



GCloud Services Terms and Conditions

Between

Somerford Associates Limited

AND

XXXXXXX (Client)

Dated xx/xx/xx

Introduction

This time and materials Services Agreement ("Agreement") is between Somerford Associates ("Somerford") and xxxxxxxxxxxxxxxx ("Customer"). This Agreement defines the scope of the services ("Services") that Somerford Associates will provide to the Customer.

Project Summary

To be completed for each project

Project Conditions

- Services are performed on a "time and materials" basis. The cost set out in this Agreement is a "not to exceed" amount. Should any items require additional time to complete then an additional Agreement will be agreed by both parties.
- The Customer will provide remote access via WebEx, MS Teams or another comparable remote access solution to the Somerford Engineer in order to facilitate the delivery of offsite Services and/or troubleshooting as required.
- Every effort has been made to account for whether a particular service will be delivered offsite or onsite. However, in certain circumstances, services previously designated as "onsite" may be performed remotely (offsite) and in such case no credit for the difference in the fees associated with these different "day types" will be provided to the Customer.
- If after six months from the date of the Effective Date there remain unused/undelivered days of services, the Customer will contact Somerford Associates to discuss scheduling services for those days. Unless otherwise agreed in writing, any unused and unscheduled days of services will expire one year from the date of the signing of this SOW, at which point Somerford Associates will be under no obligation to perform any additional services under this SOW. No credit/refund of unused service days will be provided.

Requirements

Please itemise each requirement, providing a name and description for each individual work item.

Work Item Name	Work Item Description

Contacts

	Name	Email	Phone
Somerford Commercial			
Somerford Technical			
Client Management			
Client Technical			

Client Responsibilities

The work will be performed under the scope as defined in this Agreement. The Agreement is subject to the following assumptions:

The client

- will provide access to equipment and personnel (including technical resources) necessary to complete the project. These resources will be provided when they are needed in order to avoid project delays.
- will appoint a single point of contact for the duration of the project. This person will have project management responsibilities, be technically astute and familiar with change request processes as well as have the authority to expedite if necessary.
- must provide Somerford a one (1) week notice for any cancellation or change of scheduled services or they will be charged for the originally scheduled time and any applicable travel change fees.
- will provide Somerford with access to the required servers and software to complete the Agreement requirements.
- will provide the Somerford consultant(s) with either access to the Internet or access to a computer with access to the Internet as required.
- prior to the testing phase, the Customer is responsible for producing the necessary testing scenarios.
- will either provide Somerford with a client contact that has the proper administrative access to all applications and servers and will have the ability to reboot servers as necessary within twenty-four (24) hours of request or will provide Somerford with this capability.
- will ensure all systems meet the minimum system requirements.
- will ensure all systems and applications that are part of the SOW must be on supported platforms.

Amendment to the Scope

During the performance of the engagement, certain issues may arise that effectively prevent the completion of the work outlined in this Agreement within the planned time frame, such as, but not limited to, hardware or network failures or outages in the Client's environment, problems with the Client's in-house or third-party software, or the unavailability of key Client personnel. If this situation occurs, the designated Somerford Consultant will work with the Client to identify and document the scope change, its impact on the project approach, timing, fees, resources, and the quality of project results. Somerford will document this and any change in scope must be agreed to in writing prior to Somerford reengaging on the project and will require the signature of both

Somerford and the Client. Any other problems, disputes or issues arising during this engagement should be communicated as soon as possible after identification to the designated Somerford Consultant for resolution.

Fees

Somerford professional services rates are as per the G-Cloud 15 price list. All prices are quoted exclusive of VAT

Payment

Invoices are to be paid within 30 days from the invoice date.

Duration

Somerford estimates that the Agreement will require the following number of professional services days to complete.

Quote

x days of professional services * £x's

Data Processing

Subject Matter of Processing

Personal and Commercially sensitive Data relating to [ADD DETAILS] which Somerford may process in carrying out its legitimate business interests and obligations under this SoW.

Duration of Processing

For the later of Somerford's fulfilment of its obligations to the Customer or termination of this SoW.

Nature of Processing

Collection, and such organisation, adaptation, storage, retrieval, consultation, use, disclosure, making available, restriction, erasure and destruction as is necessary for the fulfilment of this SoW.

