

PAAS SUBSCRIPTION SERVICES LEGAL TERMS

Last Updated: July 23, 2021

Access to and use of Kognitiv’s PaaS Subscription Services and the provision of the Services by Kognitiv is subject to these legal terms (including any amendments, addendums or schedules hereto, the “Legal Terms”), together with any Order Form or Statement of Work setting forth pricing, invoicing, duration and other agreed terms, which together comprises the entire agreement on this subject matter (the “Agreement”). In the event of any inconsistency between these Legal Terms and the terms and conditions of any Order Form or Statement of Work, these Legal Terms shall prevail unless specific reference is made in the Order Form or Statement of Work that a specific provision of these Legal Terms is to be superseded. Capitalized terms used in this Agreement have the meanings ascribed to such terms at Section 16.

1 SERVICES

1.1 Subject to and conditioned upon compliance with the terms and conditions of this Agreement by Client and its Authorized Users, during the Term, Kognitiv shall use commercially reasonable efforts to provide to Client the services described in the applicable Order Form or Statement of Work and these Legal Terms (collectively, the “Services”) in accordance with the terms and conditions hereof, including to host, manage, operate and maintain the Kognitiv Platform for remote electronic access and use by Client 24 hours per day, seven days per week, every day of the year, except for:

- 1.1.1 Scheduled Downtime;
1.1.2 Service downtime or degradation due to a Force Majeure Event;
1.1.3 any other circumstances beyond Kognitiv’s reasonable control, including use by Client or any Authorized User of third-party materials, misuse of the Kognitiv Platform or use of the Services other than in compliance with the express terms of this Agreement; and
1.1.4 any suspension or termination of access to, or use, of the Kognitiv Platform by Client or any Authorized User, as permitted by this Agreement.

For the avoidance of doubt, unless otherwise specifically set out in an Order Form or Statement of Work, the Services do not include marketing and promotional activities to End Consumers, and do not include customer support for End Consumers in respect of the Services. The Services may be performed by Kognitiv or an Affiliate or Subcontractor of Kognitiv.

- 1.2 Except as otherwise expressly provided in this Agreement, as between the parties:
1.2.1 Kognitiv has and will retain sole control over the hosting, operation, provision, management and maintenance of the Services and Kognitiv Materials, including without limitation the PaaS Subscription Services; and
1.2.2 Subject to the requirements of this Agreement, Client has and will retain sole control over the operation, management and maintenance of, and all access to and use of, the Client

Systems, and sole responsibility for all access to, and use of, the PaaS Subscription Services and Kognitiv Materials by any Person by or through the Client Systems or any other means controlled by Client or any Authorized User, including any: (i) information, instructions or materials provided by any of them to Kognitiv; (ii) results obtained from any use of the Services or Kognitiv Materials; and (iii) conclusions, decisions or actions based on such use.

- 1.3 Each Party shall, throughout the Term, maintain within its organization a service manager to serve as such Party’s primary point of contact for day-to-day communications, consultation and decision-making regarding the Services (each, a “Service Manager”). Prompt written notice shall be given to the other party if the Service Manager changes. Each Service Manager shall be responsible for managing the activities, tasks and deliverables in accordance with the Annual Review Process (as defined in the Order Form) and for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure that its Service Manager, as identified in the Order Form, has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity.
1.4 Kognitiv reserves the right, in its sole discretion as permitted by applicable Law, to make any changes to the Services and Kognitiv Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Kognitiv’s services to its customers; (ii) the competitive strength of or market for Kognitiv’s services; or (iii) the cost efficiency or performance of the Services; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties, except that Client may increase or decrease the number of Authorized Users for any Services without Kognitiv’s consent.
1.5 Kognitiv may, from time to time, in its discretion engage third parties to perform Services (each, a “Subcontractor”).
1.6 Kognitiv may, directly or indirectly, and by use of a Disabling Device or any other lawful means, suspend, terminate or otherwise deny access to or use of all or any part of the Services, Technology or Kognitiv Materials by Client, any Authorized User or any other Person, without incurring any resulting obligation or liability, if: (a) Kognitiv receives a Governmental Order that expressly or by reasonable implication requires Kognitiv to do so; (b) Kognitiv believes, in its good faith and reasonable discretion, that: (i) after notice to Client and Client’s failure to cure within 3 Business Days, Client or any Authorized User has failed to comply with any term of this Agreement, accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement given by Kognitiv; or (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (c) this Agreement expires or is terminated. This Section 1.6

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does not limit any of Kognitiv's other rights or remedies, whether at Law, in equity or under this Agreement.

- 1.7 Services may include advice and recommendations, but all decisions to act on such advice and recommendations shall be the sole responsibility of, and made by, Client.
- 1.8 The Services shall not include the listing, exchange or trading of any content Kognitiv determines, in its sole discretion, to be "Prohibited Content", and Kognitiv reserves the right in its sole discretion to refuse the listing, exchange or trading of any Prohibited Content.
- 1.9 If the Services include the provision of Client Content by Client to Kognitiv, Client hereby agrees to the Client Content terms set forth in Schedule A and, in the event Client Content includes Specialized Content Content, the Client hereby agrees to the terms set out in the relevant Specialized Content Form. It is expressly agreed that Kognitiv makes no representation and provides no assurance that it will utilize any Client Content.

2 AUTHORIZATION TERMS

- 2.1 Subject to the terms and conditions of this Agreement, Kognitiv authorizes Client to access and use the PaaS Subscription Services, solely in the Territory and during the Term (excluding source code) for the Permitted Use.
- 2.2 Kognitiv may implement new releases, modifications, improvements, enhancements, updates and other changes to the Services, including the PaaS Subscription Services, however Kognitiv is under no obligation to do so. Kognitiv may add, modify, or substitute the Technology, Kognitiv Systems, and/or any features thereof without notice, provided that the additional, modified or substituted Technology, Kognitiv Systems, and/or features thereof are equal or superior to those already supplied, and may discontinue the Technology, Kognitiv Systems, and/or features thereof with reasonable notice to Client.
- 2.3 Client acknowledges that in addition to the features and functionality initially available through the PaaS Subscription Services, features and functionality may be added or removed, and certain existing features and functionality may be modestly or significantly enhanced or modified ("**Enhancements**"). In some cases, an Enhancement may be made available to Client subject to the payment of certain incremental fees. Client's use of any such Enhancements will be subject to such associated or incremental fees.
- 2.4 Except as otherwise expressly permitted herein, neither Client nor its affiliates shall: (a) sell, resell, rent, license, sublicense, transfer, assign or redistribute in any way, or in any way except as specifically set out in his Agreement, allow access to the PaaS Subscription Services; (b) alter, attempt to alter, modify, copy, prepare derivative works of, reverse engineer, decompile, disassemble or otherwise attempt to derive the PaaS Subscription Services or any of Kognitiv's databases, computer code, computer programs, program logic, structure, sequence or organization, ideas, data, or any other information; (c) distribute, reproduce, display, sublicense or syndicate the PaaS Subscription Services or any portion thereof on or to any third party or to its website; (d) use the PaaS Subscription Services in any manner that violates any Laws or regulations or the rights of any third party; (e) input, upload, transmit, display, distribute or otherwise provide to or through the PaaS

Subscription Services any information or materials that are obscene, injurious or illegal, or contain, transmit or activate any Harmful Code; or (f) encourage, aid, abet, authorize or permit any employee, affiliate, contractor, agent, representative or third party to do or attempt to do any of the foregoing. Client shall not use or allow access to the PaaS Subscription Services for any purposes beyond the scope of the authorization granted in this Agreement.

- 2.5 If Client becomes aware of any actual, threatened or suspected activity prohibited by Section 2.4, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the PaaS Subscription Services and promptly complying with Kognitiv's instructions regarding such activity); and (b) promptly notify Kognitiv of any such actual, threatened or suspected activity.
- 2.6 Client must provide, at its own cost and expense, such equipment and services as are necessary to access and use the Services. Client shall provide Kognitiv with such access to Client's premises and equipment and services as are necessary for Kognitiv to perform the Services, and shall provide such cooperation and assistance as Kognitiv may reasonably request to enable Kognitiv to exercise its rights and perform its obligations under this Agreement.
- 2.7 Kognitiv may provide Client with Access Credentials which allow Client to access the Services. Client shall safeguard and keep such Access Credentials confidential and safely stored and not disclose such Access Credentials to any person other than Client's own employees or contractors who need to have access to the Services (and in the case of contractors, are not competitors of Kognitiv). Client shall immediately notify Kognitiv of any actual, threatened or suspected security breach or improper use.

