



# SELLIGENT, LTD. MASTER SERVICES AGREEMENT

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# SELLIGENT MARKETING CLOUD SUBSCRIPTION AND SERVICES AGREEMENT

**IMPORTANT, READ CAREFULLY: CLIENT'S USE OF AND ACCESS TO THE WEBSITE, PRODUCTS AND ASSOCIATED SERVICES AND SOFTWARE (COLLECTIVELY, THE "SERVICES") OF SELLIGENT LTD T/A SELLIGENT MARKETING CLOUD ("SELLIGENT") IS CONDITIONED UPON CLIENT'S COMPLIANCE AND ACCEPTANCE OF THESE TERMS.**

THIS MASTER SERVICES AGREEMENT GOVERNS ACQUISITION AND USE OF SELLIGENT'S SERVICES BY THE CLIENT. BY EXECUTING A SALES ORDER AND/OR STATEMENT OF WORK THAT REFERENCES THIS AGREEMENT, THE CLIENT AGREES TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY REPRESENTS TO HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. ANY INDIVIDUAL WHO DOES NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH ALL OF THESE TERMS AND CONDITIONS, MUST NOT ACCEPT THIS AGREEMENT. ANY CLIENT WHO DOES NOT AGREE WITH THESE TERMS AND CONDITIONS MAY NOT ACCESS OR USE THE SERVICES. IN ADDITION, THE SERVICES MAY NOT BE ACCESSED BY ANY USER FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE, OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES WITHOUT THE EXPRESS WRITTEN PERMISSION OF SELLIGENT LTD T/A SELLIGENT MARKETING CLOUD.

This Agreement was last updated on **February 8, 2018**, it is effective between the Client and Selligent as of the date of a Sales Order and/or Statement of Work is executed by both parties.

## 1. DEFINITIONS.

**1.1 "Agreement"** means this Subscription and Services Agreement, the Services Order(s), SOW(s) and the other documents as listed below and incorporated herein by reference, in prevailing order should there be conflicting provision:

1. Services Order(s), as applicable;
2. Specific Agreement(s), as applicable;
3. Data Processing Agreement ("DPA"), as applicable;
4. Support and Service Level Schedule;
5. Subscription and Services Agreement.

**1.2 “Acceptable Use Policy” or “AUP”** refers to the required actions and practices, as well as those actions and practices that are unacceptable and prohibited, with respect to the Client’s use of any product or Service created, developed, sold, licensed, delivered, supplied or performed by Selligent.

**1.3 “Brand”** Any combination of unique design, sign, symbol, words, or a combination of these, employed by Client in creating an image that identifies a product and differentiates it from its competitors or its other services.

**1.4 “Channel”** In addition to the Platform’s base modules, Client can add additional modules to enhance functionality or mode of communication with Client’s customers, each of these modules is a “Channel”. Each Channel is available separately and shall be accessible only via execution of a Sales Order(s).

**1.5 “Client”** includes any entity that controls, is controlled by, or is under common control with Client (“Affiliates”). For purposes of this Agreement, “Affiliate” means any entity directly or indirectly controlling or controlled by or in common control with Client, where “control” is defined as the ownership of at least 50% of the equity or beneficial interests of such entity or the right to vote for or appoint a majority of the board of directors or other governing body of such entity, and any other entity with respect to which Client or any of such Affiliates has management or operational responsibility. “Client” also includes any and all employees, agents, independent contractors, subcontractors, or affiliated third parties of Client who access or otherwise use the Service(s) provided under this Agreement. Client shall assume any liability arising out of the performance of its Affiliates, employees, agents, independent contractors, and affiliated third parties under this Agreement.

**1.6 “Client Data”** is all data or information submitted by or on behalf of Client to or through the Service(s), including Consumer Data, any audio-visual design assets (i.e., photographic images, video, animations, illustrations), or other identifying or branding elements of Client or its clients to enable performance of the Service(s).

**1.7 “Consumer Data”** means any information to which Selligent is provided access under this Agreement that could identify an individual either directly or indirectly including, without limitation, the individual’s name, birth date, personal contact information, passwords, employment information, or other individual confidential information.

**1.8 “Documentation”** are the information provided by Selligent describing operation and use of the Service(s), by any means of delivery, whether at Client’s written request or otherwise, and all as provided to Selligent’s clients generally and all such items as updated from time to time.

**1.9 “Platform”** means the technical infrastructure Selligent has in place to provide the subscription Service for Client. Client may, elect to have multiple, logically separated installations of the Platform, each an “Instance”. Instance(s) may be ordered only via execution of a Sales Order.