Purpose

Carrying out Somerford's legitimate business interests and obligations to the Customer pursuant to this SoW.

Data Subject Types

Customer employees, economic and financial documents, system logs or data provided in confidence by customers for the fulfilment of this SoW.



ISLAND SUBSCRIPTION TERMS

Last Updated: January 26, 2024 (v.1)

Introduction

The Island Subscription Terms below govern Customer's access to and use of Island's Services. If you have any questions about the Island Enterprise Browser or the Island Subscription Terms, please contact us at: Legal@island.io.

Assent to the Island Subscription Terms

The Island Subscription Terms (this "**Agreement**") are by and between the customer entity listed on an Order ("**Customer**") and Island Technology, Inc., a Delaware corporation having its principal place of business at 3501 Olympus Blvd, Suite 350, Dallas, Texas 75019 ("**Island**") (each, a "**Party**" and collectively, the "**Parties**").

The Parties hereby agree to the terms of this Agreement, which shall form a binding contract between them and be effective on the earliest of (i) Customer's access to or use of the Island Services, (ii) where the Agreement is linked or referenced in an Order, on the date of last signature to such Order or (iii) where a click-through or check-box is provided within the Island Services, on Customer's clicking or checking "I agree" (or similar alternative language). This Agreement does not have to be signed in order to be effective, and shall govern the relationship of the Parties unless another valid agreement has been entered into by the Parties. If Customer does not agree to the terms of this Agreement or cannot otherwise comply with the Agreement, Customer shall not assent to the Agreement or access or use the Island Services.

With respect to any individual assenting to this Agreement on behalf of its employer or another entity, that individual represents and warrants that it: (i) has full legal authority to bind its employer or such entity to this Agreement; (ii) has read and understood this Agreement; and (iii) agrees to this Agreement on behalf of the Party that it represents. In the event that an individual registers or signs up for the Island Services using an email address from its employer or another entity on behalf of which it is providing services, then that individual (a) will be deemed to represent such employer or other entity Party, and (b) will bind such employer or other entity Party to this Agreement. If an individual does not have the legal authority to bind its employer or the applicable entity, that individual should not access or use the Island Services, should not sign the Order and should not click or check "I agree" (or similar alternative language).

Partner Purchases

If Customer has purchased the Island Services from a partner, reseller or distributor authorized by Island ("**Partner**"), to the extent there is any conflict between this Agreement and the agreement entered between Customer and such Partner, including any purchase order ("**Partner Order Form**"), then, as between Customer and Island, this Agreement shall prevail. Any rights granted to Customer in such Partner Order Form, which are not contained in this Agreement, apply only as between Customer and such Partner, and Island shall have only those obligations set forth herein. Accordingly, Customer must seek redress or realization or enforcement of such rights solely from such Partner, and not Island.

Evaluations

If you are using the Island Services as a proof of value, proof of concept or for evaluation purposes, the Island Services are provided "AS IS" without warranty of any kind and in accordance with the terms of Section 12.1 (*Evaluations*) below.

ISLAND SUBSCRIPTION TERMS

1. Subscription.

- 1.1 Subject to the terms and conditions of this Agreement, Island hereby grants Customer and, to the extent provided in the applicable Order, its Affiliates (as defined herein) a limited, worldwide, non-exclusive, non-sublicensable, non-transferable and revocable right and license to install, remotely access (i.e. on a SaaS basis) and/or use (as the case may be) the applicable Island proprietary software product(s) (the "**Software**") during the applicable Subscription Term (as defined herein), solely for Customer's business purposes and not for the benefit of any third party. Unless otherwise indicated, the term "**Software**" also includes any Documentation provided or made available to Customer in connection with the operation of the Software. Customer may only use the Software strictly in accordance with this Agreement and the Documentation, subject to the use limitations reflected in the applicable Order and applicable laws and regulations. Each Order is hereby incorporated into this Agreement by reference. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and an Order, this Agreement shall prevail, unless an Order specifically states otherwise. The Software and any related services provided to Customer and detailed in an Order shall be referred to as the "**Services**".
- 1.2 For the purpose of this Agreement, "**Order**" means either (i) an order document issued by Island and agreed to by Customer for the provision of the applicable Services pursuant to this Agreement; (ii) if approved and accepted by Island in writing, a purchase order delivered by Customer provided that such purchase order incorporates by reference all of the terms and conditions reflected in this Agreement; or (iii) a Partner Order Form.

