Product Schedules

Access to the SaaS is provided by the Forsta Entity stated in the applicable Sales Order, Order Form, or other commercial agreement between the parties (“Forsta”). These Product Schedules shall govern the use of specific Software and Services to which they apply. Unless otherwise stated, these Product Schedules are subject to the Horizons SaaS Agreement terms and conditions available at www.confirmit.com/horizons-saaS-agreement (“Agreement”). Capitalized terms in these Product Schedules shall have the same meaning set out in the Agreement unless otherwise stated elsewhere herein. Except as modified herein, the terms of the Agreement remain unchanged and in full force and effect. Where any conflict arises between this Addendum and the Agreement, then the terms of this Addendum shall prevail and override the Agreement.

The term “Client” as used herein refers to you and all individuals and entities accessing the Services for any reason.

PLEASE READ THIS DOCUMENT CAREFULLY. BY USING OR CONTINUING TO USE THE SERVICES, YOU ARE INDICATING YOUR ACCEPTANCE TO BE BOUND BY THE TERMS AND CONDITIONS OF THESE SCHEDULES BETWEEN YOU AND FORSTA. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS STATED IN THE APPLICABLE SCHEDULES, FORSTA IS NOT WILLING TO ALLOW YOU TO USE THE SERVICES AND YOU SHOULD IMMEDIATELY STOP USING THE SERVICES.

ON-DEMAND IVR SERVICES SCHEDULE

1. INTRODUCTION
   1.1. Client has engaged Confirmit to undertake certain works related to Interactive Voice Response and SMS services (both referred to herein as “IVR Services”), more specifically described in an IVR Statement of Work or a related Order Form (jointly referred to herein as the “IVR SOW”) attached by reference to this Schedule. Such SOW shall be subject to the terms of this Schedule.
   1.2. All IVR SOWs executed between the Parties which reference the Agreement are incorporated herein by reference. The resultant product of the IVR Services, being the responses and audio recordings collected from Respondents, is thereafter defined as the “Work Product”. Confirmit’s obligation to provide IVR Services under each IVR SOW is subject to the continued validity of this Schedule.
   1.3. Client agrees and understands that (i) it may require a valid license for the applicable Confirmit Software to be able to utilize the Work Product; and (ii) notwithstanding Client’s rights to the Work Product as detailed herein, said Work Product may not function or operate unless being part of the Service, and that nothing in this Schedule shall be interpreted to grant Client any rights to access or use the Confirmit Software, Service or Documentation beyond the Term.
   1.4. Security reviews completed by Client of Confirmit under the Agreement and relating to the Confirmit Horizons Software, as well as any security standards and procedures agreed under the Agreement to apply to the Confirmit Horizons Software, may not apply to use of the IVR Services under this Schedule.

2. FRAMEWORK
   2.1. The terms and conditions herein are supplementary to the terms of the Agreement and are designed to address the fact that the IVR Services are different in nature to the Service. Any terms and conditions in this Schedule shall apply in relation to the IVR Services only, notwithstanding anything to the contrary elsewhere in the Agreement.
   2.2. In respect of IVR Services, and in the event of conflict or inconsistency between: (i) the terms in this Schedule, including any IVR SOW, or other documents that are expressly incorporated into this Schedule, on the one part, or (ii) terms elsewhere in the Agreement on the other, then the terms in this Schedule shall govern except when the other terms directly state that they supersede the terms in this Schedule.
   2.3. To the extent that an IVR SOW includes the use of the Service, then such use of the Service shall be covered by the terms of the Agreement and the applicable Order Form relating to the Service, and not by this Schedule.
   2.4. Client shall use commercially reasonable efforts to provide Confirmit on a need to know basis and subject to the terms of confidentiality in the Agreement, with the permission for Confirmit to access and use Client’s information, internal resources and facilities, including but not limited to equipment, software, passwords, network access, and disk space to the extent necessary for Confirmit’s performance of the IVR Services.

3. WARRANTIES
   3.1. Confirmit warrants that the IVR Services performed under this Schedule shall be performed in a high quality manner consistent with industry standard procedures.
   3.2. Client represents and warrants to Confirmit that any materials, input or instruction provided to Confirmit under this Schedule which are intended to be used in whole or in part by Confirmit to perform the IVR Services, will not violate any proprietary rights of any third party, including, without limitation, confidential relationships, patent and copyright rights,
and will be provided in accordance with and not violate any applicable laws and regulations.

3.3. In the event of a breach of the warranty under Section 3.1 of this Schedule, Client’s sole remedy and Confirmit’s sole obligation is that Confirmit shall utilize its best efforts to restore the Work Product to the contracted level. If either party concludes that Confirmit is unable to restore the Work Product within a reasonable time or at a reasonable cost, either party may terminate this Schedule and any IVR SOW hereunder, and in such case Confirmit will as a sole remedy promptly refund to Client any and all payments made to Confirmit for such non-conforming Work Product under the applicable IVR SOW, with the exception of already incurred expenses, for which Client shall remain fully responsible.

3.4. As a condition for invoking the Warranty in this Schedule, Client must give Confirmit written notice, in accordance with Article 23 of the Agreement (“Notices”), of the failure, error or malfunction Client complains of as soon as it comes to Client’s attention. In the event Client was to invoke its termination rights under Section 3.3 above, Client will allow Confirmit fifteen business (15) days, after Confirmit’s receipt of the written notice, to cure the breach.

4. LIMITATION OF LIABILITY

4.1. In respect of the provision of the IVR Services, the aggregate liability of the breaching party set forth in Article 12 of the Agreement (“Limitation of Liability”) shall not exceed 125% of the of the total amount paid to Confirmit by Client during the preceding twelve months only in relation to the work performed by Confirmit or on its behalf for the specific IVR SOW being the cause of the breach plus, in the event Client is the breaching party, any sums due and outstanding to Confirmit in relation to that specific IVR SOW at the time of the damages award.

4.2. Where the IVR Services involve potential respondents being contacted or making contact, Client accepts that it is beyond the control of Confirmit as to whether they choose to respond and that Confirmit cannot be held responsible for any failure to reach any given level of responses.

4.3. Confirmit shall not be responsible for the accuracy of any telephone numbers supplied by or on behalf of Client.

4.4. Confirmit shall not be responsible for any delays caused by telecommunication failure which are beyond its reasonable control.

5. SERVICE LEVEL AGREEMENT

5.1. The Service Level Agreement (if any) included in the Agreement shall not apply to the IVR Services, and shall be replaced in full by the following: In relation to the IVR Services, Confirmit shall remain responsible for performing backups substantially in accordance with Article 1 of Schedule 5 (“Service Level Agreement”).

6. INDEMNIFICATION

6.1. For the purpose of the provision of the IVR Services, Sections 13.1 and 13.2 of the Agreement (“Indemnification”) shall not apply to the IVR Services, and shall be replaced in full by the following:

   6.1.1. Client agrees to indemnify and hold Confirmit and its Affiliates, officers and employees, harmless from any claim or demand, including any claim or demand for legal fees, made by any third party due to or arising out of Client’s materials, input or instructions to Confirmit or its suppliers in connection with the IVR Services, Client’s violation of the terms of this Agreement, or Client’s violation of any rights of another including any claim of libel, defamation, violation of rights of privacy or property or other rights, including loss of service by other clients and infringement of intellectual property.

   6.1.2. Confirmit will defend and hold Client and Client Affiliates harmless from, and indemnify Client and Client Affiliates against all Losses suffered or incurred by it or them as a result of, any third party claim that Client’s or any Client Affiliates’ access to or use of the Work Product, in accordance with the terms of this Schedule, infringes any IPR subsisting in the United States or any country belonging to the European Economic Area.

   For clarity, Sections 13.3 to 13.5 of the Agreement (“Indemnification”) shall remain in full force and effect.

7. OWNERSHIP OF WORK PRODUCT

7.1. Confirmit shall make no claim to either the title to or intellectual property rights to any data or other input provided by Client, nor to the Work Product.

7.2. Client shall make no claim to either the title to or intellectual property rights to any methodology, procedures, software or other means used to create the Work Product.

7.3. The Work Product may include any software, intellectual property, services, materials or other technology which are owned or controlled by a third party (“Third Party Technology”). Client shall make no claim to the IPR thereof and Client’s sole and only rights in respect of Third Party Technology are limited to the rights of use as defined in this Schedule and in the Agreement.

7.4. Confirmit is not prohibited by any provision of this Schedule or any IVR SOW hereunder, from creating work products for any other clients that are similar to Work Product created for Client, provided that Confirmit does not use or disclose any of Client’s Confidential Information as defined in Article 14 of the Agreement (“Confidential Information”) or infringe any of Client’s intellectual property rights in the course of such work.

8. DATA PROTECTION

8.1. Confirmit will use the services of a third party supplier (Pinpoint Research as of the date of this Schedule) for the provision of telephone based data collection. Confirmit may change the third party supplier from time to time provided the quality and performance of the IVR Service is not materially compromised thereby. Any such change will be communicated to Client in advance.

8.2. Terms materially in accordance with Section 17.2 of the Agreement (“Data Protection”) will at all times be incorporated within the agreement between Confirmit and its third party supplier.
9. FEES & EXPENSES
9.1. The fees and expenses are set out in the applicable IVR SOW. Unless specifically stated otherwise in the IVR SOW, call costs and rentals of phone numbers are always charged in addition to any fees quoted.
9.2. Notwithstanding anything to the contrary in the Agreement or otherwise, undisputed invoices related to telephony costs are payable no later than 14 days from receipt of invoice. Prompt payment by Client of the telephony charges shall be of the essence. In the event of any dispute over such charges, Client shall promptly pay the undisputed portion, or if it is not practical to identify the undisputed portion, then a round sum plus VAT which would reasonably represent the undisputed portion.
9.3. Other invoices are payable no later than thirty (30) days from receipt of invoice.
9.4. If Client fails to pay any invoice when due, Confirmit shall be entitled to late charges at the rate of ten percent (10%) per annum of the unpaid balance from the date the invoice originally became due. Imposition of late charges shall be without prejudice to Confirmit’s right to seek other remedies.
9.5. Confirmit reserves the right to invoice the telephony related costs separately. Confirmit may choose to invoice non-telephony related charges either by way of a separate invoice, or combined with any invoice to be raised under the Agreement.
9.6. The price increases referred to in Article 2 of Schedule 2 of the Agreement (“Fees, Charges, Pricing & Payment”) will not apply to IVR Services.
9.7. Unless specifically specified otherwise in the IVR SOW, any price which includes telecommunications charges is only valid for one month and is subject to change.
9.8. For clarity, an IVR unit does not include a Confirmit Unit, which will also be required to process the response.
10. TERM AND TERMINATION
10.1. The period for which Confirmit shall provide the IVR Services will be set out in the IVR SOW. Unless otherwise stated in the IVR SOW, and notwithstanding anything to the contrary in the Agreement, neither the period for providing the IVR Services nor any prices will automatically renew. Any Term Extension will have to be agreed between the Parties in writing before the last day of the then current licensing period. Notwithstanding anything to the contrary in this Schedule, the IVR SOW or the Agreement, Confirmit reserves the right to modify the pricing of the IVR Services upon 3 months’ written notice to take effect at the next yearly anniversary of the commencement of the term of the IVR Services.
10.2. For sake of clarity, the termination rights in Article 18 of the Agreement (“Termination Rights”) also apply to this Schedule. Furthermore, termination of the Agreement shall automatically terminate this Schedule unless the Parties agree otherwise in writing.
10.3. Following termination of any IVR SOW under this Schedule or this Agreement, Confirmit may delete all data relating to such IVR SOW. It is Client’s responsibility to ensure that it has downloaded any data which it wishes to retain. Client is able to download its own data from the Service but is reminded that audio files are held on a separate server and need to be downloaded from there.

TEXTANYWHERE SMS SERVICES SCHEDULE

1. INTRODUCTION
1.1. Client wishes to use SMS messaging functionality offered by Confirmit, the purpose of which is to either direct the recipient to a survey or to conduct an interactive survey via SMS (jointly referred to herein as “SMS Services”) and more specifically described in a related Order Form. SMS messages sent using SMS Services are hereafter referred to as “SMS Messages”.
1.2. Client agrees and understands that it will have to hold a valid license for the applicable Confirmit Software to be able to utilize the responses to the SMS Messages and that nothing in this Schedule shall be interpreted to grant Client any rights to access or use the Confirmit Software, Service or Documentation beyond the Term.
1.3. Security reviews completed by Client of Confirmit under the Agreement and relating to the Confirmit Professional Software, as well as any security standards and procedures agreed under the Agreement to apply to the Confirmit Professional Software, may not apply to use of the SMS Services under this Schedule.

2. FRAMEWORK
2.1. The terms and conditions herein are supplementary to the terms of the Agreement and are designed to address the fact that the SMS Services are different in nature to the Service. Any terms and conditions in this Schedule shall apply in relation to the SMS Services only, notwithstanding anything to the contrary elsewhere in the Agreement.
2.2. In respect of SMS Services, and in the event of conflict or inconsistency between: (i) the terms in this Schedule or other documents that are expressly incorporated into this Schedule, on the one part, or (ii) terms elsewhere in the Agreement on the other, then the terms in this Schedule shall govern except when the other terms directly state that they supersede the terms in this Schedule.

3. WARRANTIES
3.1. For the purposes of the warranties under Articles 11 & 12 of the Agreement, the terms “Software” and “Service” shall be deemed to include SMS Services, save that reference to the Service Level Agreement shall be to Article 5 of this Schedule.

3.2. Client represents and warrants to Confirmit that the content of any SMS Message or any materials, input or instruction provided to Confirmit which are intended to be used in whole or in part by Confirmit to perform the SMS Services, will not violate any proprietary rights of any third party, including, without limitation, confidential relationships, patent and copyright rights, and will be provided in accordance with and not violate any applicable laws and regulations.

4. LIMITATION OF LIABILITY

4.1. As it pertains to Client’s licensing and use of the SMS Services, and notwithstanding anything to the contrary in the Agreement, Client agrees that Confirmit’s sole liability and Client’s sole remedy for any failure of the proper functioning of SMS Services shall be (a) the “Limited Warranty” of the Agreement, and (b) solely in relation to any compensation or other payments Confirmit is legally obliged to pay, to a maximum aggregate liability equivalent to 125% of the license fees paid by Client over the preceding twelve (12) months and relating to the SMS Services, plus any sums due and outstanding to Confirmit in relation to the specific project to which the failed SMS Services relate.

4.2. Where the SMS Services involve potential respondents being contacted or making contact, Client accepts that it is beyond the control of Confirmit as to whether they choose to respond and that Confirmit cannot be held responsible for any failure to reach any given level of responses.

4.3. Confirmit shall not be responsible for the accuracy of any telephone numbers supplied by or on behalf of Client.

4.4. Confirmit shall not be responsible for any delays caused by telecommunication failure which are beyond its reasonable control.

5. SERVICE LEVEL AGREEMENT

5.1. The Service Level Agreement (if any) included in the Agreement shall not apply to the SMS Services, and shall be replaced in full by the following: In relation to the SMS Services, Confirmit shall promptly investigate any delays in the sending of SMS Messages and shall make reasonable efforts to rectify any such problems.

6. INDEMNIFICATION

6.1. For the purpose of the provision of the SMS Services, Sections 13.1 and 13.2 of the Agreement ("Indemnification") shall not apply to the SMS Services, and shall be replaced in full by the following:

6.1.1. Client agrees to indemnify and hold Confirmit and its Affiliates, officers and employees, harmless from any claim or demand, including any claim or demand for legal fees, made by any third party due to or arising out of Client’s materials, input or instructions to Confirmit or its suppliers in connection with the SMS Services, Client’s violation of the terms of this Agreement, or Client’s violation of any rights of another including any claim of libel, defamation, violation of rights of privacy or property or other rights, including loss of service by other clients and infringement of intellectual property.

6.1.2. Confirmit will defend and hold Client and Client Affiliates harmless from, and indemnify Client and Client Affiliates against all Losses suffered or incurred by it or them as a result of, any third party claim that Client’s or any Client Affiliates’ access to or use of the SMS Service, in accordance with the terms of this Schedule, infringes any IPR subsisting in the United States or any country belonging to the European Economic Area.

For clarity, Sections 13.3 to 13.5 of the Agreement ("Indemnification") shall remain in full force and effect.

7. USE OF SMS SERVICES

7.1. Confirmit will register Client for use of the SMS Services. Client must provide the full legal name and address of the organisation sending the SMS Messages.

7.2. Client agrees and understands that where access is provided to Client for its use of the SMS Services on a self-service basis, such access shall be to servers and infrastructure owned or controlled by a third party, and hosted in a location that may be different than the location hosting the Services.

7.3. The restrictions under the heading Prohibited Use in the Confirmit Professional On-Demand Acceptable Use Policy document as stated at confirmit.com/legal apply equally to use of SMS Services and any breach thereof shall entitle Confirmit to disable Client’s use of the SMS Services, without refund.

8. DATA PROTECTION

8.1. Confirmit will use the services of a third party supplier (TextAnywhere Ltd, UK “TA Ltd”, as of the date of this Schedule) for the provision of Client’s self-service access to the SMS Services, and for the sending of SMS Messages. Confirmit may change the third party supplier from time to time provided the quality and overall performance of the SMS Service is not materially compromised thereby. Any such change will be communicated to Client in advance.

8.2. Confirmit shall treat any data it receives from TA Ltd in accordance with the data protection and confidentiality terms of the Agreement. The technical and organizational measures TA Ltd has in place to protect security and confidentiality of Client’s data while under TA Ltd’s control are those outlined on TA Ltd’s homepage. Client agrees that those measures meet the applicable data protection terms of the Agreement.

8.3. As of the signature date of this Schedule, SMS Messages are received in the UK and are promptly passed to the Service located in Europe.

9. FEES & EXPENSES

9.1. In addition to any software that may be required to use SMS Services, each SMS Message (not survey) sent shall be charged as one or more SMS Units, depending on the country to which it is sent. For charging purposes, SMS
Messages may be split into several SMS Units, currently on the basis of whether the first message of a survey exceeds 160 characters and subsequent ones exceed 153 characters. Confirmit may change this restriction, if required to do so by its supplier. The cost of an SMS Unit includes the cost of sending the message charged by the telecommunications network, but not the Confirmit Unit for a completed survey.

9.2. Client may also be invoiced for rentals of local telephone numbers, cost of calls/sms messages received by such local numbers and any other options available.

9.3. Client may purchase non-refundable SMS Units in advance and any SMS Messages sent shall reduce the SMS Units available to Client. In the event that Client attempts to send an SMS Message after its supply of SMS Units is exhausted, the message will not be sent.

9.4. If Client fails to pay any invoice when due, Confirmit shall be entitled to withdraw from Client’s SMS Unit account the number of SMS Units equivalent to the outstanding invoice(s), in addition to any other remedies it may have.

9.5. The price increase clauses included in Article 2 of Schedule 2 of the Agreement (“Fees, Charges, Pricing & Payment”) will not apply to SMS Services.

10. TERM AND TERMINATION

10.1. The period for which Confirmit shall provide the SMS Services will be set out in the applicable Order Form. Unless otherwise stated in the Order Form, and notwithstanding anything to the contrary in the Agreement, prices for SMS Services will not automatically renew and need to be mutually agreed.

10.2. For sake of clarity, the termination rights in Article 18 of the Agreement (“Termination Rights”) also apply to this Schedule. Furthermore, termination of the Agreement shall automatically terminate this Schedule unless the Parties agree otherwise in writing.