

Terms & Conditions

SUBMITTED BY

NORTH HIGHLAND®

10 Bloomsbury Way, Holborn, London, WC1A
2SL

www.northhighland.com

MASTER SERVICES AGREEMENT FOR THE PROVISION OF CONSULTING SERVICES

THIS MASTER SERVICES AGREEMENT is made the day of [year] (“MSA Commencement Date”).
BETWEEN

- (a) **NORTH HIGHLAND UK LIMITED**, a company incorporated and registered in England and Wales with company number 04801815 whose registered office is at 120 Holborn, London, England, EC1N 2TD (“**North Highland**”).
- (b) **[FULL COMPANY NAME]**, a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“**Client**”).

NOW IT IS HEREBY AGREED THAT

- (1) North Highland is in the business of providing management consultancy services;
- (2) This master services agreement (“**MSA**”) sets out the basis on which Client or any of its affiliates may request services from North Highland, and North Highland agrees to provide such services;
- (3) North Highland and Client or one of its affiliates will enter into a separate statement of work (“**SOW**”) in relation to the specifics of each request for services accepted by North Highland, in accordance with this MSA;
- (4) Each SOW will incorporate the MSA Terms and Conditions; and
- (5) Each party’s rights and obligations are set out in this MSA – including the Schedules – and the relevant SOW (both of which shall form a part of the agreement between the parties).

IN WITNESS WHEREOF, this MSA was executed the day and year first above written.

SIGNED BY

SIGNED BY

.....
for and on behalf of
North Highland UK Limited

.....
for and on behalf of
[FULL COMPANY NAME]

Date:

Date:

Title:

Title:

SCHEDULE 1 - MSA TERMS AND CONDITIONS

1. INTERPRETATION

The following definitions and rules of interpretation apply to this MSA and to any SOW entered into hereunder.

Definitions:

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Charges: the charges set out in part 2 of each SOW, calculated by reference to the rate-card set out in 0 - or as otherwise specified in the SOW – and payable by Client or a Client Affiliate for the provision of the Services by North Highland;

control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly;

Client Affiliate: an Affiliate of Client;

Client Background IPRs: all Intellectual Property Rights in Client Materials;

Client Materials: all materials, equipment and tools, drawings, specifications and data supplied by Client to North Highland;

Data Protection Legislation: (i) unless and until the General Data Protection Regulation ((EU) 2016/679) ('GDPR') is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Deliverables: all documents, products and materials developed by North Highland or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts);

Foreground IPRs: all Intellectual Property Rights in the Deliverables, other than North Highland Background IPRs;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use - and protect the confidentiality of - confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

North Highland Background IPRs: all Intellectual Property Rights that are owned by - or licensed to - North Highland and which are or have been developed independently of this SOW, in each case either subsisting in the Deliverables or otherwise necessary or desirable to enable a Client to receive and use the Services;

MSA Term: five years from the MSA Commencement Date until the day before the fifth anniversary of the MSA Commencement Date – for example, the period 14 April 2019 until 13 April 2022, after which the MSA will automatically renew for additional twelve (12) month terms unless either party provides the other party with written notice of cancellation at least sixty (60) days prior to the end of the then-current term;

Services: the services, including without limitation any Deliverables, to be provided by North Highland pursuant to a SOW; and

SOW: an agreement for the provision of particular Services by North Highland to Client or Client Affiliate agreed in accordance with clause 0, a template of which is at Schedule 2.

The Schedules form part of this MSA and shall have effect as if set out in full in the body of this MSA. Any reference to this MSA includes the Schedules.

A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006

The headings contained in this MSA are for reference purposes only and shall not affect in any way the meaning or interpretation of this MSA.

SOW process

This MSA governs the overall relationship of the parties in relation to the Services provided by North Highland to Client and Client Affiliates, and sets out:

in this clause 0, the procedure for Client and Client Affiliates to request the provision of Services from North Highland under separate

SOWs; and

in 0, the template SOW containing all the call-off terms, to be entered into by North Highland and Client or Client Affiliate.

Client and Client Affiliates shall be entitled from time to time to request in writing the provision of any or all of the Services from North Highland.

Within 20 Business Days of receipt of a written or emailed request from Client or any Client Affiliate, North Highland shall:

either notify Client or Client Affiliate that it is not able to provide the requested Services; or

complete the template SOW at Schedule 2 and submit the draft SOW to Client or Client Affiliate (as applicable) for its written approval.

Any estimate given by North Highland of any charge or fees, whether for planning or any other purpose, is given in good faith but will not be binding or constitute a fixed estimate unless and until included in an SOW that has been signed by the authorised representatives of both parties to it.

A SOW shall not enter into force, be legally binding or have any other effect unless:

the SOW has been signed by the authorised representatives of both parties to it; and

as at the date the SOW is signed, this MSA has not been terminated.

Each SOW:

shall be entered into by Client or a Client Affiliate and North Highland; and

forms a separate contract between its signatories.

Any amendments to this MSA agreed by Client and North Highland in accordance with clause 12 shall be deemed to apply to all future SOWs entered into after the date of such amendment. Furthermore, the terms and conditions of this MSA will govern any future services provided by North Highland to Client during the MSA Term regardless of whether these services are performed pursuant to an SOW or other work order that references this MSA.

Conflict

If there is an inconsistency between any of the provision of this MSA and the provisions of any SOW, the provisions of the MSA shall prevail.

Commencement and duration

This MSA shall commence on the MSA Commencement Date and shall continue for the MSA Term, unless terminated earlier in accordance with its provisions.

Performance

In supplying the Services, North Highland shall:

- perform the Services with a level of care, skill and diligence that accords with good practice in North Highland's industry, profession or trade;
- co-operate with Client in all matters relating to the Services, and comply with all reasonable instructions of Client;
- use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that North Highland's obligations are fulfilled; and
- ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the SOW.

5.2 Client will:

- undertake the Client responsibilities set out in the SOW;
- ensure the accuracy of the Assumptions set out in the SOW;
- perform its obligations under this MSA (and the related SOWs);
- provide North Highland and its personnel with full and prompt access at all reasonable times to the premises, directors and staff of the Client and its affiliates associated with each SOW and to the other advisers to the Client
- provide North Highland with full access to data and information as North Highland shall reasonably request; and
- provide timely decisions and obtain required management approvals
- keep North Highland promptly informed of any material developments or proposals in relation to the business or operations of the

Client and its affiliates where these may have an effect upon the MSA, an SOW and/or the Services

to enable North Highland to perform its obligations under this MSA (and the related SOWs).