**1.10 “Project Service(s)”** means project or data services, of which timing and staff availability are planned with Client. Project Services can be (but are not limited to) auditing the quality of databases, project management, technical integration services, campaign creation services, consultancy services, and training services (the “Deliverables”). Deliverables, if any, are limited to content specific to Client and do not include any retained, common, reusable or generic elements or methodologies.

**1.11 “Sector”** a description of the industry on which the Client’s primary business is focused.

**1.12 “Service(s)”** means the Subscription Services, Project Services and Support Services that the Client orders in the framework of this Agreement. “Additional Services” may be ordered via subsequent SOW(s) and/or Sales Order(s).

**1.13 “Service Order(s)”** are the ordering documents, including but not limited to a Sales Order, Statement of Work or otherwise, that specify, among other things, each Service, its subscription term and the scope of Service(s) ordered, and the applicable fees. All such forms are executed hereunder and deemed incorporated herein.

**1.14 “Statement of Work” or “SOW”** means a document executed by Client and Selligent that further specifies any additional service(s), including any fees associated therewith, and any other terms and conditions mutually agreed to by the parties.

**1.15 “Subscription Service(s)”** means, as ordered on a Service Order, the software and products which Selligent owns and/or is licensed to resell and/or distribute from third parties, accessible via a designated website or IP address, or ancillary products and services provided to Client by Selligent, to which Client is being granted access under this Agreement.

**1.16 “Subscription Term”** means the term specified in the applicable Sales Order during which Client can use the Subscription Service.

**1.17 “Support Service(s)”** means help-desk and technical support services which are by nature consumed on an ad-hoc basis and cannot be planned. Selligent provides permanent availability for those services governed by the conditions in the Support and Service Level Schedule.

**1.18 “Unique Contact”** is a deduplicated e-mail address appearing on Client’s lists within the Platform. The number of Unique Contacts appearing in a Client’s list shall be used for billing purposes as described in an applicable Sales Order(s).

**1.19 “Usage Rights”** means those rights to use the Subscription Services within the limits agreed upon in a Sales Order.

**1.20 “User”** means an individual expressly authorized by Client to use the Services and to whom Client has supplied a user identification and password, such as employees, agents (third-party service providers), independent contractors or subcontractors.

## **2. Provision and Use of the Service(s).**

**2.1 Description of Service(s).** Selligent will make available the Service(s) for Client’s use in an environment hosted and managed by Selligent and its contracted third-party(ies). Selligent may change third-party providers at any time in its sole discretion, including by hosting or providing the Service(s) directly. Client shall have no right to pursue a cause of action or other claim against any such third-party provider(s) with respect to the provision of Services under this Agreement, and expressly acknowledges this and waives any such right(s) to do so, provided, however, that the obligations under this Section 2.1 shall not constitute a waiver of any rights Client may have against Selligent related to the provision of Service(s) under this Agreement, including those aspects of the Service(s) provided by a contracted third-party, and Selligent acknowledges that it is responsible and liable for the performance of any third-party vendor hereunder. Selligent or its contracted third-party(ies) may provide Client, solely for Client’s own internal use, with access information (including without limitation URL(s), XML interface(s), user name(s) and/or password(s)) to access the Service(s). If a server migration is required, Selligent will take commercially reasonable steps to notify Client at least twelve (12) hours in advance of beginning the migration unless the server migration process must begin sooner to protect server data. Selligent will also take commercially reasonable steps to ensure that server migrations are complete within six (6) hours of start time. Client agrees that other required maintenance may interfere with access and use of the Service(s) until such maintenance has been completed, and expressly accepts such condition. Selligent will take commercially reasonable steps to notify Client approximately two (2) business days in advance of any such additional required maintenance. In the event of downtime, Client will only be entitled to credit(s), refund(s), and/or set-offs as expressly provided in this Agreement, the Support and Service Level Schedule attached hereto as Exhibit A and incorporated herein by reference, or as otherwise agreed upon by the parties in writing. Selligent will also provide Client with Project Services and Support Services as may be described in specific Service Order. Client shall not have any right, claim or interest whatsoever relating to the Services other than those granted by this Agreement. Client agrees that execution of any Service Order shall not be contingent on the delivery of any future functionality or features, nor shall any such execution rely on any oral or written, private or public comments made by Selligent respecting future functionality or features.

