's configuration contrary to the Deployment Guide;
 - (iii) delays or failures resulting from integrations, Customer configurations, or use of outdated versions;
 - (iv) issues caused by End-Users, Customer systems, or third-party APIs.

7. Uptime Commitment and Remedies

- 7.1 *Uptime Commitment.* Incubane will use commercially reasonable efforts to ensure the Application is available 99% of the time, measured monthly.
- 7.2 *Exclusions.* The following situations are excluded from uptime calculation: (i) planned maintenance announced in advance, (ii) unavailability caused by Workday or third-party

Software as a Service Agreement

services, (iii) downtime caused by Customer's systems, integrations, or configurations, and (iv) force majeure events as defined in the General Terms.

- 7.3 *Remedies.* If the uptime percentage falls below 99% in a given month due to a Defect attributable to Incubane, Customer will be entitled to a service credit of 5% of the monthly Subscription Fee for every 1% below the target, capped at 50%. Service credits shall be applied to future invoices and constitute Customer's sole and exclusive remedy in respect of downtime.

Software as a Service Agreement

Annex 3: AI Fact Sheet

1. Definitions

1.1 *Definitions.* Capitalized terms used in this AI Fact Sheet but not defined herein have the meaning given to them in the General Terms. The following defined terms apply specifically to this AI Fact Sheet:

"Acceptable Use"	means the rules for how the AI Features may be used by Customer and Users, including any limits set in the Agreement;
"AI Features"	means the optional functionalities in the 360 Feedback application that use a Large Language Model to help generate or improve text, under full user control;
"AI Output"	means text generated by the AI Features in response to User input.
"AI Provider (EU AI Act)"	means the person or organization that develops an AI system or puts it on the market under their name or trademark. In this setup, the Customer and their chosen LLM vendor are the Provider for the model service;
AI Deployer (EU AI Act)	means the person or organization that uses an AI system under its authority. In this setup, the Customer is the Deployer of the model service inside its environment;
"LLM / Model Provider"	means the cloud service that hosts the model selected and contracted by the Customer;
"Customer Data"	means any data the Customer or Users enter or process in the Application.
"Personal Data"	has the meaning under GDPR.
"Controller Processor"	have the meanings under GDPR. The Customer is controller for processing through the AI Features.
"Limited-Risk AI System"	means an AI system subject to transparency duties and not in a high-risk category. The AI Features are designed for limited-risk use.
"Automated Decision-Making"	means decisions made without human review that have legal or similar significant effects. The AI Features are not for such use.
"Human Oversight"	means a person reviews, edits, and approves AI Output before use.
"Transparency Notice"	means a clear message to Users that AI is used and that AI Output requires review.
"Prompt"	means any input text a User provides to get AI Output.

Software as a Service Agreement

"Incident" means a material safety risk, misuse, data breach, or significant malfunction related to the AI Features.

2. Responsible AI Pledge

2.1 *Ethical and Human-Centric AI Commitment.* At Incubane B.V., we are committed to developing and delivering AI-enabled solutions that are transparent, ethical, and human-empowering. Our guiding principle is simple: AI should enhance human decision-making - never replace it.

3. Alignment with the EU AI Act

3.1 We design and deliver solutions that fall exclusively within the "limited-risk" category under the EU AI Act (Regulation (EU) 2024/1689). Our systems are assistive and non-decisional — they support users in their work but do not autonomously evaluate, classify, or make decisions about people. We implement all transparency and human-oversight measures required by Article 52 of the EU AI Act.

3.2 *Respect for Human Autonomy.* All AI features we provide are optional and operate under full user control. Users remain the ultimate decision-makers, AI suggestions are advisory, not prescriptive. Our products are designed to empower employees, helping them express goals, ideas, or feedback more clearly, never to monitor or judge them.

3.3 *Privacy and Data Protection.* We fully comply with the EU General Data Protection Regulation (GDPR). Personal data is processed minimally and transparently, with clear data-flow documentation. Temporary data processed by AI components is not retained beyond what is strictly necessary for the feature to function and to provide technical support. When integrated with third-party AI models (e.g. LLMs), processing occurs within the Customer's secure environment, under their control and data-protection framework.

3.4 *Transparency and Accountability.* We clearly inform users whenever they interact with AI functionality. We maintain audit-ready documentation describing how AI components operate, their inputs and outputs, and their limitations. We collaborate with clients to ensure proper role definitions (Provider / Deployer) and compliance alignment under the EU AI Act.

3.5 *Ethical Principals.* Our approach to AI follows internationally recognized ethical frameworks (OECD, UNESCO, ISO/IEC 42001), emphasizing:

- Fairness and non-discrimination
- Transparency and explainability
- Human oversight and accountability
- Safety, reliability, and continuous improvement

Software as a Service Agreement

3.6 *Our Promise.* We pledge to: Deliver only AI systems that respect human agency, privacy, and dignity. Avoid developing or supporting high-risk or prohibited AI practices under EU law. Maintain continuous alignment with evolving European standards for Responsible AI. Partner with Customer to create AI solutions that empower, not replace people.