3 OWNERSHIP OF INTELLECTUAL PROPERTY

- 3.1 The Kognitiv Group shall be and remain the sole and exclusive owner of all right, title and interest, including any copyrights, patents, trade secrets, moral rights and other Intellectual Property Rights in and to the Kognitiv Creative, Kognitiv Materials, PaaS Subscription Services and any Technology provided hereunder, and any software, websites, templates, documentation, know-how, processes or methodology and additional intellectual or other property, data, materials and other items or information produced, used or made available by the Kognitiv Group prior to or during the performance of Services. Client acknowledges that Kognitiv solely provides Client with access to and use of the Services and that there is no license or transfer of ownership to Client of the Services or any Technology or any other underlying Intellectual Property Rights therein or to any other Intellectual Property Rights. All rights not expressly granted to Client in this Agreement, including without limitation in and to the Technology are expressly reserved by Kognitiv. To the extent, if any, that ownership of any Intellectual Property Rights does not automatically vest in Kognitiv by virtue of this Agreement, or otherwise, and vests in Client, Client hereby transfers and assigns to Kognitiv, upon the creation thereof, all rights, title and interest Client may have in and to such Intellectual Property Rights (and waives any and all moral rights, as applicable), including the right to

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sue and recover for past, present and future violations thereof. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to Kognitiv an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

- 3.2 Neither party shall register any of the Intellectual Property Rights of the other party as a trade mark or register any confusingly similar term, expression, words, logos, marks or signs as, or as part of, a trade mark or a trading or business or company name or trading style, or directly or indirectly assist any other person to do any of the foregoing. Each party hereby expressly acknowledges the other's ownership of all such Intellectual Property Rights and will not attack, question or contest the validity or ownership of the same.

4 DATA OWNERSHIP

- 4.1 As between Client and Kognitiv, Client is and will remain the sole and exclusive owner of all right, title and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights, licenses and permissions granted in Section 4.2.
- 4.2 Customer hereby agrees to provide such Client Data (including End Consumer Personal Data), and irrevocably grants all such rights, licenses and permissions in or relating to Client Data: (a) to Kognitiv, its Subcontractors and the Kognitiv Personnel as are necessary or useful to perform the Services (including implementation of Embedded Success Plans); and (b) to Kognitiv as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

5 SERVICE LEVELS

- 5.1 Subject to the terms and conditions of this Agreement:
- 5.1.1 Kognitiv will use commercially reasonable efforts to make the Kognitiv Platform Available at least 99.5% of the time as measured over the course of each calendar quarter during the Term (each such calendar quarter, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**").
- 5.1.2 For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Kognitiv Platform will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Client or its Authorized Users to access or use the Kognitiv Platform that is due, in whole or in part, to any:
- 5.1.2.1 act or omission by Client or any Authorized User/access to or use of the PaaS Subscription Services by Client or any Authorized User, or using Client's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement;

- 5.1.2.2 Client Failure;
- 5.1.2.3 Internet connectivity of Client or its Authorized User;
- 5.1.2.4 Force Majeure Event;
- 5.1.2.5 failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Kognitiv under this Agreement;
- 5.1.2.6 Scheduled Downtime; or
- 5.1.2.7 disabling, suspension or termination of the Services under Section 1.6 or otherwise pursuant to this Agreement.

- 5.2 Kognitiv will use commercially reasonable efforts to give Customer at least 24 hours prior notice of all scheduled outages of the Kognitiv Platform (the "**Scheduled Downtime**").
- 5.3 The PaaS Subscription Services include Kognitiv's standard Client support services (the "**Support Services**") at the support levels subscribed for by Client as set forth at Schedule C (the "**Support Schedule**"). Kognitiv may, upon advance notice to Client, amend the Support Schedule from time to time in its sole discretion. Client may purchase enhanced support services separately at Kognitiv's then current rates.
- 5.4 Support Services do not include provision of any call centre outsourced services or other customer support services in respect of e-commerce capabilities provided as part of the PaaS Subscription Services. Provision of any such services must be as set forth in a Statement of Work for applicable Add-on Services.
- 5.5 Kognitiv has developed and maintains a sound disaster recovery and business continuity program that includes plans designed to ensure the continued provision of all services contemplated by this Agreement in the event of a disruption, disaster or failure affecting Kognitiv's operations (the "**Plan**"). Kognitiv will provide Client with a copy of such Plan prior to the Effective Date, and will provide a copy of such Plan thereafter from time to time upon Client's request and, in any event, each time Kognitiv makes a material change to the Plan. The Plan will address the actions and resources required to provide for: (i) the continuous operation of the Services; and (ii) in the event of an interruption, the recovery of the functions required to enable Kognitiv to provide the Services promptly after initial interruption. Kognitiv will implement a system design that supports restoring and making available to Client critical services and Client Data within 24 hours of a disaster being declared. Non-critical services such as reporting will be restored on a case-by-case basis.
- 5.6 The Services do not replace the need for Client to maintain regular data backups or redundant data archives. KOGNITIV HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

6 CLIENT OBLIGATIONS

- 6.1 Client shall: (a) cooperate with Kognitiv in all matters relating to the Services and appoint the Service Manager

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to serve as the primary contact with respect to this Agreement with authority to act on behalf of Client with respect to matters pertaining to this Agreement; (b) provide such access to Client's premises, and such office accommodation and other facilities as may reasonably be requested by Kognitiv, for the purposes of performing the Services; (c) respond promptly to any Kognitiv request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Kognitiv to perform Services in accordance with the requirements of this Agreement; (d) provide such Client Materials and information as Kognitiv may reasonably request in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects; and (e) meet all deadlines for deliverables as set forth in each Order Form or Statement of Work, including any Annual Review Process. If Kognitiv's performance of its obligations under this Agreement is prevented or delayed in whole or in part by any act or omission of Client or its agents, subcontractors, consultants or employees or Client's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Client Failure"), Kognitiv shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay, and Client shall be liable to Kognitiv for any additional costs that result from such act or omission.

6.2 With respect to loyalty, rewards or other incentive programs (each a "Loyalty Program") and to the extent applicable to the Services being performed in each Order Form or Statement of Work, the Client acknowledges and agrees that: (a) notwithstanding anything to the contrary, Kognitiv will be required to provide in a non-confidential manner certain Client information, End Consumer Personal Data and personal participant data (including, without limitation, shipping information for delivery of merchandise) to third-party suppliers as is necessary in connection with providing such Services, and treatment of such Client information, End Consumer Personal Data and personal participant data by those third-party suppliers will be in accordance with the respective confidentiality and security obligations and privacy policies of such third-party suppliers, as applicable; (b) notwithstanding anything to the contrary contained elsewhere in the Agreement, Kognitiv will have no liability for any costs, expenses, lawsuits, damages, fines, penalties or other liabilities arising from any act, error or omission of any third party, including, without limitation, any breach of any warranty or representation made by such third party or any warranty, products liability, breach of contract or tort claims arising out of the provision of any reward goods or services provided to the Client or any of Client's program participants; the goods and services offered and/or provided relative to rewards and incentive programs are manufactured and provided by independent suppliers, and Kognitiv makes no representations of any kind, expressed or implied (including warranties of merchantability or fitness for a particular purpose) with respect to such goods and services; (c) except due to gross negligence or wilful misconduct, Kognitiv shall have no liability in the event of an over-issuance of award media (e.g., points, credits, funds), and the parties will use best efforts to mitigate any and all damages arising from or related to any act, error or omission by a party with respect to any over-issuance of award media; (d)

Client has all responsibility to the participants in any Loyalty Program regarding the collection, use or disclosure of the End Consumer Personal Data, including any obligation to notify or otherwise communicate with the said participants concerning use or location of their Personal Data, and Loyalty Program details and rules; (e) Client has all responsibility to acquire from all participants in any Loyalty Program all consents, licenses and permissions to collect, use or disclose End Consumer Personal Data; and (f) Client is solely responsible for development and legal review of the rules of its Loyalty Program(s) and Client's applicable privacy policy, and for circulation of these rules and privacy policy to all Loyalty Program participants, such rules and privacy policy not to be inconsistent with the terms and conditions set forth in this Agreement, and such rules will include provisions to specifically exclude Kognitiv from liability.

6.3 Client shall provide Kognitiv with all visualizations, descriptions and any translations Client would like Kognitiv to upload to the Technology. Kognitiv will not perform any language translations, unless otherwise specifically agreed with Client in writing (including any fees in respect thereof).

7 CLIENT CREATIVE AND CLIENT CONTENT INFORMATION LICENSE TERMS

7.1 Client hereby grants to Kognitiv a non-exclusive, royalty-free and worldwide right and license to the extent necessary for Kognitiv to perform the Services during the Term, to access, use, reproduce, have reproduced, process, distribute, sublicense, display and utilize, and to communicate and make available in any format or method (including through web-scraping, web-services XML feed or otherwise) and display on sites and platforms owned, operated, fulfilled or managed by the Kognitiv Group and other Clients: (i) the Client Creative; (ii) the Client Content Information; and (iii) such other Intellectual Property Rights of Client as are necessary for Kognitiv to perform the Services during the Term.

7.2 Kognitiv acknowledges and agrees that it: (a) will use the Client Creative and Client Content Information only as permitted hereunder; (b) in a lawful manner and in compliance with all reasonable requirements prescribed by Client in writing; and (c) Kognitiv's use will not confer any proprietary right thereto in any manner.

