

**GP STRATEGIES CORPORATION**  
**SOFTWARE-AS-A-SERVICE AGREEMENT**  
**FOR WATERSHED**

**Standard Terms and Conditions Schedule**

This GP Strategies Software-as-a-Service Agreement for the third party application Watershed is between GP Strategies Corporation or the relevant GP Strategies affiliate set forth in the related Project Schedule (“GP Strategies”) and the entity that wishes to use GP Strategies’ Watershed Software-as-a-Service (as identified in the Commercial Terms) (“Client”) for its LMS (as defined below) or any other agreed software application(s) related analytics purposes, and describes the terms and conditions pursuant to which GP Strategies will provide the Watershed Software-as-a-Service to the Client. By use of the Services described herein, the Client agrees to be bound by the terms and conditions of this Agreement.

**1 Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

<b>“Agreement”</b>	this Software-as-a-Service Agreement for Watershed to which the Client is required to agree before using the Services comprising, where appropriate, an order form, statement of work and/or a signature section (in either case incorporating the Commercial Terms) and this Standard Terms and Conditions Schedule;
<b>“Analyst”</b>	has the meaning set out in Clause 3.7;
<b>“Application”</b>	the third party software application Watershed Learning Record Store and Learning Analytics Platform and/or other agreed Watershed software application in machine readable form used in the Services provision (as identified in the Commercial Terms), including any applicable error corrections, updates, upgrades, modifications and enhancements to it;
<b>“Charges”</b>	the charges payable by the Client for the Services and other charges falling due in accordance with this Agreement;
<b>“Client”</b>	the Client that has purchased the Services from GP Strategies;
<b>“Client Data”</b>	the information, data and content input into or used in the Software-as-a-Service by the Client or Users;
<b>“Commercial Terms”</b>	the main commercial terms set out in the order form, statement of work and/or signature section of this Agreement;
<b>“Confidential Information”</b>	all materials and/or information, whether or not marked or otherwise identified as confidential, whether written, oral, graphic or ascertainable by inspection of tangible objects, including without limitation: specifications, formulae,

samples, prototypes, devices, techniques, processes, methods, discoveries, inventions, ideas and improvements (whether or not patentable), data, compilations, algorithms, studies, computer programs, code, research, reports, patterns, designs, sketches, plans, drawings, photographs, know-how, trade secrets, marketing plans, business plans, financial information, commercial information, technical information, pricing information, market information, information relating to relationships with third parties, information relating to business models and/or business methods, customer, supplier and distributor lists, and any other subject matter which by its nature would be reasonably known to be confidential or proprietary, and all copies of such materials and information;

<b>“Initial Term”</b>	a period of one (1) year from the Services Commencement Date or such other period as may be specified in the Commercial Terms;
<b>“Intellectual Property Rights”</b>	any patent, right to patent, copyright, design rights (registered and unregistered), trade mark and service mark (whether or not registered), trade and business names (including internet domain names and e-mail address names), database rights, know-how, trade secrets, unpatented inventions and any other intellectual property rights in any relevant jurisdiction;
<b>“Learner”</b>	an individual employee or independent contractor of Client who is the subject of a Tin Can statement;
<b>“GP Strategies Group Company”</b>	GP Strategies and any entity that directly or indirectly (whether partially or fully) controls, is partially or fully controlled by, or is under partial or full common control with GP Strategies and may provide any or all of the Services and including but not limited to direct and indirect subsidiaries of an ultimate parent holding company of GP Strategies;
<b>“LMS”</b>	the system specified in the Commercial terms, or as otherwise agreed in conjunction with which the Software-as-a-Service may be used in accordance with this Agreement;
<b>“Renewal Term”</b>	the meaning set out in Clause 2;
<b>“Service Level Terms”</b>	the service level terms specified in Clause 4 applicable to the Services under this Agreement;
<b>“Services”</b>	the Software-as-a-Service provision, Support and other related services, as agreed, to be provided by GP Strategies under this Agreement, unless otherwise specified in the Commercial Terms;
<b>“Services Commencement Date”</b>	the date specified as the Services Commencement Date in the Commercial Terms or, if earlier or in the absence of a date

	being specified, the date from which GP Strategies starts providing any of the Services;
<b>“Scheduled Maintenance Down-Time”</b>	the meaning set out in Clause 4.5;
<b>“Service Business Hours”</b>	has the meaning set out in the Commercial Terms, or in default thereof from 9pm to 5pm during UK business days not including public holidays;
<b>“Software-as-a-Service”</b>	the services provided under this Agreement that GP Strategies provides to allow authorized Users to access and use the Application through the internet;
<b>“Statement”</b>	has the meaning set out in Clause 3.7;
<b>“Support”</b>	the standard maintenance and support services provided by GP Strategies in relation to the Application pursuant to Clause 4.2;
<b>“User”</b>	means, collectively, Learners and Analysts of Client authorized to access the Software-as-a-Service and use the Application in accordance with this Agreement.