- 5.3 Client agrees that North Highland will be entitled to rely on all the Client's decisions and approvals given in connection with the Services. Further, the Client understands that North Highland is relying on the information provided by or on behalf of the Client and the Client represents that such information is or will be true, accurate and complete. North Highland will not be liable for any loss, damage or expense arising from the Client's failure or delay in supplying or North Highland reliance on any information or materials supplied by or on behalf of the Client or any inaccuracy or other deficiency in such information or materials.
- 5.4 All surveys, forecasts, projections and recommendations made in any report, presentation, letter or other materials provided by North Highland in connection with the Services, including the Deliverables, are made by North Highland in good faith and on the basis of the information supplied to North Highland at the time. However, North Highland does not guarantee and North Highland takes no responsibility for their achievement or continuing applicability, because the actual outcome will depend on future events and circumstances and matters over which North Highland has no control, including the actions of the Client's management and staff. It will be the responsibility of the Client's management to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in the Deliverables. Whilst North Highland may assist in the implementation of recommendations, ultimately this is the sole responsibility of the management of the Client.
- 5.5 The Client and North Highland will each be responsible for ensuring that their respective staff involved with an SOW have the appropriate skills and experience. If any of North Highland or the Client's staff fail to perform as required, additional or replacement staff will be provided as the other party may reasonably request.
- 5.6 Where North Highlands' personnel work on premises other than North Highlands' premises the Client will ensure that such personnel are provided without charge with a suitable office environment and facilities including secretarial support, photocopying and computer facilities and access to telephone, fax and modem communications and internet access.
- 5.7 Where the Client is using third parties to provide information, materials or support to the Engagement, or is employing other suppliers whose work may affect North Highlands' ability to perform the Services, the Client will be responsible for the management of such persons and their performance, including the timeliness and quality of their input and work.
- 5.8 Client may review, inspect and, if applicable, test any Services or Deliverables provided by North Highland for ten (10) days following North Highland's delivery of such Services ("Acceptance Period"). Client may notify Consultant in writing of its acceptance or rejection of such Services within the Acceptance Period. Any Services are deemed automatically accepted if: (a) Client deploys the Services for operational use; or (b) Client has not rejected the Services in writing by the end of the Acceptance Period.

Charges and Payment

The Charges for the Services may be calculated on a "Time and Materials" basis or charged on a "Fixed Price" fee basis. The SOW will state the applicable fee rates for Time and Materials charging or the applicable Fixed Price. Where the SOW does not state which charging basis applies, Time and Materials charging will apply.

Unless otherwise specified in 0, section 2.2 of the relevant SOW, North Highland shall invoice the Charges to Client monthly in arrears.

Client shall pay each invoice which is submitted to it by North Highland, within twenty-one (21) days of receipt, to a bank account nominated in writing by North Highland.

Unless otherwise agreed in the relevant SOW, Client shall reimburse to

North Highland, in addition to the Charges, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by North Highland's employees, subcontractors and agents in the provision of the Services. Any such reimbursement shall be subject to North Highland obtaining the approval of Client before incurring any such expense (either in the relevant SOW or on a case-by-case basis). In addition, the Client agrees to pay expenses incurred on goods and services purchased on the Client's behalf, which will be billed at cost. North Highland shall submit its invoices for expenses to Client monthly in arrears. Any special expense arrangements will be agreed and set out in the Statement of Work.

All amounts payable by Client are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the relevant SOW by North Highland to Client, Client shall, on receipt of a valid VAT invoice from North Highland, pay to North Highland such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

If Client fails to make any payment due to North Highland under the relevant SOW by the due date for payment, then, without limiting North Highland's remedies, Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclay's Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Client shall pay the interest together with the overdue amount.

North Highland shall maintain complete and accurate records of the Services provided under each SOW (and the time spent and materials used by North Highland in providing such Services), sufficient to enable Client to verify the accuracy of any invoices submitted pursuant to the relevant SOW. North Highland shall allow Client or its representatives to inspect and take copies of such records - at Client's expense - once per year at a reasonable time, on five Business Days' notice.

All amounts due under each SOW 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).

North Highland may increase the Charges no more than once in any 12 month period. North Highland shall give Client not less than one (1) month's notice of any increase. Any such increase shall not exceed the percentage increase, over the last 12 months for which figures are available, in the UK All Items Retail Prices Index or such replacement index as the parties may agree. Any increase in the Charges shall apply with effect from expiry of North Highland's notice, provided always that the first such increase shall not take effect before the first anniversary of the SOW Commencement Date.

Intellectual property

North Highland and its licensors shall retain ownership of all North Highland Background IPRs and Foreground IPRs. Client and its licensors shall retain ownership of all Client Background IPRs.

North Highland grants Client and Client Affiliates, or shall procure the direct grant to Client and Client Affiliates of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify North Highland Background IPRs and Foreground IPRs for the purpose - only - of receiving and using the Services and the Deliverables, and the benefit thereof.

Client and Client Affiliates shall not sub-license, assign or otherwise transfer the rights granted in paragraph 7.2.

Neither this MSA, nor any SOW, will prevent or restrict North Highland from providing services to other clients which are the same or similar to the Services or from using for any purpose North Highland considers appropriate any techniques, ideas, concepts or know how gained or arising from the performance of the Services, subject to the obligations of confidentiality set out in Section 12.

Client grants North Highland a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Background IPRs for the term of the SOW for the purpose of providing the Services to Client in accordance with this SOW.

North Highland shall, promptly at Client's request, do (or procure the doing of) all such further acts and things and execute (or procure the execution of) all such other documents as Client may from time to time require for the purpose of securing for Client the full benefit of this SOW.

North Highland shall obtain waivers of any moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act

1988 or any similar provision in any jurisdiction.

North Highland warrants that the receipt, use and onward supply of the Services by Client and its licensees and sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.

