

**SPIKES CAVELL ANALYTIC INC  
STANDARD TERMS AND CONDITIONS**

**1 DEFINITIONS**

1.1 In these Terms and Conditions:

**“Access Tools”** means the software-as-a-service applications and other software tools provided by Spikes Cavell to the Client;

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the relevant party;

**“Applicable Codes”** means the Freedom of Information Act, 5 U.S.C. §552, as amended, public records acts, open records laws and other local, state and federal laws providing public access to government records as applicable to Client;

**“Business Day”** means any day other than a Saturday, a Sunday, a United States federal government holiday or a holiday on which the Client is closed;

**“Client Data”** means all data provided by the Client to Spikes Cavell in connection with the Services and any derivatives thereof;

**“Client Personal Data”** means Personal Data Processed by Spikes Cavell solely for the purposes of the provision of the Services and as directed by Client;

**“Confidential Information”** means all business and technical information of a party (however recorded or preserved) which that party treats as confidential in the ordinary course of its operations. Spikes Cavell’s Confidential Information includes, but is not limited to, the terms of the Contract, configurations, programming, computer code, software (including, without limitation, the Access Tools), trade secrets, formulas, methods, know-how, processes, designs, graphics, user interfaces, techniques, documentation regarding the operation of the Access Tools or the Services, information regarding Spikes Cavell’s financial condition, customer lists, suppliers, marketing strategy, business plans, product information, names of employees, compensation amounts and formulas, billing amounts, operations, proprietary information and prospects;

**“Contract”** means the Proposal, Purchase Order and these Terms and Conditions;

**“Data Protection Laws”** means all applicable laws and regulations relating to the Processing of Personal Data including the EU Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC) and the EU General Data Protection Regulation (GDPR) (2016/679/EC), including all law and regulations implementing or made under them and any amendment or re-enactment of them. The terms “Controller”, “Personal Data”, “Process”, “Processor” shall have the meanings given to them in the GDPR;

**“Data Specification”** means the document provided by Spikes Cavell to the Client which sets out the technical specifications for the Client Data requirements;

**“Deliverables”** means any documents or materials in any form (including computer programs, reports, specifications and drafts) which are prepared by Spikes Cavell and provided to the Client, or which has been obtained by, or on behalf of, the Client as part of the Services;

**“Derivative Works”** means derivative works as that phrase is defined in the Copyright Act, 17 U.S.C. §101 et seq.;

**“Enrichment Information”** means any and all data, classifications or other information other than Client Data and any Derivative Works thereof, which are provided to the Client through the Services, or which has been obtained by, or on behalf of, the Client as part of the Services;

**“Fees”** means the fees payable by the Client to Spikes Cavell in consideration of the provision of the Services as set out in the Proposal;

**“Intellectual Property Rights”** means intellectual property and industrial property rights of any kind or nature, including all U.S. and foreign (i) inventions, whether or not patentable, reduced to practice or made the subject matter of one or more pending patent applications, patents, patent applications, patent disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof and improvements thereto, (ii) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, (iii) registered and unregistered copyrights and all applications to register the same and copyrightable subject matter, (iv) rights of publicity, (v) computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing, (vi) trade secrets and all other confidential information, business information (including pricing and cost information, business and marketing plans and customer and supplier lists), know-how (including techniques and research and development information), inventions, proprietary processes, formulae, models, and methodologies, (vii) rights of privacy and rights to personal information, (viii) telephone numbers and Internet protocol addresses, and (ix) all rights in the foregoing and in other similar intangible assets, (x) all applications (or rights to apply), registrations and renewals or extensions for the foregoing, (xi) all rights and remedies against past, present, and future infringement, misappropriation, or other violation thereof, and (xii) and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Licensed User”** means a person who is authorized by the Client to use the Access Tools;

**“Losses”** means any and all losses, costs (including but not limited to reasonable attorney’s fees through appeal), damages, fines, penalties, settlement payments, awards, expenses and other charges and liabilities incurred by a party;

**“Member State”** means any relevant member state of the European Union (“EU”) or European Economic Area (“EEA”) from time to time;

**“Password”** means a password provided by Spikes Cavell to the Client to permit a Licensed User to use the Access Tools;

**“Proposal”** means the document accepted in writing by both parties entitled “Proposal” setting out the Services to be provided to the Client by Spikes Cavell;

**“Purchase Order”** means the written order provided by the Client to Spikes Cavell in accordance with the other Contract terms for the provision of the Services;

**“Request for Information”** means a request for information or an apparent request under the Applicable Codes;

**“Services”** means all Client Data transformation, appending of Enrichment Information, provision of the Access Tools, and any other Deliverables, training or support provided to the Client in the Proposal;

**“Spikes Cavell”** means Spikes Cavell Analytic Inc., a Delaware corporation, with an office located at 1775 Tysons Blvd., Tysons, VA 22102;

**“Sub-processor”** means any third party, including any Affiliate of DXC, that Spikes Cavell engages in accordance with this Contract and which Processes Personal Data on behalf of Spikes Cavell and for its Client in order to provide the Services;

**“Term”** means period for provision of the Services as set out in the Proposal; and

**“Transfer”, “Transferred” or “Transferring”** means, whether by physical or electronic means, across national borders, both (a) the moving of Client Personal Data from one location to another, and (b) the remote access to Client Personal Data from one location to another.