7.3 Client is at all times responsible for providing correct and up-to-date Client Content Information, including, if applicable, additional availability of rooms for certain periods or any adverse events or situations (e.g. renovation or construction at or near the Client Content) that could affect an End Consumer's experience. Client shall update and/or confirm the Client Content Information on as frequent a basis as may be required to maintain the accuracy of such content. Client shall be solely responsible for any system errors or other errors or any inaccurate information provided to Kognitiv, whether arising from the use of any third-party software or management company or otherwise. Client shall be solely responsible for Client Content Information provided by Kognitiv that is not rejected by Client. Kognitiv shall have no liability to Client, any End Consumer or other third party for any such errors. Kognitiv shall have no obligation to monitor the Client Content Information, however, Kognitiv reserves the right, without liability, to reject, remove and/or cancel any Client

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- Content Information that Kognitiv in its sole discretion deems to be: (i) incorrect or incomplete, (ii) offensive or otherwise inconsistent with Kognitiv's content standards; (iii) violating law or third party rights; or (iv) implying that Kognitiv or its partners or subcontractors endorse a Client's goods or services. Client acknowledges and agrees that Kognitiv shall have no obligation to monitor, modify or remove user reviews about Client Content. Kognitiv shall not have, and disclaims, any liability and responsibility for the content and consequences of the publication or distribution of any comments or reviews howsoever or whatsoever.
- 7.4 To the extent necessary for Kognitiv to perform the Services (e.g. to promote on or access metasearch platforms) Kognitiv may sublicense, make available, disclose and offer the Client Creative and/or the Client Content Information made available by the Client and all such further rights and licenses set out herein via or in collaboration with the websites, apps, platform, tools or other devices of third parties (the "**Third Party Platforms**"). Any use of the Third-Party Platforms is governed solely by the terms and conditions agreed to by Client and the third-party. Kognitiv makes no representation in respect of, and shall have no liability or obligation whatsoever in relation to, the use by Kognitiv of such Third Party Platforms. The sole remedy for Client in respect of such Third-Party Platforms is to request Kognitiv to disable and disconnect from such Third Party Platforms.
- 7.5 Client acknowledges and agrees that the volume of sales of Client Content will depend on the effort and investment of Client in marketing and promoting to its End Consumers through all available distribution channels. To the extent Client Content is made available to End Consumers, Client shall use its best efforts to market and promote the Client Content on an ongoing basis consistent with industry marketing practices and techniques.
- 8 REPRESENTATIONS, WARRANTIES AND COVENANTS**
- 8.1 Kognitiv and Client each hereby represent and warrant to and in favour of the other party that:
- 8.1.1 it is duly and validly existing, organized and in good standing under the laws of its jurisdiction of incorporation and has the power and lawful authority to own its assets and properties and to carry on its business as now conducted and as contemplated hereby;
- 8.1.2 it has the full right, power, authority and approval required to enter into, execute and deliver this Agreement and perform its obligations hereunder; and
- 8.1.3 this Agreement constitutes a legal valid and binding obligation of each party, enforceable against such party in accordance with its terms.
- 8.2 Kognitiv represents, warrants and covenants to Client that it will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.
- 8.3 Client represents, warrants and covenants to Kognitiv that Client owns or otherwise has, and will continue to maintain, the necessary rights and consents in and relating to the Client Data and End Consumer Personal Data so that, as received by Kognitiv and processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law or contract.
- 8.4 Client acknowledges that Services shall not be offered in any jurisdiction where regulatory approvals, to the extent necessary, have not been obtained by Kognitiv. In the event Kognitiv determines that regulatory approvals are required in connection with performance of the Services, Kognitiv may, at its sole discretion, either (i) use commercially reasonable efforts to obtain any such approvals as soon as reasonably practicable or (ii) not offer Services in or in respect of such jurisdiction. The parties may agree to expand the provision of the Services to Client's End Consumers to such additional jurisdictions as the parties may mutually agree from time to time, subject to such reasonable notice as may be required in connection with the implementation of such expansion.
- 8.5 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, ALL SERVICES, INCLUDING THE TECHNOLOGY, ARE PROVIDED "AS IS" AND KOGNITIV HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE UNDER THIS AGREEMENT, AND KOGNITIV SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, KOGNITIV MAKES NO CONDITION OR WARRANTY OF ANY KIND THAT THE SERVICES OR TECHNOLOGY, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL (a) MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES; OR (d) BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. KOGNITIV DISCLAIMS AND EXCLUDES ANY AND ALL LIABILITY IN RESPECT OF CLIENT WHICH IS RELATED TO ANY (TEMPORARY AND/OR PARTIAL) BREAKDOWN, OUTAGES, DOWNTIME, INTERRUPTION OR UNAVAILABILITY OF THE TECHNOLOGY. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CLIENT AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.
- 9 FEES AND PAYMENT**
- 9.1 Each Party shall pay the fees set forth in the applicable Order Form or Statement or Work on or before the due date specified therein, provided that:
- 9.1.1 all such payments shall be made in cleared funds, in the currency indicated in the

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- applicable Order Form or Statement of Work, without any currency conversion costs or exchange fees, and without deduction, withholding or set-off except as specifically set forth herein and free and clear of and without deduction for or on account of any taxes, all wire transfer fees, bank charges and applicable foreign, national, state or local taxes, including use tax, sales tax, income tax or any other Taxes and Fees;
- 9.1.2 each party is responsible and liable for the payment and remittance of their respective applicable taxes, levies, imports, duties, charges, fees and withholdings and covenants that it is duly registered with all relevant tax authorities;
- 9.1.3 Kognitiv shall be entitled to deduct from any payment, remittance or other amount due to Client any sums claimed by Kognitiv from Client under the terms of this Agreement or any other agreement between the parties; and
- 9.1.4 in the event of any dispute in respect of any payment, Kognitiv shall be entitled to withhold the sum in question until the dispute is settled.
- 9.2 Client shall reimburse Kognitiv for reasonable out-of-pocket expenses incurred by Kognitiv in connection with providing the Services, including but not limited to any expenses Kognitiv incurs in performing support and training (the "**Reimbursable Expenses**").
- 9.3 All fees payable by Client hereunder shall be calculated and determined by Kognitiv, which determination shall include a calculation by Kognitiv of Collaboration Score.
- 9.4 Except for specific outstanding amounts that are contested by Client in good faith, provided Client has given Kognitiv prompt written notice of the same and reasonably cooperates with Kognitiv to resolve the dispute, if Client fails to make any payment when due, then, in addition to all other remedies that may be available:
- 9.4.1 Kognitiv may charge interest on the past due amount at the rate of 4% a year above the Bank of Canada base rate from time to time, by 4% a year for any period when such base rate is below 0% or, if lower, the highest rate permitted under applicable Law, calculated daily and compounded monthly;
- 9.4.2 Client shall reimburse Kognitiv for all reasonable costs incurred by Kognitiv in collecting any late payments or interest, including legal fees, court costs and collection agency fees; and
- 9.4.3 if such failure continues for 7 days following written notice thereof, Kognitiv may suspend performance of the Services until all past due amounts have been paid, without incurring any obligation or liability to Client or any other Person by reason of such suspension.
- 9.5 In the event that Kognitiv reasonably determines that a material change has occurred in the operating fees and expenses payable by Kognitiv in connection with the performance of the Services, including but not limited to any increase in fees and expenses associated with Kognitiv's regulatory compliance and merchant transaction processing, Kognitiv may seek to renegotiate the financial terms of this Agreement. Client shall have no obligation to renegotiate such terms; provided, that if the parties cannot agree on an adjustment of such terms, then Kognitiv may, at its option: (i) allow this Agreement to remain in effect without any such adjustment; or (ii) terminate this Agreement upon ninety (90) days' written notice to Client.
- 9.6 Upon Kognitiv's request, Client will provide Kognitiv with financial information reasonably necessary to enable Kognitiv to evaluate Client's credit. Should there be a substantial adverse change in Client's credit standing or if Client does not comply with the payment provisions hereunder, Kognitiv will have the right to change the terms of payment and its obligations to supply further Services will be subject to reaching a mutual agreement on such revised terms.
- 9.7 Client agrees to provide or make available to Kognitiv all information reasonably required by Kognitiv to measure the Services and calculate the fees set forth in the Order Form or Statement of Work, including Client (member) engagement, acquisition, retention and upgrade metrics and campaign success metrics.
- 10 PERSONAL DATA PROTECTION AND DATA SECURITY**
- 10.1 Both parties agree to safeguard End Consumer Personal Data and to protect it from unauthorized use or release. Each party shall, as may be applicable, comply and cause its service providers to comply with: (i) all applicable data and privacy Laws, rules and regulations governing collection, use, disclosure, and security of, and notification regarding, Personal Data, which is in force or may come into force from time to time (e.g., the General Data Protection Regulation (GDPR), the CAN-SPAM Act, the Telephone Consumer Protection Act (TCPA), the California Consumer Protection Act (CCPA), the Personal Information Protection and Electronic Documents Act (PIPEDA), SPAM Act 2003 (Cth) and Privacy Act 1988 (Cth)); and (ii) the requirements, compliance criteria and validation processes as set forth in the Payment Card Industry ("**PCI**") Data Security Standard as promulgated from time to time by the major credit card companies (collectively, the "**Data Protection Legislation**"). Each party acknowledges that it is responsible for the security of End Consumer Personal Data it processes within the context of this Agreement and, as applicable.
- 10.2 Both parties acknowledge that for the purposes of the GDPR, Client is the Data Controller and Kognitiv is the Data Processor of End Consumer Personal Data processed for the purpose of providing Services to the Client (the "**Data**"). Notwithstanding, the parties acknowledge that Kognitiv is the Data Controller where it determines the purposes and manner of the Processing of End Consumer Personal Data, including the purposes outlined in Clause 10.12. For greater certainty, Clauses 10.2 to 10.11 inclusive apply to the extent that Kognitiv is a Processor of any End Consumer Personal Data on behalf of the Client. Client instructs Kognitiv to Process Data only to provide Services to Client or as is necessary for the performance of its obligations under this Agreement or as otherwise agreed between the parties in writing (the "**Permitted Data Processing Purpose**") or as required by