**2.2 Selligent Obligations; Reservations of Rights.** Selligent shall make the Service(s) available to Client pursuant to all the terms and conditions of this Agreement and any set forth on the Service Order(s). During the term of this Agreement: (i) the Service(s) shall perform materially in accordance with its Documentation, and (ii) the functionality of the Service(s) will not be materially decreased from that available as of the Effective Date. Client agrees its purchase of one or more subscriptions is not contingent on the delivery of any future functionality or features nor on any oral or written private or public comments made by Selligent respecting future functionality or features. Client acknowledges that in providing the Service(s), Selligent uses Selligent’s: (a) company name(s), trademark(s) and logo(s), domain name(s), the product and service name(s) associated with the Service(s), and other trademarks and service marks; (b) certain

audio and visual information; and (c) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions, and other tangible or intangible technical material or information (collectively "Selligent Technology") and that the Selligent Technology is covered by intellectual property rights owned or licensed by Selligent (collectively "Selligent IP Rights"). Other than as expressly set forth in this Agreement, no license or other rights in or to the Selligent Technology or Selligent IP Rights are granted to Client, and all such licenses and rights are hereby expressly reserved. In addition, Selligent reserves the right to modify, update, upgrade, or discontinue features of the Service(s). No functionality of the Service(s) will be materially decreased from that available as of the Services ordering. Client acknowledges and agrees that Selligent may, subject to the terms of its Privacy Policy and this Agreement, use Client Data to provide services hereunder. Client hereby grants to Selligent a non-exclusive, non-transferable license to use, perform, and display the Client Data during the Term solely to allow Selligent to perform its obligations as stated herein. Selligent may prepare aggregated and anonymized summary statistics incorporating and based upon the usage activity, data and other statistics of Client and Selligent's other clients ("Benchmarking Statistics"). Selligent shall own the Benchmarking Statistics which it may use in its own research, marketing and other commercial services, offerings or activities.

**2.3 Client Responsibilities.** Client shall use the Service(s) solely for its internal business purposes as contemplated by this Agreement. Client is responsible for all activities that occur under Client's user accounts. Client shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data (including its text, audio, video, images or other content) and shall not store in the cloud data warehouse any data that is illegal, harmful, or offensive; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service(s), and notify Selligent promptly of any unauthorized use; and (iii) have sole responsibility for complying with all applicable local, state, federal, and foreign laws and regulations in using the Service(s). Client agrees not to store any data in the cloud data warehouse that violates the security or integrity of any network, computer or communications system, software application, or network or computing device.

**2.4 Client Use Guidelines & Restrictions.** Selligent grants Client a limited, non-exclusive, non-transferable, non-sublicensable, worldwide right to access and use the Service(s) in accordance with all the terms and conditions of this Agreement. Client is responsible for the provision and use of the appropriate equipment needed to connect to and use the Services, including, without limitation, computers, computer operating system and web browser. Client shall ensure that this equipment complies with the specifications set forth in the Documentation. Client shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or make the Service(s) available to any third-party, other than as contemplated by this Agreement; (ii) use the Service(s) to send spam or otherwise duplicative or unsolicited electronic communications in violation of applicable law; (iii) send or store material which is infringing, libellous, or otherwise unlawful or tortious, including material harmful to children or violative of third-party privacy rights; (iv) use the Services for criminal, illegal or otherwise unlawful purposes; (v) send or store material known by Client to contain software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (vi) intentionally interfere with or disrupt the integrity or performance of the Service(s) or the data contained therein; or (vii) attempt to gain unauthorized access to the Service(s) or their related systems or networks; (viii) modify,

copy or create derivative works based on the Service(s) or Selligent Technology; (ix) create Internet "links" to or from the Service(s), or "frame" or "mirror" any content forming part of the Service(s), other than on Client's own intranets or otherwise for its own internal business purposes; or (x) disassemble, reverse engineer, translate or decompile the Service(s) or Selligent Technology, or purposefully access it with the intent to (A) build a competitive product or service, (B) build a product or service using substantially similar features, functions or graphics of the Service(s), or (C) copy any features, functions, or graphics of the Service(s). Client may not access the Service(s) if Client is a direct competitor of Selligent, except with Selligent's prior written consent. Client may not access the Service(s) for purposes of monitoring its performance or functionality, or for any other benchmarking or competitive purpose(s). Client may not use the Services or the Platform for activities or purposes for which the Platform or Services require specific certifications (e.g. they are not certified for Payment Card Industry (PCI) compliance or healthcare related data) or are not conceived (e.g. the sending of videos and the hosting of videos on the Platform & Services or using of bandwidth in an abusive manner by including large files in e-mails are forbidden), or in excess of the Platform Limitations (defined in the Documentation), or in a manner adversely affecting the Services' usability for Selligent, including other Selligent clients.

**2.5 Subscription Services Requirements:** Except to the extent the enumerated items below permit deviation, Client must, at all times, comply with the Acceptable Use Policy ("AUP") of Selligent, as may be updated from time-to-time by Selligent, in its sole discretion, on notice to Client, currently available at: <http://www.selligent.com/acceptable-use-policy>.