1.2 In this Agreement words importing the singular include the plural and vice versa and words importing gender include any other gender.

1.3 The headings of Clauses are for ease of reference and will not affect the construction of this Agreement.

1.4 Anything agreed in the Commercial Terms takes priority over the terms and conditions set out in this Standard Terms and Conditions Schedule. Except as set out in this Agreement, no other terms shall apply, even where specified in the Client’s purchase order or otherwise.

## **2 Commencement, Duration and License**

2.1 This Agreement will commence on the Services Commencement Date and will continue for the Initial Term and will renew automatically for subsequent 12 month periods or such other period as agreed in the Commercial Terms (each a “Renewal Term”) until it expires or terminates pursuant to this Agreement or until terminated by either party per the end of the Initial Term or subsequent Renewal Term on serving not less than two months’ written notice to the other party.

## **3 Provision of Software-as-a-Service**

3.1 GP Strategies will provide the Services to the Client either itself, through a Group Company and/or through Watershed Systems, Inc, a Delaware based corporation having its principal place of business at 210 Gothic Ct, Suite 100B, Franklin, Tennessee 37067, USA.

3.2 The Client will promptly report to GP Strategies all identified attempts (whether successful or not) by unauthorised persons (including unauthorised persons who are employees of the Client) either to gain access to or to interfere with the Software-as-a-

Service.

- 3.3 GP Strategies will not be responsible for supplying any line access, hardware or any other equipment on the Client's premises.
- 3.4 GP Strategies reserves the right at all times without prior notice to suspend the Client's access to, and/or the provision of, any of the Services for such period as is necessary to carry out emergency system maintenance, emergency upgrading, emergency testing and/or repair, but it shall endeavour to give prior notice to the Client where reasonably practicable.
- 3.5 GP Strategies reserves the right at all times without prior notice at its sole discretion to suspend, remove or refuse to host (but is under no obligation to monitor) certain kinds of content (including, but not limited to, content that requires unsafe write access to GP Strategies' servers or requires GP Strategies to install system software that it does not usually use or support) and any other content that causes harm or may in GP Strategies' sole opinion cause harm to GP Strategies' servers or to the provision of Services or which is defamatory, obscene, offensive, blasphemous or infringes third party Intellectual Property Rights, and the Client shall not store, distribute or transmit any such content on, to or through the Application. GP Strategies will not be liable to the Client for any loss or damage caused as a result of it suspending, removing or refusing to host material or content pursuant to this Clause. In exercising its rights under this Clause 3.5 GP Strategies shall exercise due caution.
- 3.6 The Client will not be entitled to any form of access to the servers used in the Software-as-a-Service (either read or write access), databases, software or hardware other than the access provided by and through the Application itself.
- 3.7 GP Strategies hereby grants to the Client, on and subject to the terms and conditions of this Agreement, a non-exclusive, non-transferable licence to use the Software-as-a-Service to receive, store and share experiential data in the form of statement objects ("Statements") relating to a limited, agreed number of unique LMS (or such other software applications(s) as agreed with GP Strategies) Users, solely for the Client's own internal LMS (or such other software application(s) as agreed with GP Strategies) related analytics purposes and subject always to the terms and conditions of this Agreement. In addition, the Client shall have the right for a limited number of unique administrator users (each an "Analyst") (as specified in the Commercial Terms) to login, access and use the Software-as-a-Service in order to (i) view, share or generate administrative reports and/or (ii) extract, migrate or share Statements, solely for the Client's own internal LMS (or such other software application(s) as agreed with GP Strategies) related analytics purposes and subject always to the terms and conditions of this Agreement. The definition of Analyst, however, shall not include consultants, agents, advisers or representatives of the Client but shall be strictly limited to employees of Client.
- 3.8 The Client shall not, and warrants that its Users shall not:
  - 3.8.1 (attempt to) copy, duplicate, modify, create derivative works from or distribute all or any portion of the Application; or
  - 3.8.2 (attempt to) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application; or
  - 3.8.3 access all or any part of the Application or Services in order to build a product or service which competes with the Application and/or the Services; or

- 3.8.4 save as expressly provided in Clause 3.7, use the Application or Services to provide services to third parties or attempt to obtain, or assist third parties in obtaining, access to the Application.
- 3.9 GP Strategies shall provide Client with unique User usernames and access passwords based on the Commercial Terms. Client will not allow any User account to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Software-as-a-Service.
- 3.10 GP Strategies may as part of the Services anonymize the Client's Users' Application usage data to create reports showing general usage statistics of its clients for research and analytics purposes, for sharing on an individualized basis with the Client or on a generalized basis with other GP Strategies' clients. The Client agrees to the anonymizing and inclusion of its usage data in such reports. All Intellectual Property Rights in such reports shall at all times remain with and vest in GP Strategies.

