

EQUANTIIS - NIICO Customer Terms

DATE AND PARTIES

This agreement is dated _____ and made between:

Equantiis Limited, a limited company registered in England and Wales, with company number 08554997, and with its registered office at 63-66 Hatton Garden, Fifth Floor Suite 23, London, England, EC1N 8LE (**'Equantiis'**); and

[FULL COMPANY NAME], a limited company registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (the **'Customer'**).

BACKGROUND

This agreement sets out the customer terms relating to Equantiis' Niico Services (defined below). The Order Form details the component products and services comprising the Niico Services being purchased by the Customer, and the Statement of Work sets out the detail of the Professional Services and the Managed Services to be provided.

AGREED TERMS

1. Scope of this agreement

The scope of what might be done or provided by or on behalf of Equantiis under this agreement is described in this agreement by reference to one or more of the components (together the **'Niico Services'**) defined as follows:

'Managed Services' means the managed services provided in accordance with Schedule 1. The Managed Services are optional and will only be provided where stipulated in the Order Form.

'Professional Services' means the once-only professional services provided in accordance with clause 10 and as described in the Statement of Work, which may include implementation and configuration services, the provision of advice, and any consultancy services.

'Software' means the third-party computer software provided by Equantiis or a third party vendor to the Customer, which may be provided in either of the following manners:

- (a) **'Dedicated Instance'** means an instance of Software provided by the relevant third-party provider of said Software under a EULA in a private infrastructure environment dedicated to a specific Customer; or
- (b) **'Shared Instance'** means an instance of Software in a shared infrastructure environment managed by Equantiis under licence from the relevant third-party provider of said Software.

The Customer may receive the Niico Services either as a:

'Enterprise Customer' means a Customer receiving the Software as a Dedicated Instance.

'Niico Access Customer' means a Customer receiving the Software as a Shared Instance.

The Customer will also receive the Professional Services, and shall have the option of receiving the Managed Services, whether it is an Enterprise Customer or a Niico Access Customer.

2. Definitions and interpretation

In addition to the definitions in clause 1, in this agreement:

'Acceptance Test(s)' means the user acceptance tests (if specified in the Statement of Work) to be undertaken by the Customer to verify that the Niico Services appear to comply with the Statement of Work. References to **'Acceptance Testing'** are to be interpreted accordingly.

'Charges' means the Software Subscription Charges, the Professional Services Charges, and the Managed Services Charges and any other sums payable to Equantiis for performance of its obligations under this agreement and a Statement of Work or as otherwise communicated by Equantiis to the Customer.

'Commercial Efforts' means a course of conduct consistent with a good faith intention to achieve the relevant outcome with a level of urgency, expenditure, resource constraint and risk profile that competent and commercial management would regard as proportionate to the importance of that outcome. A party using Commercial Efforts to achieve an outcome for the benefit of another party shall treat it with the same level of importance as if the outcome was desired for its own internal business in comparable circumstances to those of the other party.

'Confidential Information' of a party means any information in whatever form relating to that party's business, customers and suppliers that is not publicly available. Confidential Information includes: information specifically designated as confidential; information supplied by any other party in relation to which a duty of confidentiality arises; and information that a reasonable recipient would in the circumstances regard as confidential; each party's business or technical information, training materials; any information relating to software, plans, designs, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how. The Customer's Confidential Information includes Customer Data. Equantiis' Confidential Information includes any software utilised by Equantiis in the provision of the Niico Services and its respective source code.

'Customer Affiliate' means an organisation other than the Customer that is under the same management and

control as the Customer.

'Customer Data' means data originating from the Customer and any created from its processing by Equantiis.

'Customer Facilities' means the hardware, software, and internet connectivity used by the Customer to use the Software.

'Hosting' means providing, maintaining and operating the hardware, systems software and internet connectivity infrastructure (as may be more specifically described in a Statement of Work) up to the boundary where that infrastructure connects to the internet (or, if applicable, to a private leased line procured by the Customer) as needed to run Software so that it can be consumed by the Customer in the form of software-as-a-service, together with related data storage. References to **'Hosted'** Software are to be interpreted accordingly.

'Intellectual Property Rights' mean all intellectual property rights, howsoever arising and in whatever media, whether or not registered, including copyright, patents, trademarks, website marks, trade names, registered designs and any applications for the protection or registration of these rights.

'Order Form' means any order form or similar document requesting all or part of the Niico Services raised by the Customer.

'Managed Services Charges' means the recurring charges payable for the Managed Services as set out in the relevant Order Form and/or Statement of Work.

'Professional Services Charges' means the charges for payable for the Professional Services, which will either be a fixed fee, or fees calculated on a time and materials basis, in either case as set out in the relevant Order Form and/or Statement of Work.

'Schedule' means a schedule to this agreement.

'Site(s)' means the location(s) at which the Software is to be installed, as agreed between the parties.

'Software Subscription Charges' means the recurring charges payable for the Software as set out in the relevant Order Form and/or Statement of Work.

'Statement of Work' means a document labelled as a statement of work, that is signed by both parties, and specifies aspects of the Niico Services to be provided by Equantiis under this agreement such as details of the Professional Services and Managed Services to be provided.

'Subscription' means the supply by Equantiis to the Customer of:

(a) the Software; and

(b) where stated in an Order Form and/or Statement of Work, the Managed Services,

in each case for a Subscription Period, as stated in an Order Form and/or Statement of Work .

'Subscription Period' means the period of a Subscription starting on the date, and continuing for the duration, as stated in an Order Form and/or Statement of Work.

'Vendor' means the third-party provider of the Software.

The word **'including'** used in this agreement or a Statement of Work means 'including (but not limited to)' and references to **'included'** or **'include'** are to be similarly interpreted.

3. Statements of Work

3.1. Each Order Form and Statement of Work form part of this agreement.

3.2. Any references to Niico Services complying with this agreement or a Statement of Work are to be interpreted as requiring compliance with both the terms of this agreement and the related Statement of Work.

3.3. Equantiis may share with the Vendor such details from the Order Form and Statement of Work as are reasonable for the third party to administer and fulfil the Order Form and Statement of Work.

4. Equantiis obligations

4.1. Equantiis shall provide the Niico Services to the Customer in accordance with this agreement, the Order Form and the Statement of Work.

4.2. Equantiis shall perform its obligations under this agreement:

4.2.1. using reasonable care and skill;

4.2.2. in accordance with applicable laws; and

4.2.3. using personnel who are appropriately trained and experienced.