Client further agrees it will:

- a. use reasonable security precautions, including encrypting any Consumer Data transmitted to Selligent servers or storage devices;
- b. cooperate with Selligent's reasonable investigation of services outages, security problems and any suspected breach of this Agreement, including all exhibit(s) and Service Orders;
- c. include the recipient's e-mail address in the body of the message or in the "TO" line of the e-mail;
- d. on request, and as needed, respond to any third-party complaints, promptly provide any available information documenting the business relationship or consent of the involved parties, and otherwise reasonably cooperate in responding to complaints and mitigating the effects related to such complaints on applicable third-party cloud hosting provider's network or Selligent's provision of the Service(s);
- e. post a Privacy Policy for each domain named in or associated with each mailing;
- f. post an e-mail address for complaints (such as [abuse@yourdomain.com](mailto:abuse@yourdomain.com)) in a conspicuous place on each website named in or associated with each mailing and promptly respond to messages sent to such address;
- g. have the means to track anonymous complaints sent to such registered address;
- h. not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission;
- i. honour revocations of consent or unsubscribe requests, and notify recipients of the same; and

- j. properly handle and process notices sent to Client by any person claiming Client Data violates such person's rights.

Selligent, of its own accord or at the direction of any then-applicable third-party service provider(s) may suspend or terminate the Service(s), and as the case may be, IP address(es), for a violation of the AUP or an actual or reasonably-apparent imminent attack or unauthorized access, until such violation, attack or unauthorized access is remedied. In the event Selligent must suspend Service(s) due to an actual or reasonably apparent imminent attack on, or unauthorized access to, the Service(s), Selligent will use commercially reasonable efforts to provide Client with advance notice of such suspension. Selligent reserves the right to finally terminate any client for any singular material violation that risks the safety, security or reputation of any network, person or entity, or for repeat violations of the AUP resulting in burdensome administration for Selligent or the then-applicable third-party service provider. In any such event Client is not entitled to any credit, refund, or set-off.

**2.6 Third-Party Providers.** Any exchange of data or other interaction between Client and a third-party provider (other than any subcontractor or agent performing any obligations of Selligent under this Agreement), and any purchase by Client of any product or service offered by any third-party provider, is solely between Client and such third-party provider.

### **3. Fees & Payment.**

**3.1 Fees.** Client shall pay all fees specified in all executed Service Orders hereunder. Except as otherwise provided in a Sales Order or SOW, all fees are quoted in British Pound Sterling ("GBP"), excluding VAT or any other relevant taxes. Except as provided for in Sections 6.2 and 9.2 of this Agreement, all Fees are non-refundable.

**3.2 Invoicing & Payment.** Fees for the Service(s) will be invoiced in accordance with the terms in the relevant Service Order and shall be payable, by Client, annually in advance, unless otherwise agreed to in writing by the parties. Unless otherwise stated in the Service Order, charges are due net thirty (30) days from date of invoice. Unless otherwise stated in the Service Order, all payments made under this Agreement are in GBP. Client shall maintain complete and accurate billing and contact information on the Service(s) at all times, and shall update such information periodically, as needed. Unless agreed to otherwise in a specific Service Order, all payments made by Client hereunder shall be made electronically via automated clearing house payment ("ACH") or wire transfer in accordance with the terms herein.

**3.3 Overdue Payments.** Selligent will automatically (no notice of non-performance being required) be entitled to (i) an interest for late payment that is equal to the ECB base rate + 8%, rounded up to the next half percentage point and (ii) a fixed sum of minimum £100 as compensation for administrative and other expenses and that Selligent is also entitled to obtain reasonable compensation from Client for any recovery costs exceeding the fixed sum of £100 and incurred due to Client's late payment. Upon two (2) business days' notice, Selligent may suspend any Service that is unpaid as and when due, and will notify Client of such suspension by e-mail. Selligent may fully and finally



terminate any Service(s) that remains unpaid as of five (5) business days following such e-mail notice. In the event of any such suspension or termination of Services as described herein, Client acknowledges and agrees that Selligent has no obligation to retain Client Data and such Client Data may be irretrievably deleted no sooner than fourteen (14) days after any termination hereunder.

**3.4 Indexation.** All Fees payable by Client pursuant to this Agreement shall be adjusted each year on the anniversary date of the Effective Date, as defined in the relevant Sales Order, depending on the variations in the UK consumer price index (hereafter the "Index"), using the formula:

$P1 = (P0 \times S1)/S0$  where:

- P1 = New Fee for the year N;
- P0 = Current Fee
- S1 = Index from the month before the month of the anniversary date of the Contract Effective Date for the year N;
- S0 = Index from the month before the month of the anniversary date of the Contract Effective Date for the year N-1.