North Highland shall not be in breach of the warranty at paragraph 7.8, and Client shall have no claim under the indemnity at paragraph 7.10, to the extent the infringement arises from:

any modification of the Deliverables, North Highland Background IPRs, Foreground IPRs or Services, other than by or on behalf of North Highland; or

compliance with Client's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that North Highland shall notify Client if it knows or suspects that compliance with such specification or instruction may result in infringement.

North Highland shall, subject to clause 8.2, keep Client indemnified against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Client as a result of or in connection with any third-party claim brought against Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables.

Client shall:

notify North Highland in writing of any claim against it in respect of which it wishes to rely on the indemnity at paragraph 7.10 (IPRs Claim);

allow North Highland, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that North Highland shall obtain Client's prior approval of any settlement terms, such approval not to be unreasonably withheld;

provide North Highland with such reasonable assistance regarding the IPRs Claim as is required by North Highland, subject to reimbursement by North Highland of Client's costs so incurred;

not, without prior consultation with North Highland, make any admission relating to the IPRs Claim or attempt to settle it, provided that North Highland considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of Client into disrepute.

Limitation of liability

Nothing in this MSA shall limit or exclude North Highland's or Client's liability for:

death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

fraud or fraudulent misrepresentation.

Subject to clause 6.1:

neither party to this MSA – or to an SOW relating thereto – shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this MSA or an SOW relating thereto;

North Highland's total liability to Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this MSA or an SOW relating thereto shall be limited to an amount equal to the amount of Charges paid by Client – and received by North Highland – in the first twelve months of the MSA Term; and

Client's total liability to North Highland, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this MSA or an SOW relating thereto shall be limited to an amount equal to the amount of Charges paid by Client – and received by North Highland – in the first twelve months of the MSA Term.

Warranty

North Highland warrants that the Services will be performed with reasonable care in a diligent and competent manner. North Highland will re-perform on the terms of this MSA any work which is not in compliance with this warranty without further liability for such non-compliance, provided that the Client gives North Highland written notice of any non-compliance within thirty days (30) after the Services are performed.

North Highland warrants that any software developed by North Highland as

part of the Services and supplied as a Deliverable will, when properly used, conform in all material respects with its specification. North Highland's obligation for any non-conformance with this warranty is that North Highland will use all reasonable endeavours to correct (by correction, replacement, workaround or otherwise) any non-conformance as soon as reasonably practical, provided that the Client gives North Highland written notice of any non-compliance within 30 days after the delivery of the non-conforming software. North Highland will have no other liability for any non-conformance with the warranty in this clause 9.2 provided that North Highland corrects that non-conformance in compliance with this warranty within 30 days of receipt of written notice of non-compliance from the Client.

North Highland does not warrant and shall not be responsible for any third party products or services. Client's sole and exclusive rights and remedies with respect to claims arising out of or relating to any third party product or services will be against the third party and not against North Highland provided that (a) North Highland will use its reasonable endeavours to assign to Client any assignable warranties North Highland may receive from any such third party; and (b) to the extent that any warranties are not assignable, North Highland will enforce such warranties against the third party on Client's behalf.

The representations, warranties, terms and conditions set out in this MSA are the parties' only representations, warranties, terms and conditions relating to the Services and the Deliverables and are made expressly in place of and to the exclusion (to the fullest extent permitted by law) of all other representations, warranties, terms and conditions, express or implied, by statute or otherwise, including without limitation any implied warranties, terms or conditions as to performance, fitness for a particular purpose, merchantability, satisfactory quality or otherwise and are subject to the limitations on liability set out herein.

Termination

Without affecting any other right or remedy available to it, either party may terminate this MSA – or an SOW relating to it – with immediate effect by giving written notice to the other party if:

the other party commits a material breach of any term of this MSA – or of an SOW – which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty Business Days after being notified in writing to do so;

the other party:

suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or

any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1 above.

Consequences of termination

On termination (or expiry) of this MSA, howsoever arising, each SOW then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such SOW, unless terminated earlier in accordance with the terms of such SOW.

The termination of any SOW shall not affect any other SOWs or this MSA.

On termination of the MSA, the following clauses shall continue in force: clause 0 (Interpretation), clause 8 (Limitation of liability), clause 11

(Consequences of termination), clause 28 (Governing law), clause 29 (Jurisdiction), along with any other provision of this MSA which either expressly or by its nature extends beyond the expiration or termination of this MSA.

Termination of this MSA shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.

Confidentiality

Each party undertakes that it shall not at any time during this MSA, and for a period of three years after termination of this MSA, disclose to any person any confidential information concerning the business, affairs, Clients, clients, or suppliers of the other party, except as permitted by clause 12.2.

Each party may disclose the other party's confidential information:

to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this MSA. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this MSA.

Upon the request of the disclosing party, the receiving party shall return or destroy such party's confidential information.

Neither party shall use the other party's name without the written consent of the other party.

Data Protection

Both parties will comply with all applicable requirements of the data protection legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the data protection legislation.

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and North Highland is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

13.3 Without prejudice to the generality of clause 13.1 above, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to North Highland for the duration and purposes of this agreement.

13.4 Without prejudice to the generality of clause 13.1 above, North Highland shall, in relation to any Personal Data processed in connection with the performance by North Highland of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Client unless North Highland is required by the laws of any member of the European Union or by the laws of the European Union applicable to North Highland to process Personal Data (**Applicable Laws**). Where North Highland is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, North Highland shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit North Highland from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity,

availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or North Highland has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) North Highland complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) North Highland complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Client or the Client's designated auditor.

13.5 The Client consents to North Highland appointing a third-party processor of Personal Data under this agreement. The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 13. As between the Client and North Highland, North Highland shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.

13.6 Either party may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

Variation

No variation of this MSA – or an SOW relating to it - shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

Waiver

A waiver of any right or remedy under this MSA – or an SOW relating to it - or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

A failure or delay by a party to exercise any right or remedy provided under this MSA – or an SOW relating to it - or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this MSA

or by law shall prevent or restrict the further exercise of that or any other right or remedy.

Force Majeure

Neither party shall be in breach of this MSA – or an SOW relating to it - nor liable for delay in performing, or failure to perform, any of its obligations under this MSA – or an SOW relating to it - if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed. If the period of delay or non-performance continues for twenty (20) Business Days, the party not affected may terminate this MSA – or the relevant SOW relating to it - by giving ten (10) days' written notice to the affected party.