- 1.3 **"Documentation"** means Island's user guides, manuals, instructions, coding comments and other end user documentation for the applicable Service available on the online help feature of the Services, as may be updated by Island from time to time, including without limitation the materials available at island.io/support.
- 1.4 **"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. **"Control"**, for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 1.5 Customer shall be solely responsible for providing all equipment, systems, assets, access, and ancillary goods and services needed to access and use the Services, and for ensuring their compatibility with the Services. Island may modify or update the Services at any time, in its discretion. All updates provided to Island's customers generally shall also be made available to Customer. After the effective date of such update, Island shall bear no obligation to run, provide or support legacy versions of the Services. Island shall provide on-boarding support and customer service, and ensure product uptime, in each case, as further detailed in the applicable Order.
2. **Permitted Users.**
- 2.1 The Services may be accessed solely by Customer's and its Affiliates' employees, consultants or other personnel acting on behalf of Customer or its Affiliates, who are explicitly authorized by Customer to access and use the Software (each, a **"Permitted User"**), subject to the limitations set forth herein and in the Order, as applicable. Customer shall immediately report any unauthorized access or use of the Services to Island. In order to access the Software, Customer and/or its Permitted Users may be required to set up an administrative account with Island (**"Account"**).
- 2.2 Customer will ensure that the Permitted Users comply with the terms of this Agreement at all times; and shall be fully responsible and liable for any breach of this Agreement by a Permitted User. Customer shall be further responsible and liable for all activities of the Permitted Users and all activities that occur under or in its Account.
3. **Subscription Ordering.**
- 3.1 **Direct Orders.** If Customer has licensed the Services directly from Island, this Section 3.1 (*Direct Orders*) shall apply. Unless otherwise specified in the respective Order: (i) the Services are conditioned on Customer's payment in full of the applicable fees set forth in such Order; (ii) Customer will pay all amounts due hereunder in U.S. Dollars; (iii) all amounts invoiced hereunder are due and payable at such times as are set forth on the Order, or if no such date is provided, within thirty (30) days of the date of the applicable invoice; and (iv) all fees and other amounts paid hereunder are non-cancellable and non-refundable, except as otherwise provided herein. Island may suspend the provision of the Services in the event any payments come ten (10) days or more past due. Any amount not paid when required to be paid hereunder shall accrue interest on a daily basis until paid in full at the lesser of: (a) the rate of one and a half percent (1.5%) per month; or (b) the highest amount permitted by applicable law. Customer shall be responsible for all costs of collection for any past due amounts, including court and attorneys' fees. All amounts payable under each Order are exclusive of all sales, use, excise, gross-receipts, value-added, withholding, and other direct or indirect taxes, charges, levies, duties and/or governmental charges, except for taxes based upon Island's net income, property or employees.
- 3.2 **Partner Orders.** If Customer has licensed the Services via a Partner, this Section 3.2 (*Partner Orders*) shall apply. The Services are subject to the full payment of the applicable fees as set forth in the applicable Partner Order Form. All payments by Customer shall be made directly to Partner, as agreed between Customer and Partner. If Customer is entitled to a refund under the terms and conditions of this Agreement, then, unless Island specifies otherwise, Island will refund any applicable fees to the Partner, and the Partner alone will be responsible for refunding the appropriate amounts to Customer.
4. **Prohibited Uses.**
- 4.1 Except as specifically permitted herein, without the prior written consent of Island, Customer shall not, and shall not allow any Permitted User or any third party to, directly or indirectly: (i) copy, modify, create derivative works of or distribute any part of the Software (including by incorporation into its products); (ii) sell, license (or sub-license), lease, assign, transfer, pledge, or share Customer's rights under this Agreement with any third party; (iii) disclose the results of any testing or benchmarking of the Software to any third party; (iv) disassemble, decompile, reverse engineer or attempt to discover the Software's source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms); (v) use the Software for any use in competition with the Island Services; (vi) use the Software in a manner that violates or infringes any rights of any third party; (vii) remove or alter any trademarks or other proprietary notices related to the Software; (viii) circumvent, disable or otherwise interfere with security-related features of the Software or features that enforce use limitations; (ix) export, make available or use the Software in any manner prohibited by applicable laws; (x) store or transmit any malicious code or other unlawful material in connection with the Software; or (xi) create any service, software, documentation or data that is competitive with, substantially similar or confusingly similar to any aspect of the Services.
- 4.2 Notwithstanding anything to the contrary herein, Island may, in its sole discretion, immediately revoke the grant of rights contemplated in Section 1.1 if Customer breaches the restrictions in this Section or creates other security or legal concerns. Customer hereby agrees that Island will be entitled, in addition to any other remedies available to it at law or in equity, to injunctive relief to prevent the breach or threatened breach of Customer's obligations under this Section, without any requirement to demonstrate irreparable harm or post a bond.
5. **Mutual Warranties.** Each Party represents and warrants that: (i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) any individual assenting to this Agreement on its behalf is authorized to do so; and (iii) the execution and performance of this Agreement will not conflict with other agreements to which it is bound or violate applicable law.