4.3. If any timescales are stipulated for the supply of the Niico Services:

4.3.1. such timescales shall not be of the essence;

4.3.2. Equantiis shall use Commercial Efforts to comply with the timescales and, if there is a delay, to mitigate the effects of the delay; and

4.3.3. the timescales will be deemed to be extended by the period of any delay caused by (i) a third party beyond Equantiis' reasonable control or (ii) by the Customer.

5. Customer Obligations

- 5.1. The Customer shall provide and maintain at its own cost all Customer Facilities it requires to make use of the Niico Services.
- 5.2. The Customer shall provide Equantiis with reasonable and prompt co-operation to facilitate Equantiis' performance of its obligations under this agreement and any Statement of Work in a timely and efficient manner, including the provision of such information, access to personnel and access to Customer Facilities as Equantiis may request.
- 5.3. The Customer acknowledges that the provision of the Niico Services does not displace the need for the Customer to continue to maintain and operate security, back-up, disaster-recovery, anti-virus and similar facilities consistent with good industry practice.

6. Responsibility for Third Party Solutions and Supply of Software

- 6.1. If Equantiis recommends a third party solution to the Customer including the Software (the '**Third Party Solution**'), Equantiis' duty in relation to such recommendation is limited to:
 - 6.1.1. using reasonable care and skill combined with Equantiis' knowledge of the Customer's requirements to select a Third Party Solution that, after reasonable diligence, appears to meet such requirements without unusual or atypical risk;
 - 6.1.2. making selections in good faith and in the best interests of the Customer;
 - 6.1.3. assisting the Customer to specify appropriate requirements when procuring the Third Party Solution;and Equantiis will not be deemed to be negligent or in breach of this agreement if the Third Party Solution nevertheless transpires to be defective or unsuitable, unless caused by a breach of clauses 6.1.1 and 6.1.2.
- 6.2. If a statement of Work includes a Third Party Solution and states the Niico Services are to be supplied by Equantiis under a contract between Equantiis and the relevant third party, Equantiis shall:
 - 6.2.1. procure the Third Party Solution under a contract on the third party's normal terms of business;
 - 6.2.2. use Commercial Efforts to apply the Third Party Solution and other benefits of the contract in the interests of the Customer;
 - 6.2.3. comply with the contract with the third party, including payment of fees to the third party (but only if the Customer has complied with payment terms between Equantiis and the Customer related to the Statement of Work);and the Customer acknowledges that Equantiis is not obliged to:
 - 6.2.4. obtain legal advice or negotiate special terms in relation to the contract; or
 - 6.2.5. incur expenditure or use dispute resolution procedures to enforce the contract or resolve any disputes about the contract.
- 6.3. The Customer shall comply with the third party's licence terms (if applicable) and such restrictions or obligations mandated by the third party's contract insofar as they are directly or indirectly applicable to the Customer.
- 6.4. If the Customer rejects a Third Party Solution for any reason not caused by breach or negligent performance of this agreement by Equantiis, the sole liability of Equantiis arising out of the Customer's rejection of that Third Party Solution will be limited in any event to refunding to the Customer a pro-rata portion of the Charges paid for the Third Party Solution that relate to the period after the date of rejection.
- 6.5. Equantiis does not provide Hosting. If the Customer needs Hosting, the Customer shall procure Hosting under contract with a third party.
- 6.6. The Software may be supplied by reference to the number of users, duration of use, or any other parameters to define the commercial basis for supply of Software. All such parameters will be set out in the Statement of Work. The Customer shall limit its use of Software in accordance with such parameters, and for which the Customer has paid the applicable Charges.
- 6.7. The Software may include (and Customer authorises the use of) mechanisms to monitor and enforce compliance with clause 6.6.
- 6.8. The Subscription to the Software begins on the date set out in the Statement of Work.
- 6.9. The Customer is responsible for use of the Software by all users to whom it grants its account credentials. The Customer must ensure:
 - 6.9.1. it grants administrator privileges to qualified personnel;
 - 6.9.2. that its users do not share their passwords; and
 - 6.9.3. it maintains the security of its systems and the machines that connect to and use the Software, including

implementation of critical patches and operating system updates.

7. Supply of Software to Enterprise Customers

- 7.1. This clause shall only apply to Enterprise Customers.
- 7.2. Equantiis shall promptly register the Customer's details with the Vendor. The Customer acknowledges and agrees that Vendor may establish requirements for the Customer to be granted end user status on the Software and may deny the Customer said status for any reason. Equantiis shall have no liability where end user status is not granted by the Vendor through no fault of Equantiis, but shall document and provide to the Customer the reason for any conflict. Following the registration process, it may take up to sixteen business days for the Customer to be granted end user status and the Software to be accessible.
- 7.3. The Software and the licence key shall be delivered electronically to the Customer directly from the Vendor. An end user licence agreement or other applicable Vendor license terms ('**EULA**') shall accompany the Software, which shall govern the Customer's rights and obligations relating to the use of the Software. The Customer acknowledges and agrees that it shall be required to enter into and comply with the EULA in order to use and access the Software. Either Equantiis or the Vendor shall provide a copy of the EULA to the Customer.
- 7.4. Except as permitted by law, the Customer shall not, and shall not permit any employees, agents, or representatives to:
 - 7.4.1. disclose, sell, assign, lease, commercially exploit or market any part of the Software or Equantiis' Confidential Information in any way or manner;
 - 7.4.2. generate or attempt to generate or reproduce any Software licence key;
 - 7.4.3. use the Software for the benefit or support of a third-party;
 - 7.4.4. copy, modify, enhance, translate, supplement, create derivative works from, or remove any proprietary notices or labels from any part of the Software or Equantiis' Confidential Information;
 - 7.4.5. disassemble, decompile, reverse engineer or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software or any Equantiis Confidential Information;
 - 7.4.6. use the Software to create bots or other automated processes that are designed to violate any applicable laws, regulations or policies, or terms of use imposed by any third parties;
 - 7.4.7. competitively analyse, benchmark, use, value or view the Software for the purpose of testing, designing, modifying, or otherwise creating any software program, or any portion thereof, that performs functions similar to the functions performed by the Software; or
 - 7.4.8. circumvent the mechanisms described in clause 6.7.
- 7.5. Any use of the Software in breach of clause 7.4 by the Customer that reasonably threatens the security, integrity or availability of the Software, may result in the immediate suspension of all or any part of the Software, however Equantiis will use Commercial Efforts under the circumstances to provide the Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- 7.6. The Customer acknowledges and agrees that the Vendor may in its sole discretion restrict or prohibit the Customer's access to the Software, and Equantiis shall have no liability in this scenario.

8. Supply of Software to Niico Access Customers

- 8.1. This clause shall only apply to Niico Access Customers.
- 8.2. Equantiis shall make available the Software via a Shared Instance for use by the Customer in accordance with clause 8.3.
- 8.3. The Customer acknowledges that the Software is third-party software and Equantiis has obtained the use of it under contract with the relevant third-party. As such, the Customer shall comply with the provisions of Schedule 2.

