

Managed Services Terms v1.1

(Provision of Services BY Confirmit)

Terms and Conditions

1. INTRODUCTION

- 1.1. By the execution of an Order Form referencing Consultancy Services, Ordering Party may engage CONFIRMIT to provide certain consultancy services (hereinafter the "**Consultancy Services**") subject to these Terms which Ordering Party accepts and agrees to be bound by and which are incorporated by reference into such Order Form. An "**Order Form**" is defined as an order document issued by CONFIRMIT or one of its corporate group, and to be mutually signed to be valid.
- 1.2. The **Parties** agree that CONFIRMIT may only allocate resources for and provide Consultancy Services subject to an Order Form referencing said Consultancy Services and, unless the Order Form states differently, a separate more comprehensive Statement of Work ("**SOW**"). Each Order Form and SOW (including any other document incorporated into them) shall form an integral part of the Terms.
- 1.3. In the event of conflict or inconsistency between these Terms, any Order Form, any SOW or any other document expressly incorporated into the SOW, the following shall be the order of precedence: first these Terms (except when the terms in the Order Form, SOW or other incorporated document directly state that they take precedence over these Terms), then the Order Form, then the SOW (if any) and, lastly, any other incorporated document. Any amending addendum to any of the foregoing executed between the Parties takes precedence over the original document which it amends, and (unless otherwise stated) any previously executed addenda thereto. No terms or conditions endorsed upon, delivered with or contained in Ordering Party's purchase order, acceptance statements, specifications, or similar documents will form part of the Terms unless expressly agreed in writing between the Parties.
- 1.4. Any SOW may specify that use of the Work Product is subject to yearly license fees for the Software, for the SaaS Service or Limited SaaS Service (as defined below) or for third party software or services, in which case the execution of additional licensing agreements or Order Forms may be necessary.
- 1.5. Ordering Party accepts and agrees that notwithstanding Ordering Party's rights to use the Work Product as detailed herein, that said Work Product may not function or operate unless being used in conjunction with the Software and / or via the SaaS Service, and that nothing in these Terms shall be interpreted to grant Ordering Party any rights to access or use the Software or the SaaS Service other than to the extent specified in a separate Order Form or SOW or in a separate SaaS or Software license agreement.
- 1.6. Ordering Party further acknowledges and agrees that only limited access (i.e. ability to respond to surveys, and / or for basic viewing, reviewing and analyzing of survey data) to the SaaS Service may be available to Ordering Party (the "**Limited SaaS Access**"). Any use of the SaaS Service for purposes other than the Limited SaaS Access, such as but not limited to Ordering Party's self-service use of the SaaS Service, shall be subject to the mutual execution of a separate SaaS Agreement.
- 1.7. "**Licensed Materials**" shall mean, jointly, the SaaS Service, the Limited SaaS Access, the Software and the Work Product.
- 1.8. "**SaaS Service**" shall mean the web based hosting environment from which the Software is accessible for use, and from which the Work Product may be made available to Ordering Party. Ordering Party understands and agrees that the web based hosting environment is currently outsourced by CONFIRMIT to a third party hosting provider, and that Ordering Party data may be stored on the SaaS Service.
- 1.9. "**Work Product**" shall mean the outcome of the Consultancy Services, as specifically created or developed for Ordering Party by or on behalf of CONFIRMIT, excluding any Third Party Technology (as defined in Section 7.2.4 below) and any CONFIRMIT IP (as defined in Section 7.2.1 below).
- 1.10. Where the Consultancy Services are developed with the aim at delivery via the SaaS Service, these Terms apply only to features developed for Ordering Party to be used in conjunction with the applicable CONFIRMIT Software product (the "**Software**"), and not to any features commissioned by Ordering Party to be embedded in, and become part of, the Software.

2. PROVISION OF SERVICES

- 2.1. Ordering Party acknowledges and agrees that CONFIRMIT's performance of the Consultancy Services may be performed in one or more increments, is conditional upon Ordering Party promptly providing all reasonable assistance, information, decision-making and access to Ordering Party's internal resources and facilities (including equipment, software, network access and disk space) as reasonably required by CONFIRMIT from time to time, which Ordering Party agrees to give, and all Materials (as defined in Section 3.2 below) provided by Ordering Party being reliable, accurate and complete.

3. WARRANTIES

- 3.1. Each Party represents and warrants that it has the right and authority to enter into and perform its obligations under these Terms; and that it shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to it and its role hereunder; provided, however, that any additional laws, regulations and other legal requirements that Ordering Party wishes or requires CONFIRMIT to comply with shall be subject to CONFIRMIT's prior written acceptance and the payment of fees to CONFIRMIT to cover its reasonable costs, if any, applicable to such compliance efforts.
- 3.2. Ordering Party further represents and warrants to CONFIRMIT that none of the materials (including names of individuals, email lists and other contact information, and/or personally identifiable information), data, input or instructions provided by or on behalf of Ordering Party to CONFIRMIT that are intended to be used in whole or in part by CONFIRMIT in the course of performing the Consultancy Services ("**Materials**"), will contain any content that infringes any intellectual property rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, inciteful of violence or hatred, blasphemous, discriminatory (on any grounds), knowingly false or misleading, or violates any applicable laws or regulations.
- 3.3. CONFIRMIT further warrants (the "**Limited Warranty**") that:
 - 3.3.1. the Consultancy Services shall be performed with reasonable care and skill, consistent with industry standard procedures;
 - 3.3.2. unless stated otherwise in the applicable Order Form or SOW, for a period of sixty (60) days from the Acceptance Date (as defined in Section 8.4 below) or date of delivery where no acceptance testing is to be performed, the Work Product will function substantially in accordance with the specifications in the Order Form and SOW; and
 - 3.3.3. the Work Product shall, upon delivery, be virus-free provided that CONFIRMIT shall not be liable in circumstances where: (i) Ordering Party has occasioned the introduction into the Work Product of a virus; or (ii) the introduction of a virus could not have been prevented notwithstanding CONFIRMIT's timely deployment of industry standard anti-virus software.
- 3.4. In the event of a breach of the Limited Warranty, Ordering Party's sole remedy and CONFIRMIT's sole liability and obligation is that CONFIRMIT shall utilize commercially reasonable efforts to make the Work Product conform to the Limited Warranty. If either Party concludes that CONFIRMIT is unable to restore the Work Product within a reasonable time of no less than ten (10) business days, or at a reasonable cost, either Party may terminate the relevant Consultancy Services and in such case CONFIRMIT will, as Ordering Party's sole and exclusive remedy, promptly refund to Ordering Party any and all payments made to CONFIRMIT for such non-conforming Work Product under the applicable Order Form.
- 3.5. As a condition for invoking the Limited Warranty, Ordering Party must give CONFIRMIT written notice of the failure, error or malfunction Ordering Party complains of as soon as it comes to Ordering Party's attention. Furthermore, Ordering Party will make commercially reasonable efforts to deliver to CONFIRMIT a detailed written explanation of how to reproduce the alleged breach of the Limited Warranty.
- 3.6. Notwithstanding anything to the contrary herein, CONFIRMIT shall have no liability for any failures, errors and/or malfunctions to the extent caused by:
 - 3.6.1. Ordering Party's Materials;
 - 3.6.2. Ordering Party's use of the Work Product in combination with materials, software or equipment not expressly approved by CONFIRMIT; or
 - 3.6.3. the failure of Ordering Party to meet any system requirements applicable to the use of the SaaS Service (see System Requirements under <http://www.confirmit.com/legal-notice.aspx>).
- 3.7. Ordering Party understands and accepts that unless specifically agreed in writing by CONFIRMIT, the Work Product shall not be considered as part of the Software or the Service as those terms are defined in either CONFIRMIT's SaaS Agreement, On-Premise Agreement or any other agreement between the Parties, and as such the warranties applying to the Software and the Service under those agreements shall

not apply to the Work Product.

- 3.8. CONFIRMIT will not be liable to Ordering Party to the extent that compliance with any instructions conveyed by or on behalf of Ordering Party would otherwise constitute a breach by CONFIRMIT of applicable law or regulation.
- 3.9. APART FROM THE WARRANTIES STATED IN THIS ARTICLE 2.1, THE LICENSED MATERIALS ARE PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW CONFIRMIT EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS AND OTHER TERMS WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONSULTANCY SERVICES AND/OR THE LICENSED MATERIALS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY, CONDITION OR OTHER TERM ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE. NO ORAL OR WRITTEN INFORMATION PROVIDED BY CONFIRMIT OR ITS EMPLOYEES OR REPRESENTATIVES OF CONFIRMIT WILL CREATE ANY WARRANTY, AND THIS WARRANTY DISCLAIMER SUPERSEDES ANY SUCH INFORMATION. CONFIRMIT DOES NOT REPRESENT OR WARRANT THAT THE LICENSED MATERIALS SHALL BE ERROR-FREE. NOTHING IN THIS SECTION 3.9 LIMITS OR EXCLUDES EITHER PARTY'S LIABILITY FOR FRAUDULENT MISREPRESENTATION.

4. LIMITATION OF LIABILITY

WHEN THE ORDER FORM IS EXECUTED BY A CONFIRMIT COMPANY INCORPORATED UNDER US LAW THE FOLLOWING APPLIES:

- 4.1. TO THE FULLEST EXTENT ALLOWED BY LAW, CONFIRMIT SHALL NOT UNDER ANY CIRCUMSTANCES, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES HOWSOEVER CHARACTERIZED, ARISING FROM OR IN ANY MANNER RELATED TO THESE TERMS, ANY ORDER FORM REFERENCING THESE TERMS, ANY SOW HEREUNDER, THE LICENSED MATERIALS, OR THE SUBJECT MATTER HEREOF, INCLUDING LOSS OF REVENUE OR PROFITS, WASTED ADMINISTRATIVE TIME, COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, OR DAMAGES RESULTING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DESTRUCTION, LOSS OR DELETION OF DATA, OR DELAYS IN OPERATION OR TRANSMISSION. IN THE EVENT OF ANY BREACH BY EITHER PARTY OF THESE TERMS, WITH THE EXCEPTION OF BREACHES OF SECTION 3.1, ARTICLE 4.1: "INDEMNIFICATION" OR ARTICLE 5.1: "CONFIDENTIALITY", IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE BREACHING PARTY EXCEED 125% OF THE TOTAL AMOUNT PAID TO CONFIRMIT BY ORDERING PARTY DURING THE PRECEDING TWELVE MONTHS IN RELATION TO THE SPECIFIC CONSULTANCY SERVICES BEING THE CAUSE OF THE BREACH, PLUS, IN THE EVENT ORDERING PARTY IS THE BREACHING PARTY, ANY SUMS DUE AND OUTSTANDING TO CONFIRMIT IN RELATION TO SUCH CONSULTANCY SERVICES AT THE TIME OF THE DAMAGES AWARD. THE TOTAL LIABILITY OF THE RELEVANT PARTY FOR ANY SPECIFIC EVENT WILL NOT EXCEED THE TOTAL AGGREGATE LIABILITY FOR SUCH PARTY, AS CALCULATED ABOVE, LESS ANY SUMS PAID OR PAYABLE FOR PREVIOUS EVENTS GIVING RISE TO LIABILITY ON THE PART OF SUCH PARTY THAT HAVE OCCURRED PRIOR TO THE DATE OF THE SPECIFIC EVENT.
- 4.2. EXCEPT AS SET FORTH IN THIS ARTICLE, EACH PARTY'S LIABILITY UNDER THESE TERMS, AT LAW OR IN EQUITY, IF ANY, SHALL BE LIMITED SOLELY TO DAMAGES AWARDED BY A COURT OF COMPETENT JURISDICTION, IN ACCORDANCE WITH THE PROVISIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE. EACH PARTY ACKNOWLEDGES AND AGREES THE FOREGOING LIMITATIONS, DISCLAIMER AND EXCLUSIONS ARE REASONABLE AND PART OF THE BARGAINED-FOR ALLOCATION OF RISK AND SHALL NOT, AND WAIVES ANY RIGHT TO, PLEAD, ALLEGE OR CLAIM ANY SOLE OR EXCLUSIVE RIGHT OR REMEDY PROVIDED HEREIN IS INVALID OR UNENFORCEABLE BECAUSE IT WILL OR DOES FAIL OF ITS ESSENTIAL PURPOSE.
- 4.3. No claim, demand, action, legal, regulatory, administrative, judicial or arbitral proceeding may be initiated, brought or commenced by either Party against the other more than two (2) years after the cause of action first arose.

WHEN THE ORDER FORM IS EXECUTED BY A CONFIRMIT COMPANY INCORPORATED UNDER EITHER ENGLISH OR NORWEGIAN LAW THE FOLLOWING APPLIES:

- 4.1. NEITHER PARTY'S LIABILITY: (A) FOR DEATH OR PERSONAL INJURY CAUSED BY ITS OR ITS EMPLOYEES' OR AGENTS' NEGLIGENCE; (B) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (C) TO PAY AMOUNTS PROPERLY DUE AND OWING UNDER THESE TERMS; OR (D) THAT IS NOT PERMITTED TO BE EXCLUDED OR LIMITED BY APPLICABLE LAW; IS EXCLUDED OR LIMITED BY THESE TERMS, EVEN IF ANY OTHER PROVISION OF THESE TERMS WOULD OTHERWISE SUGGEST THAT THIS MIGHT BE THE CASE.
- 4.2. SUBJECT TO SECTION 4.1, NEITHER PARTY SHALL BE LIABLE (WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE OR FOR ANY OTHER REASON) FOR ANY: (A) LOSS OF PROFITS; (B) LOSS OF SALES; (C) LOSS OF REVENUE; (D) LOSS OF ANY SOFTWARE OR DATA; (E) LOSS OF USE OF HARDWARE, SOFTWARE OR DATA; (F) WASTED ADMINISTRATIVE TIME; (G) COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, OR (H) INDIRECT, CONSEQUENTIAL OR SPECIAL LOSS.
- 4.3. SUBJECT TO SECTIONS 4.1 AND 4.2 AND WITH THE EXCEPTION OF: (A) ANY BREACH OF SECTION 3.1; AND/OR (B) ANY LIABILITY UNDER ARTICLE 4.1: "INDEMNIFICATION"; AND/OR (C) ARTICLE 5.1: "CONFIDENTIALITY"; EACH PARTY'S TOTAL LIABILITY UNDER THESE TERMS AND IN RELATION TO ANYTHING WHICH THAT PARTY HAS DONE OR NOT DONE IN CONNECTION WITH THESE TERMS (AND WHETHER THE LIABILITY ARISES BECAUSE OF BREACH OF CONTRACT, NEGLIGENCE OR FOR ANY OTHER REASON) SHALL BE LIMITED, IN AGGREGATE FOR ALL CLAIMS TO AN AMOUNT EQUAL TO 125% OF THE TOTAL AMOUNT PAID TO CONFIRMIT BY ORDERING PARTY DURING THE PRECEDING TWELVE MONTHS IN RELATION TO THE SPECIFIC CONSULTANCY SERVICES BEING THE CAUSE OF THE BREACH, PLUS, IN THE EVENT ORDERING PARTY IS THE BREACHING PARTY, ANY SUMS DUE AND OUTSTANDING TO CONFIRMIT AT THE TIME OF THE DAMAGES AWARD. THE TOTAL LIABILITY OF THE RELEVANT PARTY FOR ANY SPECIFIC EVENT WILL NOT EXCEED THE TOTAL AGGREGATE LIABILITY FOR SUCH PARTY, AS CALCULATED ABOVE, LESS ANY SUMS PAYABLE FOR PREVIOUS EVENTS GIVING RISE TO LIABILITY ON THE PART OF SUCH PARTY THAT HAVE OCCURRED PRIOR TO THE DATE OF THE SPECIFIC EVENT.

WHEN THE ORDER FORM IS EXECUTED BY A CONFIRMIT COMPANY INCORPORATED UNDER AUSTRALIAN LAW THE FOLLOWING APPLIES:

- 4.1. NEITHER PARTY'S LIABILITY: (a) FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES OR AGENTS; (b) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (c) TO PAY AMOUNTS PROPERLY DUE AND OWING UNDER THESE TERMS; OR (d) THAT IS NOT PERMITTED TO BE EXCLUDED OR LIMITED BY APPLICABLE LAW IS EXCLUDED OR LIMITED BY THESE TERMS, EVEN IF ANY OTHER PROVISION OF THESE TERMS WOULD OTHERWISE SUGGEST THAT THIS MIGHT BE THE CASE.
- 4.2. SUBJECT TO SECTIONS 4.1, 4.3, AND 4.4, NEITHER PARTY SHALL BE LIABLE (WHETHER FOR BREACH OF CONTRACT, NEGLIGENCE, OR FOR ANY OTHER REASON) FOR ANY: (a) LOSS OF PROFITS; (b) LOSS OF SALES; (c) LOSS OF REVENUE; (d) LOSS OF ANY SOFTWARE OR DATA; (e) LOSS OF USE OF HARDWARE, SOFTWARE OR DATA; (f) WASTED ADMINISTRATIVE TIME; (g) COST OF PROCURING OR MIGRATING TO SUBSTITUTE SERVICES, OR (h) INDIRECT, CONSEQUENTIAL, OR SPECIAL LOSS.
- 4.3. WITHOUT LIMITING SECTION 4.1(d), UNDER AUSTRALIAN CONSUMER LAW (THE "ACL"), CONSUMERS HAVE CERTAIN RIGHTS WHICH CANNOT BE EXCLUDED, INCLUDING GUARANTEES AS TO THE ACCEPTABLE QUALITY AND FITNESS FOR PURPOSE OF GOODS AND SERVICES. NOTHING IN THESE TERMS WILL BE READ OR APPLIED SO AS TO EXCLUDE, RESTRICT, OR MODIFY OR HAVE THE EFFECT OF EXCLUDING, RESTRICTING, OR MODIFYING ANY CONDITION, WARRANTY, GUARANTEE, RIGHT, OR REMEDY IMPLIED BY THE ACL AND WHICH BY LAW CANNOT BE EXCLUDED, RESTRICTED, OR MODIFIED, EVEN IF ANY OTHER PROVISION OF THESE TERMS WOULD OTHERWISE SUGGEST THAT THIS MIGHT BE THE CASE.
- 4.4. SUBJECT TO SECTION 4.3 AND TO THE EXTENT PROVIDED BY LAW, IF CONFIRMIT FAILS TO COMPLY WITH A STATUTORY GUARANTEE WHICH BY LAW CANNOT BE EXCLUDED THEN TO THE EXTENT THE LAW PERMITS IT TO LIMIT ITS LIABILITY IN RESPECT OF SUCH FAILURE ITS LIABILITY IS LIMITED TO: (a) IN THE CASE OF GOODS, THE REPLACEMENT OR REPAIR OF THE GOODS OR SUPPLY OF EQUIVALENT GOODS, OR THE PAYMENT OF THE COST OF HAVING THE GOODS REPLACED OR REPAIRED OR THE COST OF ACQUIRING EQUIVALENT GOODS; AND (b) IN THE CASE OF SERVICES, THE SUPPLY OF THE SERVICES AGAIN, OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.
- 4.5. SUBJECT TO SECTIONS 4.1 AND 4.2, AND WITH THE EXCEPTION OF: (a) ANY BREACH OF SECTION 11.8 "GOVERNING LAW & JURISDICTION"; OR (b) ANY LIABILITY UNDER ARTICLE 5: "INDEMNIFICATION"; OR (c) ARTICLE 6: "CONFIDENTIALITY"; OR (d) ANY LIABILITY REFERRED TO IN SECTIONS 4.3 AND 4.4, TO THE EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY UNDER THESE TERMS AND IN RELATION TO ANYTHING WHICH THAT PARTY HAS DONE OR NOT DONE IN CONNECTION WITH THESE TERMS (AND WHETHER THE LIABILITY ARISES BECAUSE OF BREACH OF CONTRACT, NEGLIGENCE, OR FOR ANY OTHER REASON)

SHALL BE LIMITED, IN AGGREGATE FOR ALL CLAIMS TO AN AMOUNT EQUAL TO ONE HUNDRED TWENTY-FIVE PERCENT (125%) OF THE TOTAL AMOUNT INVOICED BY CONFIRMIT TO CLIENT DURING THE PRECEDING TWELVE (12) MONTHS, EXCLUDING SALES TAX IN RELATION TO THE SPECIFIC CONSULTANCY SERVICES BEING THE CAUSE OF THE BREACH, PLUS, IN THE EVENT ORDERING PARTY IS THE BREACHING PARTY, ANY SUMS DUE AND OUTSTANDING TO CONFIRMIT AT THE TIME OF THE DAMAGES AWARD. THE TOTAL LIABILITY OF THE RELEVANT PARTY FOR ANY SPECIFIC EVENT WILL NOT EXCEED THE TOTAL AGGREGATE LIABILITY FOR SUCH PARTY, AS CALCULATED ABOVE, LESS ANY SUMS PAYABLE FOR PREVIOUS EVENTS GIVING RISE TO LIABILITY ON THE PART OF SUCH PARTY THAT HAVE OCCURRED PRIOR TO THE DATE OF THE SPECIFIC EVENT.

5. INDEMNIFICATION

- 5.1. Subject to Section 3.6, CONFIRMIT shall defend, indemnify and hold Ordering Party, and its agents and employees, harmless from and against damages, losses, liabilities and expenses, including reasonable legal fees, arising out of or resulting from any third party claim that Ordering Party's use of the Work Product in accordance with these Terms infringes any third party's patents, trademarks and/or copyrights (jointly, the "IPR") subsisting in Canada, in the United States or any country belonging to the European Economic Area.
- 5.2. Ordering Party shall defend, indemnify and hold CONFIRMIT harmless from and against any claims, damages, losses, liabilities and expenses, including reasonable legal fees, arising out of or in connection with any third party claim that any of the Materials are in breach of the warranty in Section 3.2.
- 5.3. The indemnification obligations contained in this Article shall remain notwithstanding the completion, expiration or termination of any Order Form or SOW in respect of which such claim is made, and are subject to the Party requesting indemnification ("**Indemnified Party**");
- 5.3.1. promptly notifying the indemnifying party ("**Indemnifying Party**") of any claim or litigation that is subject to such indemnification obligation; and
- 5.3.2. not making any admission or statement or taking any action that will cause an increase to the Indemnified Party's liability; and
- 5.3.3. permitting the Indemnifying Party, at its election, to control the defense and/or settlement of any such claim or litigation, provided always that no settlement may be made by said Indemnifying Party that involves an admission of liability on behalf of the Indemnified Party without such Indemnified Party's prior written consent (not to be unreasonably withheld or delayed). The Indemnified Party shall have the right, at its own expense, to participate in the defense of any such claim or litigation through counsel of its own choosing, and shall in any event cooperate reasonably with the Indemnifying Party in the defense of such claim or litigation.
- 5.4. Subject to Section 3.6, if at any time an allegation of infringement of any third party's IPR is made, or in CONFIRMIT's opinion is likely to be made, in respect of the Work Product CONFIRMIT may at its own expense:
- 5.4.1. obtain for Ordering Party the right to continue using the Work Product; or
- 5.4.2. modify or replace the Work Product so as to avoid infringement; or
- 5.4.3. in the event CONFIRMIT is unable to offer either remedy set out in Sections 5.4.1 or 5.4.2 at a reasonable cost and within a reasonable time, CONFIRMIT may terminate the appropriate Consultancy Services and shall thereupon reimburse Ordering Party a pro rata share of any sums already paid by Ordering Party under the applicable Order Form less any documented expenses (including third party expenses) CONFIRMIT has incurred prior to such termination.
- 5.5. This Article 5 states each Party's entire liability with respect to the infringement or alleged infringement of any third party's IPR of any kind whatever by the Work Product.

6. CONFIDENTIALITY

- 6.1. Each Party acknowledges that in order to perform the Consultancy Services, it may be necessary for the Parties to disclose to each other certain Confidential Information (as defined below). Neither Party shall use or disclose any Confidential Information of the other Party unless the originally disclosing Party gives prior written consent on a case by case basis, and shall only disclose such information to its own employees on a need to know basis who are subject to confidentiality agreements covering the information and who are informed by the receiving Party of the confidential nature of the Confidential Information so received and each Party's obligations under these Terms. For clarity, CONFIRMIT is authorized to use and disclose Ordering Party's Confidential Information to employees of other CONFIRMIT group companies, and to its and other CONFIRMIT group companies' sub-contractors, on a strict need to know basis and solely as required for the performance of CONFIRMIT's obligations hereunder, and always subject to written confidentiality agreements protecting the information by terms comparable in scope with the terms of this Article 6.
- As used herein, "**Confidential Information**" shall mean any non-public information of either Party, in any format and without the need for any specific marking or designation, including (i) information or materials which related to such Party's (or its sub-contractors') research, strategies, programs, databases, referral sources, customers and prospective customers, suppliers and prospective suppliers, concepts, methodologies, inventions, developments, "know-how", procedures, financial information or licensing policies; (ii) trade secrets, discoveries, the nature and results of research and development activities, and proprietary information not known generally in the community; and (iii) any information of the type described above which a receiving Party has obtained from a disclosing Party and which such disclosing Party treats as proprietary and designates as confidential, whether or not owned or developed by such disclosing Party. For clarity any Software and SaaS Service is the Confidential Information of CONFIRMIT.
- 6.2. Upon written request at any time during or after the term of any Order Form, each Party shall, subject to any legal or regulatory obligations imposed upon the other Party requiring it to retain copies of specific Confidential Information, return the Confidential Information of the other Party or delete, destroy and make permanently unusable such Confidential Information, and upon written request of the other Party certify such destruction in writing within ten (10) business days. Notwithstanding anything to the contrary herein, copies of the Confidential Information of the other Party made incidental to normal backup of a Party's computer networks are not required to be returned or destroyed; provided, however, that any such Confidential Information so retained shall remain subject to the confidentiality provisions contained herein for so long as it is retained by that Party.
- 6.3. CONFIRMIT is not prohibited by any provision of these Terms from creating work products for any other ordering party, that are similar to Work Product created for Ordering Party, provided that it does not use or disclose any of Ordering Party's Confidential Information or infringe any of Ordering Party's IPR in the course of such work.

7. OWNERSHIP OF WORK PRODUCT

- 7.1. In the event the Order Form expressly specifies that the IPR in the Work Product is to be owned by Ordering Party, then CONFIRMIT shall not claim any IPR in such Work Product to Ordering Party. CONFIRMIT agrees, at Ordering Party's expense, to take such further actions and execute and deliver such further agreements and other instruments as Ordering Party may reasonably request to give effect to this Section 7.
- 7.2. Notwithstanding anything to the contrary in these Terms, Ordering Party acknowledges and agrees that:
- 7.2.1. other than the Work Product, Ordering Party shall make no claim to any ideas, concepts, templates, methodologies, know-how or other intellectual property conceived, developed, or reduced to practice by CONFIRMIT prior to, in connection with, or after the performance of the Consultancy Services (collectively, "**CONFIRMIT IP**"); and
- 7.2.2. CONFIRMIT shall be entitled to use any of the CONFIRMIT IP in connection with its performance of services for other parties, so long as CONFIRMIT does not disclose, disseminate or make unauthorized use of Ordering Party's Confidential Information; and
- 7.2.3. Ordering Party shall not use or otherwise make available any CONFIRMIT IP to any third party without the prior written consent of CONFIRMIT; and
- 7.2.4. in the event the Work Product includes any software, IPR, materials or other technology which are owned or controlled by a third party and that are identified as such in the Order Form or SOW or where it should be reasonably apparent to Ordering Party that they are owned by a third party ("**Third Party Technology**"), Ordering Party shall make no claim to the IPR therein and Ordering Party's sole and only rights are limited to the rights of use as detailed in these Terms, the Order Form or the SOW. CONFIRMIT shall make commercially reasonable efforts to define a complete list of Third Party Technology in the SOW, and Ordering Party accepts that the list may be subject to change.

8. ACCEPTANCE TESTING

- 8.1. Where acceptance testing is specified in the SOW, Ordering Party shall perform acceptance testing of the Work Product: (i) by the date

agreed to in the SOW; or, in the event a date is not agreed to in the SOW (ii) within ten (10) business days after the date of CONFIRMIT's confirmation (e-mail will suffice) of the Work Product having been finalized and made available by CONFIRMIT for testing by Ordering Party. The applicable date of either (i) or (ii) above, shall be the "**Test End Date**".

- 8.2. If Ordering Party during the applicable acceptance-testing period should find that the Work Product does not function substantially in accordance with the specifications in the Order Form and SOW, then Ordering Party shall notify CONFIRMIT in writing within five (5) business days of the Test End Date, specifying the relevant non-conformities ("**Error Report**"). CONFIRMIT will respond promptly to any such Error Report. If the claimed non-conformities prevent further testing, Ordering Party may require the acceptance testing period to be restarted after any revised version of the Work Product has been provided by CONFIRMIT. The process described in this Section 8.2 may be repeated several times, where each end date of the re-tests is defined as "**Retest End Date**".
- 8.3. Subject to Section 3.6, CONFIRMIT shall endeavor to resolve, at its own expense, any bona fide non-conformities as reported in an Error Report within ten (10) business days of receipt of such Error Report. In the event CONFIRMIT is unable to remedy the non-conformities at a reasonable cost and within a reasonable time, CONFIRMIT may terminate the appropriate Consultancy Services and shall, as Ordering Party's sole remedy and CONFIRMIT's sole liability, reimburse Ordering Party a pro rata portion of any sums already paid by Ordering Party in conjunction with those terminated Consultancy Services.
- 8.4. The date on which the Work Product successfully passes acceptance testing (the "**Acceptance Date**"), is the earlier of either (i) the date where Ordering Party informs CONFIRMIT of its acceptance (e-mail will suffice), or (ii) the date defined in Section 8.5, or (iii) Ordering Party uses the Work Product in a production environment.
- 8.5. Ordering Party accepts that if CONFIRMIT has not received an Error Report within five (5) business days of Test End Date, or of a Retest End Date where applicable, then the Work Product will be considered as accepted in its entirety.

9. TERM & TERMINATION

- 9.1. Each Order Form shall commence on the Form Term First Date stated in such Order Form or, if no such date is specified, on the date such Order Form is executed by both Parties, and continue in force unless and until the Form Term Last Date, or as terminated in accordance with these Terms. Subject to Section 9.5, Ordering Party may terminate the Consultancy Services upon thirty (30) days written notice to CONFIRMIT.
- 9.2. Each Party shall have the right, without prejudice to its other rights or remedies, to terminate all or any applicable Consultancy Services immediately by written notice to the other if the other: (i) is in material or persistent breach of these Terms, and either that breach is incapable of remedy or it shall have failed to remedy that breach within ten (10) business days after receiving written notice requiring it to do so; or (ii) becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an order is made, or an effective resolution is passed, for its bankruptcy, administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.
- 9.3. Either Party shall be deemed to be in material breach if, without limitation, such Party:
 - 9.3.1. uses or permits the use of the Work Product in violation of these Terms; or
 - 9.3.2. misappropriates the IPR of the other Party; or
 - 9.3.3. fails to perform its obligations of indemnification as required hereunder; or
 - 9.3.4. violates its obligation to keep Confidential Information of the other Party in confidence; or
 - 9.3.5. fails to pay amounts due under the this Agreement in a timely manner and thereafter fails to cure the payment default within ten (10) business days after receiving written notice of the default from the aggrieved Party.
- 9.4. Upon termination or expiration of an individual Order Form or SOW, rights or obligations accruing prior to such date of termination, and provisions that expressly or by implication are intended to come into force or continue in force on or after termination, including Articles 3.1, 4.1, 5.1, 9.4 and 10.1, shall continue unaffected.
- 9.5. Any termination of any Order Form or SOW initiated by Ordering Party for reasons other than material breach by CONFIRMIT (i) will not relieve Ordering Party from the obligation of payment for any Software, SaaS Service, Consultancy Services, and/or Work Products provided or expenses incurred by CONFIRMIT in conjunction with its good faith performance under the Order Form or SOW up and until the effective date of termination; and (ii) will not entitle Ordering Party to any pro rata refund of license fees already paid for the Limited SaaS Access, or for the SaaS Service, and Client will remain responsible for full payment of any and all sums, whether invoiced or not, due and outstanding for the remainder of the Form Term on that Order Form or SOW in relation to such for SaaS Service.
- 9.6. Unless previously terminated in accordance with these Terms, each SOW will automatically terminate with immediate effect on the appropriate Test End Date, and any unused Consultancy Services hours will not be transferred for use to subsequent Consultancy Services projects unless agreed differently in the Order Form or SOW.

10. FEES & EXPENSES

- 10.1. The Consultancy Services shall be performed by CONFIRMIT in the manner agreed herein, and Ordering Party shall pay the fees in the amount, at the times and in the manner set forth in the Order Form or the SOW, as otherwise mutually agreed in writing between the Parties or within thirty (30) days from invoice date in the event of no other agreement. The type of payment model will be either Fixed Price or Actual Hours Worked (each as defined below) as detailed on the Order Form or the SOW. If no specific mention is made on the Order Form or the SOW, the payment model will be Actual Hours Worked:
 - 10.1.1. **Fixed Price:** Ordering Party shall pay CONFIRMIT the agreed fixed price stated on the Order Form or SOW subject to the acceptance of the Work Product in accordance with Article 7.1. CONFIRMIT will not charge Ordering Party for any hours worked in excess of the fixed price stated in the Order Form or SOW, provided that where the content of a mutually agreed change order affects the time, effort and subsequent cost of providing the Work Product, the agreed revised fixed price will supersede that stated on the Order Form or SOW;
 - 10.1.2. **Actual Hours Worked:** Ordering Party shall either: (i) pay CONFIRMIT the agreed hourly rate for the total number of hours actually worked; or (ii) have the total number of hours actually worked deducted from its pre-purchased hour allocation. The number of hours, under either of the two foregoing models, may vary from the estimate given on the Order Form or SOW due to contributory factors such as but not limited to: irregularities and delay with input materials, changed requirements underway, and the tailoring and presentation of the final result. CONFIRMIT shall not be liable to Ordering Party should the estimate of total hours not be sufficient to complete the project according to plan, but shall make best efforts to provide Ordering Party with prior written warning if the estimate of total hours is expected to exceed the stated number. Subject to availability of CONFIRMIT's resources, Ordering Party shall be able to decide whether the Consultancy Services should continue at the agreed hourly rate or whether the project should be terminated on completion of the stated estimate of total hours.
- 10.2. Except where consultancy hours have been pre-paid, CONFIRMIT will generate an invoice in respect of the Consultancy Services upon the earliest occurring of: (i) the Acceptance Date, (ii) when the estimated total number of hours is completed, (iii) when (if applicable) the survey is actually deployed, or (iv) as mutually agreed by the Parties in the applicable Order Form or SOW. Ordering Party shall pay CONFIRMIT in full (without withholding, set-off or other deduction) not later than thirty (30) days from the date of an invoice (not contested in good faith).
- 10.3. Reimbursement of Expenses: Ordering Party shall reimburse pre-approved, out-of-pocket expenses including reasonable travel expenses and living expenses (economy airfare, standard hotel, meals, and rental vehicle) incurred as a result of the performance of the Consultancy Services hereunder.
- 10.4. The performance of any additional services beyond the scope of the SOW will be subject to a separate written agreement between the Parties.
- 10.5. Where the Work Product, in order for it to be made available for production purposes to Ordering Party, necessitates hosting on CONFIRMIT equipment, or necessitates use of Third Party Technology or any other third party component, the hosting costs are to be set forth in writing in the applicable Order Form or SOW.

11. GENERAL PROVISIONS

- 11.1. **Entire Agreement:** These Terms, together with the applicable Confirmit Order Form and any SOW or other incorporated document, and any addenda to any of the foregoing, shall once executed by both Parties, determine the entire agreement between the Parties relating to their subject matter, and they shall supersede any previous communication, representation or promise, whether written or oral, provided always that nothing limits or excludes liability for fraudulent misrepresentation.

- 11.2. **Enforceability:** If any term(s), provision(s), covenant(s), or condition(s) of these Terms is held by a court or other tribunal of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions herein shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
- 11.3. **Waivers:** All waivers must be in writing. A waiver of, or failure to enforce a provision of or right under these Terms on one or more occasions, shall not be deemed a waiver of that provision or right, nor of any other provision or right under these Terms on any future occasion.
- 11.4. **Independent Contractor:** CONFIRMIT is acting as an independent contractor, and as such, shall have the right to determine the method, details, and means of performing the Consultancy Services, including utilizing sub-contractors (unless expressly prohibited in the applicable Order Form) to perform the Consultancy Services on behalf of CONFIRMIT; provided, however, that CONFIRMIT shall remain fully responsible for the acts and omissions of such sub-contractors in accordance with these Terms.
- 11.5. **No Third-Party Beneficiaries:** Each Order Form and SOW shall be binding upon and shall inure to the sole benefit of CONFIRMIT and the Ordering Party and their respective permitted assigns. No term is enforceable by any person who is not a Party to the Order Form or SOW.
- 11.6. **Assignment:** Neither Party may assign or transfer its rights or obligations or interest in these Terms or any Order Form without the prior written consent of the other Party.
- 11.7. **Limitation on Authority:** Neither Party shall have the authority to enter into agreements of any kind on behalf of the other Party and shall have no power or authority to bind or obligate the other Party's resources in any manner to any third party.
- 11.8. **Governing Law & Jurisdiction:** These Terms shall be construed in accordance with the jurisdiction under which the Confirmit company that is party to the Order Form has been incorporated (the "Applicable Law"). For the resolution of any disputes arising from or related to these Terms or any Order Form or the subject matter thereof, the Parties submit to the exclusive jurisdiction of the Applicable Law. The Parties expressly waive any right to a trial by jury in any action, suit, proceeding, or counterclaim of any kind arising out of or in any manner connected with these Terms or any Order Form or the subject matter thereof.
- 11.9. **Notices:** All notices, demands, or other communications given under these Terms shall be in writing and shall be deemed to have been duly given if delivered by certified mail or by reputable overnight courier delivery, charges pre-paid, to the other Party at the address on the first page of the appropriate Order Form.
- 11.10. **Alteration:** No alteration, modification, or change of these Terms shall be valid unless made in writing and signed by authorized representatives of both Parties hereto.
- 11.11. Any use of the word "including" herein shall mean "including but not limited to"