6. **Customer Data Warranties.** Customer represents and warrants that (i) it owns, or has acquired the express license and written authority to use, all of the Customer Data as contemplated herein; (ii) the Customer Data and the receipt, collection, use and provision thereof shall not infringe or violate any third party rights, including without limitation any intellectual property, privacy and publicity rights; (iii) the Customer Data was received, collected, used and provided to Island in compliance with all applicable laws, rules and regulations and self-regulatory guidelines and requirements, including without limitation laws on privacy and data security, unsolicited messaging, unfair or deceptive practices, or United States trade or export restrictions; and (iv) it has obtained all necessary consents, approvals or other authorizations or permissions for, and has complied with its posted privacy policies and all third-party terms and conditions or privacy policies in connection with its receipt, use and/or provision of the Customer Data hereunder and that none of the Customer Data contains any personally identifiable information or persistent identifiers from individuals under the age of 13.
7. **Additional Customer Warranties.** Customer further represents and warrants that (i) it has implemented or contractually required and industry-standard security measures to help protect the security and integrity of, and prevent, unauthorized access to the Services, Customer Data or Island systems; (ii) it will not disrupt, disable, erase, alter, harm, damage, interfere with or otherwise impair in any manner the Services; (iii) in the event of any security breach or unauthorized access to any Services, Customer Data or Island systems, Customer will immediately investigate such breach and notify Island, and, unless otherwise informed by Island, take all corrective action necessary to remedy such breach, and perform such remediation (with all consumer notifications to be undertaken by Island), all at Customer's cost; and (iv) Customer will comply with all applicable laws and not violate or infringe upon any third party intellectual property, privacy or publicity rights.
8. **Intellectual Property Rights.**
- 8.1 The Software is not for sale and is Island's sole property. All right, title, and interest in and to the Software and all related Documentation, source code, tools, scripts, processes, techniques, methodologies, inventions, know-how, concepts, formatting, arrangements, visual attributes, ideas, database rights, copyrights, patents, trade secrets, and other intellectual property, and all derivatives, enhancements, modifications and improvements thereof, are and shall remain owned solely by Island or its licensors. This Agreement does not convey to Customer any interest in or to the Software other than a limited right to use the Software in accordance herewith. Nothing herein constitutes a waiver of Island's intellectual property rights under any law.
- 8.2 If Island receives any feedback (which may consist of questions, comments, suggestions or the like) regarding the Software (collectively, "**Feedback**"), all rights, including intellectual property rights in such Feedback shall belong exclusively to Island. Customer hereby irrevocably and unconditionally transfers and assigns to Island all intellectual property rights it has in such Feedback and waives any and all moral rights that Customer may have in respect thereto. It is further understood that use of Feedback, if any, may be made by Island at its sole discretion, and that Island in no way shall be obliged to make use of the Feedback.
- 8.3 Any anonymized or aggregated information which is derived from Customer Data or the use of the Software and the Services (e.g., metadata, aggregated, statistics or analytics information, intelligence relating to the operation, support or Customer's use thereof) ("**Analytics Information**") may be used by Island for its business purposes, including without limitation providing the Software and the Services and the development and improvement thereof, and/or for the creation of metrics or analytics. Island owns all right, title and interest in and to Analytics Information.
9. **Third Party Components.** The Software may use or include third party open-source software, files, libraries or components that may be distributed to Customer and are subject to third party open-source license terms, which can be provided upon request.
10. **Confidentiality.** Each Party may have access to certain non-public information of the other Party, in any form or media, including without limitation trade secrets and other information related to the products, software, technology, data, know-how, or business of the other Party, and any other information that a reasonable person should have reason to believe is proprietary, confidential, or competitively sensitive (the "**Confidential Information**"). Each Party shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect the other Party's Confidential Information from disclosure to a third party. The receiving Party's obligations under this Section, with respect to any Confidential Information of the disclosing Party, shall not apply to and/or shall terminate if such information: (a) was already lawfully known to the receiving Party at the time of disclosure by the disclosing Party; (b) was disclosed to the receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the receiving Party has become, generally available to the public; or (d) was independently developed by the receiving Party without access to, use of, or reliance on, the disclosing Party's Confidential Information. Neither Party shall use or disclose the Confidential Information of the other Party except for performance of its obligations under this Agreement ("**Permitted Use**"). The receiving Party shall only permit access to the disclosing Party's Confidential Information to its respective employees, consultants, affiliates, agents and subcontractors having a need to know such information in connection with the Permitted Use, who either (i) have signed a non-disclosure agreement with the receiving Party containing terms at least as restrictive as those contained herein or (ii) are otherwise bound by a duty of confidentiality to the receiving Party at least as restrictive as the terms set forth herein; in any event, the receiving Party shall remain liable for any acts or omissions of such persons. The receiving Party will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, provided that, to the extent permitted by applicable law, it promptly notifies the disclosing Party in writing of such required disclosure to enable disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure and cooperates reasonably with disclosing Party in connection therewith, at the disclosing Party's cost. Except as otherwise set forth herein, all right, title and interest in and to Confidential Information is and shall remain the sole and exclusive property of the disclosing Party.