4. System Overview

Name: 360 Feedback

Version: 1.0

Provider: Incubane B.V. (Registered in The Netherlands. KVK: 97366293)

Deployment Environment: Customer’s Workday tenant

Date: 7th of November 2025

4.1 *System Description.* 360 Feedback is an approved Built on Workday application designed to help with process of 360 Feedback within organization. The 360-feedback process is a structured method where an employee receives confidential, sometimes anonymous feedback from a range of colleagues - including peers, subordinates, managers, and sometimes external partners. Its goal is to provide a well-rounded view of the employee’s strengths, behaviors, and development areas to support personal and professional growth. The application offers **optional AI assistance** that allows designated users to generate a summary of all feedback received using a Large Language Model (LLM) that is provided by Customer. The AI feature is fully **optional** and **user-controlled** – Customer may decide to switch off this feature, if it’s switched on designated users may choose to write their own summary of 360 feedback or request AI-generated suggestions. The feature serves purely as a writing and summarization tool, not as a performance analysis or evaluation system. Application is deployed in Customer Workday Tenant and can be integrated with Customer’s chosen endpoint to LLM. Incubane does not provide LLM and does not host data on Incubane servers.

5. System Functionality

Aspect	Description
AI Functionality	Generates a concise written summary of multiple feedback entries. The feature serves purely as a writing and summarization tool, not as a performance analysis or evaluation system.
User Control	Users manually explicitly trigger AI summarization, review the output, and may edit or discard it.
Final Decision	Always made by the user.
Input Data	Text and feedback provided by reviewers

Software as a Service Agreement

Output Data	Textual suggestions for feedback summary.
Decision-Making Role	None. AI serves only as a linguistics and writing summarization assistant.
Integration	The application operates within the Customer's Workday environment and uses the Customer's secure LLM endpoint.

6. AI Infrastructure and Responsibility Model

Role	Responsibility
LLM Provider	Selected and managed by the Customer (e.g., Azure OpenAI, Anthropic, Google Vertex AI). In this case, AI Provider under the EU AI Act.
Application Provider	Incubane B.V. - provides the 360 Feedback application integrated into Workday.
Customer/ Employer	Acts as both <i>AI Provider</i> and <i>AI Deployer</i> under the EU AI Act for this setup.

Incubane does not provide or host any AI model, nor does it process the model's outputs beyond displaying them to the user.

7. EU AI Act Classification

Category	Status
System Type	Limited-risk AI system (Article 52 EU AI Act)
Purpose	Assistive 360 feedback summarization tool
Decision-Making	None - full human control
Transparency	Users are clearly informed when interacting with AI. Customer configures Help Text wording for these purposes
Human Oversight	Continuous - user reviews and approves all outputs
Risk Level	Limited - informational assistance only, no HR evaluation impact

8. Transparency and User Information

8.1 *Help Text.* Users are explicitly informed via configurable help text that: AI features are optional and provided through the Customer's secure LLM environment. AI-generated content is for guidance only and must be reviewed by the user. The user retains full control and authorship of feedback summary. Example user interface message – each Customer configures their own: "This 360 Feedback Summary was generated with the organization's AI model. Please review and adjust before saving. You remain responsible for the final content."

9. Data Handling and Privacy (GDPR Compliance)

Area	Description
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Software as a Service Agreement

Data Controller	Customer
Data Processor	Workday & Customer
LLM Provider	Managed by the Customer; not controlled by Incubane.
Data Stored	Only the final summaries confirmed by the user are stored in Workday.
AI Usage Logs	The application records AI integration usage metrics for technical analytics.
Data Retention	Only final summaries approved by users are stored in Workday.

10. Human Oversight and Control.

10.1 *Oversight and control.* Humans always approve or reject AI-generated text manually. AI does not make HR decisions. Human judgment remains central to all processes.

11. Security and Technical Controls

11.1 *Security and Controls.* The application operates within the Customer’s secure Workday tenant. All API calls to the LLM are made through the Customer’s infrastructure and under their data governance. Incubane does not store or transmit any personal or AI-generated data outside the Customer's environment.

12. Ethical and Operational Limitations

12.1 *Limitations.* AI-generated suggestions may contain inaccuracies or require human judgment. The system is not intended for evaluating employee performance, competence, or behavior. The tool serves purely as a writing assistant, not an HR decision-support system.

13. Accountability and Compliance

Role	Responsibility under EU AI Act
Customer Organization	<i>AI Provider and Deployer</i> – responsible for lawful and transparent use of the AI model.
Incubane	<i>Software Vendor / Integrator</i> – responsible for ensuring secure application behavior and technical transparency.
LLM Vendor (e.g. Azure, Anthropic)	Responsible for model operation, safety, and reliability.

This role separation is aligned with Recital 60 and Articles 3 and 26 of the EU AI Act.

14. Summary

Element	Status
AI Provider	Customer Organization & their chosen LLM Vendor
AI Model	Hosted and secured by Customer
Application	Provided by Incubane, running within Workday

Software as a Service Agreement

AI Risk Level	Limited risk (assistive AI)
Transparency	Implemented. User informed before use
GDPR Compliance	Yes
EU AI Act Compliance	Yes
Decision-Making Role	None
Ethical Risks	Minimal
Human Oversight	Full

15. Contact

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