



KLUSTER INTELLIGENCE TERMS OF SERVICE

- (A) Welcome to Kluster Intelligence. These Terms of Service set are made and entered into on the Effective Date by and between Kluster Enterprises Ltd (t/a Kluster), a company incorporated in England and Wales having its registered offices [St Mary's Gate, Priory Close, Lancaster LA1 1XB 09946422] ("KEL") and the entity signing the Registration Form which references these Terms ("Customer"). These Terms along with the Registration Form constitute the agreement between the parties (collectively referred to as the "Agreement").

1. PERMITTED USAGE

- 1.1 Subject to the Customer paying for the Permitted Usage in accordance with clause 2 and clause 9.1, and the restrictions set out in this Agreement, KEL hereby grants to the Customer a non-exclusive, non-transferable, worldwide, royalty free license to use the Services strictly in accordance with the Permitted Usage during the Subscription Term solely for the Customer's internal business operations.

- 1.2 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) contains any payment card or other payment account information of any person or entity;
- (c) facilitates illegal activity;
- (d) infringes any third party rights including intellectual property rights;
- (e) is defamatory of any person;
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property,

and KEL reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause. KEL shall fully co-operate with any law enforcement authorities or court order requesting or directing KEL to disclose the identity or locate anyone posting any material in breach of clause 1.2 and 1.3.

- 1.3 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services or Product Description (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
 - (b) access all or any part of the Services and Product Description in order to build a product or service which competes with the Services and/or the Product Description; or
 - (c) use the Services and/or Product Description to provide services to third parties; or
 - (d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Product Description available to any third party, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Product Description; and
- 1.4 The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Product Description and, in the event of any such unauthorised access or use, promptly notify KEL.
- 1.5 The Customer undertakes to ensure that all Users comply with this Agreement and acknowledges that Customer shall remain responsible and liable for the acts or omissions of all Users to the same extent as if Customer had carried out such acts or omissions itself.
- 1.6 Responsibility for the security of any usernames and passwords issued (including those of any Users) rests with Customer. If Customer has reason to believe that its credentials or User account details in respect of the Services have been obtained by another without consent, the Customer should contact KEL promptly to suspend the account.

1.7 Customer will provide KEL contact information for Customer's system administrator, as may vary from time to time, who is authorised to provide the information required to configure and manage the Services by means of contacting KEL ("Customer Representative") . KEL reserves the right to only accept instructions for configuration of the Services (including the creation of User accounts) by the Customer Representative.

2. INCREASING OR DECREASING PERMITTED USAGE

2.1 Subject to clause 2.2, the Customer may, from time to time during any Subscription Term, purchase additional Permitted Usage in excess of that initially purchased and KEL shall grant access to the Services for such additional Permitted Usage in accordance with the provisions of this Agreement.

2.2 If the Customer wishes to purchase additional Permitted Usage, the Customer shall contact their assigned KEL representative requesting a quote for such additional Permitted Usage. In the event that the Customer pays to KEL the price agreed for the additional Permitted Usage, the revised Permitted Usage and Subscription Fees shall apply from the date of such payment.

3. SERVICES

3.1 KEL shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this Agreement and with reasonable care and skill.

3.2 KEL shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out; and
- (b) unscheduled maintenance,

provided that KEL has used reasonable endeavours to give the Customer written notice at least 24 hours in advance.

3.3 KEL will, as part of the Services and at no additional cost to the Customer, provide the Customer with KEL's standard customer support services during Normal Business Hours in accordance with KEL's Support Services Policy in effect at the Effective Date. KEL may amend the Support Services Policy in its sole and absolute discretion from time to time.

- 3.4 KEL may, upon prior written notice to Customer, suspend Customer's account or any User account or temporarily disable access to whole or part of the Services in the event of any of the following:
- (a) any reasonably suspected illegal activity,
 - (b) any actual or reasonably suspected breach of this Agreement;
 - (c) requests by law enforcement or other government agencies.
- 3.5 The Customer may terminate any User account by contacting KEL with a request for such termination, which KEL shall effect promptly and in any event within no longer than 2 Business Days.
- 3.6 KEL shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by KEL in its sole discretion from time to time, with any such amended version to be made available to Customer. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be for KEL to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by KEL in accordance with the archiving procedure described in its Back-Up Policy. KEL shall not have any responsibility in respect of any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties contracted by KEL to perform services related to Customer Data maintenance and back-up) unless caused by KEL's negligence or wilful misconduct.
- 3.7 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 3.8 The Customer hereby grants to KEL a royalty-free, non-exclusive, right to gather and process and store Customer Data solely for the purposes of:
- (a) providing the Services, and
 - (b) converting the Customer Data to Anonymised Data and to combine that Anonymised Data with other data and information available, derived or obtained from the Customer Data and data from third parties including other customers, to permit KEL to develop and improve the Service, and to create and distribute reports, datasets and other materials including or combined with the Anonymised Data,
- and warrants and undertakes that Customer has all necessary rights and permissions to the Customer Data to authorise KEL to do so, provided that KEL's

use of the Customer Data beyond termination of the Agreement shall not include any personal data of Customer

- 3.9 The Customer acknowledges and agrees that KEL will be the owner of all right, title and interest in and to Anonymised Data Customer Data. For the avoidance of doubt, Customer's grant of licence under clause 3.8 above shall survive the expiry or termination of this Agreement
- 3.10 The Customer acknowledges that KEL will process in accordance with Privacy Policy accompanying this Agreement any personal data derived from the Customer's registration or enquiry in respect of the Services. This may include using the Customer's email address for the purposes of bringing to the Customer's attention any aspects of the Services, or any other services, which KEL reasonably considers may be of interest to the Customer.
- 3.11 From time to time KEL may offer Customer certain additional Services as free beta trials in order to gain a view on their maturity and suitability for adding to the KEL suite of services. Customer agrees that KEL has the sole authority and discretion to determine the period of time for testing and evaluation of these beta services and reserves the right to fully or partially discontinue, at any time and from time to time, temporarily or permanently, any of them with at least 14 days prior written notice to Customer. Customer agrees that KEL will not be liable to Customer or to any third party for any harm related to, arising out of, or caused by the modification, suspension or discontinuance of any of the beta services for any reason. Once the beta trial period is ended, KEL will notify Customer and Customer will either commence payment for the relevant Services or discontinue use.

4. TRIAL ACCOUNTS

- 4.1 Subject to the terms of this Agreement, the Services may be utilised on a Trial Basis for a maximum of two weeks. Without prejudice to clause **Error! Reference source not found.** above, only one Trial Basis subscription is permitted in respect of any company, person or entity.
- 4.2 In the event that the Services are provided on a Trial Basis for two weeks, Customer shall be required to pay Subscription Fees as a condition of further use of the Service.

5. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access or use third party services (including Salesforce.com), and that it does so solely at its own risk. KEL makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party service, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not KEL. KEL recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. KEL does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

6. DATA PROTECTION

6.1 As per the Data Protection Addendum agreed between the parties.

7. KEL'S OBLIGATIONS

7.1 KEL undertakes that the Services will be performed substantially in accordance with the Product Description, and that it has used all reasonable endeavours to ensure that the Services are free from Viruses.

7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to KEL's instructions, or modification or alteration of the Services by any party other than KEL or KEL's duly authorised contractors or agents. If the Services do not conform to the undertaking in clause 7.1, KEL will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, KEL:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Product Description and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks

and facilities, including the internet, and the Customer acknowledges that the Services and Product Description may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 7.3 Customer acknowledges that the Services have not been developed to meet Customer's individual requirements, and that it is therefore Customer's responsibility to ensure that the facilities and functions of the Services meet Customer's requirements.
- 7.4 Customer further acknowledges that it is not possible to test the Services in advance in every possible operating combination and environment and it is not possible to produce and provide the Services such that they are known to be error free in all circumstances.
- 7.5 KEL works hard to ensure the accuracy and reliability of its analytics tools and their operation in accordance with the Product Description, but the Customer acknowledges that the processes and analysis provided by means of the Services is accurate, complete, reliable, secure, or useful, or will enhance the Customer's revenues or sales conversions.
- 7.6 The Customer acknowledges that no data transmission over the Internet can be guaranteed to be secure. KEL is not responsible for any interception or interruption of any communications through the Internet or networks or systems outside KEL's control. Customer is responsible for maintaining the security of its networks, servers, applications and data transmissions.
- 7.7 Nothing in this Agreement shall prevent KEL from entering into similar agreements with third parties, or from independently developing, using, selling or licensing Product Description, products and/or services which are similar to those provided under this Agreement.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide KEL with:
 - (i) all reasonably necessary co-operation in relation to this Agreement; and
 - (ii) all reasonably necessary access to such information as may be required by KEL;

in order to provide the Services;

- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, KEL may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Services and the Product Description are used in accordance with the terms and conditions of this Agreement and shall be responsible for any User's breach of this Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for KEL, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by KEL from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to KEL's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. CHARGES AND PAYMENT

9.1 As a condition of its use of and access to the Services (except on a Trial Basis strictly as set out in clause 4), the Customer shall pay the Subscription Fees to KEL for the Permitted Usage in accordance with this clause 9 and the Registration Form.

9.2 The Customer shall on the Effective Date provide to KEL valid, up-to-date and complete payment means acceptable to KEL. The Customer hereby authorises KEL to debit the Subscription Fees:

- (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
- (ii) subject to clause 13.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period.

9.3 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in the currency specified on the Registration Form;
- (b) are, subject to clause 11.4(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax or sales tax (as applicable), which shall be added to KEL's invoice(s) at the appropriate rate.

9.4 KEL shall be entitled to increase the Subscription Fees at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Subscription Fees shall be deemed to have been amended accordingly.

9.5 The Subscription Fees are billed annually in advance. Payments are non-refundable, and no refunds or credits will be given for any partial use within any subscription period. No refunds or credits will be provided in the event that the Customer does not utilise all its allocation of Permitted Usage, or cancels any User accounts except as otherwise permitted under this Agreement.

9.6 KEL reserves the right to suspend Customer's access to the Services by giving 30 days' prior written notice if Customer fails to pay KEL the full amount of any outstanding fees and charges that are not subject to a bona fide dispute by the due dates.

10. PROPRIETARY RIGHTS IN THE SERVICES

10.1 The Customer acknowledges and agrees that KEL and/or its licensors own all intellectual property rights in the Services and the Product Description. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Product Description.

10.2 Without limitation on clause 10.1 above, the trade mark "Kluster Intelligence", the Kluster Intelligence logo and all other trade marks, logos and service marks (the trade marks) which appear on Services are KEL's trade marks or are licensed for use by KEL by the owners of those trade marks.

10.3 Other trade marks (including "Salesforce.com") are proprietary marks and are registered to their respective owners.

- 10.4 Nothing contained in the Services should be construed as granting any licence or right to use any trade marks displayed on the Services without KEL's written permission or such other trade mark owner.
- 10.5 In the defence or settlement of any claim, KEL may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such courses of action are not reasonably practicable at a reasonable cost, terminate this Agreement on 2 Business Days' notice to the Customer.
- 10.6 Clause 11.4(b) state the Customer's sole and exclusive rights and remedies, and KEL's (including KEL's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

11. LIMITATION OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other:
- (a) arising under or in connection with this Agreement;
 - (b) in respect of any use made by the Customer of the Services and Product Description or any part of them; and
 - (c) in respect of any representation, 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:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Product Description by the Customer, and for conclusions drawn from such use. KEL shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to KEL by the Customer in connection with the Services, or any actions taken by KEL at the Customer's direction;
 - (b) 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; and
 - (c) the Services and the Product Description are provided to the Customer on an "as is" basis.

- 11.3 Nothing in this Agreement excludes the liability of KEL:
- (a) for death or personal injury caused by KEL's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 11.4 Subject to clause 11.2 and clause 11.3:
- (a) neither party shall not be liable to the other whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:
 - (i) loss of profits,
 - (ii) loss of business,
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss or corruption of data or information, or
 - (v) pure economic loss, or
 - (vi) for any special, indirect or consequential loss, costs, damages, charges or expenseshowever arising under this Agreement; and
 - (b) each party's total aggregate liability to the other in contract (including in respect of the indemnity at clause **Error! Reference source not found.**), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of £20,000 (twenty thousand pounds sterling) and 200% of the total Subscription Fees paid and payable by the Customer during the 12 months immediately preceding the date on which the claim arose.
- 11.5 In no event shall KEL, its employees, agents and sub-contractors be liable to the Customer to the extent that any alleged infringement is based on:
- (a) a modification of the Services or Product Description by anyone other than KEL; or
 - (b) the Customer's use of the Services or Product Description in a manner contrary to the instructions given to the Customer by KEL; or
 - (c) the Customer's use of the Services or Product Description after notice of the alleged or actual infringement from KEL or any appropriate authority.

12. TERM AND TERMINATION

12.1 This agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with clause 12, for the Initial Subscription Term, at the end of which it shall terminate, with notice unless, by no later than the end of the Initial Subscription Term (or any Renewal Period agreed under this clause), the parties agree in writing that the term of the agreement shall be extended for a period of 12 months (Renewal Period). Unless it is further extended under this clause or terminated earlier in accordance with clause 12, the agreement shall terminate with notice at the end of a Renewal Period. The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**. This clause 12.1 does not apply to Trial Basis accounts which can be terminated on notice at any time.

12.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is voluntarily filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of

that other party with one or more other companies or the solvent reconstruction of that other party;

- (f) an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(c) to clause 12.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement, and the Customer's right to use the Services, shall immediately terminate;
- (b) Customer will have no access to Customer Data;
- (c) each party shall return and make no further use of any equipment, property, Product Description and other items (and all copies of them) belonging to the other party;
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13. FORCE MAJEURE

KEL shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying

on its business for more than 30 days, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of KEL or any other party), failure of a utility service or transport or telecommunications network or hosting or connectivity provider, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

14. CONFIDENTIALITY

- 14.1 Each party (the Receiving Party) shall keep the other's (the Disclosing Party's) confidential information confidential. This includes all information (of any kind and in any format and coming into Receiving Party's knowledge, possession or control in any way) relating to KEL's business, finance or technology, know-how, intellectual property rights, assets, strategy, products and customers, where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given its nature or how it was disclosed (Confidential Information).
- 14.2 The Receiving Party shall not without the Disclosing Party's prior written consent use, disclose, copy or modify the Disclosing Party's Confidential Information (or permit others to do so) other than as strictly necessary for it to be able to do what it is permitted and required to do under this Agreement and, where disclosure to its officers, employees, agents, professional advisers and contractors is necessary, Receiving Party shall ensure such persons are made aware of and agree to observe these same obligations.
- 14.3 Confidential Information shall not include:
- (a) any information that was known to the Receiving Party before that information was imparted by the Disclosing Party; or
 - (b) any information that is in or subsequently comes into the public domain (through no fault of the Receiving Party); or
 - (c) any information that is received by the Receiving Party without restriction on disclosure or use from a third party lawfully entitled to make the disclosure to the Receiving Party without such restrictions; or

- (d) any information that is developed by any of the Receiving Party's employees who have not had any access to, or use or knowledge of, that information imparted by the Disclosing Party; or
- (e) any information that the parties agree in writing is not confidential.

14.4 Each party may disclose any confidential information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.

14.5 Customer hereby grants KEL a fully paid, royalty-free, , worldwide, exclusive, and license to use any comments, suggestions, proposals or recommendations ("Feedback") made by or on behalf of Customer in respect of the Services, and any such Feedback shall not be considered the Customer's Confidential Information.

14.6 This clause 14 shall not affect the entitlement of KEL to use the Customer Data under the licence granted under clause 3.8.

14.7 Subject to clause **Error! Reference source not found.** above, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

- 18.1 This Agreement constitutes the entire and exclusive agreement between KEL and Customer with respect to the Services and supersedes and replaces any other agreements, terms and conditions, arrangements, statements, assurances, representations and undertakings of any nature made by or on behalf of the parties, whether oral or written applicable or relating to the Services, subject to clause 19.3..
- 18.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. Nothing in this clause shall limit liability for any representations made fraudulently.
- 18.3 Save as otherwise expressly stated in the Agreement, the Agreement may only be modified and varied in writing executed by duly authorised representatives of both parties.

19. ASSIGNMENT

- 19.1 The Customer may by prior written notice to KEL, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement to an Associated Company.
- 19.2 KEL may at any time assign or otherwise transfer its rights and obligations to any of its Associated Companies under this Agreement. KEL may at any time use subcontractors to fulfil its obligations under the Agreement; provided that it shall at all times remain liable for the performance of its obligations under this Agreement and for any breach of the Agreement by such subcontractors. Any attempted

assignment, sub-contracting or other transfer in violation of the Agreement shall be null and void.

20. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the English courts

23. INTERPRETATION

23.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: these Terms of Service and the Registration Form.

Anonymised Data: anonymous statistical and usage data related to use of the Service.

Associated Companies: an entity that is directly or indirectly controlled by, or is under common control with, a party to the Agreement. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty per cent (50%) of the voting power to elect directors of the entity, or (ii) greater than fifty per cent (50%) of the ownership interest in the entity

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Customer Data: means any information or data linked to, submitted to or stored within the Services by Users, including information accessed from the Customer's Salesforce or CRM service account Customer Data and information, including personal data, that KEL holds in respect of the Customer, its characteristics, Users and activities to the extent that they are received by KEL in the course of providing the Services.

Customer: the corporate entity specified as the Customer on a Registration Form.

Data Processing Addendum: the additional terms regarding any personal data comprised in the Customer Data, applicable from 25 May 2018.

Effective Date: the start date of Customer's Initial Subscription Term as specified in the Registration Form.

Initial Subscription Term: 12 months from the Effective Date.

KEL: Kluster Enterprises Ltd, a limited company registered in England and Wales under company number 09946422, whose registered office is at Priory Close, St Mary's Gate, Lancaster, United Kingdom, LA1 1XB.

Normal Business Hours: 9am to 5pm local UK time, each Business Day.

Permitted Usage: the use of the Services as specified with reference to parameters set out on the Registration Form, as increased or decreased by the Customer in accordance with this Agreement.

Product Description: the functions specified in the Registration Form, as detailed in the document made available to the Customer by KEL online via www.kluster.com or such other web address notified by KEL to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Registration Form: the Registration Form executed by both parties which references these Terms if Service and details the Services ordered by Customer, the Initial Subscription Term and the Subscription Fees payable by Customer and any other additional terms in respect of Customer's access to and use of the Services

Renewal Period: the period described in clause 13.1.

Services: the Kluster Intelligence predictive sales analytics service provided by KEL to the Customer under this Agreement.

Subscription Fees: the subscription fees payable by the Customer to KEL for the Permitted Usage, as set out in the Registration Form.

Subscription Term: has the meaning given in clause 13.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services Policy: KEL's policy for providing support in relation to the Services as notified to the Customer from time to time.



User: any person to whom Customer provides access to or otherwise make available the Services in whole or in part in any form.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.