11. Customer Data.

- 11.1 As between the Parties, Customer is, and shall be, the sole and exclusive owner of all data and information inputted or uploaded to the Service by or on behalf of Customer or otherwise integrated with the Software via an API, or data belonging to Customer's applications within the environment in which the Software is made available ("**Customer Data**"). Customer hereby grants Island and its affiliates a worldwide, non-exclusive, non-assignable (except as provided herein), non-sublicensable (except to Island's subcontractors, if applicable), non-transferable right and license, to access and use the Customer Data for Island's provision of the Services and the creation of Analytics Information.
- 11.2 If Customer Data contains personally identifiable information, to the extent applicable, the Parties shall comply with Island's Data Processing Agreement ("**DPA**"), which is available at www.island.io/legal/DataProcessingAgreement, and forms an integral part of this Agreement.

12. Additional Service Terms.

- 12.1 **Evaluations.** If Customer is using the Services for a fee-free trial, proof of value, proof of concept, evaluation, one-time assessment, or other similar purpose ("**Evaluation**"), such Evaluation is granted for a limited period of sixty (60) days, unless Island agrees to an extension and in each case solely for the purpose of evaluating and testing the Island Services to determine whether to purchase a subscription for Customer's internal use. Island may terminate Customer's access to and use of any Evaluation at any time. Evaluations are provided "as is" without guaranteed support levels, indemnification, or warranty of any kind, whether express, implied, statutory, or otherwise. Notwithstanding Section 14 (*Limitation of Liability*) or any other provision of this Agreement, Island's maximum aggregate liability under any Evaluation shall be capped at five thousand dollars US (\$5,000 US).
- 12.2 **Preview Features.** From time to time, Island may make beta, pilot, or early access features, services or functionality available to Customer on a beta-testing basis ("**Preview Feature(s)**") to try at no charge. Island makes no representations or warranties of any kind, whether express, implied, statutory, or otherwise regarding Preview Features, and Island shall have no liability of any kind arising out of or in connection with Preview Features. Service level agreements otherwise agreed with Customer shall not apply to Preview Features. Customer may choose to try Preview Features in its sole discretion, and Island, in its sole discretion, may (a) discontinue Preview Features at any time, and/or (b) elect not to make Preview Features generally available.
- 12.3 **Customer Integrations.** The Services may provide Customer with the ability to integrate certain functionalities of the Services with applications or services separately provided to Customer by third parties ("**Third Party Services**") via API integrations built by either Island or the Third Party Service provider ("**Third Party Integrations**"). Customer's use of such Third Party Integrations is optional and Customer shall be required to take the steps set forth in the Documentation to enable a Third Party Integration. Customer acknowledges and agrees that: (a) the use of Third Party Services are subject to the terms and conditions agreed between Customer and each such Third Party Service provider; (b) Customer may be required to grant Island access to its Third Party Service account and/or to grant the Third Party Service provider access to its Island account; and (c) Customer Data may be transferred between Island and the Third Party Service provider as required and authorized by Customer for the interoperation with the Services. Since Island does not provide such Third Party Services, Island cannot