1.2 In these Terms and Conditions:

1.2.1 references to the singular include the plural and vice versa, and headings will not affect the interpretation of these Terms and Conditions;

1.2.2 unless the context clearly indicates otherwise, the word "including" when used in these Terms and Conditions means "including but not limited to"; and

1.2.3 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.2.4 Each party has agreed to the use of the particular language of the provisions of the Contract and has had the opportunity to consult with legal counsel of its own choosing. Therefore, the parties agree that that the rule of construction which provides that ambiguities in a contract shall be construed against the drafter shall not apply to this Contract and the parties waive any such defense to the terms of this Contract.

## **2 INCORPORATION**

2.1 These Terms and Conditions shall apply to the Contract to the exclusion of all other terms and conditions and shall prevail over all inconsistent terms that the Client may seek to apply, including any terms and conditions attached by Client to a Purchase Order, unless otherwise agreed in writing by Spikes Cavell.

2.2 Spikes Cavell shall not be deemed to have accepted any Contract until the Client has 1) signed and returned the Proposal, 2) signed and returned these Terms and Conditions and 3) issued a Purchase Order in accordance with the Proposal and these Terms and Conditions.

## **3 INTELLECTUAL PROPERTY RIGHTS**

3.1 Client represents and warrants to Spikes Cavell that (i) it has the authority to provide the Client Data and to grant the license to Spikes Cavell hereunder and (ii) the use of the Client Data by Spikes Cavell in accordance with the Contract will not violate any applicable law or regulation or violate the rights of any third party. Subject to the license granted under Section 5 (License to Use Data of the Client), no Intellectual Property Rights in the Client Data shall transfer to Spikes Cavell under the Contract.

- 3.2 Spikes Cavell represents and warrants to the Client that Spikes Cavell is the owner or authorized licensee of all Intellectual Property Rights in the Enrichment Information and Access Tools and that Spikes Cavell has the full authority to grant the license to the Client hereunder. Subject to the license granted under Section 4 (License to Use the Enrichment Information and Access Tools), no Intellectual Property Rights in the Enrichment Information shall transfer to the Client under the Contract. Client acknowledges and agrees that all Intellectual Property Rights in any Derivative Works created under this Contract shall be owned by Spikes Cavell and Client will take all reasonable steps necessary to cause such rights to vest with Spikes Cavell. All rights not expressly granted to the Client hereunder are reserved by Spikes Cavell.
- 3.3 The Client acknowledges and agrees that the Enrichment Information is proprietary to Spikes Cavell and comprises (a) works of original authorship, including compiled information containing Spikes Cavell's selection, arrangement, co-ordination and expression of such information or pre-existing material that Spikes Cavell has created, gathered or assembled, (b) confidential and trade secret information, and (c) information that Spikes Cavell has created, developed and maintained at great expense of time and money, such that misappropriation or unauthorized use by others for commercial gain would unfairly or irreparably harm Spikes Cavell. Accordingly:
- 3.3.1 the Client will not, and will not authorize any of its employees, agents or subcontractors to, through any act or omission, impair the Intellectual Property Rights of Spikes Cavell in the Enrichment Information;
- 3.3.2 the Client will not use any of Spikes Cavell's trade names, trademarks, service marks or copyrighted materials, or otherwise identify Spikes Cavell, in listings or advertising in any manner without the prior written approval of Spikes Cavell; and
- 3.3.3 the Client will reproduce Spikes Cavell's copyright notice and proprietary rights legend on all authorized copies of the Enrichment Information which are to be disclosed to third parties in accordance with Section 4 (License to use the Enrichment Information and Access Tools). For the avoidance of doubt, the copyright notice and proprietary rights legend required to be reproduced under this subsection are automatically embedded in all charts and graphs exported directly from the Access Tools.