Example:

Contract Effective Date: 15 March 2017 – Monthly Subscription Fee of £5,000

The first indexation shall take place on 15 Mars 2018 as follows:

$P0 = £5,000$

$S1 = [102]$  (index of February 2018, published beginning of March 2018)

$S0 = [101]$  (index de February 2017, published beginning of Mars 2017)

$$P1 = (5,000 \times 102) / 101 = £5,049.50$$

## 4. Confidentiality.

**4.1 Definition of Confidential Information.** As used herein, "Confidential Information" is all non-public and proprietary information of a party ("Disclosing Party") disclosed by or on behalf of the Disclosing Party to the other ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be

confidential given the nature of the information and the circumstances of disclosure, including this Agreement (and pricing and other terms reflected in all Service Order(s)), Client Data, the Service(s), the Selligent Technology, business and marketing plans, trade secrets, technology and technical information, product designs, methods, processes, code, data, inventions, apparatus, statistics, programs, research, development, information technology, network designs, passwords, sign-on codes, usage data, business processes, and the terms of this Agreement. Confidential Information (except for Client Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; (iv) is incorporated into Benchmarking Statistics; or (v) is received from a third-party without breach of any obligation owed to the Disclosing Party.

**4.2 Confidentiality.** Except as provided for in Section 2.1 and 4.4 of this Agreement, the Receiving Party shall not disclose or use Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written permission.

**4.3 Protection.** For a period of five (5) years from initial disclosure, each party agrees to a) use not less than a commercially reasonable standard of care to protect Disclosing Party's Confidential Information disclosed hereunder; (b) not use Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement; (c) not disclose the Confidential Information to any other third-party except as provided herein or as authorized by Discloser in writing; and (d) disclose Disclosing Party's Confidential Information to its Representatives on a "need-to-know" basis only, provided that each Representative is bound by obligations of confidentiality and usage and restrictions against disclosure substantially similar to those contained herein. If required under applicable law, Client and Selligent agree to execute a DPA, a copy of which is hereby incorporated into this Agreement as Exhibit B. Client agrees that Selligent may, subject to the terms of the DPA, process Consumer Data.

**4.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**4.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

**4.6 Return of Confidential Information.** Upon the written request of Disclosing Party at any time, Receiving Party shall at its option, and if legally permissible, return or destroy (and certify such destruction in a signed writing) all Confidential Information of Disclosing Party, including all copies thereof, whether in physical or electronic form; provided,

however, Selligent may retain a copy of Client's Confidential Information for archival purposes. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any copies retained for archival purposes, Recipient shall continue to maintain the confidentiality of such information in accordance with this Agreement for as long as such information is retained.

**4.7 Data Breach.** For purposes of this section, "breach" means any unlawful or unauthorized acquisition or use of Consumer Data that compromises the security, privacy, or integrity of the Consumer Data. If any Consumer Data that is held by Selligent is breached, Selligent shall utilize best efforts to: (i) provide the Client written notice of such breach no later than three (3) business days from the date it obtains actual or constructive knowledge of the breach; and (ii) mitigate any and all adverse effects of the Consumer Data breach. In the event of a breach as defined in this provision or any other occurrence of any other event regarding Consumer Data that requires notification under applicable law, Selligent agrees, subject to the limits set forth in Section 7, to pay the Client's reasonable direct costs incurred in providing any required notice to affected individuals in accordance with any applicable law.

## **5. Warranties & Disclaimers.**

**5.1 Mutual Warranties.** Each party warrants that it has the legal power to enter into this Agreement.

**5.2 Selligent Warranties.** Selligent warrants that it will provide the Service(s) in a workmanlike manner consistent with general industry standards reasonably applicable to the provision thereof. If Client notifies Selligent in writing of errors in any Deliverables or Subscription Services within thirty (30) days of receipt, Selligent's sole liability with respect to the errors in the unaltered versions of such Deliverables or Subscription Services, shall be to attempt to correct those errors on a time and materials basis at its then-current rates.

**5.3 Client Warranties.** Client warrants that: (a) Client owns or otherwise has the right to use any Client Data, Consumer Data, software, systems or materials provided by or on behalf of Client to Selligent in performing any Services hereunder; (b) Client Data and Consumer Data do not and shall not contain any data or materials that infringe upon the intellectual property rights of a third party, or that Client knows to be inaccurate; (c) Client has obtained the necessary authorizations to permit Selligent to access any third party data, software, systems and materials to provide any Services requested under an applicable Sales Order or Statement of Work; and (d) Client's use of the Services, Deliverables, and any outputs or results obtained therefrom shall not violate any applicable law, rule, or regulation, including, without limitation, export, privacy, anti-discrimination, or anti-trust laws, or any proprietary or contract right of any third-party.

**5.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLIGENT MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. SELLIGENT HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS

FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## 6. Indemnification.

**6.1 Mutual Indemnification.** Each Party (the “Indemnifying Party”) will indemnify, defend, and hold the other Party and its respective officers, directors, employees and agents harmless from and against any and all third party claims, actions, demands, or lawsuits arising out of performance of this Agreement, and resulting judgments, damages, liabilities, fines, penalties, losses, costs, and expenses (including reasonable attorneys' fees) or any amounts paid in settlement thereof subject to the conditions herein, to the extent arising out of or relating to:

(a) the gross negligence or wilful misconduct of the Indemnifying Party; or

(b) any act or omission by the Indemnifying Party that results in personal injury or death.

**6.2 Indemnification by Selligent.** Subject to this Agreement and the limitations set forth herein, Selligent shall defend, indemnify and hold Client harmless against any loss or damage incurred in connection with claims, demands, suits, or proceedings ("Claim(s)") made or brought against Client by a third-party (i) alleging that the use of the Service(s) as contemplated hereunder infringes any third-party United Kingdom or European Union copyright(s) or trademark(s), registered as of the Effective Date of Sales Order No.1, or misappropriates such third-party(ies)'s trade secret(s), or (ii) against any damages, penalties, and fines resulting solely from Selligent's failure to comply with applicable law or with the provisions of Section 4.7; provided, that Client (a) promptly gives written notice of the Claim to Selligent (but only to the extent that delay in giving notice materially prejudices Selligent's ability to fulfil its obligations under this Section); (b) gives Selligent sole control of the defence and settlement of the Claim; and (c) provides to Selligent, at Selligent's cost, all reasonable assistance. The Client may also choose to participate in the defence of such claims at Client's sole cost and expense. Selligent's obligations under this Section 6.1 shall be Client's sole remedy for any of the above infringement, misappropriation, and data breach claims and actions. Exclusive of any costs of defence incurred by Selligent in connection with any Claim, the aggregate liability of Selligent under this Section 6.2, including without limitation any liability arising from judgments, damages, awards, fines, penalties, recoveries, or settlements resulting from a Claim, shall be limited to the aggregate amounts paid or payable by Client in the twelve (12) months preceding any such Claim. Selligent's obligations under this Section 6.2 shall not apply if the alleged infringement or misappropriation is based on the Client Data or results from use of the Services in conjunction with any other platform, product or service, or unlicensed activities or use of the Services in violation of this Agreement. In the event a Claim under this Section 6.1 is made or in Selligent's reasonable opinion is likely to be made, Selligent may, at its sole option and expense: (i) procure for Client the right to continue using the Services under the terms of this Agreement; (ii) replace or modify the Services to be non-infringing; or (iii) if the foregoing options are not reasonably available, Selligent may terminate this Agreement and refund to Client all prepaid, unused fees.

**6.3 Indemnification by Client.** Subject to this Agreement, Client shall defend, indemnify and hold Selligent harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Selligent by a third-party alleging that the Client Data or Client's illegal or unauthorized use of the Service(s) infringes the rights of, or has otherwise harmed, a third-party; provided, that Selligent (a) promptly gives written notice of the Claim to Client; (but only to the extent that delay in giving notice materially prejudices Client's ability to fulfil its obligations under this Section 6.3) (b) gives Client sole control of the defence and settlement of the Claim (provided that Client may not settle or defend any Claim unless it unconditionally releases Selligent of all liability); and (c) provides to Client, at Client's cost, all reasonable assistance.

## **7. Limitation of Liability.**

**7.1 Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 6.1, SELLIGENT'S DEFENSE OBLIGATIONS UNDER SECTION 6.2, THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 6.3; AND CLIENT'S VIOLATION OF SECTION 2.3, 2.4, OR 2.5 OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE AMOUNTS PAID AND PAYABLE BY CLIENT TO SELLIGENT, IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

**7.3 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY NOR SELLIGENT'S THIRD-PARTY HOSTING PROVIDER(S), HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS (EXCLUDING ANY FEES OWED TO SELLIGENT BY CLIENT UNDER THIS AGREEMENT), LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS SECTION SHALL NOT BE CONSTRUED TO PROHIBIT A SELLIGENT CLAIM FOR DAMAGES ALLEGING ANY SUCH BASES DUE TO VIOLATION OF THE PROPRIETARY RIGHTS SECTION (COPYING, ETC.) WHICH SELLIGENT ASSERTS ARE DIRECT, AND NOT INDIRECT DAMAGES.

**8. Publicity.** Subject to Client's prior written approval (e-mail deemed sufficient), Selligent may use Client's name, tradename(s), trademark(s), and/or logo(s) in Selligent's client list identifying all or a material representation of Selligent's clients. Client agrees to participate in the development of a case study and/or white paper for publication on Selligent's website and/or other media outlets, and Client agrees to serve as a commercial reference client and/or provide a testimonial for Selligent and its Services. Selligent agrees not to alter the name or logo presentation as provided by Client in any such list, nor to state or imply any endorsement by Client.

## **9. Term & Termination.**

**9.1 Term of Agreement.** This Agreement shall take effect on the Effective Date and remain in force so long as there is at least one active Service Order in place, unless earlier terminated in accordance with this Section 9. Each Service shall be sold in a minimum of one (1) year increments. All Service Orders will automatically renew at the end of each term for an additional term of the same duration (each a “Renewal Term”), unless either party gives the other notice of non-renewal at least ninety (90) calendar days before the end of the then-current term. Renewals will automatically apply to all Services listed in the applicable Sales Order or Statement of Work. Timeframes specified in any Service Order or Statement of Work are only estimates. Actual performance times will be dependent upon Client’s timely provision of accurate and properly-formatted data, feedback, and access to key personnel reasonably requested by Selligent from time-to-time. Selligent shall not be accountable for any performance delays caused by Client’s failure to timely provide such data, access, or feedback required for performance. In such an event, estimated timetables shall be extended accordingly and Fees may be increased as a result of such delays.

**9.2 Termination for Cause.** A party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach (other than non-payment which is not subject to a thirty (30) day cure and is due when scheduled) to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Subject to seven (7) days prior written notice, Selligent reserves the right to deactivate Client’s passwords and/or credentials, and/or to block access to the Services for as long as Client remains in breach of its contractual obligations (including its payment obligations), and Client will be solely responsible for any and all consequences resulting from such blocking and/or deactivation, without possibility of recourse against Selligent. Selligent may terminate this Agreement if, at any time, Client becomes a direct competitor of Selligent’s. Upon any termination for cause by Client, Selligent shall refund Client any prepaid fees for the remainder of the subscription term after the date of termination.

**9.3 Outstanding Fees.** Termination shall not relieve Client of the obligation to pay any fees accrued and/or payable prior to the effective date of termination.

**9.4 Return of Client Data.** Subject to Section 3.3 above, upon written request by Client made within ten (10) calendar days prior to the effective date of termination or expiration of this Agreement, Selligent will return to Client, any Client Data through FTPS or SFTP. The format in which such data will be returned will be in Selligent format or any other format that can be run on industry standard, commercially available, software. All complaints relating to the return of the data must be notified to Selligent in writing within 5 working days of the return, failing which such claim will be dismissed. After termination of the Agreement, Selligent shall have no obligation to maintain or provide Client Data and shall thereafter, in due course, delete all Client Data in its systems or otherwise in its possession or control.

**9.5 Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 2, 3, 4, 6, 7, 9.3, 9.4, 9.5, and 10.

## **10. General Provisions.**

**10.1 Nature of Relationship.** Client and Selligent understand, acknowledge and agree that their relationship is that of independent contractor, and nothing in this Agreement is intended to create a partnership, agency, joint venture or employment relationship.

**10.2 Entire Agreement.** This Agreement, as defined herein, constitutes the entire agreement between the parties relating to subject matter hereof and supersedes all prior or simultaneous agreements, discussions, negotiations and statements, written or oral.

**10.3 Other Documents.** No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Client may use in connection with a Service Order or the purchase of any Service will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Selligent to object to such terms, provisions or conditions. Except as otherwise provided in Sections 6.2 and 9.2, Services Orders are non-cancellable, non-refundable, and non-returnable.

**10.4 Governing Law; Limitation.** This Agreement is governed by and construed under English law, without reference to its conflicts of law principles. Any dispute in connection to this Agreement shall be subject to the sole jurisdiction of the courts of England. Any claim before a court in connection with this Agreement may only be initiated by the party executing this Agreement and is subject to a limitation period of one (1) year from of the date on which the facts giving rise to such claim are known, or should have been known by the claimant.

**10.5 Export Control.** Each party warrants that it will comply with the export regulations and other laws governing exports in effect from time to time.

**10.6 Government Approvals.** Client warrants to the best of its knowledge that no consent, approval or authorization of, or designation, declaration or filing with, any governmental authority is required in connection with the valid execution, delivery and performance of this Agreement.