guarantee the continued availability of such Third Party Integration and may cease supporting them at any time, including if the relevant Third Party Service provider ceases to make its application or service available for integration with the Services or changes the way it does so in a way that is not reasonably acceptable to Island. To the maximum extent permitted by law but without derogating from Island's obligations under this Agreement, Island shall not bear and expressly disclaims all responsibility or liability of any kind relating to such Third Party Integrations, including, without limitation, for any disclosure of, access to or other processing of Customer Data by Third Party Service providers.
- 12.4 **AI Features.** From time to time, Island may make available certain functionalities that allow Customer to utilize artificial intelligence, machine learning, or similar technologies through the Services in connection with the Services' processing of Customer Data (the "**AI Features**"). Customer's use of such AI Features is optional. If Customer elects to use AI Features, Customer Data will not be used to train or improve third-party foundation models without Customer's prior written consent. Customer or its Permitted Users may provide input, including Customer Data, for use with the AI Features ("**AI Input**") and receive output generated and returned by the AI Features based on the AI Input ("**AI Output**"). Other Island customers providing similar AI Input to the AI Features may receive the same or similar AI Output. Customer acknowledges and agrees that Customer is responsible for reviewing and validating AI Output for its needs and technical environment before electing to use AI Output. Customer agrees to comply with any applicable AI Feature restrictions described in the Documentation. Notwithstanding anything to the contrary herein or otherwise, Island does not represent or warrant that the AI Output will be accurate, complete, error-free, or fit for a particular purpose.

13. LIMITED WARRANTIES.

- 13.1 Island represents and warrants that, under normal authorized use, the Software shall substantially perform in conformance with its Documentation. As Customer's sole and exclusive remedy and Island's sole liability for breach of this warranty, Island shall use commercially reasonable efforts to repair the Software. The warranty set forth herein shall not apply if the failure of the Software results from or is otherwise attributable to Customer or its Permitted User's acts or omissions in violation of this Agreement. Island shall not be liable for any inaccuracy in the Service's output and/or delay and/or unavailability of the Services, caused due to (a) failure of Customer's internet access or any public telecommunications network, or shortage of adequate power, (b) any incompatibility between the Customer's systems and the Services and/or (c) maintenance within the Customer's systems affecting the operation of the Services.
- 13.2 OTHER THAN AS EXPLICITLY STATED IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, ITS RELATED SERVICES AND THE RESULTS THEREOF ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. ISLAND DOES NOT WARRANT THAT: (i) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR (ii) THE SERVICES WILL OPERATE ERROR-FREE. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, ISLAND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES,

INCLUDING MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NON- INFRINGEMENT, NON-INTERFERENCE AND FITNESS FOR A PARTICULAR PURPOSE. ISLAND WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO PUBLIC NETWORKS OR HOSTING SERVICES. ISLAND SHALL NOT BE RESPONSIBLE FOR ANY WARRANTIES AND REPRESENTATIONS MADE BY ANY PARTNER TO CUSTOMER, AND SUCH WARRANTIES AND REPRESENTATIONS ARE THE SOLE RESPONSIBILITY OF SUCH PARTNER.