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- applicable Data Protection Legislation binding on Kognitiv, for the duration of this Agreement.
- 10.3 Client understands that Kognitiv is part of a global corporation, and as such, Kognitiv may need to transfer Data outside of the European Economic Area ("EEA"). Client agrees to such transfers by Kognitiv provided Kognitiv has taken such measures as are necessary to ensure the transfer will be in accordance with the applicable Data Protection Legislation.
- 10.4 Kognitiv shall ensure that any person, including its employees, agents, consultants, and subcontractors, that it authorises to process the Data shall protect the End Consumer Personal Data substantially in accordance with Kognitiv's confidentiality obligations in Section 12.
- 10.5 Kognitiv shall implement such technical and organisational measures, as set out in Schedule B, to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "Security Incident"). Kognitiv may update Schedule B but any additions will be equal to or greater than the level of security currently afforded to the Data as of the date of this Agreement.
- 10.6 Client consents to Kognitiv engaging third party subprocessors to process the Data for the Permitted Data Processing Purpose provided that: (i) Kognitiv maintains an up-to-date list of its subprocessors at an accessible URL, which it shall promptly update with details of any change in subprocessors; (ii) Kognitiv imposes data protection terms on any subprocessor it appoints that require it to protect the Data to the standard required by the Data Protection Legislation; and (iii) Kognitiv remains liable for any breach of this Clause that is caused by an act, error or omission of its subprocessor.
- 10.7 Kognitiv shall provide reasonable and timely assistance to Client, at Client's expense, to enable Client to respond to: (i) any request from a Data Subject to exercise any of its rights under the Data Protection Legislation (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a Data Subject, regulator or other third party, in each case, in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to Kognitiv, Kognitiv shall promptly inform Client providing full details of the same.
- 10.8 If Kognitiv believes or becomes aware that its processing of the Personal Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform Client and provide reasonable cooperation to Client, at Client's expense, in connection with any data protection impact assessment that the Client may be required to conduct under Data Protection Legislation.
- 10.9 Client acknowledges that Kognitiv is regularly audited against PCI DSS compliance standards by independent third-party auditors. Upon request, Kognitiv can supply a summary of its audit report(s) to Client, which reports shall be subject to Section 12 of this Agreement.
- 10.10 If it becomes aware of a confirmed Security Incident, Kognitiv shall inform Client without undue delay and shall provide reasonable information and cooperation to Client so that Client can fulfil any data breach reporting obligations it may have under applicable Data Protection Legislation. Kognitiv shall further take such measures and actions that it reasonably deems necessary or prudent to remedy or mitigate the effects of the Security Incident and shall keep Client informed of all material developments in connection with the Security Incident.
- 10.11 Promptly upon termination or expiry of this Agreement, Kognitiv will delete all Data, provided, however, his requirement shall not apply to the extent that: (i) Kognitiv is the controller of the Data; (ii) Kognitiv or its Subcontractor is required or permitted by applicable Law to retain some or all of the Data; or (iii) the Data is archived on back-up systems, which Data Kognitiv shall securely isolate and protect from any further processing except to the extent required by such law until deletion is possible.
- 10.12 Client authorizes and agrees to Kognitiv collecting and/or aggregating End Consumer Personal Data to produce pseudonymized data and/or anonymized data to use for its own purposes as an independent Data Controller including, but not limited to, improving quality and service, developing new services, performing analyses and providing other insights. Kognitiv shall have the perpetual and irrevocable right to use, collect and aggregate such pseudonymized data and anonymized data and information such purpose, provided that at all times Kognitiv complies with its obligations under the Data Protection Legislation.
- 10.13 Client agrees that any privacy notices and/or policies, whether or not appearing on Client's platform(s), in connection with Personal Data directly or indirectly collected, used or shared by Kognitiv (including consents and privacy policies on Client's platform(s)), are the responsibility of Client and must be approved by Client's legal counsel, and shall be subject to review and change by Kognitiv on an ongoing basis, acting reasonably, for the purpose of Kognitiv providing the Services contemplated hereunder and ensuring Kognitiv's compliance under applicable Law, including Data Protection Legislation. Client represents, warrants and covenants that it has obtained all necessary consents from, and has provided all necessary information to End Consumers under the Data Protection Legislation to allow Kognitiv to provide the Services, including but not limited to marketing to End Consumers on behalf of Client).
- 10.14 Client further agrees that Kognitiv may store, use, share and release Personal Data provided or generated pursuant to this Agreement to any person for the purposes set out in Section 10.12.
- 10.15 The parties agree that should the GDPR require the execution of a supplementary data processing agreement to further govern the data processing relationship between the parties, the parties will formalize such agreement in a timely manner.
- 11 TERM AND TERMINATION**
- 11.1 The term of this Agreement shall begin on the Effective Date of the applicable Order Form and/or Statement of Work and shall continue for the period set forth in such Order Form or Statement of Work (the "Term").
- 11.2 Either party may terminate this Agreement without prejudice to enforcement of any other legal right or remedy, immediately upon giving written notice of such termination
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- to the other party without any charge, obligation or liability whatsoever if:
- 11.2.1 the other party is in breach of a material term of this Agreement and has not cured the breach (if such breach is curable) within thirty (30) days after receipt of written notice specifying the breach;
- 11.2.2 if Kognitiv, pursuant to Section 13.4 hereof, becomes excused from the performance of its obligations under this Agreement for a continuous period of thirty (30) days; or
- 11.2.3 the other party becomes or is adjudicated insolvent or bankrupt, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors or applies for relief under the Bankruptcy and Insolvency Act (Canada), the Companies Creditors Arrangement Act (Canada) or any similar statute or law or if proceedings of any type are initiated in any jurisdiction in respect of the alleged insolvency or bankruptcy of the other party and are not being diligently defended.
- 11.3 Kognitiv, acting reasonably, may immediately suspend its provision of the Services and Client's access to the PaaS Subscription Services if Client breaches a material term of this Agreement until such time as the breach is cured. Kognitiv shall not be liable to Client or any other party as a result of such suspension.
- 11.4 If (i) Client terminates this Agreement prior to expiry of the Term other than termination as a result of Section 11.2 or (ii) Kognitiv terminates this Agreement under Section 11.2.1, all fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay all such fees, together with all previously-accrued but not yet paid fees and Reimbursable Expenses, on receipt of Kognitiv's invoice therefor.
- 11.5 Subject to Section 11.6, upon termination of this Agreement for any reason, Kognitiv will cease providing the Services hereunder and terminate access to, and Client shall cease accessing, the Services. All of Client's rights in, to and under this Agreement, including rights to access and use of the Technology, end upon termination of this Agreement for any reason, and each party agrees that it shall immediately cease all use of the other party's Intellectual Property Rights.
- 11.6 Upon termination of this Agreement, other than termination as a result of Section 11.2, Kognitiv and Client will continue to provide such services as are necessary in respect of the wind-down of this Agreement until all of Kognitiv and Client's respective obligations to Client's End Consumers are satisfied, including Client honoring any reservations of Client Content made prior to termination of the Agreement.
- 12 CONFIDENTIALITY**
- 12.1 The parties understand and agree that in the performance of this Agreement, each party may have access to or may be exposed to, directly or indirectly, Confidential Information of the other party.
- 12.2 Except as expressly set forth herein, each party agrees that it will hold, in perpetuity, the Confidential Information disclosed to it by the other party in strict confidence, and will treat such Confidential Information with the same degree of care as it accords its own Confidential Information of similar nature.
- 12.3 Except as expressly set forth herein, each Party agrees that: (a) all Confidential Information shall remain the exclusive property of the disclosing party and the receiving party shall not use any Confidential Information for any purpose except in furtherance of this Agreement; (b) it shall maintain, and shall use prudent methods to cause its employees, officers, representatives, contracting parties and agents (the "**Permitted Persons**") to maintain, the confidentiality and secrecy of the Confidential Information; (c) it shall disclose Confidential Information only to those Permitted Persons who need to know such information in furtherance of this Agreement; (d) it shall not, and shall use prudent methods to ensure that the Permitted Persons do not, copy, publish, disclose to others or use (other than pursuant to the terms hereof) the Confidential Information; and (e) it shall destroy all (hard and soft) copies of Confidential Information upon written request of the other party. For clarity, the recipient party shall be solely responsible for any breach of this Agreement by any third party to whom the recipient party provided or allowed access to Confidential Information of the other party to the extent such third party has not agreed in writing to be liable directly to the disclosing party for such breach.
- 12.4 Notwithstanding the foregoing or any other provision of this Agreement, (a) Confidential Information shall not include any information that (i) is or becomes part of the public domain through no act or omission on the part of the receiving Party, (ii) was rightfully known to the receiving Party without restriction on use or disclosure before such information being disclosed or made available to the receiving Party in connection with this Agreement, (iii) is disclosed to the receiving Party by a third party having no obligation of confidentiality with respect thereto, or (iv) the receiving Party can demonstrate by written or other documentary records was or is independently developed by the receiving Party without reference to or use of any Confidential Information.
- 12.5 If a party in receipt of Confidential Information becomes legally compelled by applicable Law or by any order, decree or directive of any competent judicial, legislative or regulatory body or authority to disclose Confidential Information of the disclosing party, it will, if legally able, promptly notify the disclosing party of such receipt and tender to the disclosing party the defence of such subpoena or process. If requested by the disclosing party, the recipient party will reasonably cooperate (at the expense of the disclosing party) in opposing such order, decree or directive. Unless the order, decree or directive is timely limited, quashed or extended, the recipient party will then be entitled to comply with such request, but will furnish only that portion of that Confidential Information which is legally required and the receiving party will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to such Confidential Information.
- 12.6 Kognitiv shall be entitled to: (i) share all Confidential Information within the Kognitiv Group, (ii) identify, and use the Client Creative for the purpose of identifying, Client as
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- Kognitiv's Client in Kognitiv's public relations, print and online marketing and sales or promotion materials, including investor materials, and (iii) include a description of the services rendered in the course of the engagement and select metrics in connection therewith in marketing and research materials and disclose such information to third parties.
- 12.7 Except as otherwise permitted pursuant to this Agreement, neither party shall issue, or authorize or assist another to originate, produce or issue, any written publicity, news release, marketing document or other publication or public announcement relating in any way to this Agreement without the prior written approval of the other party, which approval shall not be unreasonably withheld.
- 12.8 Except as otherwise provided in this Agreement, upon any termination or expiration of this Agreement each party shall immediately cease use all use of any Confidential Information and promptly return to the disclosing party, or at the disclosing party's written request destroy, all documents and tangible material containing, reflecting, incorporating or based on any disclosing party's materials and permanently erase all disclosing party's materials and other Confidential Information from all computer systems that recipient party directly or indirectly controls. Notwithstanding anything to the contrary, each party may retain Confidential Information of the other party as required by law, that reside in archived backup tapes, or that are required for audit purposes, subject to an ongoing obligation of confidentiality as required under this Agreement.
- 13 INDEMNIFICATION AND LIMITATION OF LIABILITY**
- 13.1 Client (including on behalf of its Hotels, if applicable, employees, suppliers, agents and sub-contractors) hereby indemnifies and saves Kognitiv (including its affiliates and their respective directors, officers, employees, agents and subcontractors) ("**Kognitiv Indemnitees**") from and against the full amount of all damages, expenses, losses, compensation, demands, actions, liabilities, fines, expenses (including, without limitation, reasonable attorneys' fees and expenses) and/or any other sum of whatever nature arising out of or related to any breach of any nature whatsoever by Client of its obligations expressed or implied under this Agreement and/or any other agreement between the parties by Client, including any claim that arises from or relates to:
- 13.1.1 allegations of facts that, if true, would constitute Client's breach of any of its representations, warranties, covenants or obligations under this Agreement or violation of law;
 - 13.1.2 Client's design, operation or termination of its Loyalty Program or otherwise relating to Client's use of the Services;
 - 13.1.3 Client Data or End Consumer Personal Data, including any Processing of Client Data or End Consumer Personal Data by or on behalf of Kognitiv in accordance with this Agreement and any failure by Client or its agents to comply with any of its obligations under Data Protection Legislation;
- 13.1.4 the Client Content and Client Content Information (including (i) the sale and supply thereof and (ii) any End Consumer complaints related thereto);
- 13.1.5 the shipment, export, or delivery of Client Content, including to foreign addresses and any sales, use, value added, personal property, gross receipts, excise, franchise, business or other taxes or fees, or any customs, duties or similar assessments (including penalties, fines or interest on any of the foregoing) imposed by any government or other taxing authority in connection with shipping and handling of Client Content
- 13.1.6 the death, injury or illness (including fatality) of any person for whom Kognitiv may be found responsible or for which Kognitiv may have any liability and which is caused by or arises out of any wrongful or negligent act or omission of, or any breach of this Agreement by Client, its employees, agents, suppliers or sub-contractors;
- 13.1.7 any of Client's taxes or the collection, payment or failure to collect or pay taxes; and
- 13.1.8 any act(s), omission(s) and/or default(s) of Client, any Authorized User and/or any person(s) provided or used (directly or indirectly) by Client (including Hotels, if applicable, employees, agents, suppliers and sub-contractors of Client).
- 13.2 Kognitiv hereby indemnifies and saves Client (including its affiliates and their respective directors, officers, employees, agents and subcontractors) ("**Client Indemnitees**") from and against all damages, expenses, losses, compensation, demands, actions, liabilities, fines, expenses (including, without limitation, reasonable attorneys' fees and expenses) and/or any other sum of whatever nature arising out of or related to any third party intellectual property infringement claim in connection with the Technology provided by Kognitiv under this Agreement, to the extent such claim is not resulting from the negligence or wilful misconduct of Client Indemnitees. Should the Technology or the Services become, or in Kognitiv's opinion be likely to become, the subject of a claim of infringement, Kognitiv may, at its sole option and/or election, use reasonable commercial efforts to (a) obtain for Client the right to continue using the Technology or Services pursuant to the terms and conditions of the Agreement; (b) replace or modify the Technology or Services so that they become non-infringing but functionally equivalent or (c) where either (a) or (b) are not practicable in Kognitiv's sole discretion, terminate the Agreement. The indemnification obligation shall be subject to Section 13.5 of this Agreement and shall not apply to any claim arising out of (i) the combination of the Technology or Services with any hardware, system, software, product, network or other materials or service not claimed to be owned, developed or deployed by or on behalf of Kognitiv, (ii) the modification of the Technology or Services, or any part thereof, unless such modification was made by or for Kognitiv, (iii) unauthorized use of the Technology or Services, (iv) failure to timely implement any modifications, upgrades, replacements or enhancements
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made available to Client by or on behalf of Kognitiv or (v) any infringement caused in whole or in part by any action of Client. THIS INDEMNIFICATION PROVISION STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF KOGNITIV AND ITS LICENSORS TO CLIENT AND CLIENT'S SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

- 13.3 In the event of a third party claim, the parties shall act in good faith and use their commercially reasonable efforts to consult, cooperate and assist each other in the defense and/or settlement of such claim. Unless otherwise agreed in respect of a claim, the indemnifying party shall be entitled to take over a claim and assume the defence, and unless otherwise agreed neither party shall make any admission, file any papers, consent to the entry of any judgment or enter into any compromise or settlement without the prior written consent of the other party (which shall not unreasonably be withheld, delayed or conditioned).
- 13.4 In no event will Kognitiv be liable for failure to perform its obligations under this Agreement if such failure results from acts, events, omissions or happenings beyond its reasonable control including, as applicable, an Act of God, natural disaster, insurrection, pandemics, war or other hostilities, riots, civil commotion, terrorism, embargoes, blockades, national or regional emergency, the requirements or regulations of any civil or military authority, government order or law, strikes, labour stoppages or slowdowns, third party industrial dispute, third party transportation or communication problems, third party service or business failures, cyber or Internet attacks, Internet or communications slowdowns or outages, or any incident which is similar in nature or effect to any of the foregoing (each, a "Force Majeure Event"). Each of the parties hereto agree to immediately give notice to the other upon becoming aware of a Force Majeure Event, which notice shall contain details of the circumstances giving rise to the Force Majeure Event and shall take all reasonable steps to mitigate the effect of the Force Majeure Event.
- 13.5 THE MAXIMUM LIABILITY OF KOGNITIV OR ANY OF ITS AFFILIATES IN AGGREGATE FOR ALL CLAIMS MADE AGAINST KOGNITIV OR ANY OF ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS OR SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY CLIENT TO KOGNITIV IN CONNECTION WITH THE PARTICULAR SERVICES GIVING RISE TO THE CLAIM, UNLESS IN THE EVENT OF FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE ON THE PART OF KOGNITIV, IN WHICH EVENT THE LIMITATION OF LIABILITY IS NOT APPLICABLE.
- 13.6 IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES, INCLUDING LOSS OF PRODUCTION, LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF CONTRACT, LOSS OF OR DAMAGE TO GOODWILL OR REPUTATION, LOSS OF CLAIM, WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT OF A BREACH OF CONTRACT, TORT OR OTHERWISE (EVEN IF ADVISED OF THE POSSIBILITY

OF SUCH DAMAGES OR LOSSES). ALL SUCH DAMAGES AND LOSSES ARE HEREBY EXPRESSLY WAIVED AND DISCLAIMED.

14 DISPUTE RESOLUTION

- 14.1 In the event of a dispute between the parties relating to the Services or otherwise in relation to this Agreement, either party may call a meeting of the parties to attempt to resolve such dispute by service of 14 days' written notice (or such shorter period as may be agreed between the parties) on the other, and each party agrees to procure that a relevant member of its management team will attend such meetings.
- 14.2 The members of the relevant meeting will use their reasonable endeavours to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to their respective directors (or their respective nominees) who will cooperate in good faith to resolve the dispute as amicably as possible within 7 days of service of such notice.
- 14.3 Any claim, dispute or controversy (whether in contract, tort, or otherwise, whether pre-existing, present or future, and including statutory, common law, intentional tort and equitable claims) between the parties arising out of or in connection with this Agreement, or the breach, termination or validity thereof shall be resolved exclusively and finally by binding arbitration, unless waived by Kognitiv. The arbitration shall be conducted in Toronto, Ontario under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. The arbitration shall be conducted in the English language. The arbitration panel shall be empowered to grant whatever relief would be available in court, including without limitation preliminary relief, injunctive relief and specific performance. Any award of the arbitration panel shall be final and binding immediately when rendered, and judgment on the award may be entered in any court of competent jurisdiction. Neither party shall be entitled to join, consolidate, or include any claims belonging to or alleged or arising from, by, or on behalf of any third party to an arbitration brought hereunder, or arbitrate any claim as a class action, class representative, class member, or in a private attorney general capacity. The individual (non-class) nature of this dispute resolution provision goes to the essence of the parties' dispute resolution agreement, and if found unenforceable, the entire arbitration and dispute resolution provision shall be void. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction to enforce such party's Intellectual Property Rights or protect its Confidential Information.
- 14.4 Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 12 and, in the case of Client, Section 2.4, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that

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monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

15 GENERAL

- 15.1 Any notice to be given under this Agreement shall be in writing and addressed to the other party at the address set forth in the applicable Order Form or Statement of Work (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Each party shall deliver all notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email (always with a copy to legal@kognitiv.com in the case of notice to Kognitiv) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving notice has complied with the requirements of this Section. A notice sent via e-mail shall be deemed to have been served at 09:00 a.m. in the jurisdiction of the recipient on the next Business Day after transmission, provided that an error message is not received stating that the e-mail could not be delivered.
- 15.2 This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and replaces and supersedes all prior agreements, arrangements, offers, undertakings or statements regarding such subject matter. Any other terms, conditions, performance criteria, guarantees or prior representations whatsoever (whether written or oral) shall be of no effect unless expressly incorporated herein. Any information or projections submitted by Kognitiv are provided to assist Client in making its own evaluations and shall not be construed or understood as a representation, warranty or guarantee as to the future performance of Services. Each party acknowledges that it has not entered into this Agreement in reliance on any statement or representation of the other party except to the extent that such statement or representation has been incorporated in this Agreement.
- 15.3 Neither party shall be entitled to assign, transfer or encumber any of its rights and/or obligations under this Agreement without the prior written consent of the other party, provided that Kognitiv may assign, transfer, or encumber any of its rights and/or obligations under this Agreement (in whole or in part or from time to time) without the prior written consent of Client to an Affiliate or to a party engaged in a merger with, an acquisition of, or the purchase of all or substantially all of the assets of Kognitiv. Subject to the foregoing, this Agreement shall be binding upon and enure to the benefit of the parties and their respective permitted successors and assigns. Any purported assignment in violation of the foregoing shall be without any effect.
- 15.4 The Services may be performed by any member of the Kognitiv Group. Kognitiv shall be permitted to sublicense its rights hereunder from time to time to another member of the Kognitiv Group for the same purpose and under the same terms and conditions as the licenses set forth in this Agreement.
- 15.5 This Agreement 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 laws of the province of Ontario without regard to conflicts of laws provisions.

- 15.6 Subject to Section 14, each party irrevocably agrees that the courts of Ontario shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 15.7 No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.
- 15.8 Except as otherwise provided in this Agreement, Kognitiv performs Services as an independent contractor and not as Client's employee or agent. Nothing in this Agreement is intended, nor shall it be deemed, to confer on or constitute either party as the agent of the other or to create a partnership, joint venture, franchise or similar relationship between the parties.
- 15.9 If any provision of this Agreement is or becomes invalid or non-binding, the parties shall remain bound by all other provisions hereof. In that event, the parties shall replace the invalid or non-binding provision by provisions that are valid and binding and that have, to the greatest extent possible, a similar effect as the invalid or non-binding provision, given the contents and purpose of this Agreement.
- 15.10 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 15.11 The terms of this Agreement that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement (including for certainty Sections 10-15 of this Agreement), shall survive the termination or expiration of this Agreement.
- 15.12 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Delivery of an executed signature page to this Agreement by facsimile or electronic means (e.g. e-mail, PDF) shall be effective to the same extent as if such party had delivered a manually executed counterpart.

16 INTERPRETATION

- 16.1 For purposes of this Agreement, the capitalized terms set forth below shall have the following meanings:
- "Access Credentials" means any user name, identification number, digital identity, password, license or security key, security token, personal identification number (PIN) or other security code, method, technology or device used, alone or in combination, to verify an

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individual's identity and authorization to access and use the Services.

"Affiliate" of a Person means any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, the first Person.

"Agreement" means these Legal Terms along with any Order Form or Statement of Work, including all schedules, appendices, amendments and additions.

"Annual Review Process" has the meaning set forth in the Order Form.

"Authorized User" means any employee of Client who has been issued Access Credentials to allow access to the Services.

"Availability Requirement" has the meaning set forth in Section 5.1.

"Available" means the Technology is available for access and use by Client and its Authorized Users over the internet.

"Business Day" means a day other than a Saturday, Sunday or public holiday in Canada when banks in Ontario are open for business.

"Client Content" means the goods, currency, data and/or services provided or managed by Client from time to time, including Specialized Content. For certainty, Client shall be responsible for any liabilities or other obligations of the Client Content.

"Client Content Information" means information provided by the Client related to the Client Content, including (i) description, including location specific availability, options and cancellation policies, (ii) availability, shipping limitations or requirements and other shipping and handling information, (iii) digitized images that accurately depicts the Client Content, (iv) shipping and handling charges, (v) any text, disclaimers, warnings, notices, labels, warranties or other content required by applicable Law to be displayed in connection with the offer, merchandising, advertising or sale of Client Content, (vi) any requirements, fees or other terms and conditions applicable to such Client Content that an End Consumer should be aware of prior to purchasing, (vii) brand, model, product dimensions, weight, technical specifications and other similar information, (viii) Hotel Content Information, and (ix) any other information reasonably requested by Kognitiv.

"Client Creative" means any marketing and/or promotional materials relating to Client or Client Content provided or made available by Client to Kognitiv, including but not limited to copyrighted content, hypertext links, domain names, icons, buttons, banners, graphic files, Trademarks, logos and trade names of Client and Client Content, whether registered or unregistered.

"Client Data" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Client or an Authorized User by or through the Services.

"Client Failure" has the meaning set forth in Section 6.1.

"Client Indemnitees" has the meaning set forth in Section 13.2.

"Client Materials" means any content, documents, data, know-how, methodologies, software and other materials and information provided to Kognitiv by Client, or a third party on behalf of Client, including computer programs, reports and specifications.

"Client Systems" means the Client's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), networks and internet connectivity, whether operated directly by Client or through the use of third-party services.

"Collaboration Score" means the score calculated as set forth at Appendix III based on Client's investments made and received as well as overall End Consumer spend on peer-to-peer content in Client's ecosystem.

"Confidential Information" means information (whether or not recorded in documentary form, or stored on any magnetic or optical disk or memory) relating to the business, products, affairs and finances of a party for the time being confidential to that party and trade secrets including, without limitation, technical data and know-how relating to the business of a party or any of its business contacts, including in particular (by way of illustration only and without limitation) price lists, lists of customers and suppliers, strategic business development plans, contractual rates and terms and, if not already covered by the foregoing, any and all information, materials, data, documents and assets provided by one party to the other or to which a party gains access in connection with this Agreement, as well as generally any information that a reasonable business person would understand not to be publicly available whether or not such information is labeled or identified as "confidential".

"Contracted Services" has the meaning set forth in the Statement of Work.

"Consumer Dividend" means an incentive provided to consumers of peer-to-peer content pursuant to an Embedded Success Plan, calculated as a percentage of the relevant content consumed.

"Consumer ID" means an entity defined by one or more unique identifiers that has, or has the ability to have, transactions and interactions associated with in the Kognitiv Platform.

"Control" (and the terms "Controlled by" and "under common Control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Data" has the meaning set forth in Section 10.2.

"Data Controller" has the meaning set forth in Article 4(7) of the GDPR.

"Data Processor" has the meaning set forth in Article 4(8) of the GDPR.

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"Data Protection Legislation" has the meaning set forth in Section 10.1

"Data Subject" has the meaning set forth in Article 4(8) of the GDPR.

"Disabling Device" means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Kognitiv or its designee to disable Client's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Kognitiv or its designee.

"Effective Date" means the date indicated in the relevant Order Form or Statement of Work.

"Embedded Services" means management services provided by Kognitiv in connection with the PaaS Subscription Services as outlined in the Order Form.

"Embedded Success Plan" or "ESP" means a plan designed to deliver outcomes as directed by Client.

"End Consumer(s)" means end consumers to whom either Client or Kognitiv markets and/or sells and/or otherwise makes available the Client Content and/or other goods and services.

"Enhancements" has the meaning set forth in Section 2.3.

"Force Majeure Event" has the meaning set forth in Clause 13.4.

"GDPR" means the General Data Protection Regulation 2016/679 of the European Union, as may be amended from time to time.

"Governmental Authority" means any federal, provincial, territorial, municipal or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

"Harmful Code" means any software, hardware or other technology, device or means, including any virus, trojan horse, worm, backdoor, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby; or (b) prevent Client or any Authorized User from accessing or using the PaaS Subscription Services as described in this Agreement. Harmful Code does not include any Disabling Device.

"Hotel(s)" means those hotels or other accommodation types that use the Services provided to Client under this Agreement.

"Hotel Content" means the hotel(s), accommodation, arrangements, amenities, services and/or facilities provided or managed by Client from time to time. For certainty, Hotel shall be responsible for any liabilities or other obligations of the Hotel Content.

"Hotel Content Information" means information provided by the Client for inclusion on the Technology, including all information related to the Hotel Content (including pictures and descriptions), their amenities and services, rooms available for reservation, details of the rates (including all applicable taxes, levies, surcharges and fees) and availability, cancellation and no-show policies and other policies and restrictions.

"Intellectual Property Rights" means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right, registered or unregistered, arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

"Kognitiv Creative" means all marketing and/or promotional materials relating to Kognitiv provided or made available, including but not limited to copyrighted content, hypertext links, domain names, icons, buttons, banners, graphic files, Trademarks, logos, and trade names of Kognitiv, whether registered or unregistered.

"Kognitiv Group" means the Kognitiv contracting entity and each of its Affiliates.

"Kognitiv Indemnitees" has the meaning set forth in Section 13.1.

"Kognitiv Materials" means the Kognitiv Platform, Kognitiv Systems any and all information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Kognitiv or any subcontractor in connection with the Services or otherwise comprise or relate to the Services. For the avoidance of doubt, Kognitiv Materials include Resultant Data and any information, data or other content derived from Kognitiv's monitoring of Client's access to or use of the PaaS Subscription Services, but do not include Client Data.

"Kognitiv Personnel" means all individuals involved in the performance of Services as employees, agents or independent contractors of Kognitiv or any Subcontractor.

"Kognitiv Platform" means the Kognitiv software application(s) and any third party or other software and all new versions, updates, revisions, improvements and modifications thereof that Kognitiv provides remote access to and use of as part of the Technology.

"Kognitiv Systems" means the information technology infrastructure used by or on behalf of Kognitiv in

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performing the PaaS Subscription Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Kognitiv or through the use of third-party services.

"Launch Date" has the meaning set forth in the relevant Order Form or Statement of Work.

"Law" means any law, ordinance, rule, regulation, order, license, permit, judgment, decision, or other requirement, now or in the future in effect, of any governmental authority (e.g., on a federal, state, or provincial level, as applicable) of competent jurisdiction.

"MSRP" means the price designated by a provider of goods and services to Kognitiv as the Manufacturer's Suggested Retail Price attributable to such good or service.

"Order Form" means the order form(s) to which these Legal Terms are appended.

"PaaS Subscription Services" means the Kognitiv Platform, Embedded Services and applicable Add-On Services, including the Kognitiv Systems and Technology in support thereof.

"Package" means inclusive package holiday arrangements organised by Kognitiv in accordance with any national legislation implementing the Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, or any equivalent legislation in any other legal jurisdiction.

"PCI" has the meaning set forth in Section 10.1.

"Permitted Data Processing Purpose" has the meaning set forth in Section 10.2.

"Permitted Persons" has the meaning set forth in Section 12.3.

"Permitted Use" means any use of the Services by an Authorized User for the benefit of Client solely in or for Client's internal business operations.

"Person" means an individual, corporation, partnership, unlimited liability company, Governmental Authority, unincorporated organization, trust, association or any other entity.

"Personal Data" has the meaning set forth in Article 4(1) of the GDPR, and relates only to personal data, or any part of such personal data, processed under this Agreement."

"Process" or "Processing" has the meaning set forth in Article 4(1) of the GDPR.

"Reimbursable Expenses" has the meaning set forth in Section 9.2.

"Resultant Data" means information, data and other content that is derived by or through the Services from Processing Client Data and is sufficiently different from such Client Data that such Client Data cannot be reverse engineered or otherwise identified from the inspection,

analysis or further Processing of such information, data or content.

"Scheduled Downtime" has the meaning set forth in Section 5.2.

"Security Incident" has the meaning set forth in Section 10.5.

"Services" has the meaning set forth in Section 1.1.

"Service Level Failure" means a material failure of the PaaS Subscription Services to meet the Availability Requirement.

"Service Manager" has the meaning set forth in Section 1.3.

"Specialized Content" means any Client Content designated by Kognitiv as Specialized Content, which shall include for greater certainty Hotel Content and content from airlines, cruise operators, rental car operators, travel agencies, tour operators and other third party and wholesale content providers and aggregators, as may be supplemented by Kognitiv from time to time.

"Statement of Work" means the statement of work(s) to which these Legal Terms are appended.

"Subcontractor" has the meaning set forth in Section 1.5.

"Support Schedule" has the meaning set forth in Section 5.3.

"Support Services" has the meaning set forth in Section 5.3.

"Taxes and Fees" means (i) any sales, license or use taxes, including without limitation, any harmonized sales taxes, (ii) any fees or assessments levied by any local, state, provincial or federal government or government agency, (iii) any fees or assessments levied by any supplier, hotelier, airline or other vendor that is designated as a tax or fee and on which no commission is payable to Kognitiv, but for greater certainty does not include income taxes payable by any person.

"Technology" means any: (a) ideas, procedures, processes, systems, methods of operation, concepts, principles, and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials; and (c) Kognitiv Platform, PaaS Subscription Services and other software, hardware, code, technology, or other functional item, of Kognitiv.

"Term" has the meaning set forth in Section 11.1.

"Third Party Platforms" has the meaning set forth in Section 7.4.

"Trading Credit" means an inbound investment of cash, goods and services or other content provided pursuant to an Embedded Success Plan.

"Trademark" means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia, or any other

source or business identifier, protected or protectable under any Laws.

- 16.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 16.3 Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 16.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this Agreement includes the Schedules.
- 16.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

[Schedules follow]

SCHEDULE A

CLIENT CONTENT TERMS

1 GENERAL; PROCESSING AND FULFILLMENT

- 1.1 Kognitiv may from time to time enable the sale, merchandising and promotion of Client Content as part of the Services.
- 1.2 Unless otherwise agreed, pricing of the Client Content to End Consumers will either be included in a package with other goods or services or will be consistent with Client's other publicly available rates.
- 1.3 Kognitiv will receive all sales proceeds on Client's behalf and will provide order information to Client for each order of Client Content following collection of all sales proceeds by Kognitiv and completion of the End Consumer's experience. Order information will only be provided to Client following full and final collection of sales proceeds.
- 1.4 Client will be solely responsible for fulfillment of orders immediately upon receipt of order information from Kognitiv, including for shipping, handling and the other duties and obligations described in this Schedule. Client will accept and fulfill orders to at least the same standards as if such orders had been made with Client through any other distribution channel, but in any event shall ensure that 90% of all orders are dispatched within 7 calendar days of being received by Client, 99% of all orders are dispatched within 14 days of being received by Client and 100% of all orders are dispatched within 24 calendar days of being received by Client.
- 1.5 Without limiting Client's fulfillment obligations, Kognitiv may require that certain voucher codes, coupon codes and other order confirmations sent to the End Consumer originate from Kognitiv (on behalf of Client), and in such circumstances Client will provide all necessary information to facilitate such End Consumer communications.
- 1.6 Other than the fees, costs or other charges as set out in a confirmed order, Client shall not charge the End Consumer any additional amounts in connection with such purchase. If Client fails to disclose any fees, costs or other charges to Kognitiv in connection with the Client Content, then Client must waive the collection of such amounts from End Consumers who are unwilling to remit payment.
- 1.7 Kognitiv will bear the risk of credit card fraud occurring in connection with transactions for the purchase of Client Content for which sales proceeds are collected by Kognitiv. Client will bear all other risk of fraud or loss.
- 1.8 Client shall be solely liable for any claim, return, adjustment, cancellation or other dispute that is not credit card fraud borne risk for which Kognitiv is responsible pursuant to section 1.7 of this Schedule A. Client shall reimburse the End Consumer for the full amount of any such claim (including sales proceeds, associated shipping and handling charges and all taxes).

2 BILLING TERMS

- 2.1 Client shall invoice Kognitiv on a monthly basis for all Client Content orders for which order information was provided by Kognitiv in the preceding month. If Kognitiv has not received an invoice within such a period, then no amount

is due to Client for the order(s) in question, and Kognitiv shall have no further obligation to Client with respect to such order(s).

- 2.2 Each invoice shall specify for each order, the End Consumer name, the Kognitiv confirmation number and the Client Content ordered. Client shall provide proof of fulfillment of the order to the End Consumer upon request.
- 2.3 Client shall provide Kognitiv with valid tax invoices upon request. All invoices and payments shall be in the currency agreed in the Order Form.
- 2.4 Kognitiv shall pay Client within 30 days of receipt of the invoice by electronic funds transfer or other payment method selected by the parties.

3 DISPUTES, CANCELLATIONS AND RETURNS

- 3.1 Client will be solely responsible for, and will promptly accept, calculate and process, cancellations, returns, refunds, changes and other adjustments in accordance with the Client Content Information, payments for which will be paid directly by Client to the End Consumer. If Client accepts a return or cancellation and does not provide a replacement, it shall notify Kognitiv in the monthly report that relates to the relevant month, and in such event the fee for such item shall be refunded to Kognitiv, by either deducting it from Client's next invoice, or on termination or expiry of this Agreement, by providing a credit note (such credit note to be paid within 30 days).
- 3.2 Client is solely responsible for any non-performance, non-delivery, improper delivery, theft or other mistake or act in connection with the fulfillment of Client Content.
- 3.3 Client is solely responsible for any non-conformity or defect in, any public or private recall of, or safety alert of any Client Content or other products provided in connection with Client Content. Client will notify Kognitiv promptly as soon as it has knowledge of any such public or private recalls or safety alerts.
- 3.4 Kognitiv may, in its sole discretion, withhold for investigation, refuse to process, restrict shipping destinations for, stop, and/or cancel any transactions for the sale of Client Content, and Client will stop or cancel orders at the request of Kognitiv. If Client has already transferred the Client Content to a carrier or shipper at the time of such a request by Kognitiv, Client will use commercially reasonable efforts to stop or cancel delivery of the order. If Client has received payment from Kognitiv for any stopped or cancelled order it agrees to return the applicable funds to Kognitiv.
- 3.5 In the event of a complaint being made to Kognitiv by any End Consumer relating to Client and, in particular, the inadequacy or non-provision of the Client Content or any other service or facility provided or agreed to be provided by Client, Kognitiv may notify Client of any such claim or complaint and Client will provide Kognitiv with satisfactory information immediately and in any event within two (2) Business Days to assist Kognitiv in responding adequately to such complaint. In the event any order is fulfilled with an incorrect item of Client Content, Client agrees to re-dispatch the correct item within 24 hours of being advised of any such error.

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4 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 4.1 Client represents, warrants and covenants to Kognitiv as follows:
- 4.1.1 the Client Content Information shall at all times be true, accurate and not misleading;
- 4.1.2 Client will at all times hold all necessary licences, certificates, consents and permissions required by applicable Law and regulation for the purposes for which the Client Content are provided
- 4.1.3 it has all valid legal title to Client Content and all necessary rights to distribute the Client Content and to perform the obligations contemplated hereunder, including any necessary image and copy approvals from third parties;
- 4.1.4 all Client Content can be lawfully exported and/or imported in fulfillment of orders processed under this Agreement;
- 4.1.5 Client is not aware of any defects in the Client Content and will notify Kognitiv as soon as it becomes aware of any defects or safety issues, and the Client Content has not been subject to any product recall;
- 4.1.6 the Client Content and Client Content Information, including its offer and sale, will comply with all applicable Law (including all minimum age, marking and labelling requirements) and will not contain any sexually explicit, defamatory or obscene materials;
- 4.1.7 it will source, offer, sell and fulfill Client Content in accordance with the terms of the applicable Client Content Information, this Agreement, all other terms provided by Client and communicated to End Consumers and any other terms agreed by Client and Kognitiv;
- 4.1.8 it will source any certification or other documentation from partners where available as requested by Kognitiv to assess the quality of Client Content;
- 4.1.9 it will package Client Content in a commercially reasonable manner complying with all applicable marking, packaging and labelling Laws;
- 4.1.10 it will retrieve order information provided by Kognitiv on a timely basis, and will use best efforts to maintain sufficient stock of Client Content throughout the term of this Agreement;
- 4.1.11 it will provide Kognitiv with information regarding fulfillment and order status and tracking (to the extent available) as requested by Kognitiv, including numbers of relevant voucher codes, coupon codes, code entries and code redemptions;
- 4.1.12 it will notify Kognitiv immediately if any items of Client Content are no longer available, and will use reasonable commercial efforts to increase the stock levels of Client Content where demand appears to be greater than anticipated prior to using substitution stock. In the event an order is taken for an item of Client Content which is out of stock, Client shall suggest a substitution to Kognitiv, and any potential substitution should match or exceed the specifications of the original item, and be offered at no higher than the original cost;
- 4.1.13 it will notify Kognitiv immediately concerning any problem or potential problem with the quality or available of Client Content, and make best efforts to protect End Consumers in connection with any such problem;
- 4.1.14 it will comply with all applicable shipping and handling Laws; and
- 4.1.15 it will identify Client as the seller of the Client Content and as the person to whom an End Consumer may return the applicable Client Content.
- 4.2 Upon termination of this Agreement, all rights and obligations of the parties pertaining to transactions involving Client Content occurring during the Term will survive termination or expiration of the Term.
- 4.3 Client shall at all times maintain (at its own cost) a comprehensive insurance policy or policies to cover all risks relating to and/or arising out of the performance of this Agreement and/or the Client Content normally covered by insurance. Client shall on demand provide a copy of all insurance policies and schedules to the same to Kognitiv or Kognitiv's representatives. Kognitiv will not check the policy documentation for suitability and it remains the responsibility of Client to ensure that they are adequately insured at all times.

SCHEDULE B

TECHNICAL AND ORGANIZATIONAL MEASURES

- 1 Organizational policies and procedures that address:
 - 1.1 Security
 - 1.2 Data handling, protection, and retention
 - 1.3 Physical and Environmental security
 - 1.4 Access control
 - 1.5 Acceptable use
 - 1.6 Periodic testing of business-critical plans
- 2 Risk management program
- 3 Asset management program
- 4 Vulnerability management program
- 5 Incident and Breach management program
- 6 Network security procedures and best practices
- 7 Application and platform procedures and best practices
- 8 Business Continuity and Disaster Recovery Plans

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SCHEDULE C

SERVICE SUPPORT

Level	Description	Business Impact	Client Responsibility	Response Time¹	Contact Method
Urgent	System outage, all agent users are unable to transact through the system, impact is measured by significant loss of revenue	Loss of revenue, inability to service end user/consumer requests	Client is available and able to test workaround and solutions on constant basis in conjunction with Kognitiv	2 business hours ¹	Create a support ticket
High	Reoccurring system issue causing transactions to fail, has happened more than once in a short interval, can be reproduced, workaround not available	Major loss of productivity	Client is available to engage for joint troubleshooting	4 business hours	Create a support ticket
Medium	Intermittent system issue causing transaction or workflow to fail, has happened more than once, can be reproduced, workaround is available and reasonable	Minor loss of productivity	Client to provide feedback on as needed basis	1 Business Day	Create a support ticket
Low	Annoyance, enhancement request, inaccuracy or inconsistency in documentation, how-to question	Does not impact ability to transact business	Client to provide feedback on as needed basis within 7 business days of contact from Kognitiv	5 Business Days	Create a support ticket

¹ "Business hours" shall mean 9 AM – 5 PM Eastern Time on a Business Day.