Rights and remedies

Except as expressly provided in this MSA, the rights and remedies provided under this MSA – or an SOW relating to it - are in addition to, and not exclusive of, any rights or remedies provided by law.

Severance

If any provision or part-provision of this MSA – or an SOW relating to it - is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this MSA.

Transfer of Employees

Subject to anything to the contrary in this MSA:

North Highland acknowledges and agrees that it is intended that all employees of North Highland shall remain employees of North Highland and that termination of this MSA – or an SOW relating to it - shall not operate to transfer the contracts of employment of any of North Highland's employees to Client or any third party, whether the Services subsequently cease to be provided, are provided by a third party, or by Client in-house.

North Highland shall use all reasonable endeavours to ensure that none of its employees is deployed in the delivery of the Services to the extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 ("TUPE"), may operate to transfer the employment of such employee to Client or any successor service provider upon termination of this MSA – or an SOW relating to it -; and on termination of this MSA – or an SOW relating to it - North Highland will indemnify Client, any relevant Client Affiliate and any successor service provider in respect of all liability, loss and expense arising from the operation of the TUPE and its application to any or all of North Highland's employees deployed in the delivery of the Services.

Non-solicitation

Neither Client, nor any Client Affiliate which is party to a relevant SOW, shall - without the prior written consent of North Highland - at any time during the MSA Term nor until the expiry of twenty-four months after the completion of the Services provided under an SOW relating to it, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of North Highland in the provision of the Services. For the avoidance of doubt, this clause does not apply if an individual makes an application in response to a publicly advertised vacancy.

Any consent given by North Highland in accordance with paragraph 20.1 shall be subject to Client paying to North Highland a sum equivalent to 100% of the then current annual remuneration of North Highland's employee, consultant or subcontractor or, if higher, 100% of the annual remuneration to be paid by Client to the

at employee, consultant or subcontractor.

Entire agreement

This MSA – and any SOW entered into further to this MSA - constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party agrees that it 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 MSA – or an SOW relating to it.

Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this MSA – or an SOW relating to it.

Assignment and other dealings

Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this MSA without the prior written consent of the party (such consent not to be unreasonably withheld).

No partnership or agency

Nothing in this MSA is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

Each party confirms it is acting on its own behalf and not for the benefit of any other person.

Third party rights

A person who is not a party to this MSA shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this MSA.

Notices

Any notice given to a party under or in connection with this MSA shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office. In the case of North Highland, such notice must be marked "Attn: General Counsel".

Counterparts

This MSA may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Disputes

Any dispute arising out of or in connection with this MSA – or an SOW relating to it - (a Dispute) shall be referred by either party first to:

in the case of the Client, the Client Relationship Manager; and
in the case of the Supplier, the Supplier Relationship Manager,
for resolution.

If the Dispute cannot be resolved by the persons referred to in clause 27.1 above within twenty Business Days after the Dispute has arisen, either party may give written notice (Notice) to the other party that a Dispute has arisen. If the Dispute is not resolved by agreement in writing between the parties within twenty Business Days after the date of the Notice, the Dispute shall be resolved in accordance with the remaining provisions of this clause 27.

A Dispute may at the request of the North Highland or the Client be referred to mediation. Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (CEDR) in London. The mediation shall be conducted by a single mediator appointed by the parties, or (i) if the parties to the dispute are unable to agree on the identity of the mediator within 21 days after the date of the request that the Dispute be resolved by mediation, or (ii) if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party. The mediation shall be conducted in London in English. Mediation is without prejudice to the rights of the parties in any future proceedings. The costs of the mediation, including the fees and expenses of the mediator shall be borne equally by the parties.

This clause 27 is without prejudice to either party's right to seek interim relief (such as an injunction) against the other party through the English courts to protect its rights and interests, or to enforce the obligations of the other party.

Governing law

This MSA – and any SOW relating to it - and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this MSA – or an SOW relating to it - or its subject matter or formation.

Schedule 2 - Template SOW

This SOW is dated [INSERT DATE]

PARTIES:

- (1) **North Highland UK Limited**, a company incorporated and registered in England and Wales with company number 04801815 whose registered office is at 120 Holborn, London, England, EC1N 2TD (**North Highland**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Client**)

BACKGROUND:

- (A) Client and North Highland entered into a MSA dated [INSERT DATE] (**MSA**), allowing Client [or any of its Affiliates] to request services from North Highland.
- (B) Pursuant to the MSA, Client requests certain services to be provided by North Highland, and North Highland agrees to provide such services to Client in accordance with this statement of work (**SOW**).
- (C) This SOW incorporates the terms and conditions set out in the MSA but, if there is an inconsistency between any of the provisions of this SOW and the MSA, the provisions of the MSA shall prevail.

AGREED TERMS:

2. INTERPRETATION

Any term defined in the MSA shall have the same meaning in this SOW; the following definitions and rules of interpretation apply to this SOW.

2.1 Definitions:

Client Manager: [INSERT NAME OR TITLE].

North Highland Manager: [INSERT TITLE OR NAME].

SOW Commencement Date: [INSERT DATE]

SOW Term; the period from the SOW Commencement Date [until [INSERT DATE] OR [a period of [INSERT TERM] from the SOW Commencement Date].

3. TERM AND RENEWAL

- 3.1 This SOW shall come into force on the SOW Commencement Date.
- 3.2 This SOW shall, unless terminated earlier in accordance with its terms, continue for the SOW Term.

4. SUPPLY OF SERVICES

- 4.1 North Highland shall supply the Services in accordance with this SOW and the MSA.
- 4.2 North Highland shall provide the Services from the SOW Commencement Date.

- 4.3 North Highland shall use all reasonable endeavours to meet any delivery dates specified in this SOW, always provided that if no delivery dates are specified North Highland shall perform the Services within a reasonable time. Unless both parties specifically agree otherwise in writing, all dates given by North Highland or specified by Client, including dates contained in any timetable in the SOW, are intended for planning and estimating purposes only and are not contractually binding.
- 4.4 North Highland shall appoint a North Highland Manager – as may be varied, on notice to Client, from time to time - in respect of the Services, who shall: (i) have authority under this SOW contractually to bind North Highland on all matters relating to the Services and (ii) be responsible for managing issues relating to the day-to-day performance of the SOW, including meeting with the Client Manager at regular intervals to discuss and minute the progress of the Services.
- 4.5 North Highland shall provide the Services using the staff team listed in Part 3, as updated or rotated from time to time.

5. SERVICES

- 5.1 In supplying the Services, North Highland will ensure that the Services and Deliverables conform to the descriptions and specifications set out in Part 1.
- 5.2 Client may review, inspect and, if applicable, test any Services or Deliverables provided by North Highland for ten (10) days following North Highland's delivery of such Services ("Acceptance Period"). Client may notify Consultant in writing of its acceptance or rejection of such Services within the Acceptance Period. Any Services are deemed automatically accepted if: (a) Client deploys the Services for operational use; or (b) Client has not rejected the Services in writing by the end of the Acceptance Period. Client's obligations
- 5.3 Client shall:
 - (a) co-operate with North Highland in all matters relating to the Services and appoint Client's Manager – as may be varied, on notice to Client, from time to time - in relation to this SOW, who shall (i) have the authority contractually to bind Client on matters relating to the Services, and (ii) be responsible for managing issues relating to the day-to-day performance of the SOW, including meeting with the North Highland Manager at regular intervals to discuss and minute the progress of the Services;
 - (b) identify and assign all Client personnel required to work with and support North Highland's project team as shall reasonably be required for the provision of the Services (and the delivery of any Deliverables) in a timely manner;
 - (c) provide such access to Client's premises and data, and such office accommodation and other facilities as may reasonably be required for the purposes of the Services;
 - (d) provide such information as North Highland may request (and Client considers reasonably necessary), and make such decisions regarding North Highland's approach to each project, interim performance and the like in order to enable North Highland to carry out the Services in a timely manner; and
 - (e) inform North Highland of all health and safety rules and regulations and any other reasonable security requirements that apply at Client's premises.

- 5.4 If North Highland's performance of its obligations under this SOW is prevented or delayed by any act or omission of Client, its agents, subcontractors, consultants or employees, North Highland shall (i) not be liable for any costs, charges or losses sustained or incurred by Client that arise directly or indirectly from such prevention or delay; and (ii) have the time for performance of its obligations extended by the period of the delay or prevention.

6. TITLE TO DELIVERABLES AND CLIENT MATERIALS

- 6.1 Subject to clause 7.2 below, title to any Deliverables that are goods or in any physical media on which Deliverables are stored shall pass to Client on the earlier of their delivery to Client or payment of the Charges for them.
- 6.2 All Client Materials are the exclusive property of Client.

7. CHARGES AND PAYMENT

- 7.1 In consideration for the provision of the Services, Client shall pay North Highland the Charges in accordance with the payment provisions set out in the MSA.

8. CONSEQUENCES OF TERMINATION AND EXPIRY

- 8.5 On termination or expiry of this SOW:
- (a) North Highland shall immediately deliver to Client all Deliverables whether or not then complete, and return all Client Materials, and Client shall pay all amounts due as of the date of termination or expiry. Until such Deliverables and Client Materials have been returned or delivered, North Highland shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this SOW;
 - (b) North Highland shall, if so requested by Client, provide all assistance reasonably required by Client to facilitate the smooth transition of the Services to Client or any replacement service provider appointed by it. Client shall pay for any such assistance at the rates set out in 0; and
 - (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this SOW which existed at or before the date of termination shall not be affected.

9. [THIRD PARTY RIGHTS[– IF ENTERED INTO BY AFFILIATE ON BASIS OF CLIENT'S MSA]

The parties to this SOW may vary, terminate or rescind this SOW, in writing, without the consent of Client.]

10. VARIATION

No variation of this SOW shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this SOW or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the

further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

IN WITNESS WHEREOF, this SOW was executed the day and year first above written.

SIGNED BY

SIGNED BY

.....
for and on behalf of
North Highland UK Limited

.....
for and on behalf of
[FULL COMPANY NAME]

Date:

Date:

Title:

Title:

Part 1. Services & Deliverables

1.1 Description of Services / Deliverables

[INSERT SERVICES/ DELIVERABLES DESCRIPTION HERE]

1.2 Change Management

Either party may request changes to the Services or changes to any other aspect of an SOW. Requests for changes must be supported by sufficient detail to enable the other party to assess the impact of the requested change on the cost, timetable and any other relevant aspect of an SOW. Both parties agree to work together to consider and, if appropriate, agree any changes. Until a change is agreed in writing both parties will continue to act in accordance with the latest agreed version of the SOW.

Part 2. Charges and Invoicing

2.1 Charges

Basis of calculation of Charges: [Time and Materials/ Fixed Price]

[INSERT CHARGES HERE]

Where Time and Materials charging applies: charges will be calculated on the basis of the time spent by North Highland's personnel in connection with performing the Services at their respective rates. The charges will also include time spent by personnel travelling which is in excess of their normal work journey time. A normal working day is a 7.5-hour day worked between the hours of 09:00 and 17:30 on weekdays excluding public holidays. Where overtime takes place over an extended period of time or in the event significant peaks of work should occur based on Client needs, North Highland will provide reasonable notice to the Client and will work in good faith to agree upon a resolution, which may include one or more of the following: (1) adding to the team structure, (2) reducing the scope of work and/or (3) billing for the extra hours/days being worked at a modified fee rate(s). Any such modification shall be agreed to by both parties in writing.

Where Fixed Price charging applies: if North Highland incurs extra costs or the scope of the Services is increased by any delay, variation, interruption or suspension of work arising from the default or instructions of the Client and/or those persons for which the Client is responsible, and provided North Highland will advise the Client of such extra costs or increased scope as soon as reasonably practical on becoming aware of them (and where reasonably practicable before any extra costs are incurred), then North Highland may increase the Fixed Price to reflect such extra costs properly incurred or increased scope and the Client will pay the increased Fixed Price.

Should the scope of North Highland's work change, or Client's staff are not able to meet the responsibilities referred to in clause 6 of the SOW or part 4 below, or should any other circumstances arise which might necessitate a change in the Charges, North Highland will discuss the matter promptly with Client before proceeding further.

Any changes in the scope of the Services or in the Charges must be agreed in writing signed by both parties and neither party shall be obliged to implement any such change until such agreement is signed by both parties.

2.2 Invoicing

Unless specified, as set out in clause 6 of the MSA.

[specific alternative]

Part 3. Staff Team

[insert initial team members here]

Part 4. Assumptions & Responsibilities

[insert Client Responsibilities and Scope & Assumptions here]

3.1. Scope & Assumptions

Part 5: Quality

We are proud of our track record for quality delivery and the continued satisfaction of our clients. For each client engagement, we assign a Quality Coach, who is a member of our Leadership Team and will conduct regular reviews with the North Highland team from project mobilisation to close down. The Quality Coach for this engagement is [Name] and he/she would also appreciate the opportunity to periodically gather feedback from [Name] as Project Sponsor.

If at any time you would like to discuss with us how our service to you could be improved or if you are in any way dissatisfied with the service you are receiving, please let us know by contacting one of the following individuals. If you would prefer to raise the matter, or to discuss its proposed resolution, with someone different, please contact Tony Doocey, North Highland London Office Lead.

<i>Name</i>	<i>Role</i>	<i>Email</i>	<i>Phone</i>
<i>First Last</i>	<i>Quality Coach</i>		
<i>First Last</i>	<i>Sector Lead</i>		

Schedule 3 – Rate Card

[INSERT: CHARGES FOR EACH SERVICE OR METHOD OF CALCULATION OF CHARGES]

ADDENDUM

SUBSCRIPTION SERVICES TERMS AND CONDITIONS

THIS SUBSCRIPTION SERVICES TERMS AND CONDITIONS (the “Agreement”) is agreed to and made as of the [] day of [], 20[] (“Effective Date”), by and between [], a [] [corporation/limited liability company], having its principal place of business at [] (“North Highland” or “Company”), and [], a [] [corporation/limited liability company], having its principal place of business at [] (“Customer”). Now therefore, in consideration of the premises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of this agreement, the parties hereto agree as follows:

Any capitalized terms that are used in these Subscription Services Terms and Conditions but are not defined herein have the meaning ascribed to such term in the Order Form. Each Company and Customer may be referred to as a “Party” and both together, the “Parties”.

1. DEFINITIONS.

(a) **“Confidential Information”** means any non-public or proprietary information disclosed by a Party (**“Discloser”**) to the other Party (**“Recipient”**) that is in written, graphic, machine readable, oral, or other form and that (i) is identified as “Confidential” or “Proprietary” or in some other manner to indicate its confidential nature or (ii) based upon the facts and circumstances of the disclosure, information that a reasonable person would consider confidential. For clarity, the terms of this Agreement and all pricing information under this Agreement is the Confidential Information of Company. Confidential Information does not include any information that (1) was publicly available prior to the time of disclosure by the Discloser, (2) becomes publicly available after disclosure by the Discloser to the Recipient through no action or inaction of the Recipient, (3) is already in the lawful possession of the Recipient at the time of disclosure, (4) is obtained by the Recipient from a Third Party without a breach of such Third Party’s obligations of confidentiality, or (5) is independently developed by the Recipient without use of or reference to the Discloser’s Confidential Information.

(b) **“Data”** means any data or information Customer stores in or transmits through the Service.

(c) **“Order Form”** means the order form that references this Agreement and is signed by the Parties.

(d) **“Report”** means any analysis of Data that is provided to or accessed by Customer through the Service.

(e) **“Service”** means the services identified in the Order Form

(f) **“Software Services”** shall mean (i) software which is proprietary to Company; (ii) any new releases, updates or versions thereof; and (iii) any complete or partial copies of any of the foregoing.

(g) “**Terms of Use**” shall mean the terms of use for Customer’s use of the Service. Company shall be permitted to add, delete, or modify the Terms of Use at any time. Company shall give electronic notice to Customer of any additions, deletions, or modifications to the Terms of Use and Customer will have ten (10) business days to object in writing to those changes.

2. SERVICE.

(a) Subject to Customer’s continuing compliance with the terms and conditions of this Agreement, Customer may, on non-exclusive basis: (i) during the Term, use the Service to store, access, and download Data (and any Reports made available by Company) through the Service, in each case, solely for Customer’s internal business purposes; (ii) during the Term, use the Reports for Customer’s internal business purposes; and (iii) during the Term, use the Service in compliance with the Terms of Use. Company may from time-to-time upgrade, enhance or modify the Services, at Company’s discretion. Company may have to perform maintenance duties which may make the Customer’s service unavailable for a period of time.

(b) Customer will ensure the security and confidentiality of its passwords and usernames (“**Account Information**”) and is responsible for all activities performed in the Services with its Account Information.

(c) Customer will not (and Customer will not permit any third party to): (i) make the Service available to any third party (via, a services arrangement, service bureau, lease, sale, resale, or otherwise); (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Service; (iii) modify, copy, disclose, alter, translate or create derivative works of any of the Service; (iv) circumvent any usage or access limits on the use of the Service; (v) damage, disable, overburden, impair, or disrupt the Service or attempt to gain unauthorized access to any systems or networks that connect thereto or otherwise interfere with the operation of the Service or in any way with the use or enjoyment of the Service by others; (vi) export or re-export any of the Service in violation of any export control laws or regulations administered by the U.S. Department of Commerce; (vii) use the Service in any unlawful manner; (viii) use the Service other than in accordance with this Agreement; (ix) access or use the Service in order to create a product or service competitive with the Service; or (x) remove, alter or obscure any proprietary notices in or on the Service, including copyright, trademark, or other proprietary rights notices.

(d) Customer will immediately notify Company in writing of any unauthorized use of any Account Information or the Service, in each case, that comes to Customer’s attention. In the event of any such unauthorized use by any third party that obtained access to the Service through Customer, Customer will take all steps necessary to terminate such unauthorized use. Customer will provide Company with such cooperation and assistance related to any such unauthorized use as Company may reasonably request.

3. FREE TRIAL.

If Customer is provided with free or no-charge access to Services, the applicable terms and conditions of this Agreement will apply. The term of any such free trial access will be determined solely at the discretion of the Company.

Any data (Customer Data or otherwise) entered into Services, and any customizations made to Services by or for the Customer during the free trial will be permanently lost unless Customer acquires a Services subscription and makes arrangements with the Company for the preservation of such Customer Data.

Services provided during a free trial are provided “as-is”, with no warranty or guaranteed provision for availability or support unless otherwise agreed upon between Customer and the Company.

4. FEES.

(a) Customer will pay Company all fees identified on or referenced in the Order Form(s) (“**Fees**”), in U.S. Dollars, within thirty (30) days of the invoice date, unless a different period is specified in the applicable Order Form. Customer will also pay Company any sales or other taxes associated with the Service, including but not limited to any required export, re-export and import duty or tax (but excluding taxes based on Company’s net income). Company may change the Fees by no more than four percent (4%) per calendar year (unless mutually negotiated otherwise by the Parties) and payment policies for any Services provided after the Initial Term (as defined in the Order Form) by providing Customer with written notice thereof.

(b) Any amount due under this Agreement that remains unpaid after its due date will bear interest from the date that such payment became delinquent until the date such amount is paid in full at the lower of 1.5% per month or the maximum rate permitted by law, calculated from the date such amount was due until the date that payment is received. Customer will pay Company all costs and expenses of collection (including attorneys’ fees) incurred by Company for collecting any amounts past due under this Agreement.

5. OWNERSHIP.

(a) As between Company and Customer, Company owns all right, title and interest in the Service and Software Services. Customer hereby grants to Company a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid-up license to use and otherwise practice any suggestions, ideas, enhancement requests, feedback, or recommendations that Customer provides to Company. All rights not expressly granted to Customer in this Agreement are hereby expressly reserved and retained by Company and its licensors.

(b) Company hereby grants to Customer a nonexclusive, revocable right and license to use the Service in accordance with the Terms of this Agreement and the Order Form.

(c) Customer owns all Data. Company will not share any Data with third parties, except for Company vendors and contractors that provide services to Company. Notwithstanding the foregoing, Customer hereby grants Company a non-exclusive royalty-free license to: (i) use the Data to perform Company’s obligations to Customer under this Agreement, and (ii) aggregate, and de-identify the Data (the resulting data, “**Aggregated Data**”) for the purpose of providing, developing, improving, and/or reporting on the Platform. Customer hereby further grants Company a non-exclusive, royalty-free, perpetual, irrevocable, transferable license to use, reproduce, distribute, publicly display, publicly perform and create derivative works of the Aggregated Data for Company’s business and other purposes, in such a manner that neither Customer nor any Individual can be identified from such data.

(d) Notwithstanding any other agreements that may exist between Company, Customer, or affiliated companies, all intellectual property rights related to the Service and Software Services, including

ownership or license, shall be governed exclusively by this Agreement and may not be modified in any way except by written agreement, signed by both Parties, and explicitly referring to this Agreement.

(d) Customer hereby grants to Company the right to identify Customer as Company's customer by using Customer's name, trade name, or other brand features (such as Customer's trademark(s) or servicemark(s)): (i) on Company's website(s); and, (ii) in connection with any of Company's marketing or promotional materials that generally identify Company's customers of the Service, and in each case, in a manner in which Company deems, in its sole discretion, appropriate.

6. CONFIDENTIALITY. Recipient will use Discloser's Confidential Information only to exercise rights and fulfill obligations under this Agreement. Recipient will use reasonable care to protect the Discloser's Confidential Information from being disclosed to Persons other than the Recipient's employees, affiliates, contractors, agents, or professional advisors who need to know it and who have a legal obligation to keep it confidential. Recipient's disclosure of Confidential Information pursuant to law or a judicial or administrative order will not be deemed to be a breach of this Agreement, if Recipient (a) provides timely written notice of such disclosure requirement to the Discloser (if permitted to do so under Applicable Law), and (b) reasonably cooperates, at Discloser's expense, with the Discloser's efforts to limit the scope of such disclosure.

7. CONSENTS AND PRIVACY.

(a) Customer will provide any notices and obtain any consents that are required by Customer's contractual obligations with third parties, law, or applicable self-regulatory principles in order to provide the Data or to use the Services or Reports.

(b) Unless Customer receives prior express written authorization from Company, Customer will not process via, or submit to, the Services any materials or Data that include any: (i) "personal health information," as defined under the Health Insurance Portability and Accountability Act, (ii) government issued identification numbers, including Social Security numbers, driver's license numbers and other state or national issued identification numbers, (iii) financial account information, including bank account numbers, (iv) payment card data, including credit card or debit card numbers, (v) biometric information, such as fingerprints or voiceprints, (vi) personally identifiable information as may be regulated under any relevant data protection law, (vii) "sensitive" personal data, as defined under Directive 95/46/EC of the European Parliament ("**EU Directive**") and any national laws adopted pursuant to the EU Directive, about residents of Switzerland and any member country of the European Union, including racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life, or the commission or alleged commission any crime or offense, or (vii) any personally-identifiable information that may be protected under the EU Directive, the California Consumer Privacy Act of 2018 ("CCPA"), or any other relevant privacy law or regulation.

8. COMPLIANCE. Customer will comply with all laws and regulations including state and federal laws and regulations, orders, and ordinances, applicable to it, including privacy laws and regulations governing such Party and its data privacy practices ("**Applicable Law**"). Customer represents, warrants and covenants that Customer has provided all notices, and obtained all rights and permissions required under Applicable Law as may be necessary for each Party to process the Data and provide the Services as contemplated by this Agreement.

9. WARRANTY DISCLAIMERS. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT (OR OTHERWISE REQUIRED BY APPLICABLE LAW WITHOUT POSSIBILITY OF CONTRACTUAL WAIVER), COMPANY AND/OR ITS LICENSORS EXPRESSLY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND WARRANTIES IMPLIED FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE OR USAGE OF TRADE. THE SERVICE, AND REPORTS ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS WITHOUT WARRANTY OR CONDITION OF ANY KIND. THESE DISCLAIMERS WILL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR OTHERWISE REQUIRED BY LAW, CUSTOMER BEARS THE ENTIRE RISK OF USING THE SERVICES AND THE REPORTS AND RECEIVING THE SERVICES AND THE REPORTS. CUSTOMER ACKNOWLEDGES THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. COMPANY DOES NOT GUARANTEE THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, OR THAT CONTENT LOSS WON'T OCCUR, OR THAT ANY CONNECTION TO OR TRANSMISSION FROM THE COMPUTER NETWORKS WILL OCCUR, AND CUSTOMER ACKNOWLEDGES THAT IT IS NOT TECHNICALLY PRACTICABLE TO DO SO. Customer represents and covenants that Customer has not relied on any warranties, representations, or covenants not set forth in this Agreement.