14. **LIMITATION OF LIABILITY.**

- 14.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, REPUTATION, PROFITS, DATA, OR DATA USE, OR THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.
- 14.2 EXCEPT FOR ANY DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM LIABILITY FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO ISLAND BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM (THE "**GENERAL LIABILITY CAP**").
- 14.3 NOTWITHSTANDING THE FOREGOING, IN THE CASE OF PROTECTED INFORMATION CLAIMS (DEFINED BELOW), ISLAND'S AND ITS AFFILIATES' MAXIMUM LIABILITY TO CUSTOMER AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED TWO TIMES (2X) THE GENERAL LIABILITY CAP ("**EXPANDED LIABILITY CAP**"). "**PROTECTED INFORMATION CLAIMS**" MEANS ANY DAMAGES ARISING FROM ISLAND'S BREACH OF SECTION 10 (*CONFIDENTIALITY*) OR SECTION 11 (*CUSTOMER DATA*).
- 14.4 THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. FOR CLARITY, THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO PAYMENTS DUE TO ISLAND UNDER THIS AGREEMENT.

15. **Indemnification**

15.1 **Indemnification by Island.**

- 15.1.1 Island agrees to defend, indemnify and hold harmless, Customer, with respect to any third party action or suit brought against Customer alleging that the Software, when used as permitted under this Agreement and each respective Order (as the case may be), infringes intellectual property rights of a third party ("**IP Infringement Claim**").
- 15.1.2 If the Software becomes, or in Island's opinion is likely to become, the subject of an IP Infringement Claim that is not subject to the Infringement Exclusions, then Island may, at its sole discretion: (a) procure for Customer the right to continue using the Software; (b) replace or modify the Software to avoid the IP Infringement Claim; or (c) if options (a) and (b) cannot be accomplished despite Island's reasonable efforts, then Island may terminate all effected Orders and Island (or the applicable Partner, if applicable) shall also provide a refund for any amount pre-paid by Customer for such returned Software for the remaining unused period of the license.
- 15.1.3 Notwithstanding the foregoing, Island shall have no liability or obligation hereunder with respect to any IP Infringement Claim arising directly or indirectly from (a) the use of the Software in combination with products, services, software, data or systems not provided by Island; (b) any modification or unauthorized use of the Software or any breach of this Agreement by Customer; (c) any Customer Data or Customer systems; (d) instructions or directions provided by or on behalf of Customer; (e) any open-source software or other third party materials; or (f) the failure to use corrections provided by Island (collectively, "**Infringement Exclusions**").
- 15.1.4 This Section 15 states Island's entire liability, and Customer's exclusive remedy, for any IP Infringement Claim. Island shall not be responsible for any delay or disruption to Customer's use of the Services, including any damages stemming therefrom, caused by an IP Infringement Claim falling under this Section.

- 15.2 **Indemnification by Customer.** Customer agrees to defend, indemnify and hold harmless Island, with respect to any action or suit brought any third party or any Permitted User against Island arising from the Customer's or its Permitted Users', as applicable, use of the Services, Customer Data, Customer's breach of this Agreement or violation of applicable law or otherwise brought by any Permitted User.

- 15.3 **Indemnification Procedures.** The Party seeking indemnification shall promptly notify the indemnifying Party of any claim for which it seeks indemnification; provided, however, that any delay in providing notification shall not impact the indemnifying Party's indemnification obligations, unless the indemnifying Party is materially impacted thereby. The indemnifying Party shall have sole control over the defense of a claim, provided that the indemnified Party may participate in the defense, at its cost. All settlements of indemnification claims require the consent of the indemnified Party; provided, however, that Island may settle indemnification claims pursuant to this Section 15 without the prior consent of Customer unless the settlement includes any admission, obligation or liability on behalf of Customer.

16. **Term.**

- 16.1 An Order (as the case may be) commences on the effective date specified therein (or if no effective date is specified, then upon execution) (the "**Effective Date**") and continues for the initial subscription term specified therein (the "**Initial Subscription Term**"). This Agreement shall enter into force and effect on the Effective Date and shall remain in full force and effect until all Orders expire or are terminated (the "**Term**"). Unless otherwise specified in the applicable Order: (i) following such Initial Subscription Term of an Order, such applicable Order shall be automatically renewed for successive one (1) year terms, at Island's then current price list, unless either Party provides the other Party with at least a sixty (60) days' prior written notice of non-renewal, and (ii) following the Initial Subscription Term of a Partner Order Form, such Partner Order Form shall be extended only if agreed to be extended

between the Partner and Customer (each a “**Renewal Subscription Term**” (if applicable), and together with the Initial Subscription Term, the “**Subscription Term**”).

17. Termination.

17.1 Either Party may terminate an Order, and/or this Agreement with immediate effect upon written notice if (i) the other Party materially breaches an Order and/or this Agreement and such breach remains uncured fifteen (15) days after having received written notice thereof; or (ii) a receiver is appointed for the other Party, if the other Party makes a general assignment for the benefit of its creditors, or if the other Party commences proceedings under any bankruptcy or insolvency law.

17.2 Upon termination or expiration of an Order and/or Partner Order Form: (i) the Software license granted to Customer under such Order and/or Partner Order Form shall expire, and Customer shall discontinue any further use thereof; and (ii) Customer shall immediately delete and dispose of all copies of the Documentation in Customer’s or any of its representatives’ possession or control. The provisions of this Agreement that, by their nature and content, must survive the termination of this Agreement in order to achieve the fundamental purposes of this Agreement shall so survive, including but not limited to Sections 8 (*Intellectual Property Rights*), 10 (*Confidentiality*), 11 (*Customer Data*) and 15 (*Indemnification*) hereof. The termination of this Agreement shall not limit Island from pursuing any other remedies available to it under applicable law. If applicable, Customer shall be responsible for downloading its Customer Data prior to termination of this Agreement and Customer understands that Island does not perform any backups of the same.

18. **Customer Reference.** Unless otherwise set forth in the Order, Island shall not use Customer's name or logo to identify Customer as a customer of Island or user of the Software, on Island's web site, marketing materials or otherwise, absent Customer’s prior written consent.

19. Miscellaneous.

19.1 This Agreement, including any Order(s) and/or any Partner Order Form and any exhibits attached or referred hereto, represents the entire agreement between the Parties concerning the subject matter hereof, may be amended only by a written agreement executed by both Parties and supersedes and replaces all prior and contemporaneous oral or written understandings, agreements and statements by the Parties with respect to such subject matter, including prior non-disclosure agreements or evaluation agreements. Without limiting the generality of the foregoing, this Agreement supersedes any terms or conditions (whether printed, hyperlinked, or otherwise) in any Customer's purchase order or other standardized business forms, which purport to supersede, modify or supplement this Agreement. The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach shall not be deemed a waiver by that Party as to subsequent enforcement or actions in the event of future breaches. Any waiver granted hereunder must be in writing. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and such provision shall be reformed only to the extent necessary to make it enforceable.

19.2 Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, this Agreement may be assigned by either Party in connection with a merger, consolidation, sale of all of the equity interests of such Party, or a sale of all or substantially all of the assets of the Party to which this Agreement relates. Subject to the foregoing, this Agreement will be binding on the Parties and their permitted successors and assigns.

19.3 This Agreement shall be governed by and construed under the laws of the State of Delaware, without reference to principles and laws relating to the conflict of laws. The competent courts of the State of Delaware shall have the exclusive jurisdiction with respect to any dispute and action arising under or in relation to the Agreement. Notwithstanding the foregoing, each Party may seek equitable relief in any court of competent jurisdiction in order to protect its proprietary rights. Each Party irrevocably waives its right to trial of any issue by jury.

19.4 This Agreement does not, and shall not be construed to create any relationship, partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the Parties. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.

19.5 Island will not be liable for any delay or failure to provide the Services resulting from circumstances or causes beyond its reasonable control including, but not limited to on account of strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government or quasi-governmental authorities actions, riots, acts of terrorism, earthquakes, explosions, power outages, pandemic or epidemic (or similar regional health crisis), malicious cyber attacks or internet or hosting provider outages.

19.6 Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing (email is acceptable) and delivered to the addresses set forth on the Order for each Party and shall be deemed to have been delivered upon the date of delivery. Island may send operational emails including but not limited to: billing emails, account activity emails, and service updates. These are required to provide the Services.

19.7 From time to time, Island may modify this Agreement. Unless otherwise specified by Island, changes become effective for Customer upon renewal of the then-current Subscription Term or upon the effective date of a new Order after the updated version of this Agreement goes into effect. Island will use reasonable efforts to notify Customer of the changes through communications via Customer’s account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Subscription Term or upon the effective date of a new Order, and in any event continued use of any Island Services after the updated version of this Agreement goes into effect will constitute Customer’s acceptance of such updated version.

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