9. Managed Services

Where the Customer has purchased the Managed Services, the provisions of Schedule 1 shall apply to the provision of Managed Services to the Customer.

10. Professional Services

- 10.1. Where the Professional Services Charges are calculated on a time and materials basis, any Professional Services Charges specified in the Statement of Work are estimated.
- 10.2. When Professional Services are charged on a time and materials basis, there is a minimum ½ day charge for each day when Equantiis works on the Professional Services.
- 10.3. On the terms and conditions set out in this agreement, Equantiis agrees to:
 - 10.3.1. take reasonable steps within its power to effect the making available of the Software to the Customer;
 - 10.3.2. implement and configure the Software;

10.3.3. carry out, in conjunction with the Customer, the Acceptance Tests in accordance with clause 12; and

10.3.4. provide training to the Customer in accordance with clause 10.8,

all in accordance with the Statement of Work.

10.4. Equantiis shall supply to the Customer, within a reasonable time before the delivery of any Software, such information and assistance as may be necessary to enable the Customer to prepare for the implementation and configuration of the Software. The Customer shall, at its own expense, prepare the Site(s) in accordance with the information provided by Equantiis in advance of the delivery of the Software.

10.5. Equantiis shall deliver and complete the implementation and configuration of the Software at the Customer's Site(s) by the date agreed between the parties. If the delivery, implementation and configuration of the Software is delayed at the request of, or because of the acts or omissions of, the Customer, a reasonable extension of time shall be granted to Equantiis to complete such delivery. If Equantiis can demonstrate by documentary evidence that the delay has resulted in an increase in cost to it in carrying out its obligations under this agreement, Equantiis may, at its sole discretion, notify the Customer that it wishes to increase the Charges by an amount not exceeding any such demonstrable cost. Equantiis may invoice the Customer for any additional monies that become payable in this way within 30 days of demonstrating the increase in costs.

10.6. If delivery of the Software is delayed because of any act or omission of Equantiis, Equantiis shall be liable for any reasonable costs that the Customer can demonstrate it incurred as a direct result of such delay.

10.7. Equantiis shall not be liable to the Customer whatsoever for any delays to the delivery of the Software if such delays are caused by acts or omissions of a third-party.

10.8. Equantiis shall provide training relating to the use and functionality of the Software to such number of employees of the Customer as is specified in, and is otherwise in accordance with, the Statement of Work.

11. Data migration

11.1. This clause 11 applies when Professional Services include Equantiis migrating Customer Data from existing Customer solutions to the Software.

11.2. Unless otherwise stated in a Statement of Work, data migration includes two data extracts: (i) a data extract for use with Acceptance Testing and (ii) a data extract for use when the Customer begins using Software for production use (that is to say, at so-called 'go live').

11.3. Unless Professional Services specifically include services to remediate any problems with Customer Data, or problems become manifest during data migration, Equantiis will assume that Customer Data can be migrated 'as is'. If it transpires that additional work is required to prepare Customer Data for migration to the Software, such work might impact the timescales and estimated Charges for Professional Services. If the Professional Services Charges are a fixed fee, Equantiis may invoice additional Professional Services Charges for the additional work.

12. Acceptance Testing

12.1. Acceptance Tests will be performed if the relevant Statement of Work stipulates that Acceptance Tests are required or if Equantiis recommends that any part of the Software is subjected to Acceptance Tests. If the Customer wants to undertake Acceptance Tests that are neither stipulated in the Statement of Work nor recommended by Equantiis, the Customer may conduct Acceptance Tests, but any extra Professional Services arising for Equantiis will be subject to additional Charges.

12.2. Acceptance Tests will be performed by the Customer as set out in the Statement of Work.

12.3. If Acceptance Tests are performed, the Customer shall perform them promptly upon supply of the Software (and in any event within 14 days) and shall keep Equantiis informed of progress.

12.4. Equantiis shall provide reasonable co-operation and assistance to the Customer to aid the Acceptance Tests.

12.5. If the Software fails the Acceptance Tests:

12.5.1. the Customer shall promptly notify Equantiis in writing of the details of the failure;

12.5.2. Equantiis shall investigate and remediate the cause of failure and re-submit the Software for re-testing;

12.5.3. the Customer and Equantiis shall continue the cycle of testing and remediation until the earlier of: (i) the Software passing the Acceptance Tests; (ii) after two cycles of unsuccessful tests, the Customer, acting reasonably, declares that Acceptance Tests will not be passed within a time necessary for the Customer to obtain sufficient benefit from deployment of the Software; or (iii) a longstop date specified in a Statement of Work for completion of Acceptance Tests; and

12.5.4. the Customer shall not use the Software for any purpose other than training and Acceptance Tests until the Software passes the Acceptance Tests.

12.6. The Niico Services will be deemed to have passed the Acceptance Tests if:

12.6.1. the Customer confirms in writing the satisfactory completion of Acceptance Tests;

12.6.2. 14 days elapses after the Software has been made available for Acceptance Tests, and Customer has not notified Equantiis of any failure; or

12.6.3. the Customer commences use of the Software for purposes other than training or Acceptance Tests.

13. Use of the Niico Services

- 13.1. Unless otherwise restricted by a Statement of Work or licence terms provided with Software, the Customer is permitted to use the Niico Services for Customer Affiliates, but:
- 13.1.1. the Customer is liable for all Charges (even if Equantiis agrees to invoice a Customer Affiliate);
 - 13.1.2. the Customer will be responsible for the acts and omissions of Customer Affiliates; and
 - 13.1.3. the Customer must ensure that any claims arising out of or connected with this agreement or any Statement of Work (howsoever caused) are actioned only by the Customer. However, the Customer may claim for loss or damage incurred by Customer Affiliates as if such loss or damage was incurred by the Customer.
- 13.2. Except as permitted by clause 13.1, Niico Services are supplied to the Customer for its internal use in the ordinary course of business and must not be re-sold or otherwise made available to any third party.

14. Change Control

- 14.1. The Customer acknowledges that the Software is subject to changes introduced generally for customers of such Software, and such changes might be deployed with little or no prior notice to customers. Equantiis shall not change the Software in a way that materially detracts from its features or functionality. Equantiis shall have no liability to the Customer whatsoever where the Software features or functionality are altered by a third-party. Changes permitted by this clause 14.1 are not subject to the change control procedure in clause 14.2.
- 14.2. If either party wants to change the Niico Services or other details of a Statement of Work, it may submit details of the requested change to the other party in writing and Equantiis shall, within a reasonable time, provide a written estimate to the Customer of:
- 14.2.1. the likely time required to implement the change;
 - 14.2.2. any variations to the Charges arising from the change; and
 - 14.2.3. any other impact of the change on the terms of the Statement of Work.
- 14.3. Changes proposed under clause 14.2 do not take effect unless and until the parties have agreed to the change.

15. Charges and Payment

- 15.1. The Customer shall pay to Equantiis the Charges in consideration for the provision by Equantiis of the Niico Services in accordance with this clause.
- 15.2. Unless otherwise stated in an Order Form and/or Statement of Work:
- 15.2.1. the Software Subscription Charges, Managed Services Charges and other recurring Charges will be invoiced monthly or annually in advance (or as otherwise set out in the Order Form and/or Statement of Work) during the term of each Order Form and/or Statement of Work to which they relate;
 - 15.2.2. where the Professional Services Charges are a fixed fee, they shall be invoiced for in accordance with the Order Form and/or Statement of Work (or where the Order Form and/or Statement of Work is silent, may be invoiced for in full at any time from the date on which the relevant Order Form and/or Statement of Work are signed); and
 - 15.2.3. where the Professional Services Charges are calculated on a time and materials basis, they will be invoiced for at the rates set out in the Order Form and/or Statement of Work monthly in arrears.
- 15.3. The Customer must pay invoices within 30 days of the invoice date.
- 15.4. Charges not paid when due shall be subject to interest at the rate of one and one-half percent (1.5%) per month or, if less, the maximum rate permitted by law.
- 15.5. All Charges are stated exclusive of VAT or any equivalent sales tax, which will be invoiced and payable at the rate prescribed by law.
- 15.6. In addition to the Charges, the Customer shall reimburse (without mark-up) any reasonable travel and subsistence expenses incurred in the supply of the Niico Services. Such expenses must be no greater than those which Equantiis reimburses to its employees in the course of its own business.
- 15.7. If the Customer disputes any part of an invoice, it shall notify Equantiis in writing of the basis for the dispute within 7 days of receipt of the invoice, and it shall pay any undisputed amount by the due date. The parties shall promptly negotiate in good faith to resolve the dispute. This clause 15.7 does not prevent Equantiis pursuing its legal rights and remedies to enforce payment of its invoices.
- 15.8. The Charges set out in an Order Form and/or Statement of Work may be increased by Equantiis as follows:
- 15.8.1. the Software Subscription Charges and/or the Managed Services Charges may increase provided that, except where clause 15.8.2 applies, Equantiis will provide at least 30 days' notice in advance of any increase to the Software Subscription Charges and/or the Managed Services Charges, and the

increase will take effect from the following Subscription Period;

- 15.8.2. if a Vendor increases its own fees for the Software in question, Equantiis will endeavour to provide as much prior notice as possible of any consequent increase in the Software Subscription Charges, and the increase shall have effect from the end of the notice period;
- 15.8.3. rates for Professional Services set out in a Statement of Work will not be increased for the particular Professional Services specified in the Statement of Work (that is to say Professional Services quantified and requisitioned at the date of the Statement of Work), but rates may vary between different Statements of Work; and
- 15.8.4. any increase in Charges will be notified in writing.

16. Warranties

16.1. Equantiis warrants that:

- 16.1.1. it is lawfully entitled to supply the Niico Services;
- 16.1.2. subject to the Customer's compliance with its obligations in this agreement and clause 16.2, use of the Niico Services by the Customer in accordance with the terms of this agreement shall not infringe the Intellectual Property Rights of any third party;
- 16.1.3. the Niico Services shall be provided in a professional, workmanlike manner and performed in a manner conforming to the generally accepted industry standards and practices for similar services; and
- 16.1.4. the Software shall be checked for viruses and malware before release.

16.2. Notwithstanding clause 16.1.2, Equantiis does not represent nor warrant that the Software shall not infringe the Intellectual Property Rights of any third-party. The Customer acknowledges and agrees that it shall bring a claim for such an infringement directly against the Vendor.

16.3. Any claim submitted alleging a breach under clause 16.1 must be submitted in writing to Equantiis within thirty (30) days of the Customer becoming aware of the warranty issue. Equantiis' entire liability for any breach of clause 16.1 is to repair, replace or find a workaround for any nonconforming portion of the Niico Services so that the affected services operate as warranted or, if Equantiis is unable to repair, replace or put in place a workaround, Equantiis may terminate the Order Form and/or Statement of Work and refund a pro rata portion of any prepaid fees for such affected portion of the Niico Services equal to the period of time from the date of termination to the end of any then current Subscription Period or Renewal Period.

16.4. Where the Customer is an Enterprise Customer, Equantiis shall have no liability (including under clause 16.1) where the Software fails to perform, and such failure is caused by the Vendor. In this scenario, the Customer acknowledges and agrees that it shall have rights and remedies against the Vendor. Where the Customer is a Niico Access Customer, Equantiis' sole obligation shall be to liaise with the Vendor in accordance with clause 6.2.2 in order to rectify the failure, and the Customer's sole remedy shall be as set out in clause 6.4.

16.5. Equantiis does not warrant that Software will perform completely uninterrupted or error-free. Equantiis does not warrant or guarantee that it will be able to rectify any defects in the Software, nor that any defect which does not materially affect the Customer's operations using the Software will be corrected before a new release or patch of the Software is issued.

16.6. All other representations, conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are excluded to the extent permitted by law.

17. Intellectual Property Rights

17.1. Nothing in this agreement or any Statement of Work transfers ownership or creates any implied licence of any Intellectual Property Rights of any party or any non-party.

17.2. Equantiis disclaims ownership of any Intellectual Property Rights in Customer Data.

17.3. Equantiis shall indemnify the Customer against any claim that the normal operation, possession or use of the Niico Services (excluding the Software) within the terms of this agreement infringes the Intellectual Property Rights of any third party (an **'Intellectual Property Infringement'**) subject to the pre-condition that:

- 17.3.1. the Customer promptly notifies Equantiis in writing of the claim;
- 17.3.2. the Customer must mitigate its loss where possible;
- 17.3.3. promptly upon request, Equantiis is given control of the claim and any settlement thereof giving rise to the indemnity (at Equantiis' expense), but Equantiis agrees not to make any admissions on behalf of the Customer or settle the claim on terms that commit the Customer to any obligations or restrictions without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);
- 17.3.4. the Customer does not prejudice Equantiis' defence of such claim;
- 17.3.5. the Customer gives Equantiis all reasonable assistance, information, and authority reasonably required for the defence and settlement of the claim (at no expense to the Customer); and

- 17.4. Equantiis shall have no liability for any claim described in section 16.3 to the extent that it would not have occurred but for:
- 17.4.1. the modifications to any part of the Niico Services made by the Customer or a party acting on the Customer's behalf (other than modifications made at Equantiis' written direction or made in accordance with this agreement);
 - 17.4.2. the combination, operation or use of the Niico Services with equipment, devices, software or data not supplied by Equantiis;
 - 17.4.3. the Customer's use of the Niico Services other than in accordance with this agreement; or
 - 17.4.4. compliance by Equantiis with instructions, designs, plans or specifications furnished by or on behalf of the Customer.

18. Confidential information

- 18.1. If either party receives the other party's Confidential Information, it shall:
- 18.1.1. not use it for any purpose other than performance of this agreement;
 - 18.1.2. keep it secret and protect it at least as well as it would protect its own Confidential Information;
 - 18.1.3. disclose it only to those of its employees, subcontractors and advisers who need to know the Confidential Information for the performance of this agreement;
 - 18.1.4. seek prior written consent before disclosing it to anyone other than its employees, subcontractors and advisers even if such disclosure is necessary for performance of this agreement;
 - 18.1.5. inform anyone to whom it discloses the Confidential Information that the information is confidential and take all reasonable steps to ensure that such recipients comply with the terms of this agreement;
 - 18.1.6. after performance of the relevant Statement of Work or upon termination of this agreement, cease to use altogether and return or (at the option of the other party) destroy or permanently erase all copies of the Confidential Information; and
 - 18.1.7. inform the other party immediately if it becomes aware or suspects that an unauthorised person knows the Confidential Information.
- 18.2. The obligations in clause 18.1 will not apply to Confidential Information which:
- 18.2.1. has ceased to be confidential through no fault of either party;
 - 18.2.2. was already in the possession of the recipient before being disclosed by the other party as can be verified by the production of written evidence of such possession;
 - 18.2.3. has been lawfully received from a third party who did not acquire it in confidence; or
 - 18.2.4. is required to be disclosed by law, provided that the relevant party shall take all reasonable steps to notify the other party in good time before such disclosure and gain assurances as to confidentiality from the body to whom the information is to be disclosed.
- 18.3. Each party's duty of confidence shall continue after termination of this agreement for a period of two years.

19. Press releases and marketing information

- 19.1. The Customer acknowledges that the Charges are determined on the basis that Equantiis will have the benefits of the marketing described in this clause 19.
- 19.2. The Customer consents to Equantiis naming the Customer in Equantiis' marketing media together with a short statement describing the project undertaken by Equantiis.

20. Data protection

- 20.1. In this clause 20, the following definitions shall apply:

'Controller', 'processor', 'data subject', 'personal data', 'personal data breach', 'processing' and 'appropriate technical and organisational measures' as set out in the Data Protection Legislation in force at the time

'Data Protection Legislation'

all applicable laws prevailing from time to time in the United Kingdom that regulate the processing of personal data including the UK GDPR; the Data Protection Act 2018 (DPA); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

'GDPR Compliant Country'

means (i) the United Kingdom, or (ii) a country within the European Economic Area, or (iii) a country with the benefit of a favourable adequacy decision under the

UK GDPR.

- 20.2. This clause 20 applies if Equantiis processes personal data when performing its obligations under this agreement and the Statement of Work.
- 20.3. Each party shall comply with the Data Protection Legislation.
- 20.4. In the provision of the Software as a Shared Instance, the Managed Services and/or the Professional Services, the Customer shall be the data controller and Equantiis is a data processor. Where this is the case, clauses 20.5 to 20.13 shall apply.
- 20.5. The parties shall ensure each Statement of Work sets out the duration of processing, the purpose of the processing, and the types and categories of personal data and data subjects.
- 20.6. Equantiis shall not process personal data (or permit any sub-processor to process personal data) outside a GDPR Compliant Country without ensuring the personal data is afforded adequate protection within the meaning of the Data Protection Legislation.
- 20.7. Equantiis shall:
- 20.7.1. process the personal data only on instructions from the Customer;
 - 20.7.2. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 20.7.3. take all measures and implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons;
 - 20.7.4. if there is a personal data breach, notify the Customer without undue delay and, where practicable, within 48 hours of discovery, and assist the Customer with its obligations to notify the personal data breach to a supervisory authority;
 - 20.7.5. provide the Customer with reasonable assistance to undertake data protection impact assessments about processing of personal data under this agreement;
 - 20.7.6. at the choice of the Customer, delete or return all personal data (and thereby ensure the deletion or return of all personal data) to the Customer after termination of a Statement of Work;
 - 20.7.7. makes available to the Customer all information necessary to demonstrate compliance with the obligations in this clause 20 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
 - 20.7.8. immediately notify the Customer if, in Equantiis' opinion, an instruction infringes Data Protection Legislation.
- 20.8. Equantiis shall not appoint another processor to process any personal data until Equantiis has complied with clause 20.7.2.
- 20.9. It is the Customer's responsibility to:
- 20.9.1. assess whether the Niico Services is suitable for the Customer's intended use having regard to the personal data the Customer decides to process using the Niico Services;
 - 20.9.2. determine when personal data ought to be deleted or when processing of personal data ought to cease;
 - 20.9.3. take any steps to comply with the rights of data subjects for access to personal data, rectification or erasure of personal data, data portability, rights to be forgotten, or to act upon any notices from data subjects; and
 - 20.9.4. keep a record of processing with any greater information than that which is evident from this agreement.
- 20.10. Equantiis shall provide such assistance with the matters described in clause 20.9 as the Customer reasonably requires or as Data Protection Legislation mandates but such assistance will be treated as a request for Professional Services.
- 20.11. The Customer represents and warrants that: (i) any personal data transferred under this agreement has been collected in strict compliance with the Data Protection Legislation; (ii) it has properly notified data subjects that their personal data will be transferred to third parties including Equantiis, and will be processed for the purposes set forth in this agreement; and (iii) the Customer has all necessary rights and has procured any consents and authorisations required by law to transfer any personal data for the purposes set out in this agreement.
- 20.12. The Customer agrees:
- 20.12.1. That it shall have sole responsibility for the accuracy, quality, integrity and legality of all personal data collected under this agreement;

20.12.2. Equantiis will retain personal data for only those periods described in the Customer's privacy policy, will routinely destroy such information, and will not be responsible or liable for deletion, correction, destruction, damage, or loss of any personal data;

20.12.3. Equantiis may use personal data, in an anonymized and aggregated format, obtained from the Customer's use of the Niico Services, such as tracking click actions, runtime, behaviour, and other metadata derived from the Customer's use of the Niico Services, to analyse, enhance and improve Equantiis' service offerings and model.