#### **4 Service Level Terms and Support**

- 4.1 GP Strategies will provide technical support as stated below. This is GP Strategies' standard support for the Services. GP Strategies may provide additional technical support services to the Client upon terms and charges to be agreed. Where so granted direct access by GP Strategies, Client shall also be entitled to raise support queries directly with the licensor of the Application (Watershed Systems, Inc.) via its support portal at <https://watershedlrs.zendesk.com/hc/en-us> provided that any support provided by Watershed Systems Inc. to the Client directly shall be exclusively governed by this Agreement.
- 4.2 Any support provided in addition to the support described in this Clause 4.2 will be charged in addition, in accordance with Clause 4.1. Telephone and on-site support do not form part of Support. GP Strategies will not be obliged to provide Support for any release of the Application other than the current release.
- 4.3 GP Strategies reserves the right to amend the Service Level Terms at any time upon 60 days' written notice to the Client to the extent that such amendment is necessary to meet any legislative or best practice requirements, so long as the amendment does not have a material adverse effect on the Client. The Service Level Terms are limited to those events and service levels within GP Strategies' commercially reasonable control and do not include events or Services/services or security failures resulting from any actions or inactions of the Client or any third parties not under GP Strategies' direct control (including but not limited to Client or third-party equipment and internet or telecommunications providers).
- 4.4 GP Strategies uses GP Strategies Group Companies and Watershed Systems, Inc. as its subcontractors in providing the Services. The Software-as-a-Service also uses third party hosting infrastructure providers. GP Strategies shall be responsible for the acts and omissions of its subcontractors under this Agreement, save where the Client or any Users logs a support request directly with Watershed System, Inc. through the support portal referred to in Clause 4.1. GP Strategies shall endeavour to provide Client with 99.5% Uptime per month during Service Business Hours. Uptime is defined as the amount of time the Software-as-a-Service is available to Users and capable of performing operations, excluding Scheduled Maintenance Down Time (as defined below) and non-availability caused by actions or inactions of the Client or Users. Non-availability is the amount of time (excluding Scheduled Maintenance Down-Time) that the Software-as-a-Service is either not available or not capable of performing

operations. The Software-as-a-Service will be available 99.5% of the time calculated over each month and is measured by GP Strategies by consecutive seconds over the period of a calendar month of this Agreement. Non-availability caused by (i) the actions or inactions of the Client or Users (including the Client's equipment), (ii) downtime resulting from requests by the Client, (iii) network errors outside the control of GP Strategies or its agents or contractors, (iv) server errors and limitations set by third party service providers, (v) scheduled Maintenance Downtime, or (vi) maintenance that is performed outside of Service Business Hours will not be included when calculating the Uptime. If the Uptime Service Level is not met for three consecutive months or for 4 months in any year of the contract, the Client will have the right to terminate this Agreement and to receive a prorated refund of the Charges for the remaining unused months of the paid Software-as-a-Service.

- 4.5 The Client accepts that GP Strategies will require scheduled down-time periods from time to time to perform system maintenance, backup and upgrade functions for the Software-as-a-Service ("Scheduled Maintenance Down-Time"). Scheduled Maintenance Down-Time will usually consist of a weekly three hour maintenance window to take outside of Service Business Hours. The weekly maintenance window is required to allow GP Strategies (or its third party contractors) to maintain and improve server or storage space and other facilities. The timing of the weekly maintenance window will be communicated in writing to the Client from time to time and GP Strategies shall use reasonable efforts to provide the Client with at least 48 hours' of such Scheduled Downtime. Additional periods of Scheduled Maintenance Down-Time may be required by GP Strategies which will be scheduled in advance by e-mail message or telephone call to the Client, and GP Strategies will use its reasonable endeavours to ensure that Scheduled Maintenance Down-Time is at times and for periods which minimise inconvenience to the Client. The measurement for Scheduled Maintenance Down-Time is the time elapsed from when the Software-as-a-Service becomes unavailable to perform operations to the time when the Software-as-a-Service becomes available to perform operations again.
- 4.6 The Client may designate up to two Users as technical support contacts to log support tickets with GP Strategies. GP Strategies or the applicable GP Strategies Group Company shall provide support to the Client's technical support contacts only using either email, ticketing system or such other means as communicated by GP Strategies to the Client from time to time. In addition, where so granted direct access by GP Strategies, each technical support contact may access support via Watershed System Inc's support portal at <https://watershedlrs.zendesk.com/hc/en-us>. Support will be provided at the times specified in this Agreement, as otherwise agreed between GP Strategies and the Client or as may be reasonably communicated to Client by GP Strategies from time to time. The Client may change the technical support contacts up to twice in any year of this Agreement free of charge.
- 4.7 GP Strategies will prioritize support requests related to the Application and the Software-as-a-Service into four levels:

Severity Level	Description	Examples
1	Production Down	The Application is inoperable. A major application failure has occurred or data integrity issues exist, and business processes are halted. There is no workaround available.
2	High	A critical business process is impaired, causing a serious disruption of a major business function. It is causing serious impact on daily functions or processing, and there

		is no acceptable workaround. The workaround is unacceptable if one or more of the following are true: - Workaround is very labor intensive or time consuming. - Workaround affects transactions that are repeated throughout the day. - Analyst has to reallocate and/or add staff to accomplish the workaround.
3	Medium	Non-critical problems occur with the Application, but the Analyst is able to run the system and/or application, and there is an acceptable workaround for the problem.
4	Low	An inquiry and/or low system impact issue which does not require immediate attention. This includes cosmetic issues on screens or a request for information regarding the use of the Application.

4.8 Response and Resolution targets are set out in the table below: incidents are responded to upon Client’s initial logging and each time Client makes an update to the incident. The response targets are calculated as the time difference between each update Client makes to the incident and GP Strategies’ corresponding response. Resolution targets are calculated as the difference between the time the incident is logged by Client and the time the response is provided and the incident is closed. The resolution to the incident can be an answer to a question, an acceptable workaround, an existing code correction, or a new code correction. The response and resolution targets are based on the severity level of the incident and are defined below. Client shall indicate the level of severity to GP Strategies when initially notifying GP Strategies of the request for support and the response and resolution times shall start once GP Strategies has sufficient information to enable it to replicate the error:

Severity Level	Response Target during Service Business Hours	Resolution Target during Service Business Hours
Severity 1 – Production Down	Within 2 business hours	Within 2 business day
Severity 2 - High	Within 8 business hours	Within 4 business days
Severity 3 – Medium	Within 16 business hours	Within 6 business days
Severity 4 - Low	Within 24 business hours	To be mutually agreed upon

4.9 GP Strategies will use commercially reasonable efforts to prevent unauthorised access to the Client Data, and GP Strategies will notify the Client of any known material security breaches or holes. The Client acknowledges that the Software-as-a-Service and data transmitted to the Software-as-a-Service are provided via the internet, a publicly-available computer network, and that such networks are susceptible to failure, attack and hacking.

## 5 Client’s Obligations

5.1 The Software-as-a-Service is provided subject to an agreed disk space as specified in the Commercial Terms and subject to reasonable bandwidth use (as elaborated on below). The Client will not exceed this agreed disk space without the prior written

consent of GP Strategies and any agreed additional disk space shall be subject to paying additional charges as indicated in the Commercial Terms or as may be agreed. GP Strategies shall use reasonable endeavours to inform Client when disk space or bandwidth utilised by the Client reaches 80% of the agreed level. Any additional disk space required or used will be provided in increments of the same amount and subject to an additional annual charge per increment as shown in the Commercial Terms or where this is not so specified, at GP Strategies' then current list price, payable in advance (and where an increment is provided part way through a year, the initial payment will be pro rata to the next anniversary). If the amount of disk space is not specified in the Commercial Terms, the Client will be entitled to use a maximum of 50 gigabytes at no additional charge.

- 5.2 The Client will, without prejudice to its obligation not to exceed the agreed disk space or reasonable bandwidth, within five business days of receipt of a written notice from GP Strategies, reduce its content so as to operate within the amount of disk space agreed with GP Strategies (or, alternatively, agree to increased disk space available upon payment of an applicable charge within the said five Business Days). GP Strategies will be entitled to suspend the Services forthwith without serving notice on the Client if the Client exceeds the agreed disk space and/or reasonably allowed bandwidth (bandwidth usage is deemed not reasonable if it causes harm or in GP Strategies' sole opinion may cause harm to the systems used in the performance of the Services).
- 5.3 The Client will:
- 5.3.1 use the Services in accordance with GP Strategies' reasonable operating instructions as made available to the Client in writing (including via email, and GP Strategies' support channels such as zendesk) from time to time and the terms of this Agreement;
  - 5.3.2 comply with any restrictions contained in this Agreement, including but not limited to the identity and number of Users and any bandwidth limitations;
  - 5.3.3 be responsible for ensuring that the Software-as-a-Service is not used for the sending, recording or storage of any defamatory, offensive, abusive, derogatory, blasphemous, racist, obscene or menacing material or in a manner which infringes the rights of any person (including rights of data privacy, copyright and confidentiality);
  - 5.3.4 be responsible for complying with its obligations under any applicable statutory provisions in any relevant jurisdiction in respect of data privacy or information processed and stored;
  - 5.3.5 be responsible for the acts and omissions of the Users;
  - 5.3.6 ensure that any User authorised to use the Services (as specified in the Commercial Terms) is bound by the terms of this Agreement prior to accessing the Services and complies with the same; and
  - 5.3.7 in a timely manner inform GP Strategies if Client is planning to materially change its usage behaviour (which could affect the provision of the Services).
- 5.4 The Client will ensure that no one other than Users, and no more than the permitted number of Users in accordance with the Commercial Terms, access the Services.



- 5.5 GP Strategies may at any time, at its own expense, audit the Client's usage of the Application and Services and compliance with this Agreement (including with regard to the number of Users accessing the Services and/or registered on the Application and the amount of bandwidth or disk space used), and such audit shall be exercised in a manner so as to not substantially interfere with Client's normal conduct of business. If an audit reveals that the number of Users exceeds the number specified in the Commercial Terms, allowed under this Agreement or otherwise agreed with GP Strategies (and paid for) or the bandwidth or disk space used, GP Strategies is entitled to (in the case of bandwidth and/or disk space, in addition to the right to suspend set out in Clause 5.2) immediately invoice Client for the additional Users (regardless of the active or non-active status) or the additional bandwidth or disk space used for the remainder of the Initial Term or applicable Renewal Term in accordance with its current (per User) list price or such pricing as may be agreed with Client.
- 5.6 The Client will be responsible for maintaining the confidentiality of its passwords and for procuring that all Users keep their own passwords confidential. If the Client becomes aware of any unauthorised access to the Services by any person who uses a password without the Client's or GP Strategies' authorisation, the Client will immediately notify GP Strategies and disable such password.
- 5.7 With the Client's prior written approval, GP Strategies and any Group Company may refer to the Client in GP Strategies' websites and marketing materials.
- 5.8 Where the Client wishes to dispute an invoice or part of an invoice it will do so as soon as reasonably practicable and in any event within 15 working days of issuance of the applicable invoice.

## **6 Data Protection**

- 6.1 GP Strategies will maintain and enforce commercially reasonable physical and logical security methods and procedures to protect Client Data and to secure and defend the Software-as-a-Service against "hackers" and others who may seek to access the Software-as-a-Service without authorisation. GP Strategies will use commercially reasonable efforts to remedy any breach of security or unauthorised access. GP Strategies reserves the right to suspend access to the Services in the event of a suspected or actual security breach.

## **7 Warranties and Indemnification**

- 7.1 GP Strategies hereby warrants to the Client that it will provide the Services:
- 7.1.1 with reasonable skill and care;
  - 7.1.2 using appropriately qualified and experienced personnel; and
  - 7.1.3 in accordance with current industry standards.
- 7.2 GP Strategies warrants that it owns or otherwise has sufficient rights in the Application to grant to the Client the rights granted under this Agreement.
- 7.3 The parties warrant that the persons executing this Agreement are authorised to do so on behalf of the relevant parties and that the execution, delivery and performance of this Agreement does not in any way conflict with any other agreement including, but not limited to, any policy or guidelines binding on those persons.

- 7.4 The Client warrants that:
- 7.4.1 it will use reasonably commercial endeavours, including using up-to-date virus-checking routines, to ensure that its data and content transmitted to the Services remain free from viruses and other malicious code;
  - 7.4.2 in using the Services it will comply with all applicable laws;
  - 7.4.3 it will not upload any material or content through the Application to the Software-as-a-Service which causes or may cause harm to GP Strategies' servers or to the provision of the Services.
- 7.5 Save to the extent that any claim arises from the actions of GP Strategies or its other clients, and such actions were neither at the Client's request nor required under this Agreement, the Client will indemnify GP Strategies and any other GP Strategies Group Company, as appropriate, and their respective directors, officers, employees, agents and sub-contractors, from and against any claims made against any of them by a third party arising in connection with:
- 7.5.1 the Client's use of the Services or use of Client Data in violation of this Agreement;
  - 7.5.2 liability resulting directly or indirectly from Client Data;
  - 7.5.3 any claimed violation by GP Strategies of such laws, rules, policies and procedures which is or are a consequence of the Client failing to inform GP Strategies that the Client's content or data transmission requires GP Strategies to obtain licences, permits and/or approvals; or
  - 7.5.4 any breach of the Client's obligations under Clauses 3.7 and 3.8 or of any warranties under this Agreement;

provided that GP Strategies: (1) notifies the Client in writing as soon as is reasonably possible and in any event within 30 days of becoming aware of any such claim; (2) makes no admission or settles the claim, or otherwise does anything to prejudice Client's conduct of the claim without Client's prior written consent; and (3) provides all reasonable assistance in conducting all negotiations and litigation, if required to do so by Client.

- 7.6 The Client will indemnify GP Strategies against all loss and damage sustained by GP Strategies as a result of or in connection with any breach by the Client or its Users of GP Strategies' or its licensors' (Watershed Systems Inc included) Intellectual Property Rights.

## **8 Charges and Payment**

- 8.1 In consideration of GP Strategies providing the Services under this Agreement, the Client will pay the Charges to GP Strategies prior to the commencement of each year of this Agreement. Payment of all additional charges falling due under this Agreement shall be made within 30 days of the date of GP Strategies' invoice. If Customer requires a purchase order (P.O.), it shall be provided when the Order Form or SOW is signed. In no event shall Customer's failure or delay in providing a P.O. alter its payment obligations under the relevant Order Form or SOW.

- 8.2 All charges quoted by GP Strategies are exclusive of any value added tax and any other applicable local, regional or national taxes, levies or charges, for which the Client will be additionally liable at the rate applicable at the date of GP Strategies' invoice.
- 8.3 Payment of all amounts due to GP Strategies will be made by the Client in the agreed currency by wire transfer or by such other method as may be agreed or specified from time to time by GP Strategies. The Client will be responsible for payment of all its bank charges.
- 8.4 Payment of all sums due to GP Strategies must be made by the Client in full without any set-off (whether at common law or otherwise), deductions or withholding for or on account of any taxes, fees, levies, imposts, duties or charges of any nature imposed by any governmental authority on any payment due hereunder, except as required by law.
- 8.5 If the Client fails to make a payment (which has not been disputed in accordance with Clause 5.9) to GP Strategies in accordance with this Clause 8, GP Strategies will be entitled to (i) charge interest on the overdue amount at a rate of 1.5% per month compounded monthly from 30 days after the invoice date until the date of payment, and (ii) recover on demand from the Client the costs (including attorneys' costs) incurred by GP Strategies in collecting or recovering the payment due from the Client.
- 8.6 GP Strategies may increase per the end of the Initial Term or applicable Renewal Term the Charges with at least 90 days' notice in writing before the end of the Initial Term and before the end of each subsequent Renewal Term.
- 8.7 Pricing and applicable terms for any services other than the Services shall be as may be agreed by the parties.

## **9 Intellectual Property Rights**

- 9.1 All Intellectual Property Rights and all other right, title and interest in and to the Client Data shall be owned at all times by the Client and the Client shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data. The Client gives GP Strategies, any other GP Strategies Group Company, as appropriate, a non-exclusive right to use such content and data solely in connection with this Agreement and for the purpose of the provision of the Services and Support in accordance with this Agreement.
- 9.2 All Intellectual Property Rights and all other right, title and interest in and to the Application shall be owned at all times by the applicable third party licensor or its licensors.

## **10 Confidentiality**

- 10.1 Each party to this Agreement (the "Receiving Party") agrees to keep confidential and appropriately secure, and not copy, adapt, alter or divulge to any third party any and all Confidential Information supplied to or observed by its agents, employees or subcontractors in the course of performing this Agreement which belongs to or relates to the other party (the "Disclosing Party") or the other party's business, organisation, work methods, know-how, clients, programs or products, or which belongs to or relates to any member of the other party's group.
- 10.2 Each party will immediately inform the other if it becomes aware of the possession, use or knowledge of, or attempts to gain access to, any of the Confidential Information by any person not authorised to possess, use or have knowledge of the Confidential

Information and will at the request of the other party provide such reasonable assistance at its own expense as is required by such other party to deal with such event.

10.3 The provisions of Clauses 10.1 and 10.2 will not apply to any information which:

10.3.1 is in or enters the public domain other than by breach of Clauses 10.1 and 10.2;  
or

10.3.2 is obtained from a third party who is lawfully authorised to disclose such information; or

10.3.3 is independently developed without reference to the Confidential Information of the Disclosing Party and such independent development can be proved to the reasonable satisfaction of the Disclosing Party; or

10.3.4 is authorised for release by written consent of the Disclosing Party; or

10.3.5 is required to be disclosed by law or order of a court of competent jurisdiction, provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has given the Disclosing Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.

## **11 Limitation of Liability and Disclaimers**

11.1 This Clause 11 sets out the entire financial liability of GP Strategies (including any liability for the acts or omissions of its employees, agents and sub-contractors) (GP Strategies Group Companies included)) to the Client:

11.1.1 arising under or in connection with this Agreement;

11.1.2 in respect of any use made by the Client of the Services, the Application, or any part of them; and

11.1.3 in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

11.2 Except as expressly and specifically provided in this Agreement:

11.2.1 the Client assumes sole responsibility for results or other output obtained from the use of the Application and the Services by the Client and the Users;

11.2.2 GP Strategies shall have no liability for any damage caused by errors or omissions in any Client Data or any other information, instructions or content provided to GP Strategies by the Client in connection with the Services, or any actions taken by GP Strategies at the Client's direction.

11.2.3 ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THAT THE SERVICES WILL BE UNINTERRUPTED OR VIRUS OR ERROR

FREE, THAT ANY NETWORK OR OTHER SERVICES SUPPLIED BY ANY OPERATOR OTHER THAN GP STRATEGIES WILL BE UNINTERRUPTED OR VIRUS OR ERROR FREE OR THAT THE SERVICES WILL MEET THE CLIENT'S REQUIREMENTS OTHER THAN AS STATED IN THIS AGREEMENT, OR OPERATE IN COMBINATIONS WITH HARDWARE, SOFTWARE, PLATFORMS, SYSTEMS OR DATABASES USED BY OR ON BEHALF OF THE CLIENT.

11.3 Nothing in this Agreement excludes the liability of either party:

11.3.1 for death or personal injury caused by that party's negligence; or

11.3.2 for fraud or fraudulent misrepresentation; or

11.3.3 for any damages resulting from that party's wilful misconduct or gross negligence.

11.4 Subject to Clause 11.3, the Service Level Terms state the Client's full and exclusive right and remedy, and GP Strategies' only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.

11.5 Subject to Clause 11.3:

11.5.1 GP STRATEGIES SHALL NOT BE LIABLE WHETHER IN CONTRACT, TORT (INCLUDING FOR NEGLIGENCE BREACH OF STATUTORY DUTY), MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION OR OTHERWISE FOR ANY LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR CONTRACTS, LOSS OF ACTUAL OR ANTICIPATED SAVINGS, DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES OR LOSS OF OR CORRUPTION TO DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES HOWEVER ARISING UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME; AND

11.5.2 GP STRATEGIES' TOTAL AGGREGATE LIABILITY IN CONTRACT (EXCLUDING IN RESPECT OF ANY INDEMNITY, IN RESPECT OF WHICH GP STRATEGIES' AGGREGATE LIABILITY SHALL BE AT THE LIMIT SPECIFIED IN CLAUSE 11.5.3), TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION (WHETHER INNOCENT OR NEGLIGENT), RESTITUTION OR OTHERWISE, ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT SHALL BE LIMITED TO THE CHARGES PAID BY CLIENT FOR THE SERVICES DURING THE 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE; AND

11.5.3 GP STRATEGIES' TOTAL AGGREGATE LIABILITY UNDER OR IN RESPECT OF ANY INDEMNITY UNDER THIS AGREEMENT SHALL BE LIMITED TO US\$100,000.

## **12 Suspension and Termination**

12.1 Either party may (without prejudice to its other rights) terminate this Agreement by notice in writing to the other if the other party:

- 12.1.1 defaults in due performance or observance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the default within thirty days of receipt of the terminating party's notice so to do, and such termination will take effect either immediately or at a date specified in the notice provided that this provision will not apply to a failure to pay any sum by the due date; or
- 12.1.2 becomes bankrupt or insolvent, or if the other party's business is placed in the hands of a receiver or trustee, whether voluntarily or otherwise, and such termination will take effect either immediately or at a date specified in such notice.
- 12.2 GP Strategies will have the right to terminate this Agreement on serving written notice with immediate effect if the Client does not pay any sum within 10 days of receiving a written reminder from GP Strategies provided that the sum has not been disputed in good faith in accordance with Clause 5.9.
- 12.3 GP Strategies may also suspend the provision of the Services under this Agreement on giving not less than 2 Business Days' notice in writing if circumstances arise in respect of which it has the right to terminate this Agreement under Clause 12.1 or 12.2, and may continue the suspension until the relevant payment has been made or the relevant default has been cured.
- 12.4 Client may suspend its payments under this Agreement on giving no less than 2 Business Days' notice in writing if circumstances arise in respect of which it has a right to terminate this Agreement under Clause 12.1.

### **13 Consequences of Termination**

- 13.1 On termination of this Agreement for any reason:
  - 13.1.1 all licences granted under this Agreement shall immediately and automatically cease; and
  - 13.1.2 the Client will immediately stop accessing the Services; and
  - 13.1.3 each party shall return and make no further use of any equipment, property, materials, Confidential Information (excluding Client Data) and other items (including all copies of them) belonging to the other; and
  - 13.1.4 GP Strategies may destroy or otherwise dispose of the Client Data in its possession unless it receives, no later than 14 days after the effective date of termination of this Agreement, a written request from Client to allow it to download the Client Data from GP Strategies' servers. In such case, GP Strategies shall allow the Client to download its data within 10 business days of such request, provided that the Client has, at that time, paid all Charges outstanding.
- 13.2 Termination of this Agreement will not affect the obligation of the Client to pay GP Strategies, as the case may be, any charges or other payments which are due and unpaid at the date of termination.
- 13.3 Any termination of this Agreement will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision

of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **14 Force Majeure**

- 14.1 Neither GP Strategies nor the Client will be liable to the other under this Agreement for any failure to perform its obligations hereunder other than payment obligations or for any loss or damage which may be suffered by the other party due to any circumstances beyond its reasonable control including, without limitation, any Act of God, failure or shortage of power supplies, flood, lightning or fire, strike or other industrial action, the act or omission of Government or other competent regulatory authority, war, military operations, epidemic, quarantine restrictions or riot. GP Strategies bears no responsibility for any adverse effect on the Services (including, but not limited to, server failure or slow response time) caused by any acts of the Client in violation of this Agreement.
- 14.2 If either the Client or GP Strategies wishes to rely upon this Clause 14 it will send written notice to the other party explaining the relevant force majeure circumstances as soon as reasonably possible.

## **15 General**

- 15.1 This Agreement is personal to the Client and may not be assigned to any third party in whole or in part, including by sale of assets, merger, consolidation or otherwise, without the prior written consent of GP Strategies, not to be unreasonably withheld.
- 15.2 GP Strategies has the right to assign the Services, this Agreement or any part of this Agreement or the Services to a GP Strategies Group Company. GP Strategies has the right to subcontract any part of the Services to a GP Strategies Group Company or such third party service provider it deems appropriate in the event of any such subcontracting, GP Strategies shall remain responsible for all acts and omissions of the applicable GP Strategies Group Company and/ or third party service provider.
- 15.3 The terms of this Standard Terms and Conditions Schedule Agreement will not be varied or amended unless such variation or amendment is agreed by separate agreement specifically drafted for purpose and executed by duly authorised representatives from the Client and GP Strategies.
- 15.4 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, the provision will be severed and the remainder of the provisions of this Agreement will continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Client and GP Strategies will immediately commence good faith negotiations to remedy such invalidity.
- 15.5 No failure or delay on the part of either of the parties to this Agreement to exercise any right or remedy under this Agreement will be construed or operate as a waiver nor will any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

- 15.6 This Agreement constitutes the entire understanding between the parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced in this Agreement, supersedes all prior representations, writings, negotiations or understandings with respect hereto.

## **16 Notices and Communications**

- 16.1 Any notice or other document to be given under this Agreement will be in writing and will be deemed to have been duly given if left at or sent by hand or by registered post, or by facsimile or such other electronic media (including email) to a party at the address or facsimile number set out in the signature section of this Agreement or such other (email) address or facsimile number as one party may from time to time designate by written (email) notice to the other.
- 16.2 Any such notice or other document will be deemed to have been received by the addressee three working days following the date of dispatch if the notice or other document is sent by registered post, or simultaneously with the delivery or transmission if sent by hand or if given by facsimile, or at the moment of receipt of a confirmation for receipt in the case of email or other electronic means.

## **17 Anti-Corruption**

The Client has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of GP Strategies' employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If the Client learns of any violation of the above restriction, it will use reasonable efforts to promptly notify GP Strategies' Legal and Compliance Department.

## **18 Governing Law and Disputes**

This Agreement will be governed by and interpreted in accordance with the laws of New York, without regard to its conflicts of law principles or to the United Nations Convention on the International Sale of Goods. Each Party irrevocably consents to the exclusive jurisdiction, forum and venue of the United States District Court for the Southern District of New York over any and all claims, disputes, controversies or disagreements between the Parties or any of their respective subsidiaries, affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby. This Agreement, and any communications or disputes concerning this Agreement shall be in the English language.