**10.7 Force Majeure.** Neither party shall incur any liability to the other on account of any loss, claim, damage, or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this Section. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions, but the inability to meet financial obligations is expressly excluded.

**10.8 Audit.** Upon thirty (30) days prior written notice, not more than once per calendar year, and subject to any confidentiality obligations owing to any third-parties, Selligent shall make available such financial and technical records to permit Client to verify Selligent's compliance with the terms of this Agreement. Client will conduct any audits in a way to avoid unreasonable interference with Selligent's normal business operations and in accordance with the terms of Section 4 of Exhibit A.

**10.9 Compliance.** Client acknowledges the Service(s) may include a monitoring component to track usage and agrees not to impede, disable or otherwise undermine such monitoring component's operation or its transmission of data to Selligent.

**10.10 Successors and Assigns; Assignment.** The parties acknowledge that the licenses granted hereunder are personal to Client. Neither this Agreement nor any rights or obligations of either Party arising hereunder may be assigned or transferred without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. As used herein, an "assignment" includes transfer to any entity in connection with a merger, acquisition, or corporate change of control. If a Party provides a commercially reasonable basis for withholding consent to an assignment under this Section 10.11, said non-consenting Party may terminate this Agreement upon ninety (90) days written notice to the other Party.

**10.11 Amendment; Severability.** This Agreement may be amended or supplemented only in a writing signed by duly authorized representatives of both parties. If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired. Client and Selligent shall replace any invalid provision with a valid one that most closely approximates the intent and economic effect of the invalid provision.

**10.12 Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by either of the parties hereto of a breach or of a default under any of the provisions of this Agreement shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any party may otherwise have at law or in equity. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such party's rights under this Agreement and shall not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

**10.13 Feedback.** Client agrees that Selligent, or its agents, may freely use, disclose, reproduce, license, distribute, or otherwise exploit in any manner any feedback, comments, or suggestions Client or its Users may post in any forums or otherwise provide to Selligent about the Services and Software without any obligation to Client or its Users, restrictions of any kind (including on account of any intellectual property rights), and without any obligation of compensation to Client, its Users and/or any third-party.

**10.14 Non-Solicitation.** During the term of this Agreement and for a period of six (6) months after its expiration, neither party shall, directly or indirectly, solicit any current employee of the other party who has directly participated in the performance of this Agreement. In the event of a breach of this section, the non-defaulting party may, within thirty (30) days following its notice of such breach, claim from the defaulting party compensation in the amount of twelve (12) months of the applicable employee's most



recent compensation rate as an employee of the non-defaulting party. The foregoing shall not apply to individuals hired as a result of the use of an independent employment agency (so long as the agency was not directed to solicit a particular individual) or as a result of the use of a general solicitation (such as a newspaper advertisement or digital posting) not specifically directed to employees of any other party.

**10.15 Notices.** Any notice required or permitted under this Agreement or required by law must be in writing and be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by reputable overnight courier, in each case properly posted and fully prepaid to the address of the applicable party identified herein as of the Effective Date, or to such other address of such party as may be later designated in writing in accordance with this Section. Notices shall be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service, provided in each case that delivery in fact is effected. E-mail notice may be given to noticed e-mail addresses and are effective on dispatch, provided one of the above methods is also initiated on such same date and delivery of such other method is thereafter in fact effectuated. Client must notify Selligent of any changes to its Client contact, accounts payable, and Authorized Support Contact information, within 7 days of any change thereto.

**10.16 Construction; Titles and Subtitles; Counterparts.** In this Agreement, unless it says otherwise: (a) reference to a person includes a legal person (such as a limited company) as well as a natural person; (b) reference to "including" in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words; (c) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation; (d) reference to one party giving notice to the other party shall mean notice in writing; (e) references to clauses or schedules shall be to those in this Agreement; (f) the titles and subtitles used in this Agreement are used for convenience only and shall not be considered in construing or interpreting this Agreement; and (g) this Agreement shall be executed via execution of a Sales Order in duplicate counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and both of which together shall constitute the same instrument.

**10.17 Exhibits.** The following documents (if applicable) shall be distributed separately to Client, by Selligent and incorporated herein by reference as specified below:

- Exhibit A: Selligent Support and Service Level Schedule
- Exhibit B: Data Protection Agreement
- Exhibit C: Selligent Site Specific Agreement [as applicable if such Service is ordered by Client]
- Exhibit D: Selligent CI Specific Agreement [as applicable if such Service is ordered by Client]
- Exhibit E: Selligent SMS Specific Agreement [as applicable if such Service is ordered by Client]

**10.18 Reservation of Rights.** Any software associated with the Services and website is protected by copyright laws and international copyright treaties, as well as other intellectual property rights, laws, and treaties.