20.13. Equantiis shall inform the Customer about any data subject access request it receives. The Customer shall use Commercial Efforts to assist Equantiis in responding to such a request as directed by Equantiis including the provision of additional data as required by Equantiis to identify personal data processed by Equantiis relating to the data subject.

20.14. In the provision of the Software to an Enterprise Customer, the parties acknowledge that the Customer shall have data protection rights and obligations with the Vendor.

20.15. It is acknowledged that Equantiis may collect personal data from the Customer's employees and contractors in the provision of the Niico Services. In this scenario Equantiis shall be a controller and shall use the personal data in accordance with its privacy policy.

21. Limitations and exclusions of liability and customer indemnity

21.1. Notwithstanding any other provisions of this agreement, neither party excludes or limits its liability for:

21.1.1. death or personal injury caused by its negligence or the negligence of its officers, employees, contractors or agents;

21.1.2. the Customer's obligation to pay Charges properly due;

21.1.3. fraud or fraudulent misrepresentation; or

21.1.4. any liability that cannot lawfully be excluded.

21.2. Except as expressly set out in clause 21.1, neither party will be liable for any loss of use, loss of data, loss of profit, loss of business, loss of goodwill, loss of anticipated savings, whether direct or indirect, or for any indirect, consequential, special or incidental loss or punitive damages whatsoever and howsoever caused (even if caused by that party's negligence and/or breach of contract and even if that party was advised that such loss would probably result).

21.3. Each party's liability under each Statement of Work. Except as expressly set out in clause 21.1, Equantiis' total liability under each Statement of Work for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by its negligence and/or breach of contract) shall not exceed the Charges payable by the Customer under each Statement of Work.

21.4. Each party's liability under this agreement. Except as expressly set out in clause 21.1 and except where liability relate to a specific Statement of Work under clause 21.3, Equantiis' total liability in any 12-month period of this agreement starting on the its date of signature or any anniversary of it (a "**Contract Year**") for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by its negligence and/or breach of contract) shall not exceed the aggregate amount of the Charges payable by the Customer under this agreement during that Contract Year. Equantiis' total aggregate liability under this clause 21.4 will be reduced by any amount paid by it to the other party that is subject to clause 21.3.

21.5. Except as expressly set out in clause 21.1 and notwithstanding clauses 21.3 and 21.4, Equantiis' total liability in any Contract Year for any claims, losses, damages or expenses whatsoever and howsoever caused (including for claims of negligence and/or breach of contract) arising out of a breach of clauses 17 (IP) and 18 (Confidential Information) shall not exceed 3 x the aggregate amount of the Charges payable by the Customer under this agreement during that Contract Year.

21.6. Any rights of any person to enforce the terms of this agreement under the Contracts (Rights of Third Parties) Act 1999 are excluded.

21.7. The Customer will defend, indemnify and hold Equantiis harmless from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) arising out of or incurred by the Customer in connection with or as a result of any third-party claim arising out of or relating to any breach of this agreement by the Customer.

22. Insurance

22.1. Equantiis shall maintain professional indemnity insurance with cover not less than £1,000,000 with an insurer of good repute.

22.2. Upon request, Equantiis shall provide evidence of compliance with clause 22.1.

23. Termination

Termination of Subscriptions

23.1. For Niico Services supplied subject to a Subscription, the relevant Subscription of each service component will

continue for the Subscription Period applicable to it and automatically renew for successive periods equivalent to the Subscription Period or one year (whichever is shorter) (each a 'Renewal Period') at the end of the then current Subscription Period or Renewal Period, unless:

23.1.1. either party notifies the other party of termination of that Subscription, in writing, at least 60 days before the end of the Subscription Period or any Renewal Period, in which case that Subscription shall terminate upon the expiry of the applicable Subscription Period or any Renewal Period; or

23.1.2. that Subscription, the Order Form and/or Statement of Work to which it relates, or this agreement as a whole, is otherwise terminated in accordance with the provisions of this agreement.

Termination of this agreement without terminating Statements of Work and/or Order Forms

23.2. Either party may terminate this agreement by giving 30 days' prior written notice to the other party at its principal place of business. After such notice takes effect, the parties will not agree any new Order Forms and/or Statements of Work but termination of the agreement pursuant to this clause 23.2 will not affect any subsisting Order Forms and/or Statements of Work.

No-fault termination of Statements of Work and/or Order Forms

23.3. Except where there are no outstanding Professional Services to be provided under a Statement of Work and/or Order Form, in which case a Statements of Work and/or Order Form can be terminated by terminating any active Subscriptions in accordance with clause 23.1, either party may terminate any or all Order Forms and/or Statements of Work by written notice of at least 90 days to the other party, and in such circumstances, if an Order Form and/or Statement of Work includes a component of the Niico Services that is subject to a Subscription, that Subscription will terminate at the end of then current Subscription Period or Renewal Period.

Termination for cause

23.4. Either party may terminate this agreement and any or all Order Forms and Statements of Work immediately by written notice to the other party if:

23.4.1. the other party ceases to do business;

23.4.2. the other party commits any material breach of the terms of the agreement and (where remediable) such breach is not remedied within 10 days of a written request to do so (such written request must expressly refer to the threat of termination pursuant to this clause 23.4); or

23.4.3. if the other party commits or threatens to commit or is threatened with any act of insolvency under the Insolvency Act 1986 or any analogous procedure or step is taken in any jurisdiction, including any proceeding relating to receivership, liquidation, or composition for the benefit of creditors.

23.5. Equantiis may terminate this agreement and any or all Order Forms and Statements of Work immediately if the Customer does not pay any invoice of Equantiis in accordance with clause 15.3, provided Equantiis gives the Customer 7 days' prior written notice of its intention to terminate.

Suspension of services

23.6. Equantiis may suspend any part of the Niico Services if the Customer fails to pay Charges by the due date for payment and after Equantiis has given not less than 5 days' notice of its intention to suspend and the Customer has not disputed such Charges in accordance with clause 15.7.

After termination

23.7. Upon termination or expiry of this agreement or any Order Form and/or Statement of Work, all sums due to Equantiis shall become immediately payable by the Customer (and unless the Customer is terminating for cause, no Charges shall be refundable), and the Customer will cease all use of the Niico Services hereunder and return, or destroy upon Equantiis' request, all copies of any part of the Niico Services then in the Customer's possession or under the Customer's control.

23.8. Upon termination of a Statement of Work, it is the Customer's responsibility to extract and retain any data stored using the relevant Niico Services. Equantiis shall provide such assistance as the Customer may require, but such assistance will be chargeable as a Professional Service.

23.9. Termination of this agreement or any Statement of Work will not affect any accrued rights or liabilities of either party or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

23.10. The terms in clauses 1, 2, 17.1, 18, 21, 23.7 to 23.10, 24 to 32 shall survive expiry or termination of this agreement.

24. Force Majeure

Neither party will be liable for any delay or failure in performing its obligations under this agreement if caused by circumstances beyond its reasonable control (including, in the case of performance by a subcontractor, circumstances beyond the reasonable control of the subcontractor). The party in default shall notify the other party promptly in writing of the reasons for and likely duration of the failure or delay. Performance of the parties' obligations will be suspended during the period that the circumstances persist.

25. Anti-Bribery

Each party confirms that it has an Anti-Bribery and Anti-Corruption policy and shall maintain and comply with the policy, and shall provide a copy of the prevailing policy upon request.

26. Non-solicitation

26.1. In this clause 26:

'Relevant Person' means any employee or contractor of a party who is known to the other party because of their respective involvement in the performance of this agreement within the previous 12 months; and

'Restriction Period' means the period commencing with the date of this agreement and ending 6 months after the later of (i) the date this agreement is terminated or (ii) the termination of all Statements of Work which continue to be performed after termination of this agreement.

26.2. Each party shall refrain during the Restriction Period from engaging (directly or indirectly) or trying to engage the services of any Relevant Person.

26.3. If a party engages the services of a Relevant Person before the end of the Restriction Period, that party shall pay to the other party a fee equal to 40% of the Relevant Person's gross annual income for the 12 months before such engagement.

27. Assignment

Neither party may assign this agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

28. Variations and waiver

28.1. No variation of this agreement will be valid unless it is in writing and signed by or on behalf of each of the parties by a director or other duly authorized officer of each of the parties.

28.2. The failure to exercise, or delay in exercising, a right or remedy under this agreement will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies.

29. Severance

29.1. If any provision of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

29.2. If any invalid, unenforceable or illegal provisions would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

30. Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes any arrangements, understanding or previous agreement between the parties relating to the subject matter of this agreement.

31. Dispute Resolution

31.1. If a dispute arises out of or in connection with this agreement, the parties shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

31.2. Clause 31.1 does not restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any Intellectual Property Rights or trade secrets whether by way of injunctive relief or otherwise.

32. Governing law and jurisdiction

32.1. This agreement and any dispute or claim arising out of or in connection with it (including any non-contractual disputes or claims) is governed by and is to be construed in accordance with the laws of England and Wales.

32.2. Each of the parties irrevocably submits for all purposes (including any non-contractual disputes or claims) to the exclusive jurisdiction of the courts in England and Wales.

SCHEDULE 1
MANAGED SERVICES

1. Scope of Managed Services

The Managed Services will comprise:

- 1.1. the ongoing monitoring by Equantiis of the Software as used by the Customer in order to identify any over-burdening of the Software due to the activities of the Customer;
- 1.2. Equantiis liaising with the Customer regarding its future business plans in order to advise on how such plans may affect the operation of the Software; and
- 1.3. Equantiis providing support in accordance with paragraph 4.

2. Customer Obligations

The Customer agrees:

- 2.1. that it shall only use the Software in accordance with the limitations outlined to it by Equantiis and set out in the Statement of Work, and Equantiis shall not at any time be liable for any failure of the Software due to a breach of the Customer of this requirement;
- 2.2. that it shall keep Equantiis updated of all future business plans that may affect the operation of the Software, providing adequate information and notice for Equantiis to properly advise on the effect of such plans on the operation of the Software;
- 2.3. that Equantiis shall not at any time be liable for any failure of the Software where the Customer has failed to provide adequate notice in accordance with paragraph 2.2, or has otherwise continued with its plans against Equantiis' recommendation or without following Equantiis' recommendation.

3. Additional Professional Services

- 3.1. Where the Customer plans to implement changes to its business that may affect the operation of the Software, and wishes to engage Equantiis to provide Professional Services regarding the Software in light of such plans, the parties will agree a new Statement of Work in accordance with clause 3.

4. Support

- 4.1. Equantiis will, as part of the Managed Services, provide the Customer with Equantiis' standard customer support services whereby the Customer may submit support queries to Equantiis during normal business hours (9am – 5pm Monday to Friday excluding bank holidays) by emailing [EMAIL ADDRESS TO BE INCLUDED]. Equantiis may amend the nature of its support services in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Equantiis' then current rates.
- 4.2. Support excludes diagnosis and rectification of any problems resulting from any of the following:
 - 4.2.1. lack of training;
 - 4.2.2. modifications to the Software not performed or directed by Equantiis;
 - 4.2.3. the failure by the Customer to implement recommendations, workarounds and solutions to problems previously advised by Equantiis; or
 - 4.2.4. deficiencies of Customer Facilities;

and, if the Customer requests Equantiis to correct such problems, Equantiis may treat such requests as a request for Professional Services.