#### **4 LICENSE TO USE THE INFORMATION AND ACCESS TOOLS**

- 4.1 The Client acknowledges that the Intellectual Property Rights in certain portions of the Enrichment Information are owned by third parties, and that such third parties may have imposed restrictions on the use of such data. Accordingly the Information is made available to the Client on the following terms as set out in this Section 4.
- 4.2 In consideration of the payment of the applicable Fees to Spikes Cavell by the Client, Spikes Cavell hereby grants to the Client a non-exclusive, non-transferable, revocable license to use the Enrichment Information for the Term subject to the terms of the Contract including the following:
- 4.2.1 the Client may use, copy and create Derivative Works of the Enrichment Information for internal purposes only without restriction;
- 4.2.2 the Client will use the Enrichment Information only in compliance with applicable laws and regulations, including laws and regulations regarding telemarketing, customer solicitation (including fax and/or email solicitation), data protection and privacy; and

- 4.2.3 notwithstanding Section 12 (Confidentiality), the Client may disclose the Enrichment Information to any third party advisors providing services to Client, or any other third parties as may be necessary for Client to comply with any regulatory or statutory obligations, in each case solely in an aggregated form provided that:
- (a) such Enrichment Information shall relate to the Client only and no other Client;
  - (b) the source of the Enrichment Information is accredited to Spikes Cavell;
  - (c) the Enrichment Information is aggregated such that individual pieces of Enrichment Information are not disclosed (for example, a list of Client small business vendors may not be disclosed if the classification of such vendors as small businesses is derived from use of the Enrichment Information while, however, disclosure of aggregate data on purchases from all Client small business vendors would be permitted hereunder);
  - (d) the Client shall not seek any financial gain in relation to any disclosure of the Enrichment Information; and
  - (e) additionally, in the case of disclosure of the Enrichment Information to a third party, the Enrichment Information may only be used by the third party for its internal purposes, and the third party shall not be entitled to publish the Enrichment Information.

4.3 In consideration of the payment of the applicable Fees to Spikes Cavell by the Client, Spikes Cavell hereby grants to the Client a non-exclusive, non-transferable, revocable license to use the Access Tools subject to the terms of the Contract. The Organization shall only use the Access Tools in accordance with Section 7 (Passwords); and the Client shall take all necessary precautions to ensure that no unauthorized use is made of (and that no unauthorized person gains access to) the Access Tools or the Enrichment Information, in whole or in part.

## **5 LICENSE TO USE DATA OF THE CLIENT**

- 5.1 The Client shall provide the Client Data to Spikes Cavell in accordance with the Data Specification. Unless otherwise agreed to by the parties, Client Data may only consist of data that the Client would be required to make available to the public under the Applicable Codes upon receipt of a Request for Information. Client shall use commercially reasonable efforts to remove all personally identifiable data of individuals from the Client Data. The Client acknowledges that Spikes Cavell is unable to provide the Services until the Client has provided Spikes Cavell with the Client Data in accordance with the Data Specification.
- 5.2 The Client hereby grants to Spikes Cavell a perpetual, royalty-free, non-exclusive license to use, copy and create Derivative Works of the Client Data solely for the purposes contemplated under the Contract.
- 5.3 The Client hereby grants to Spikes Cavell a perpetual, royalty-free, non-exclusive license to use the Client Data subject to the following:
- 5.3.1 Spikes Cavell may use, copy and create Derivative Works of the Client Data;
  - 5.3.2 notwithstanding the provisions of Section 12 (Confidentiality), Spikes Cavell may grant sublicenses to the following organizations to use the Client Data on the following terms:

- (a) Other public sector and not-for-profit higher education institution Clients of Spikes Cavell whose own data is included in the Access Tools, together with their licensed users, may use the Client Data on the standard terms and conditions of Spikes Cavell (as updated from time to time)
- (b) other third parties may only use the Client Data subject to the following restrictions:
  - (i) the Client Data is completely anonymized and aggregated with the data of other Clients so that the identity of the source of the Client Data cannot be determined;
  - (ii) at the prior written request of the Client by notice to Spikes Cavell certain categories Client Data shall be excluded from the scope of any such sub-license for political or security reasons.

## **6 PROVISION OF THE SERVICES**

- 6.1 In consideration of the payment of the applicable Fees, Spikes Cavell shall perform the Services in accordance with the Contract.
- 6.2 Time for performance of the Services shall not be of the essence and, unless Spikes Cavell otherwise expressly agrees in writing, any specific dates cited in the Contract or otherwise by Spikes Cavell for performance are only estimates.

## **7 PASSWORDS**

- 7.1 The Client will provide written notice to Spikes Cavell of the names of the Licensed Users, and the Client will notify Spikes Cavell as soon as practicable of any changes to the identity of such Licensed Users. The Client may substitute individuals as Licensed Users throughout the Contract term at no additional cost.
- 7.2 Spikes Cavell will issue a Password to each of the Licensed Users to use the Access Tools. Each such Password may only be used by the respective Licensed User in accordance with these Terms and Conditions, and no other use may be made of the Password.
- 7.3 The Client is entirely responsible for maintaining the confidentiality of the account information of the Licensed Users, including the Passwords, and for any and all activity that occurs under the accounts of the Licensed Users. The Client agrees to notify Spikes Cavell immediately of any unauthorized use of the accounts of the Licensed Users or the Passwords or any other breach of security. Spikes Cavell will not be liable for any Losses that the Client may incur as a result of someone other than the Licensed User using its Password or account (other than where such use arises due to the gross negligence or willful misconduct of Spikes Cavell), either with or without the knowledge of the Client. However, the Client will be liable for Losses incurred by Spikes Cavell due to someone other than the Licensed User using the Password or account of the Client.
- 7.4 Without limiting its other rights, Spikes Cavell may at any time cancel any of the Passwords and/or terminate the right of any Licensed User to use the Access Tools (a) if the Client is in breach of the Contract; (b) upon the expiration or termination of the Contract; or (c) if Spikes Cavell is or becomes unable to grant the Client a right to use any of the Information, in which event Spikes Cavell will refund to the Client any Fees paid by the Client for the remainder of the Term on a pro rata basis.

## **8 FEES**

- 8.1 The amount of the Fees and the payment arrangements for the Fees shall be as set out in the Proposal.
- 8.2 All Fees are exclusive of sales tax and other charges and duties, unless stated to the contrary in the Proposal.
- 8.3 All amounts due under the Contract shall be paid in full, in immediately available funds, in US Dollars within thirty (30) days of the date of the invoice to Spikes Cavell's nominated bank account or by check without any deduction, offset or withholding other than as required by law. If, in the reasonable opinion of the Client, the invoice contains an error, the Client shall contact Spikes Cavell in writing within fourteen (14) days of the date of the invoice to be eligible to receive any adjustment or credit.
- 8.4 If the Client fails to pay the Fees in full on the due date and the Client has not disputed the Fees in accordance with Section 8.3 then, without prejudice to any other right or remedy available to Spikes Cavell, Spikes Cavell shall be entitled immediately upon notice to the Client:
- 8.4.1 to terminate the Contract in accordance with Section 14.3 (Term and Termination); and/or
  - 8.4.2 to suspend access to the Access Tools until payment has been made in full; and/or
  - 8.4.3 charge interest on the overdue amount at the rate of 1½% per month, or at the highest rate allowed by law, whichever is less from the date due until paid.
- 8.5 If a payment due from the Client is subject to tax (whether by way of direct assessment or withholding at source) or any other deduction Spikes Cavell shall be entitled to receive from the Client such amount to ensure that the net receipt, after tax or deduction, to Spikes Cavell for the payment is the same as it would have been had the payment not been subject to tax or deduction, unless where required by law.

## **9 WARRANTIES**

- 9.1 Spikes Cavell hereby represents and warrants that the Services shall be performed in a professional manner by appropriately skilled and qualified persons and be performed in accordance with applicable law, regulation and industry standards.
- 9.2 While Spikes Cavell uses commercially reasonable procedures to keep the Enrichment Information current and accurate, the Client acknowledges that the Enrichment Information may contain a degree of error and that the Client is responsible for determining whether the Enrichment Information is sufficiently accurate for its use. Accordingly, all Enrichment Information is provided on an "as is" basis. Spikes Cavell disclaims all warranties, express or implied, regarding the Enrichment Information, including any warranties of accuracy, completeness, currentness, merchantability, or fitness for a particular purpose. If the Client identifies an error in the Enrichment Information, as the Client's sole and exclusive remedy Spikes Cavell will correct the Enrichment Information at no additional cost.
- 9.3 The Access Tools are made available via the internet over which Spikes Cavell has no control. Accordingly, the Access Tools are provided on an "as available" basis. Spikes Cavell does not provide any warranties, express or implied, that use of the Access Tools will be uninterrupted. The Client is solely responsible for the operation, performance, access and security of the networks (including WAN, LAN and wireless) and computers

over and on which the Access Tools will be accessed. Spikes Cavell makes no warranties and has no responsibility for network security, firewalls, servers, bandwidth, load balancers, SSL certificates, domain name systems (DNS), intrusion detection systems (IDS), monitoring, routers, anti-virus mechanisms, operating system and other third-party product updates and upgrades, and any other aspects of the Client's network or computers. Except as expressly granted herein Spikes Cavell disclaims all other warranties, express or implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose or that the Information and Access Tools will be without error or invulnerable to viruses, worms or other harmful software or hardware. The Client hereby acknowledges that the Information or Access Tools may not be available due to any number of factors including without limitation periodic system maintenance, scheduled or unscheduled, acts of god, unauthorized access, viruses, denial of service or other attacks, technical failure of the information or access tools, telecommunications infrastructure, or disruption. Therefore Spikes Cavell expressly disclaims any express or implied warranty regarding system use and/or Information or Access Tools availability, accessibility, security or performance. The Client assumes the entire cost of all necessary servicing, repair or correction of problems and any other direct or indirect damages or costs caused by unauthorized network or computer access or viruses, worms or other harmful or unauthorized software or hardware.

## **10 LIMITATION OF LIABILITY**

- 10.1 Nothing in these Terms and Conditions excludes or limits the liability of either party (including, without limitation, their employees, agents and subcontractors) for (a) death or personal injury caused by its gross negligence or willful misconduct; (b) fraud in the inducement; or (c) any other liability that cannot be excluded or limited under applicable law.
- 10.2 If Spikes Cavell fails to provide the Services in accordance with the Contract, then its sole liability shall be to provide remedial Services or (as Spikes Cavell may determine in its reasonable discretion) refund to the Client any Fees paid by the Client for the Services concerned for the period the Services were so affected through the remainder of the Term on a pro rata basis.
- 10.3 Excluding breaches of confidentiality obligations and a breach of the Client's representation and warranty under Section 3.1(ii), in no event will either party's total liability to other for all damages in any one or more causes of action, whether in contract, tort, or otherwise exceed the amount of the total Fees paid by the Client under the contract.
- 10.4 Excluding a breach of the Client's representation and warranty under Section 3.1(ii), neither party shall be liable to the other for the payment of any consequential, indirect, incidental, punitive or special damages, including lost profits even if the party has been advised of the possibility of such damages. In no event will Spikes Cavell or its licensors be liable for any damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business information and data, loss of goodwill; work stoppage; hardware or software failure, repair time value or other pecuniary loss) arising out of the use or inability of the Client to use the Information or the Access Tools, even if Spikes Cavell has been advised of the possibility of such damages.

## **11 INDEMNIFICATION**

- 11.1 Spikes Cavell will indemnify, defend and hold the Client harmless from and against any and all claims, actions, suits, demands, or proceedings (whether legal or administrative) threatened, asserted or filed by a third party and Losses incurred in connection with any third party claim that any the Client's use of the Services, Information or Access Tools in



accordance with the Terms and Conditions violates or infringes any United States patent, copyright, or trademark rights.

- 11.2 The Client will promptly notify Spikes Cavell in writing of such claim, provided that any delay in the Client's notifying Spikes Cavell will not absolve Spikes Cavell from its indemnification obligations unless such delay materially prejudices Spikes Cavell's ability to respond to or otherwise defend such claim. Spikes Cavell may assume sole control of the defense of such claim with counsel of its choice and all related settlement negotiations, provided that if any settlement requires an affirmative obligation of, results in any ongoing liability to or prejudices or detrimentally impacts a the Client in any way and such obligation, liability, prejudice or impact can reasonably be expected to be material, then such settlement shall require the Client's written consent (not to be unreasonably withheld or delayed), and the Client may have its own counsel at its own expense in attendance at all proceedings and substantive negotiations relating to such claim. the Client will provide Spikes Cavell, at Spikes Cavell's request and expense, with reasonable assistance, information and authority necessary to conduct the defense of the claim.
- 11.3 If Spikes Cavell reasonably believes that the Client's use of the Services, Information or Access Tools is likely to constitute an infringement of a patent, copyright, or trademark, Spikes Cavell may (i) modify or replace the Services, Information or Access Tools to make it non-infringing; (ii) acquire for the Client a license to continue to use the Services, Information or Access Tools, or (iii) if neither of the preceding options is reasonably available, terminate the Contract and refund to the Client the Fees paid by the Client for the remainder of the Term on a pro rata basis.

## **12 CONFIDENTIALITY**

- 12.1 Each party shall, and shall ensure that its employees shall, keep secret and confidential all Confidential Information of the other party. Each party undertakes not to disclose the other's Confidential Information to any third party without the other party's written consent, other than its responsible employees to whom disclosure is in good faith necessary for the proper performance of their duties in connection with the Contract and then provided that such party ensures that its employees are aware of and agree to comply with these confidentiality obligations.
- 12.2 The obligations of confidentiality under Section 12.1, shall not apply to any Confidential Information which:
- 12.2.1 is independently developed or acquired by a party or its personnel without reliance in any way on other protected information of the other party;
  - 12.2.2 is lawfully in the public domain or possession of a third party other than by reason of a breach of a confidential obligation; or
  - 12.2.3 is authorized for release by the written consent of the disclosing party.
- 12.3 Notwithstanding the foregoing restrictions, each party may use and disclose any information (i) to the extent required by an order of any court or other governmental authority or (ii) as necessary for it to protect its interest in this Contract, but in each case only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- 12.4 Nothing in this Section shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to

the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of the other party's Intellectual Property Rights.

## **13 SECURITY**

### **Client Data**

- 13.1 Spikes Cavell will use commercially reasonable efforts:
- 13.1.1 to keep all Client Data secure and to use no less stringent measures for the protection of such Client Data as Spikes Cavell uses for its own data; and
  - 13.1.2 to preserve the integrity of Client Data and to prevent the loss or corruption of Client Data.
- 13.2 If at any time Spikes Cavell suspects or has reason to believe that Client Data has or may have been corrupted, lost or sufficiently degraded in any way for any reason, Spikes Cavell will notify the Client as soon as possible and in any event within five (5) Business Days. If Spikes Cavell is in breach of Section 13.1.2, it will use commercially reasonable efforts to restore the Client Data as soon as practicable.

### **Client Personal Data**

#### Processing of Personal Data

- 13.3 The Client shall, in its use of the Services, Process Personal Data in accordance with the requirements of Data Protection Laws.
- 13.4 Related to the Services, the Parties acknowledge and agree that with regard to the Processing of Client Personal Data, the Client is the Controller, Spikes Cavell is the Processor and that Spikes Cavell or DXC Affiliates may engage Sub-processors pursuant to this Contract.
- 13.5 Spikes Cavell shall Process and Transfer the Client Personal Data only (i) as needed to provide the Services and (ii) in accordance with the specific documented instructions Spikes Cavell has received from Client, as set forth in this Contract, and any related contractual documents, unless required otherwise to comply with any EEA or Member State law, in which case Spikes Cavell shall provide prior notice to Client of such legal requirement, unless that law prohibits this disclosure on important grounds of public interest. The Client shall ensure that any such instructions to Spikes Cavell in relation to the Processing of Client Personal Data comply with Data Protection Laws. The Parties acknowledge and agree that terms and conditions in this Contract and contractual documents constitute the complete set of instructions from the Client to Spikes Cavell. Changes to or additional instructions shall be subject to the applicable change control procedure.
- 13.6 Spikes Cavell personnel engaged in the Processing of Client Personal Data shall be informed of the confidential nature of the Client Personal Data and will receive appropriate training on their responsibilities. Such personnel shall be subject to appropriate confidentiality undertakings.
- 13.7 In accordance with this Contract and taking into account the nature of Processing of Client Personal Data in the Services provided, Spikes Cavell shall as required by GDPR Article 32, maintain appropriate technical and organizational measures for protection of the security of, including protection against unauthorized or unlawful Processing, and against

accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, Client Personal Data. The Parties acknowledge and agree that the security measures specified in this Contract and contractual documents constitute appropriate technical and organizational security measures to ensure a level of security appropriate to the risk.

- 13.8 At Client's cost and expense, Spikes Cavell shall, by reasonable and appropriate technical and organizational measures, assist Client, insofar as this is possible, in fulfilling Client's obligation to respond to requests for exercising Data Subjects' rights in relation to Client Personal Data as set forth in GDPR Chapter III, taking into account the nature of the Processing;
- 13.9 In accordance with obligations applicable separately to each of Spikes Cavell and Client under the GDPR, upon Client's request and at Client's expense, Spikes Cavell shall provide Client with reasonable cooperation and assistance needed to fulfil Client's obligation under the GDPR to carry out a data protection impact assessment related to Client's use of the Spikes Cavell Services but only to the extent that Client does not otherwise have access to the relevant information, and only to the extent that such information is available to Spikes Cavell. Spikes Cavell shall provide reasonable assistance to the Client, at the Client's expense, in relation to consultation with a Supervisory Authority in connection with a data protection impact assessment related to the Spikes Cavell Services.
- 13.10 Spikes Cavell shall, at Client's discretion and with any such request being provided by Client to Spikes Cavell in writing, delete or return all the Client Personal Data to Client after the end of the provision of Services relating to Processing, and delete existing copies unless applicable EEA or Member State law requires storage of the Client Personal Data;
- 13.11 Spikes Cavell shall provide Client with all reasonable information necessary to demonstrate compliance with the obligations set forth in the GDPR and allow for and contribute to audits subject to any audit clauses in this Contract or contractual documents including inspections, conducted by Client or another auditor mandated by Client, provided that any such auditor is not a competitor to Spikes Cavell;
- 13.12 Spikes Cavell shall immediately inform Client if, in Spikes Cavell's reasonable opinion, an instruction issued by Client in respect of Client Personal Data infringes the GDPR or EEA or Member State other data protection provisions.

#### Details of the Processing

- 13.13 A high-level description of the details of Processing in respect of Client Personal Data is provided below. Further details are available in this Contract and contractual documents
- 13.13.1 **Subject-matter of Processing, the nature and purpose of the Processing:** the provision of the Services by Spikes Cavell to Client;
- 13.13.2 **Duration of the Processing:** for as long as necessary in connection with the provision of the Services;
- 13.13.3 **Types of Personal Data:** Client shall control the types of Personal Data Processed through the Services;
- 13.13.4 **Categories of Data Subjects:** Client shall control the types of Data Subjects whose Personal Data may be collected through the Services.

#### Sub-processors

- 13.14 Unless otherwise agreed in this Contract, Client acknowledges and agrees that (i) DXC Affiliates may be used as Sub-processors; and (ii) Spikes Cavell and DXC Affiliates respectively may engage third-party Sub-processors in connection with the provision of Services. Spikes Cavell or the DXC Affiliate will ensure that it has entered into a written agreement with each Sub-processor containing data protection obligations no less protective than those in this Contract with respect to the protection of Client Personal Data to the extent applicable to the nature of the Services provided by such Sub-processor.
- 13.15 Unless otherwise agreed in this Contract, Client may object to Spikes Cavell's (or a DXC Affiliate's) use of a new Sub-processor by notifying Spikes Cavell promptly in writing within ten (10) business days after receipt from Spikes Cavell of notice to change its Sub-processor if Client, in its reasonable discretion, believes that Spikes Cavell's (or a DXC Affiliate's) use of such new Sub-processor would result in a violation of applicable Data Protection Laws. In such case, the Parties will, for a period of no more than twenty (20) business days from the date of Client's objection, work together in good faith to attempt to find a commercially reasonable solution for Client which avoids the use of the objected-to Sub-processor. In such circumstances, Spikes Cavell will use reasonable efforts to make available to the Client a change in the Services or recommend a commercially reasonable change to the Client's configuration or use of the Services to avoid Processing of Client Personal Data by the relevant new Sub-processor. In the event that no such change is possible on a reasonable basis, then the Client and Spikes Cavell may mutually agree to terminate the respective statement of work or Service.

#### Data Transfers

- 13.16 In accordance with GDPR Article 28(3)(a), Spikes Cavell shall not, and shall not permit any Sub-processor to, Transfer any Client Personal Data outside the EEA without the prior consent of Client. Spikes Cavell understands that in accordance with GDPR Chapter V, adequate protection for the Personal Data must exist after the Transfer and will, if so requested by Client, enter into an appropriate agreement with Client governing such Transfer, including, but not limited to the EU Standard Contractual Clauses (Controller to Processor), unless another adequacy mechanism for the Transfer exists.

#### Personal Data Breach

- 13.17 With regard to Personal Data Breach caused by Spikes Cavell, Spikes Cavell shall:
- 13.17.1 In accordance with GDPR Article 33 and 34, (i) notify Client without undue delay and in accordance with related terms in this Contract, in the event of any Personal Data Breach involving Client Personal Data and (ii) provide reasonable assistance to the Client when the Client is required to communicate a Personal Data Breach to a Data Subject.
- 13.17.2 Use reasonable efforts to identify the cause of such Personal Data Breach and take those steps as Spikes Cavell deems reasonably practicable in order to remediate the cause of such Personal Data Breach.
- 13.17.3 Subject to the terms of the Contract, provide reasonable assistance and cooperation as requested by Client, in the furtherance of any correction or remediation of any Personal Data Breach.

#### Records of Processing

- 13.18 To the extent applicable to Spikes Cavell's Processing activities for Client, Spikes Cavell shall maintain all records required by Article 30(2) of the GDPR and shall make them available to Client upon request.

## **14 TERM AND TERMINATION**

- 14.1 The Contract shall come into effect on the date that the Client 1) has signed and returned the Proposal, 2) has signed and returned these Terms and Conditions and 3) has issued a Purchase Order in accordance with the Proposal and these Terms and Conditions ("Effective Date").
- 14.2 Either party may terminate the Contract with immediate effect at any time by serving written notice thereof on the other party if:
- 14.2.1 the other party is in material breach of any obligation under the Contract and where such breach is capable of remedy, fails to remedy it within thirty (30) days of written notice requesting that such breach is remedied; or
- 14.2.2 (i) becomes insolvent; (ii) files a petition in bankruptcy or an involuntary petition in bankruptcy is filed against a party and is not dismissed within 30 days of such filing; (iii) makes an assignment for the benefit of its creditors; (iv) is subject to the appointment of a trustee, receiver or other custodian for such party or such party's property.
- 14.3 Spikes Cavell may terminate the Contract wholly or in part with immediate effect at any time by serving written notice thereof on the Client if any outstanding Fees are not paid within forty five (45) days of the date of the invoice.
- 14.4 Upon expiration or termination of the Contract for any reason:
- 14.4.1 the Client shall be entitled to continue to use the Deliverables and any charts, graphs or other derivative products that contain aggregated extracts of data from the Enrichment Information which have been provided to, or obtained by, the Client prior to or upon expiration or termination, for its internal purposes only, and all other rights of the Client to use the Enrichment Information whether pursuant to Section 4 or otherwise shall cease; and
- 14.4.2 except for amounts due and owing from the Client to Spikes Cavell, neither party shall have any further right or obligation with respect to the other party except as set out in this Section 14 and in the following additional Sections, which shall survive such expiration or termination: Section 2 (Incorporation), Section 3 (Intellectual Property Rights), Section 5 (License to use data of the Client), Section 9 (Warranties), Section 10 (Limitation of Liability), Section 11 (Indemnification), Section 12 (Confidentiality), , Section 13 (Security) and Section 16 (General).
- 14.5 The expiration or termination of the Contract as provided for under these Terms and Conditions shall not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to a party under the Contract or at law or equity.

## **15 Notices**

- 15.1 Each party must send all notices relating to a Contract to the other party's address. A notice may be posted (using pre-paid registered mail), hand delivered or sent by email.
- 15.2 A notice will be deemed to be given:
  - 15.2.1 if in writing;
  - 15.2.2 if posted, on the date of registered receipt at the recipients address;
  - 15.2.3 if delivered by hand, on the date of delivery; and
  - 15.2.4 if emailed, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered;
- 15.3 If a notice is delivered by hand or email and received after 5:00pm (local time of the receiving party) or not on a Business Day it will be deemed to be given on the next Business Day.
- 15.4 Any notice under clause 14 or 17 which is sent via email must also be sent by post or hand delivered.

## **16 GENERAL**

- 16.1 No amendment to this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party.
- 16.2 Nothing in the Contract shall create an agency, partnership, joint venture or employment relationship between the parties. Neither party is authorized to make or enter into any commitments for or on behalf of the other party.
- 16.3 The Contract is personal to the Client. The Client may not assign, subcontract or otherwise dispose of the Contract or any part of it without Spikes Cavell's prior written consent.
- 16.4 Except for payment obligations of the Client, neither party will be liable if it is delayed in or prevented from performing its obligations due to circumstances outside its reasonable control including acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, failures in utility supply, supplier failures, systems interruption, power surges, network unavailability, equipment failures, virus attack and any comparable circumstances.
- 16.5 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.6 Except as otherwise expressly provided by these Terms and Conditions, all remedies available to each of the parties for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- 16.7 If any provision of the Contract is held to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated.
- 16.8 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy for, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.
- 16.9 The Contract shall be governed in all respects by the laws of the state in which the Client resides without regard to that state's conflict of laws analysis. To the extent application, the parties hereby opt and elect out of and agree that the Uniform Computer Information Transactions Act, as adopted into law in the relevant jurisdiction, shall not apply to and shall have no force and effect on this Contract.
- 16.10 The parties agree that irreparable damage will occur in the event that any of the confidentiality or license restrictions are not performed in accordance with their specific terms or are otherwise breached. It is accordingly agreed that the parties shall be entitled to seek and obtain injunctive relief to prevent such breaches of the Contract.

## **17 DISPUTE RESOLUTION**

- 17.1 Subject to 17.1.2 below, in the event of a Dispute between the Parties in relation to any Contract, no Party will commence proceedings in any court or tribunal in relation to that Dispute until:
- 17.1.1 that Party has given written notice to the other Party or Parties that it wishes to meet pursuant to this clause 17.1.1 to discuss whether an amicable resolution of the Dispute can be achieved (the "Dispute Notice"); and
- 17.1.2 either:
- 17.1.3 the Parties have met to discuss whether an amicable resolution of the Dispute can be achieved; or
- 17.1.4 10 Business Days have elapsed since the giving of the Dispute Notice.
- 17.2 All meetings, related communications, and any settlement offers (or counter-offers) made pursuant to this clause will be confidential, without prejudice to any claims or defences, and inadmissible as evidence in any later proceedings (but use of otherwise admissible evidence during negotiations will not render that evidence inadmissible).
- 17.3 Each Party will pay its own costs and attorneys' fees associated with discussions and negotiations pursuant to clause 17.1.1.
- 17.4 Nothing in clause 17.1.1 above restricts or limits:
- 17.4.1 a Party from applying to a court or tribunal for urgent interim or interlocutory relief;  
or

17.4.2 DXC from commencing proceedings in court for payment or to enforce a debt or judgment in the country where Customer receiving Services is located.

17.4.3 Customer and DXC agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to any Contract.

**For the Client:**

**For Spikes Cavell**

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_