10. TERM; TERMINATION; AND SUSPENSION.

(a) Unless earlier terminated as provided in the Agreement, this Agreement commences on the Effective Date and continues so long as an Order Form is in effect (the "**Term**"). Each Order Form commences on the date specified in the Order Form and continues for as long as specified in the Order Form. Each Order Form will automatically renew for the period set forth therein, unless either Party notifies the other Party of its intent not to renew at least thirty (30) days prior to the then scheduled expiration date.

(b) Notwithstanding any other provision of this Agreement, Company may immediately suspend Customer's use of the Service and/or Reports for any actual or suspected violation of any obligations under Section 2(c). Company may suspend performance of the Services while any amount owed by Customer remains past due. Either Party may terminate this Agreement if the other Party fails to correct any breach of any material term or condition of this Agreement within thirty (30) days from written notice or if (i) the other files a voluntary petition in bankruptcy or an involuntary petition is filed against it, (ii) the other is adjudged a bankrupt, (iii) a court assumes jurisdiction of the assets of the other under federal reorganization act, (iv) a trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other, (v) the other becomes insolvent or suspends business, or (vi) the other makes an assignment of its assets for the benefit of its creditors.

(c) Upon termination or expiration of the Agreement, Customer will cease all access and use of the Service. Not limiting the foregoing, in the event this Agreement expires or is terminated: (i) Customer will not be entitled to any refunds of any Fees; and (ii) Customer will promptly pay any outstanding balance for the Service rendered through the date of termination. The following sections will survive any expiration or termination: 2(c), 2(d), 3 (with respect to fees owing as of the date of expiration or termination), 4, 5, 6(d), 8, 9(c), 10, 11 and 12.

11. INDEMNIFICATION. Customer will indemnify, hold harmless and defend Company and its affiliates and each of its and their respective officers, directors, agents, partners, and employees from any and all claims, actions, proceedings, suits, liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by Company arising out of or relating to: (i) Customer's breach of any term or condition of this Agreement; (ii) Customer's access to, use, or misuse of the Service; (iii) Customer's Data; or (iv) violations of any laws, rules or regulations applicable to Customer's use of the Service or Reports, including without limitation, privacy laws.

12. LIMITATION OF LIABILITY.

(a) TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF COMPANY HAS BEEN APPRAISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT (INCLUDING ARISING UNDER THIS AGREEMENT), TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF ANY STATUTORY DUTY OR OTHERWISE, WITH THE EXPRESS EXCEPTION OF DEATH, PERSONAL INJURY, FRAUDULENT MISREPRESENTATIONS, COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL: (I) COMPANY BE LIABLE FOR DAMAGES FOR LOSS OF PROFIT OR REVENUE, DATA THAT IS LOST OR CORRUPTED, LOSS OF GOODWILL, OR OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES; AND, (II) COMPANY'S TOTAL AND CUMULATIVE LIABILITY, FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER TO COMPANY IN THE TWELVE (12) MONTHS IMMEDIATELY PROCEEDING THE OCCURRENCE OF THE FIRST EVENT GIVING RISE TO A CLAIM UNDER THIS AGREEMENT.

(b) Customer acknowledges that the Fees, exclusions, disclaimers and limitations of liability set forth in this Agreement are essential components of this Agreement and form the basis for determining the price charged for the Service, and that Company would not enter into this Agreement without these limitations on its liability. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy.

13. GENERAL. This Agreement (including all Exhibits attached hereto) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes and merges all prior proposals, understandings and contemporaneous communications. This Agreement may not be modified except by written agreement of both Parties. Notwithstanding any other agreements that may exist between Company, Customer, or any affiliated companies, the Services shall be governed exclusively by this Agreement and may not be modified in any way except by written agreement, signed by both Parties, and explicitly referring to this Agreement. Customer will not assign any of the rights or obligations granted hereunder, except with the express written consent of Company, and any attempted assignment in violation of this paragraph is void. Company may assign this Agreement or delegate its obligations hereunder without restriction. The Parties are independent contractors; and, this Agreement does not create or imply any partnership, agency or joint venture. A waiver of any provision of this Agreement must be signed by the waiving Party; and, one waiver will not imply any future waiver. Neither Party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (other than monetary obligations) as a result of any cause or condition beyond such Party's reasonable control. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without regard to or application of any

conflicts of law rules or principles and without regard to the United Nations Convention on the International Sale of Goods. Any dispute arising between the parties out of or in connection with this Agreement will be finally resolved by arbitration conducted by one arbitrator in Atlanta, Georgia pursuant to the International Arbitration Rules of the American Arbitration Association ("AAA") applicable to commercial disputes. The arbitrator's award will be final and binding and may be entered in any court having jurisdiction thereof. Each Party will bear its own costs and attorneys' fees, and will share equally in the fees and expenses of the arbitrator. The arbitration will be conducted in English, the governing language of this Agreement. If any provision (or any part thereof) of this Agreement is unenforceable under or prohibited by any present or future law, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from this Agreement; and, all the remaining provisions of this Agreement will remain unimpaired. Any notice or other communication under this Agreement given by any Party to any other Party must be in writing and will be effective upon delivery as follows: (a) if to Customer, (i) when delivered via registered mail, return receipt requested, to the address specified in the Order Form or otherwise on record for Customer; or (ii) when sent via email to the email address specified in an Order Form or otherwise on record for Customer; and (b) if to Company, when sent via registered mail, return receipt requested, to Company at the address set forth in the Order Form or such other address which Company may specify from time to time. This Agreement may be executed in counterparts, all of which together constitute a single agreement and any one of which will be deemed an original. The execution of this Assignment may be evidenced by way of a facsimile, portable document format (.pdf) transmission or electronic production or reproduction, photostatic or otherwise, of such party's or person's signature, and such portable document format (.pdf), or electronic production or reproduction signature will be deemed to constitute the original signature of such party or person.