SCHEDULE 2 – FLOW DOWN TERMS

1. Rights granted. Customer shall be granted a limited, non-exclusive, non-transferable, personal, revocable right to receive the benefit of the Software (including any associated downloaded components, such as bot agents, needed to use the Software) in amounts provisioned for Customer by Equantiis solely for Customer's internal purposes in connection with Customer's ordinary business operations, for the term described in the relevant Order Form. Customer agrees that use of the Software will be in compliance with the terms of this Schedule and any applicable laws, including but not limited to the Data Protection Legislation.
2. Use Restrictions. Except as otherwise provided in this Schedule or as required or permitted by a law that cannot be excluded or by the terms of a third-party license, Customer shall not, and shall not permit any employees, agents, or representatives to: (a) disclose, sell, assign, lease, commercially exploit or market any part of the Software or Confidential Information relating to it in any way or manner; (b) copy, modify, enhance, translate, supplement, create derivative works from, or remove any proprietary notices or labels from any part of the Software or Confidential Information relating to it; (c) disassemble, decompile, reverse engineer or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software or Confidential Information relating to it; (d) use the Software to create bots or other automated processes that are designed to violate any applicable laws, regulations or policies, or terms of use imposed by any third parties; or (e) use any Software which has not been provisioned by Equantiis for Customer's use under this Schedule. Except as expressly permitted in this Schedule, Customer shall not cause or permit competitive analysis, benchmarking, or the use, evaluation or viewing of the Software for the purpose of testing, designing, modifying, or otherwise creating any software program, or any portion thereof, that performs functions similar to the functions performed by the Software. Any use of the Software in breach of the foregoing by Customer that reasonably threatens the security, integrity or availability of the Software, may result in Equantiis' immediate suspension of the Customer's access to the Software, however Equantiis will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
3. Customer Responsibilities. Customer is responsible for use of the Software by all users to whom it grants its account credentials. Therefore, Customer must:
 - 3.1. Ensure it grants administrator privileges to qualified personnel.
 - 3.2. Ensure that its users do not share their passwords.
 - 3.3. Ensure and maintain security of its systems and the machines that connect to and use the Software, including implementation of critical patches and operating system updates.
4. Feedback. Customer grants to Equantiis, the Vendor and its sub-licensors and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its Software any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer relating to the operation of the Software, but only to the extent that any such feedback does not contain Customer's Confidential Information.
5. Term and termination. The Subscription Period shall be set out in the Order Form and/or Statement of Work, and shall renew or expire based on the terms on which the Software is made available to Equantiis, as notified to the Customer from time to time.
6. Excessive Usage. If Customer's use of the Software exceeds a capacity limitation as set forth in the Order Form, then Equantiis reserves the right to bill for such increased usage at Equantiis' then-current applicable list prices, if applicable, and Customer agrees to pay the additional fees, plus interest, in the manner provided herein, subject to any additional remedies Equantiis might have.
7. Disclaimers.
 - 7.1. No warranty provided in respect of the Software shall apply where the Software has been used in a manner other than as set forth in the relevant documentation and as authorized under this Schedule, to the extent such improper use causes the Software to be nonconforming. Equantiis does not warrant that the Software will operate in the combinations that Customer may select for use, or that the use or availability of the Software will be uninterrupted or error-free, or that all errors in the Software will be corrected. Any claim submitted under a warranty relating to the Software must be submitted in writing to Equantiis within thirty (30) days of Customer becoming aware of the warranty issue. Equantiis' entire liability for any breach of such a warranty is to work with the Vendor to repair, replace or find a workaround for any nonconforming portion of the Software so that the affected Software operate as warranted or, if Equantiis and the Vendor are unable to repair, replace or put in place a workaround, Equantiis may terminate the subscription for such Software and refund a pro rata portion of any prepaid fees for such affected portion of the Software equal to the period of time from the date of termination to the end of the then-current subscription term.
 - 7.2. THE PARTIES ACKNOWLEDGE THAT THE SERVICES AND PROFESSIONAL SERVICES PROVIDED TO CUSTOMER PURSUANT TO AND FOR THE PURPOSES OF THIS SCHEDULE ARE PROVIDED "AS IS," "AS AVAILABLE," AND WITHOUT ANY WARRANTY WHATSOEVER. EQUANTIIS DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, OR ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS. NO EQUANTIIS AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS DISCLAIMER. TO THE EXTENT THE LAWS OF CUSTOMER'S JURISDICTION DO NOT PERMIT SUCH DISCLAIMER WITH RESPECT TO THE SOFTWARE AS

PURCHASED HEREUNDER, EQUANTIIS PROVIDES ONLY THE MINIMUM LAWFUL WARRANTY BEYOND THAT WARRANTY EXPRESSLY MADE ABOVE AND DISCLAIMS ALL WARRANTIES TO THE EXTENT PERMITTED BY APPLICABLE LAW. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE WITH, AND SHOULD NOT BE USED IN CONNECTION WITH, HAZARDOUS APPLICATIONS, SUCH AS OPERATION OF NUCLEAR FACILITIES, LIFE SUPPORT, WEAPONS, AIRCRAFT NAVIGATION OR COMMUNICATION, AND/OR PROCESS CONTROL THAT COULD RESULT IN DEATH, INJURY OR ENVIRONMENTAL IMPACT. THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMERS IN THIS SECTION ARE A MATERIAL PART OF THIS AGREEMENT, AND EQUANTIIS WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR SUCH DISCLAIMERS.

8. Liability.

- 8.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT WITH RESPECT TO EITHER PARTY'S WILLFUL MISCONDUCT AND/OR FRAUD, OR EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, CAUSE BY ITS NEGLIGENCE:
- 8.1.1. IN NO EVENT SHALL EQUANTIIS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SCHEDULE, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN RESPECT OF THE SOFTWARE MADE AVAILABLE UNDER THIS SCHEDULE DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY; AND
- 8.1.2. EQUANTIIS SHALL NOT BE LIABLE UNDER THIS SCHEDULE FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING ANY COST OF PROCUREMENT OF SUBSTITUTE SERVICES AND LOSS OF USE, DATA, BUSINESS, OR PROFITS), REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER EQUANTIIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS IF CUSTOMER'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.
9. Audit. Upon reasonable notice and written request, Customer will provide Equantiis with reports, summaries or other documents reasonably designed to allow Equantiis to audit Customer's compliance with the use of the Software under this Schedule.
10. Third-Party Software. The software incorporated in the Software contains and is distributed with third-party and open source software that is covered by a different license. Equantiis' obligations set forth in this Schedule do not extend to any such open source software. Customer agrees that all such open source software shall be and shall remain subject to the terms and conditions under which it is provided. Any such open source software, and the notices, license terms and disclaimers applicable to such open source software shall be identified to Customer by email, website identification or a notice visible within the Software.
11. Updates. The Customer acknowledges that the Vendor shall have the right, at its option and from time to time, to update the Software (e.g., to provide new features, implement new protocols, maintain compatibility with emerging standards or comply with regulatory requirements); provided, however, that the functionality of the Software will not be materially decreased as a result of such updates. To the extent an update requires additions or modifications to the terms of this Schedule, Equantiis will notify Customer accordingly, but any such amendment(s) shall not materially increase Customer's liabilities and/or obligations nor shall it materially decrease Equantiis' obligations and/or liabilities unless required by applicable law.
12. Monitoring. Equantiis and Vendor may, in compliance with Equantiis' Privacy Policy and Data Protection Legislation, collect, use and retain technical data and use information, such as how the Software is performing, access information, click actions, runtime behaviour, settings and user information including (without limitation) IP address, when monitoring Customer's use of the Software. Although Equantiis and/or Vendor is not obligated to monitor Customer's use of the Software, Customer hereby authorizes Equantiis to do so. Equantiis may prohibit any use of the Software it reasonably believes may be (or is alleged to be) in violation of the terms of this Schedule or any applicable laws (including Data Protection Legislation).
13. Export Compliance. The parties understand that U.S. and any other relevant, local export laws and regulations (collectively, "Export Laws") apply to the Software. The parties will comply with all Export Laws. Customer will not export or re-export, either directly or indirectly, the Software or any bots, data, information, or other materials resulting from the Software in violation of these laws, or use any of the foregoing for any purpose prohibited by Export Laws.

Signed for and on behalf of **Equantiis Limited**

Job title:

Print name:

Signed for and on behalf of **[NAME OF CUSTOMER]**

Job title:

Print name: