



## **Customer Terms**

This agreement is dated **DATE** and made between:

- A. **Niico Ltd**, a limited company registered in England and Wales with company number 14732866 whose registered office is at 167-169 Great Portland Street, Fifth Floor, London, W1W 5PF (**'Niico'**); and
- B. **[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 the provision of 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 Niico under this agreement is described in this agreement by reference to one or more of the following components which the parties may agree to include or exclude (together the **'Niico Services'**), defined as follows:

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

**'Professional Services'** means the professional services provided in accordance with clause 9 and as described in the Statement of Work, which may include implementation and configuration services, the provision of advice, any consultancy services and the Deliverables.

**'Software'** means the online software provided by Niico to the Customer known as the Niico Automation Platform.

### **2. Definitions and interpretation**

#### **2.1. In addition to the definitions in clause 1, in this agreement:**

**'Acceptance Test'** means the user acceptance tests (if specified in the Statement of Work) to be undertaken by Niico, or where applicable, the Customer, in accordance with the agreed criteria specified in the Statement of Work 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 Niico for performance of its obligations under this agreement or as otherwise communicated by Niico 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. Niico's Confidential Information includes any software utilised by Niico 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 Niico.

**'Customer Facilities'** means the hardware, software, and internet connectivity used by the Customer to use the Software (other than any provided as part of the Niico Services).

**'Deliverable'** means any item to be developed, prepared or delivered by Niico, as identified in a Statement of Work;

**'Documentation'** means the document(s) and other materials made available to the Customer by Niico which sets out a description of the Software and the user instructions for the Software (as amended upon Niico providing reasonable notice to the Customer).

**'Force Majeure Event'** means any event or circumstances beyond a party's reasonable control (including, in the case of performance by a subcontractor, circumstances beyond the reasonable control of the subcontractor) including: (a) acts of God, flood, drought, earthquake or other natural disaster (b) epidemic or pandemic (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations (d) any law or action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent (e) non-performance by suppliers or subcontractors.

**'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, quote, purchase order or similar document, that is signed by both parties, and specifies the Niico Services to be provided by Niico under this agreement.

**'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 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 Statement of Work.

**'Renewal Period'** has the meaning set out in clause 22.1.

**'Schedule'** means a schedule to this agreement.

**'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 labeled as a statement of work, that is signed by both parties, and specifies the Professional Services and Managed Services to be provided by Niico under this agreement.

**'Subscription'** means the supply by Niico to the Customer of:

- (a) the Software; and
- (b) where stated in an Order Form, the Managed Services.

**'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.

- 2.2. 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 and Order Forms**

- 3.1. Each Order Form and Statement of Work are subject to these Customer Terms. Together these Customer Terms, any Order Forms and Statements of Work make up the **'agreement'**.
- 3.2. The Customer may procure any Professional Services and Managed Services by agreeing a Statement of Work with Niico.
- 3.3. Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

### **4. Niico's obligations**

- 4.1. Niico shall provide the Niico Services to the Customer in accordance with this agreement, the Order Form and the Statement of Work.
- 4.2. Niico shall perform its obligations under this agreement:
  - 4.2.1. using reasonable care and skill;
  - 4.2.2. in accordance with applicable laws;
  - 4.2.3. in material accordance with the Documentation; and
  - 4.2.4. using personnel who are appropriately trained and experienced.
- 4.3. Niico shall obtain and shall maintain all necessary licences, consents, and permissions necessary for the Customer, its contractors and agents to use the Niico Services as provided for in this agreement.
- 4.4. If any timescales are stipulated for the supply of the Niico Services:

- 4.4.1. such timescales shall not be of the essence;
- 4.4.2. Niico shall use Commercial Efforts to comply with the timescales and, if there is a delay, to mitigate the effects of the delay; and
- 4.4.3. the timescales will be deemed to be extended by the period of any delay caused by (i) a third party beyond Niico's reasonable control or (ii) by the Customer.
- 4.5. Niico does not warrant that the Customer's use of the Niico Services will be uninterrupted or error-free.

## **5. Customer's 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 Niico with reasonable and prompt co-operation to facilitate Niico's performance of its obligations under this agreement and any Statement of Work or Order Form in a timely and efficient manner, including the provision of such information, access to personnel and access to Customer Facilities as Niico 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.
- 5.4. The Customer shall upon reasonable written notice from Niico, provide Niico with reports, summaries or other documents reasonably designed to allow Niico to audit Customer's compliance with the use of the Software and this agreement.
- 5.5. The Customer shall:
  - 5.5.1. without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement.
  - 5.5.2. obtain and shall maintain all necessary licences, consents, and permissions necessary for Niico, its contractors and agents to perform their obligations under this agreement, including without limitation the Niico Services;
  - 5.5.3. ensure that its network and systems comply with the relevant specifications provided by Niico from time to time;
  - 5.5.4. be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Niico's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and
  - 5.5.5. comply with any additional responsibilities of the Customer as set out in a Statement of Work and/or Order Form.

## **6. Responsibility for Third Party Solutions**

- 6.1. If Niico recommends a third party solution to the Customer (the '**Third Party Solution**'), Niico's duty in relation to such recommendation is limited to:
  - 6.1.1. using reasonable care and skill combined with Niico's 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 Niico 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 is to be supplied by Niico under a contract between Niico and the relevant third party, Niico 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 Niico and the Customer related to the Statement of Work);and the Customer acknowledges that Niico 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 Niico, the liability of Niico 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.

## **7. Supply of Software**

- 7.1. 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 use of Software in accordance with such parameters and for which the Customer has paid the applicable Charges.
- 7.2. The Software may include (and Customer authorises the use of) mechanisms to monitor and enforce compliance with clause 7.4.
- 7.3. Except as permitted by law, the Customer shall not, and shall not permit any employees, agents, or representatives to:
  - 7.3.1. disclose, sell, assign, lease, commercially exploit or market any part of the Software or Niico's Confidential Information in any way or manner;
  - 7.3.2. generate or attempt to generate or reproduce any Software licence key;
  - 7.3.3. use the Software for the benefit or support of a third-party;
  - 7.3.4. copy, modify, enhance, translate, supplement, create derivative works from, or remove any proprietary notices or labels from any part of the Software or Niico's Confidential Information;
  - 7.3.5. 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 Niico Confidential Information;
  - 7.3.6. 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;
  - 7.3.7. 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
  - 7.3.8. circumvent the mechanisms described in clause 7.5.
- 7.4. Any use of the Software in breach of clause 7.7 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 Niico 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.
- 7.5. The Customer is responsible for use of the Software by all users to whom it grants its account credentials. The Customer must ensure:
  - 7.5.1. it grants administrator privileges to qualified personnel;
  - 7.5.2. that its users do not share their passwords; and
  - 7.5.3. 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.
- 7.6. The Software contains open source software that is covered by a different license. Niico's obligations set forth in this agreement 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.
- 7.7. Niico may, in compliance with Niico's Privacy Policy and Data Protection Legislation (as defined below), collect, use and retain technical data and use information, such as how the Software is performing, access information, click actions, runtime behavior, settings and user information including (without limitation) IP address, when monitoring Customer's use of the Software. Although Niico is not obligated to monitor Customer's use of the Software, Customer hereby authorises Niico to do so. Niico may prohibit any use of the Software it reasonably believes may be (or is alleged to be) in violation of the terms of this agreement or any applicable laws (including Data Protection Legislation).

## **8. Managed Services**

Where the Customer subscribes to the Managed Services, the provisions of the Schedule shall apply to the provision of Managed Services to the Customer.

## **9. Professional Services**

- 9.1. Unless the Statement of Work specifically states that Charges or Professional Services are 'fixed', the Charges for Professional Services are calculated on a time and materials basis and any Charges specified in the Statement of Work are estimated.
- 9.2. When Professional Services are charged on a time and materials basis, there is a minimum ½ day charge for each day when Niico work on the Professional Services.
- 9.3. On the terms and conditions set out in this agreement, Niico agrees to:
  - 9.3.1. implement and configure the Software;
  - 9.3.2. provide the Deliverables;
  - 9.3.3. carry out, in conjunction with the Customer, the Acceptance Tests in accordance with clause 11; and
  - 9.3.4. provide training to the Customer in accordance with clause 9.8,  
all in accordance with the Statement of Work.
- 9.4. Niico 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.
- 9.5. Niico shall deliver and complete the implementation and configuration of the Software and Deliverable by the date agreed in the Statement of Work or as otherwise agreed between the parties. If the delivery, implementation and configuration of the Software or Deliverables 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 Niico to complete such delivery. If Niico 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, Niico may, at its sole discretion, notify the Customer that it wishes to increase the Charges by an amount not exceeding any such demonstrable cost. Niico may invoice the Customer for any additional monies that become payable in this way within 30 days of demonstrating the increase in costs.
- 9.6. If delivery of the Software is delayed because of any act or omission of Niico, Niico shall be liable for any reasonable costs that the Customer can demonstrate it incurred as a direct result of such delay.
- 9.7. Niico 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.
- 9.8. Niico 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.

## **10. Data migration**

- 10.1. This clause 10 applies when Professional Services include Niico migrating Customer Data from existing Customer solutions to the Software.
- 10.2. 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').
- 10.3. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.
- 10.4. Unless Professional Services specifically include services to remediate any problems with Customer Data, or problems become manifest during data migration, Niico 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 are subject to a fixed Charge, Niico may invoice additional Charges for the additional work.

## **11. Acceptance Testing**

- 11.1. Acceptance Tests will be performed if the relevant Statement of Work stipulates that Acceptance Tests are required or if Niico recommends that any part of the Niico Services are subjected to Acceptance Tests.
- 11.2. By default, Acceptance Tests will be performed by Niico as specified in the Statement of Work (acting reasonably) to verify that the Niico Services appear to comply with the Statement of Work.
- 11.3. The Customer may:
  - 11.3.1. notify Niico, not later than five (5) days after the Software or first Deliverable is provided, that it will carry out the Acceptance Tests;
  - 11.3.2. request to:
    - (a) undertake Acceptance Tests that are neither stipulated in the Statement of Work nor recommended by Niico;
    - (b) include new Deliverables not initially in scope of the agreed Acceptance Tests,and any additional Acceptance Tests requested per clause 11.3.2 are subject to Niico's written approval and

additional Professional Services Charges at Niico's prevailing rates to account for Niico's involvement in the additional Acceptance Tests.

**11.4. Both parties shall:**

- 11.4.1. provide the other party with reasonable co-operation and assistance to aid Acceptance Tests;
- 11.4.2. commence the Acceptance Tests as soon as reasonably possible after the Software or first Deliverable is provided (and in any event within 14 days) and provide the other party with at least 24 hours notice of when the Acceptance Tests will be commencing;
- 11.4.3. run the Acceptance Tests continuously during its normal working hours;
- 11.4.4. permit the other party to observe all or any part of the Acceptance Tests;
- 11.4.5. keep the other party informed of progress of the Acceptance Tests.

**11.5. If the Software fails the Acceptance Tests:**

- 11.5.1. the Customer shall promptly notify Niico in writing of the specific details of the failure;
- 11.5.2. Niico shall investigate and remediate the cause of failure and re-submit the Software or Deliverable for re-testing within a reasonable timeframe;
- 11.5.3. the Customer and Niico shall continue the cycle of testing and remediation until the earlier of: (i) the Software passes the Acceptance Tests; (ii) after two cycles of unsuccessful tests and 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 and Deliverable; or (iii) a longstop date specified in a Statement of Work for completion of Acceptance Tests; and
- 11.5.4. the Customer shall not use the Software or any Deliverables for any purpose other than training and Acceptance Tests until the Niico Services pass the Acceptance Tests.

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

- 11.6.1. the Customer confirms in writing the satisfactory completion of Acceptance Tests;
- 11.6.2. the Customer accepts the Niico Services subject to a change of acceptance criteria, amendment of the Statement of Work and/or reduction in the Charges as, after taking into account all the relevant circumstances, is reasonable;
- 11.6.3. 14 days elapses after the Software or Deliverable has been made available for Acceptance Tests, and the Customer has not notified Niico of any failure; or
- 11.6.4. the Customer commences use of the Software for purposes other than training or Acceptance Tests.

**12. Use of the Niico Services and Customer Affiliates**

- 12.1. Unless permitted by a Statement of Work or otherwise by Niico in writing, Customer Affiliates are not permitted to use the Niico Services.
- 12.2. If a Customer Affiliate is permitted to use of the Niico Services by a Statement of Work or approved by Niico in accordance with clause 12.1 above:
  - 12.2.1. the Customer is liable for all Charges (even if Niico agrees to invoice a Customer Affiliate);
  - 12.2.2. the Customer will be responsible for the acts and omissions of Customer Affiliate; and
  - 12.2.3. 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 Affiliate as if such loss or damage was incurred by the Customer.
- 12.3. Except as permitted by clause 12.2, 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.

**13. Change control**

- 13.1. Niico shall use all Commercial Efforts to not change the Software in a way that materially detracts from its features or functionality. However, Niico may change the Software for the purposes of compliance with laws, in the interests of security or as required by critical vendors. Niico will endeavour to provide reasonable notice of any such changes but may not be able to in all circumstances. Changes permitted by this clause 13.1 are not subject to the change control procedure in clause 13.2.
- 13.2. 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 Niico shall, within a reasonable time, provide a written estimate to the Customer of:
  - 13.2.1. the likely time required to implement the change;
  - 13.2.2. any variations to the Charges arising from the change; and
  - 13.2.3. any other impact of the change on the terms of the Statement of Work.

13.3. Changes proposed under clause 13.2 do not take effect unless and until the parties have agreed to the change.

#### **14. Charges and payment**

14.1. The Customer shall pay to Niico the Charges in consideration for the provision by Niico of the Niico Services in accordance with this clause 14.

14.2. Unless otherwise stated in a Statement of Work and/or Order Form:

14.2.1. Subscription Fees and other recurring Charges will be invoiced monthly or annually in advance;

14.2.2. Professional Services Charges can be invoiced in full at any time from the date on which the relevant Order Form and/or Statement of Work are signed;

14.2.3. the Customer must pay invoices within 30 days of the invoice date.

14.3. Charges not paid when due shall be subject to interest at the rate of one and one-half percent (3%) per month or, if less, the maximum rate permitted by law.

14.4. All Charges stated:

14.4.1. are exclusive of VAT or any equivalent sales tax, which will be invoiced and payable at the rate prescribed by law; and

14.4.2. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14.5. 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 Niico reimburses to its employees in the course of its own business.

14.6. If the Customer disputes any part of an invoice, it shall notify Niico 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 14.6 does not prevent Niico pursuing its legal rights and remedies to enforce payment of its invoices.

14.7. The Charges (excluding any Professional Services Charges) may be increased by Niico:

14.7.1. with effect from the following Subscription Period or Renewal Period provided that Niico will provide at least 30 days' notice in advance of the increase;

14.7.2. if Customer's use of the Software exceeds a capacity limitation as set forth in the Order Form; and

14.7.3. if a Niico vendor increases its own fees that materially affects the commercial provision of the Software, in which case Niico will endeavour to provide as much prior notice as possible and the increase shall have effect from the end of the notice period.

#### **15. Warranties**

15.1. Niico warrants that:

15.1.1. it is lawfully entitled to supply the Niico Services;

15.1.2. subject to the Customer's compliance with its obligations in this agreement and clause 15.2, 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; and

15.1.3. 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.

15.2. Notwithstanding clause 15.1.2, Niico 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 such a claim directly against the Vendor.

15.3. Any claim submitted alleging a breach under clause 15.1 must be submitted in writing to Niico within thirty (30) days of the Customer becoming aware of the warranty issue. Niico's entire liability for any breach of clause 15.1 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 Niico is unable to repair, replace or put in place a workaround, Niico 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 services equal to the period of time from the date of termination to the end of any then current Subscription Period or Renewal Period.

15.4. Niico does not warrant that Software will perform completely uninterrupted or error-free. Niico 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.

15.5. 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.

## **16. Intellectual Property Rights**

- 16.1. 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.
- 16.2. Niico disclaims ownership of any Intellectual Property Rights in Customer Data.
- 16.3. Niico grants the Customer a limited, non-exclusive, non-transferable, personal, revocable right to access and use the Software (including any associated downloaded components, such as bot agents, needed to use the Software) solely for Customer's internal use in connection with Customer's ordinary business operations.
- 16.4. Unless otherwise specified in a Statement of Work, Niico will retain ownership of any Deliverable but Niico hereby grants to the Customer a non-exclusive, royalty-free, worldwide, right and license to use the Deliverables during the term of this agreement to extent necessary to enjoy the full benefit of the Niico Services.
- 16.5. Niico 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:
  - 16.5.1. the Customer promptly notifies Niico in writing of the claim;
  - 16.5.2. the Customer must mitigate its loss where possible;
  - 16.5.3. promptly upon request, Niico is given control of the claim and any settlement thereof giving rise to the indemnity (at Niico's expense), but Niico 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);
  - 16.5.4. the Customer does not prejudice Niico's defence of such claim; and
  - 16.5.5. the Customer gives Niico all reasonable assistance, information, and authority reasonably required for the defence and settlement of the claim (at no expense to the Customer).
- 16.6. Niico shall have no liability for any claim described in section 16.3 to the extent that it would not have occurred but for:
  - 16.6.1. 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 Niico's written direction or made in accordance with this agreement);
  - 16.6.2. the combination, operation or use of the Niico Services with equipment, devices, software or data not supplied by Niico;
  - 16.6.3. the Customer's use of the Niico Services other than in accordance with this agreement; or
  - 16.6.4. compliance by Niico with instructions, designs, plans or specifications furnished by or on behalf of the Customer.
- 16.7. The Customer grants to Niico and its affiliates:
  - 16.7.1. a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Data for the term of this agreement to the extent necessary to enable Niico to comply with its obligations under this agreement; and
  - 16.7.2. 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.

## **17. Confidential Information**

- 17.1. If either party receives the other party's Confidential Information, it shall:
  - 17.1.1. not use it for any purpose other than performance of this agreement;
  - 17.1.2. keep it secret and protect it at least as well as it would protect its own Confidential Information;
  - 17.1.3. disclose it only to those of its employees, subcontractors and advisers who need to know the Confidential Information for the performance of this agreement;
  - 17.1.4. 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;
  - 17.1.5. 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;
  - 17.1.6. 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
  - 17.1.7. inform the other party immediately if it becomes aware or suspects that an unauthorised person knows the

Confidential Information.

17.2. The obligations in clause 17.1 will not apply to Confidential Information which:

- 17.2.1. has ceased to be confidential through no fault of either party;
- 17.2.2. 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;
- 17.2.3. has been lawfully received from a third party who did not acquire it in confidence; or
- 17.2.4. 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.

17.3. Each party's duty of confidence shall continue after termination of this agreement for a period of two years.

**18. Press releases and marketing information**

- 18.1. The Customer acknowledges that the Charges are determined on the basis that Niico will have the benefits of the marketing described in this clause 18.
- 18.2. The Customer consents to Niico naming the Customer in Niico's marketing media together with a short statement describing the project undertaken by Niico.

**19. Data protection**

19.1. In this clause 19, 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.

19.2. This clause 19 applies if Niico processes personal data when performing its obligations under this agreement and the Statement of Work.

19.3. Each party shall comply with the Data Protection Legislation.

19.4. In the provision of the Managed Services and the Professional Services, the Customer shall be the data controller and Niico is a data processor. Where this is the case, clauses 19.5 to 19.13 shall apply.

19.5. 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.

19.6. Niico 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.

19.7. Niico shall:

- 19.7.1. process the personal data only on instructions from the Customer;
- 19.7.2. ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 19.7.3. 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;
- 19.7.4. 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;
- 19.7.5. provide the Customer with reasonable assistance to undertake data protection impact assessments about

processing of personal data under this agreement;

19.7.6.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;

19.7.7.makes available to the Customer all information necessary to demonstrate compliance with the obligations in this clause 19 and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.

19.7.8.immediately notify the Customer if, in Niico's opinion, an instruction infringes Data Protection Legislation.

19.8. Niico shall not appoint another processor to process any personal data until Niico has complied with clause 19.7.2.

19.9. It is the Customer's responsibility to:

19.9.1.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;

19.9.2.determine when personal data ought to be deleted or when processing of personal data ought to cease;

19.9.3.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

19.9.4.keep a record of processing with any greater information than that which is evident from this agreement.

19.10.Niico shall provide such assistance with the matters described in clause 19.9 as the Customer reasonably requires or as Data Protection Legislation mandates but such assistance will be treated as a request for Professional Services.

19.11.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 Niico, 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.

19.12.The Customer agrees:

19.12.1. That it shall have sole responsibility for the accuracy, quality, integrity and legality of all personal data collected under this agreement;

19.12.2. Niico 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;

19.12.3. Niico 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 Niico' service offerings and model.

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

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

## **20. Limitations and exclusions of liability and customer indemnity**

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

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

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

20.1.3.fraud or fraudulent misrepresentation; or

20.1.4.any liability that cannot lawfully be excluded.

20.2. Except as expressly and specifically provided in this agreement:

20.2.1.the Customer assumes sole responsibility for results obtained from the use of the Niico Services and the Documentation by the Customer, and for conclusions drawn from such use. Niico shall have no liability for any damage caused by errors or omissions in any Customer Data, information, instructions or scripts provided to Niico by the Customer in connection with the Niico Services, or any actions taken by Niico at the Customer's direction;

20.2.2.all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and

20.2.3. the Software and the Documentation are provided to the Customer on an "as is" basis.

- 20.3. Except as expressly set out in clause 20.1, 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).
- 20.4. Each party's liability under each Statement of Work. Except as expressly set out in clause 20.1, Niico's 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 Professional Services Charges actually paid by the Customer under the relevant Statement of Work.
- 20.5. Each party's liability under this agreement. Except as expressly set out in clause 20.1 and except where liability relate to a specific Statement of Work under clause 20.3, Niico's total liability in any 12-month period of this agreement starting on the 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. Niico's total aggregate liability under this clause 20.4 will be reduced by any amount paid by it to the Customer that is subject to clause 20.3. If defaults committed in more than one Contract Year give rise to a single claim or a series of connected claims, Niico's total liability for those claims shall not exceed the single highest annual cap for those Contract Years.
- 20.6. The Customer will defend, indemnify and hold Niico harmless from and against any and all damages, liabilities, costs and expenses (including but not limited to attorneys' fees) arising out of or in connection with the Customer's use of the Niico Service or as a result of any third-party claim arising out of or relating to any breach of this agreement by the Customer.

## **21. Insurance**

- 21.1. Niico shall maintain the following insurance coverage with an insurer of good repute:
- 21.1.1. professional indemnity insurance with cover not less than £1,000,000;
  - 21.1.2. public and products liability insurance with cover of at least the amount required by law but not less than £1,000,000;
  - 21.1.3. employers liability insurance with cover of at least the amount required by law but not less than £1,000,000.
- 21.2. Upon request, Niico shall provide evidence of compliance with clause 21.1.

## **22. Duration and termination**

- 22.1. This agreement shall commence on the date the last party signs this agreement.
- 22.2. A Statement of Work shall commence on the date specified in the relevant Statement of Work.

### Termination of Subscriptions

- 22.3. For Niico Services supplied as part of the Subscription, the Subscription will continue for the Subscription Period 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:
- 22.3.1. either party notifies the other party of termination of that Subscription, in writing, at least 90 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
  - 22.3.2. 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 Form

- 22.4. If there is no active Subscription under this agreement, either party may terminate this agreement by giving written notice to the other party such notice to expire no sooner than on the completion of all Statements of Work entered into before the date on which the notice is served.
- 22.5. If notice is served under clause 22.2:
- 22.5.1. the parties will not agree any new Statements of Work and/or Order Forms;
  - 22.5.2. such notice will not affect any subsisting Statements of Work and/or Order Forms; and
  - 22.5.3. if there are no active Statements of Work and/or Order Forms as at the date the notice to terminate is served such notice shall terminate this agreement with effect from 30 days after the date of service of the notice.

### Termination for cause

- 22.6. 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:
- 22.6.1. the other party ceases to do business;

22.6.2. 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 22.4); or

22.6.3. 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.

22.7. Niico may terminate this agreement and any or all Statements of Work immediately if the Customer does not pay any invoice of Niico in accordance with clause 14.2, provided Niico gives the Customer 7 days' prior written notice of its intention to terminate.

#### Suspension of services

22.8. Niico may suspend any part of the Niico Services if the Customer fails to pay Charges after the due date for payment and after Niico 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 14.6.

#### After termination

22.9. Upon termination or expiry of this agreement, all sums due to Niico shall become immediately payable by the Customer, and the Customer will cease all use of the Niico Services hereunder and return, or destroy upon Niico's request, all copies of any part of the Niico Services then in the Customer's possession or under the Customer's control.

22.10. 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. Niico shall provide such assistance as the Customer may require, but such assistance will be chargeable as a Professional Service.

22.11. 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.

22.12. The terms in clauses 1, 2, 16.1, 17, 20, 22.7 to 22.10, 23 to 31 shall survive expiry or termination of this agreement.

### **23. Force Majeure**

Neither party will be liable for any delay or failure in performing its obligations under this agreement if caused by a Force Majeure Event. 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. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this agreement by giving not less than 30 days' written notice to the affected party.

### **24. Compliance**

24.1. Niico shall comply with its Anti-Bribery and Anti-Corruption policies.

24.2. 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.

### **25. Non-solicitation**

25.1. In this clause 25:

**'Relevant Person'** means any employee or contractor of Niico who is known to the Customer because of their respective involvement in the performance of this agreement; 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.

25.2. The Customer shall refrain during the Restriction Period from engaging (directly or indirectly) or trying to engage the services of any Relevant Person.

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

### **26. Assignment**

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

### **27. Third party rights**

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **28. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **29. Variations and waiver**

- 29.1. 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 authorised officer of each of the parties.
- 29.2. 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. A waiver of any right or remedy is only effective if given in writing.

## **30. Severance**

- 30.1. 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.
- 30.2. 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.

## **31. No partnership or agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **32. Entire agreement**

- 32.1. 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.
- 32.2. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 32.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **33. Conflict**

In the event of a conflict between these Customer Terms, a Statement of Work and the Order Form, the following order of priority shall apply (a) Statement of Work (b) Order Form (c) the Customer Terms.

## **34. Notices**

All notices in relation to this agreement must be in writing by email. When given by the Customer to Niico they must go to this email address: [notices@niico.ai](mailto:notices@niico.ai). Notices from Niico to the Customer may be sent to the email address associated with the Customer's account (or to such other email address as the Customer may notify to Niico from time to time). Any notice shall be deemed to have been received upon transmission, or, if this time falls outside business hours, when business hours resume.

## **35. Dispute resolution**

- 35.1. 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.
- 35.2. 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.

## **36. Governing law and jurisdiction**

- 36.1. 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.
- 36.2. 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**  
**MANAGED SERVICES**

**1. Scope of Managed Services**

The Managed Services will comprise:

- 1.1. Niico making available the Software for the use by the Customer in accordance with this agreement;
- 1.2. The ongoing monitoring by Niico 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;
- 1.3. Niico 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
- 1.4. Niico 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 Niico and set out in the Statement of Work, and Niico 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 Niico updated of all future business plans that may affect the operation of the Software, providing adequate information and notice for Niico to properly advise on the effect of such plans on the operation of the Software; and
- 2.3. That Niico 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 other continued with its plans against Niico's recommendation or without following Niico's recommendation.

**3. Additional Professional Services**

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

**4. Support**

- 4.1. Niico will, as part of the Managed Services, provide the Customer with Niico's standard customer support services whereby the Customer may submit support queries to Niico during normal business hours by emailing [hello@niico.ai](mailto:hello@niico.ai). Niico 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 Niico's 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 Niico;
  - 4.2.3. the failure by the Customer to implement recommendations, workarounds and solutions to problems previously advised by Niico; or
  - 4.2.4. deficiencies of Customer Facilities;

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

Signed for and on behalf of **Niico**

Job title:

Print name:

Signed for and on behalf of **Customer**

Job title:

Print name: