

**CAREFULLY READ THE TERMS AND CONDITIONS OF THESE TERMS OF USE BEFORE DOWNLOADING OR INSTALLING AND USING ALL OR ANY PORTION OF THE MODEL MATCH PRODUCTS AND SERVICES. DOWNLOADING, INSTALLING OR USING SUCH PRODUCTS AND SERVICES INDICATES YOUR ACCEPTANCE OF THESE TERMS OF USE. THESE TERMS OF USE SHALL APPLY UNLESS OTHERWISE PROVIDED IN A DULY EXECUTED AGREEMENT BETWEEN THE PARTIES. YOU SHOULD NOT DOWNLOAD OR INSTALL THE PRODUCTS AND SERVICES, IF YOU DO NOT AGREE WITH THESE TERMS OF USE.**

## **TERMS OF USE**

Model Match, Inc. (“Model Match”) will provide Customer with certain Products and Services governed by the following terms and conditions.

### **1. AGREEMENT STRUCTURE AND DEFINITIONS.**

1.1 These Terms of Use establish the general terms and conditions to which the parties have agreed with respect to the provision of Products and Services by Model Match to Customer. Additional terms for the purchase of a specific Product or Service may be set forth in one or more Orders. An “Order” means a document accepted or executed by the parties which incorporates by reference these Terms of Use, and describes order-specific information, such as a description of Products and/or Services ordered, License Metrics, if any, and fees to be paid by Customer. At any time after acceptance or execution of an Order, Customer may purchase additional Services or otherwise expand the scope of Services granted under an Order, upon Model Match’s acceptance or execution of a new Order specifying the foregoing.

1.2 These Terms of Use, along with any Order is referred to as the “Agreement”. The parties acknowledge receipt of, and agree to be bound by, the terms and conditions of the Agreement. All pre-printed or standard terms of any Customer purchase order or other business processing document shall be void and have no effect on the Agreement.

1.3 To the extent any terms and conditions of these Terms of Use conflict with the terms and conditions of an Order, the terms and conditions of these Terms of Use shall control, except where the Order expressly states the intent to supersede a specific portion of the Terms of Use.

1.4 Additional Definitions:

“**Customer Data**” means any data, information, or material Customer or any Authorized User provides or submits through the SaaS Service.

“**Intellectual Property Rights**” means patent rights (including patent applications and disclosures), copyrights and all other literary property or authors’ rights, moral rights, trademarks, tradenames, service marks, trade secrets, symbols, logos, brand names, and other proprietary indicia, know-how and any other intellectual property rights and protections

recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed, registered or recorded.

“**Intellectual Property**” means technology, inventions, know-how, show how, designs, formulae, processes, techniques, methodologies, procedures, processes, tools, utilities, techniques, various concepts, ideas, methods, models, templates, content, photographs, audio and video clips, and other works of authorship, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, Authorized User interfaces and screen designs, general purpose consulting and software tools, utilities and routines, and logic, coherence and methods of operation of systems, training methodology and materials, and any document or other materials embodying any of the foregoing, whether or not any of the same are patentable or copyrightable, and related documentation.

“**License Metrics**” means the limitation on the usage of SaaS Services to Authorized Users only.

“**Products**” means collectively (i) software programs (including updates and documentation), (ii) content, templates, information, data, text, software, music, sound, photographs, graphics, video messages or other material that Model Match may deliver or make available to Customer as part of the Services, and (iii) all toolkits and any other programs provided by Model Match, training materials, tutorials and related documentation provided by Model Match in connection with the performance of Services.

“**Professional Services**” means training, implementation, data conversion, integrations, and other consulting services.

“**SaaS Services**” means the provision of access to the Products identified in an Order from a data center located on-site at Model Match (or provided virtually from its hosting provider’s data center), including offline components.

“**Services**” means collectively the Professional Services and SaaS Services.

“**Term**” is defined in section 9.2.

“**Authorized User**” means an individual identifiable by a name who is authorized to access the Products and Services in his or her capacity as an employee or an individual contractor of Customer.

## **2. PRODUCTS AND SERVICES**

**2.1 Set-Up and Implementation.** As more fully described in an Order, Model Match shall provide set-up and implementation services and such additional Professional Services as agreed. Customer shall adopt procedures and take all necessary steps to ensure the accuracy of input data, examine and confirm results prior to use, adopt procedures to identify and correct Customer or Authorized User errors and omissions, and provide an authorized primary and a backup point of contact who will coordinate communication and activities, make or facilitate making decisions during the implementation and post-implementation.

**2.2 Cooperation.** Customer shall cooperate in good faith with Model Match and take all necessary steps in order to provide Model Match access to such information, facilities, personnel and equipment as may be reasonably required by Model Match in order to provide Services, including, but not limited to, providing security access, information, and software interfaces to Customer's applications, and Customer personnel, as may be reasonably requested by Model Match from time to time. Customer acknowledges and agrees that Model Match's performance is dependent upon Customer's timely and effective undertakings and efforts respecting Customer's various responsibilities as well as Customer's commitment to achieve the necessary goals and objectives in connection with the Services. Model Match shall be entitled to rely on all decisions and approvals of Customer.

**2.3 SaaS Services Generally.** Subject to Customer's and its Authorized Users' compliance with the Agreement and timely payment of all applicable fees, Model Match shall make the SaaS Services available to Client and its Authorized Users in accordance with these Terms of Use and the applicable Order during the Term. Access to the SaaS Services is limited to the version of the Products then currently available in Model Match's production environment. Model Match regularly updates the Products and Services and reserves the right in its sole judgment and discretion to add and/or substitute functionally equivalent features in the SaaS Services due to product unavailability, end-of-life, or changes to software requirements.

**2.4 Environment.** Model Match shall provide Customer online access to and use of the SaaS Services via the Internet by use of a Model Match approved Customer-provided browser. The SaaS Services will be hosted on a server that is maintained by Model Match or its designated third-party supplier or data center. Customer is solely responsible for obtaining and maintaining at its own cost and expense, all equipment needed to access the Services, including but not limited to procuring, installing, and operating Customer's computers, hardware, communications lines, internet connectivity, bandwidth and any operating systems required for Customer's use of the Services.

**2.5 Security.** Model Match shall, in its sole judgment and discretion, implement reasonable and appropriate measures and safeguards intended to secure Customer Data against accidental or unlawful loss, access or disclosure. Customer shall obtain and use current state-of-the-art tools and use adequate technical, administrative and security safeguards and procedures for the transmission of data to Model Match. Customer will notify Model Match immediately of any suspected security breach regarding transmissions to or from Model Match. Customer will not: (a) breach or attempt to breach the security of the SaaS Services or any network, servers, data, computers or other hardware relating to or used in connection with the SaaS Services, or any third party interfacing with any part of the SaaS Services; or (b) use or distribute through the SaaS Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the SaaS Services or the operations or assets of any other customer of Model Match or any third party. Customer shall comply with the Authorized User authentication requirements for use of the SaaS Services. Customer shall identify one (1) individual who will be authorized by Customer to administer Customer's access to and use of the SaaS Services on behalf of Customer. Customer will only permit Authorized Users to access and use the SaaS Services. Model Match has no obligation to verify the identity of any person who gains access to the SaaS Services by means of an access ID. Model Match may rely on the instructions and actions as being those authorized by Customer. Customer is solely responsible

for monitoring its Authorized Users' access to and use of the SaaS Services. Any failure by a Authorized User to comply with the Agreement shall be deemed to be a material breach by Customer, and Model Match shall not be liable for any damages incurred by Customer or any third party resulting from such breach. Customer shall immediately take all necessary steps, including providing notice to Model Match, to effect the termination of an access ID for any Authorized User if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred.

**2.6 Customer Data.** Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership of all of the Customer Data it submits to the Services. All such Customer Data shall be provided to Model Match in a format acceptable to Model Match. Customer acknowledges that Customer Data not submitted in such format may result in additional fees for conversion to an acceptable format or other tasks which must be performed by Model Match on Customer's behalf to allow for the use of Customer Data in other than an acceptable format.

**2.7 Training.** As more fully described in an Order, Model Match will provide training for all specified Authorized Users based on the modules purchased; however, Customer acknowledges that Customer shall be obligated and responsible to train its employees on an ongoing basis after the initial training and implementation provided by Model Match.

### **3. USE RIGHTS AND RESTRICTIONS**

**3.1 Grant of Use.** Subject to the provisions contained in the Agreement, including without limitation the restrictions set forth in this Section and timely payment of the applicable fees, Model Match hereby grants Customer for the Term a non-transferable, non-exclusive license, without the right to grant sublicenses, to access and use the Products and Services solely in accordance with the License Metrics identified in the Order solely for the internal business purposes of Customer. Customer acknowledges that Model Match has no delivery obligation and will not ship copies of the Products to Customer as part of the SaaS Services. Customer agrees that it does not acquire under the Agreement any license to use the Products in excess of the scope and/or duration described in the License Metrics.

**3.2 Restrictions.** Customer shall use the Services only for the internal business purposes of Customer. Customer shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Products or Services; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products or Services, in whole or in part, for competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Services to any entity or individual other than Authorized Users who have a need to obtain such access consistent with the license grant contained in the Agreement and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Products or Services; (v) modify, adapt, translate or otherwise make any changes to the Products or Services or any part thereof; (vi) use the Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Model

Match's prior written consent, comparative tests, reviews or benchmarks respecting the performance or capacity statistics or the results of any benchmark test performed on the Products or Services; or (viii) otherwise use or copy any Model Match Product, Services or content without Model Match's express written permission.

**3.3 License Metrics.** Customer understands that its right to use the Products and SaaS Services is limited in accordance with License Metrics set forth in an Order. All fees are based upon the License Metrics. The License Metrics provided in the initial Order represent minimum amounts that Customer has committed to be bound by for the Term. There shall be no fee adjustments or refunds for any decreases in usage or modification to the License Metrics during the Term. Additional capacity or quantity to be added to any License Metrics must be purchased in advance and in the event usage by Customer exceeds the Licensed Metrics. Additional License Metrics, if any, are prorated for the remainder of the then-current Term of the applicable Order.

**3.4 Acceptable Use Policy and Compliance with Applicable Laws.** Customer acknowledges and agrees that Model Match does not monitor or police the content of communications or data of Customer or its Authorized Users uploaded in or transmitted through the SaaS Services, and that Model Match is not and shall not be responsible for the content of any such communications or transmissions. Customer shall use the Services exclusively for permissible and legal purposes, consistent with all applicable laws and regulations, including without limitation the US CAN-SPAM Act of 2003, 15 U.S.C. §7701, and any other national, state or local laws governing or restricting the use of email and the Telephone Consumer Protection Act of 1991 as well as all other local, state, federal or national laws which govern the use of, sending or receiving text messages. Further, Customer shall at all times comply with the terms of 18 U.S.C. §2721, as may be amended from time to time, regarding the authorized use and disclosure of "personal information" and "highly restricted personal information" (as those terms are defined in 18 U.S.C. §2725). Customer agrees not to post on any website provided or maintained by Model Match any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains viruses or other contaminating or destructive features; (c) violates the rights of others, such as data which infringes on any Intellectual Property Rights or violates any right of privacy or publicity; or (d) otherwise violates any applicable law (including, without limitation, the laws and regulations governing export control, unfair competition, or false advertising). Customer further agrees not to use any website provided or maintained by Model Match to solicit users to join or to procure products or services competitive to the Services. Model Match reserves the right to delete, move or edit any Customer content that it may determine, in its sole judgment and discretion, violates the Agreement or is otherwise inappropriate for posting. Customer hereby agrees to defend, indemnify, and hold Model Match or any of its subsidiaries, affiliates, suppliers, and their respective directors, officers, agents and employees harmless against any and all liability associated with a breach by Customer or its Authorized Users.

**3.5 Market Insights Data Use and Restrictions.** Customer and its Authorized Users shall use the information provided through Model Match Market Insights Data solely for their own internal business purposes of identifying potential loan officer candidates for recruitment. For the avoidance of doubt, Customer and its Authorized Users shall not use or rely upon such information for any employment decision or purpose, including, but not limited to, verifying or

validating any figures, statistics or other data provided by an applicant for employment or otherwise supplementing any employment application. Customer shall be solely responsible for all pre-employment and employment-related screening related to an applicant for employment.

#### **4. FINANCIAL TERMS**

**4.1 General.** Fees and payment terms are specified in an Order. Except as otherwise expressly specified in the Order, all recurring fees payment obligations start from the execution of the Order. Model Match may increase recurring fees at any time upon sixty (60) days written notice, provided however that any increase shall occur no more than once per twelve-month period and shall not exceed five (5%) per cent in a twelve (12)-month period. Unless otherwise specified in the Order, payment of all fees is due thirty (30) days after the invoice date. Interest accrues on past due balances at the lesser of 1½% per month or the highest rate allowed by law. Failure to make timely payments shall be a material breach of the Agreement and Model Match will be entitled to suspend any or all of its performance obligations hereunder in accordance with the provisions of Section 9.4 and accelerate the payment terms, and to request full payment before any additional performance is rendered by Model Match. Customer shall reimburse Model Match for any expenses incurred, including interest and reasonable attorneys' fees, in collecting amounts due Model Match hereunder that are not under good faith dispute by Customer. Amounts paid or payable for SaaS Services are not contingent upon the performance of any Professional Services.

**4.2 Taxes.** Customer shall be responsible for payment of all taxes (excluding those on Model Match's net income) relating to the provision of the Products and Services, except to the extent a valid tax exemption certificate or other written documentation acceptable to Model Match to evidence Customer's tax exemption status is provided by Customer to Model Match prior to the delivery of Products or Services.

**4.3 Travel and Lodging Expenses.** Reasonable travel and lodging expenses incurred by Model Match in the performance of Services on Customer's site will be billed separately at actual cost.

**4.4 Credit Card Payments.** All dollar amounts referenced in an Order reflect the cash price for the stated use of the Services and/or Products. If Customer elects to pay via credit card, Customer will pay the non-cash price and will need to complete a separate form with Model Match authorizing the use of Customer's credit card to pay the agreed non-cash amounts.

**4.5 Data/Message Costs.** Standard data (and text, if applicable) rates apply for data (and messages, if applicable) sent from and received by mobile devices as determined by Customer's wireless provider and Customer is solely responsible for such charges and any other charges from its wireless provider.

#### **5. CONFIDENTIALITY.**

Confidential Information means nonpublic information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure should be treated as confidential ("Confidential Information"). Confidential Information includes, without limitation: Products, Services, information relating to software or hardware products which may include

source code, API data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information also includes information received from third parties that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agents is covered by this Agreement. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether Authorized User or machine-readable. Confidential Information shall not include any information that: (1) is already known to the receiving party prior to disclosure pursuant to these Terms of Use; (2) is or becomes publicly known through no wrongful act of the receiving party; (3) is received by the receiving party from a third party without any restriction on confidentiality; or (4) is approved for release by prior written authorization of the disclosing party. Customer acknowledges and agrees that Model Match shall have the right to utilize data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-Customer identifiable data or information resulting from Customer's use of the SaaS Services ("**Statistical Data**"). Statistical Data may be collected by Model Match for any lawful business purpose without a duty of accounting to Customer, provided that the Statistical Data is used only in an anonymized, deidentified, or aggregated form, without specifically identifying the source of the Statistical Data. On creation, Model Match shall own all Intellectual Property Rights in the Statistical Data. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. Either party may only use Confidential Information in order to fulfill its obligations under this Agreement. In addition, Model Match shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to incorporate into the SaaS Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback Model Match receives from Customer. The parties agree that the unauthorized disclosure of Confidential Information may cause irreparable harm to the party whose information is disclosed and that such party shall be entitled to request injunctive or other equitable relief seeking to restrain such use or disclosure without the necessity of posting any bond.

## **6. OWNERSHIP – INTELLECTUAL PROPERTY RIGHTS.**

The Products, Services, and all equipment, infrastructure, websites and other materials or deliverables provided by Model Match in the performance of all aspects of the Services will at all times remain owned by, and the exclusive and sole intellectual property of, Model Match or its licensors. Customer does not acquire any right, title, or interest in or to such Products and equipment, materials and deliverables except the limited and temporary right to use them as necessary for Customer's use of Services. All right, title and interest in or to any Intellectual

Property Rights relating to the Products and Services and the related logos, product names, and other identifying marks of Model Match are reserved and all rights not expressly granted are reserved by Model Match and its licensors. Customer may not obscure, alter or remove any copyright, patent, trademark, service mark or proprietary rights notices on any Products, Services, or other materials. During the Term, Model Match may adapt, create or use intellectual property to which Model Match is entitled, whether conceived of independently or while working with Customer. The parties mutually acknowledge that Model Match shall own all right, title and interest in and to such Intellectual Property including without limiting the Intellectual Property Rights relating thereto and may use such Intellectual Property in its business operations with other customers, without limitation. Model Match agrees that Customer retains sole and exclusive ownership to the Customer Data.

## **7. GENERAL WARRANTY AND DISCLAIMER.**

For a ninety (90) day period after delivery, Model Match warrants that the medium and documentation is free from material defects in materials or workmanship under normal use and the Products will provide, in all material respects, the functionality set forth in the applicable Authorized User documentation. Model Match does not warrant that the Product or Services are adapted to Customer's own needs or compatible with any computer program selected by Customer or on Customer's behalf for use with the Products. Customer therefore acknowledges that Customer is aware of the potential, the purposes, and functions of the Products, or that Customer has been assisted by a third party to determine the appropriateness of the Products for Customer's own needs. The Product is used under Customer's sole direction, control and responsibility. Customer shall take all steps to prepare adequate back-up plans or appropriate measures to mitigate any possible damaging consequences resulting from the use of the Products.

Model Match will, at its expense, defend Customer from or settle any claim, proceeding, or suit ("Claim") brought by a third party against Customer alleging that Customer's use of the SaaS Services infringes or misappropriates any Intellectual Property Rights of any third party. Model Match's obligation under this section is contingent on: (a) Customer giving Model Match prompt written notice of the Claim; (b) Model Match having sole, full and complete control over the defense and settlement of the Claim; and (c) Customer providing assistance in connection with the defense and settlement of the Claim as Model Match may reasonably request.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS OF USE, MODEL MATCH MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED PURSUANT TO THE AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OF USE, THE PRODUCTS AND ALL SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, USEFULNESS, SECURITY OR CONTENT OF INFORMATION, PRODUCTS OR SERVICES, OR ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. MODEL MATCH DOES NOT WARRANT THAT THE PRODUCTS

OR SERVICES WILL BE ERROR FREE OR BE UNINTERRUPTED. CUSTOMER ACKNOWLEDGES THAT THE PRODUCTS AND SERVICES COMPRISING THE SAAS SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MODEL MATCH DOES NOT THEREFORE GUARANTEE THAT SAAS SERVICES WILL BE AVAILABLE AT ALL TIMES. FURTHER, CUSTOMER ACKNOWLEDGES THAT MOBILE CRM IS AVAILABLE THROUGH MOBILE DEVICES USED WITHIN THE OPERATING RANGE OF A WIRELESS CARRIER OR WIFI PROVIDER, AS APPLICABLE, AND AS SUCH IS SUBJECT TO TRANSMISSION LIMITATION, INTERRUPTION AND MOBILE DEVICE PERFORMANCE. MODEL MATCH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. FURTHER, THE PRODUCTS MAY PROVIDE, OR THIRD PARTIES MAY PROVIDE, LINKS TO OTHER WORLD WIDE WEB SITES OR RESOURCES. MODEL MATCH SHALL NOT BE RESPONSIBLE FOR THE AVAILABILITY, ACCURACY, SAFETY OR SECURITY OF SUCH EXTERNAL RESOURCES. MODEL MATCH DOES NOT ENDORSE AND IS NOT RESPONSIBLE OR LIABLE FOR ANY CONTENT, ADVERTISING, PRODUCTS OR OTHER MATERIALS ON OR AVAILABLE FROM SUCH SITES OR RESOURCES.

## **8. LIMITATION OF LIABILITY.**

NEITHER MODEL MATCH NOR ANY OF ITS EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES, CONSULTANTS OR SERVICE PROVIDERS, SHALL BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, STATUTORY OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE DELIVERY, PERFORMANCE OR USE OF THE PRODUCTS OR SERVICES OR MATERIALS PROVIDED BY MODEL MATCH, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF USE OR DATA, DAMAGE TO SYSTEMS OR EQUIPMENT, COST OF COVER OR OTHER PECUNIARY LOSS, EVEN IF MODEL MATCH OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUMULATIVE LIABILITY OF MODEL MATCH TO CUSTOMER FOR ANY CLAIMS, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT IN ANY EVENT EXCEED THE AMOUNT OF SAAS SERVICES FEES PAID HEREUNDER IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING ALLOCATION OF RISK AND LIMITATION OF LIABILITY HAS BEEN NEGOTIATED AND AGREED BY THE PARTIES AND FORMS THE BASIS OF THEIR WILLINGNESS TO ENTER INTO THIS AGREEMENT.

IN ADDITION TO, AND NOT IN LIMITATION OF, THE LIMITATIONS ON MODEL MATCH LIABILITY SET FORTH ABOVE, IN NO EVENT SHALL MODEL MATCH BE LIABLE IN ANY MANNER FOR ANY SECURITY BREACH ARISING OUT OF USE OF THE PRODUCTS OR SERVICES COMPRISING THE SAAS SERVICES, OR FOR ANY LOSS OR THEFT OF DATA AND/OR CONFIDENTIAL INFORMATION RESULTING THEREFROM, OR FROM THE UNAUTHORIZED OR CRIMINAL ACTS OF ANY THIRD

PARTY, INCLUDING BUT NOT LIMITED, HACKING OF OR ILLEGALLY ACCESSING MODEL MATCH SERVERS OR THE SERVERS OF ITS HOSTING PROVIDER, DENIAL OF SERVICE ATTACKS, OR THE USE OR DISSEMINATION OF COMPUTER VIRUSES, TROJANS, SPYWARE, OR ANY OTHER COMPARABLE OR SIMILAR ATTEMPT TO INTERFERE WITH OR DISRUPT USE OF THE PRODUCTS OR SERVICES COMPRISING THE SAAS SERVICES, OR USE THE PRODUCTS OR SERVICES TO OBTAIN PERSONAL INFORMATION.

## 9. TERM AND TERMINATION.

9.1 **Agreement Term.** The term of these Terms of Use shall commence on the Effective Date specified in the first Order entered into by Customer and shall continue in full force and effect until the expiration or termination of all Orders, unless otherwise terminated earlier as provided hereunder.

9.2 **SaaS Services Term.** The initial term of each of the SaaS Services is specified in the relevant Order (“**Initial Term**”) and shall automatically renew for the same length as the Initial Term unless either party gives written notice 30 days prior to the end of the Initial Term or any renewal Term of its intention to terminate the SaaS Services described in the applicable Order. The Initial Term and renewal terms are referred to as the “**Term**”.

9.3 **Termination.** Either party may terminate the Agreement immediately upon written notice at any time if: (i) the other party commits a nonremediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of payment obligations which shall have a ten (10) day cure period; (ii) the other party ceases business operations; or (iii) the other party becomes insolvent, generally stops paying its debts as they become due or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within ninety (90) days after commencement of one of the foregoing events). If Model Match terminates the Agreement for Customer’s breach, Customer agrees to pay to Model Match the remaining value of the then-current Initial Term or renewal term (that Customer acknowledges as liquidated damages reflecting a reasonable measure of actual damages and not a penalty) equal to the aggregate recurring fees (as set forth in the Order) that will become due during the canceled portion of such Initial Term or renewal term. If applicable, Model Match’s entitlement and right to other ongoing or recurring fees, as established in an applicable Order, shall not be abridged or otherwise impacted by the termination of the Agreement. Where a party has rights to terminate, the non-breaching party may at its discretion either terminate the entire Agreement or the applicable Order. Orders that are not terminated shall continue in full force and effect under these Terms of Use.

9.4 **Suspension.** Model Match will be entitled to suspend any or all Services upon ten (10) days written notice to Customer in the event Customer is in breach of the Agreement or any Order. Further, Model Match may suspend Customer’s access and use of the SaaS Services if, and so long as, in Model Match’s sole judgment and discretion, a security risk created by Customer may interfere with the proper continued provision of the SaaS Services or the

operation of Model Match's network or systems. Model Match may impose, and Customer shall timely pay to Model Match, Model Match's reasonable and customary charges to reinstate access following such suspension.

9.5 Upon Customer's request made within thirty (30) days after the effective date of termination, Model Match will, provided that Customer is not in breach of any of its obligations under the Agreement and upon Customer's payment of the applicable fees, make available to Customer for download a file of Customer data in comma separated value (.csv) format along with attachments in their native format. After such period, Model Match shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. Model Match has no obligation to retain Customer Data after three (3) months of the expiration or termination of SaaS Services.

9.6 **Survival.** Sections 1, 4, 5, 6, 7, 8, 9 and 10 shall survive termination of this Agreement.

## **10. MISCELLANEOUS PROVISIONS**

10.1 **Representations.** Each party represents that the Agreement shall, when duly executed and delivered, constitute the legal, valid and binding obligation of each party, as applicable, enforceable in accordance with the Agreement's terms. Each party further represents and warrants that: (i) such party has all rights necessary to enter into and perform the party's obligations under the Agreement; and (ii) there are no other contracts, agreements, restrictive covenants or other restrictions preventing such party from entering into the Agreement or performing the party's obligations hereunder. In addition, Customer represents that Customer will use the SaaS Services in compliance with all applicable laws and regulations and in a manner that does not infringe on the rights of any third party or violate any third party's privacy rights.

10.2 **Compliance.** Without prejudice to Model Match audit rights pursuant to this section and upon Model Match's request, Customer will timely document and certify to Model Match that Customer's use of the Products and Services is in full conformity with the use rights granted under this Agreement and the applicable Order, including, but not limited to, compliance with the License Metrics. During the Term and for a period of one year thereafter, Customer will maintain and make available to Model Match upon request, Customer's internal documentary records sufficient to permit Model Match or Model Match's independent auditor to verify Customer's compliance with this Agreement. Customer will provide reasonable assistance, personnel, systems access, and information in an expeditious manner to facilitate the timely completion of Model Match's compliance verification. The audit will be performed during regular business hours. If Customer is not in compliance with the Agreement, Customer will reimburse Model Match's reasonable costs and expenses of such verification process (including, but not limited to the fees of an independent auditor), and Customer will promptly cure any noncompliance, including without limitation payment of any and all fees owed to Model Match during the period of noncompliance owing to Customer's failure to comply with the License Metrics. The rights and remedies under this section are in addition to any other rights Model Match may have under the Agreement. Customer acknowledges that the Products may include a

license manager component to track usage of the Products and agrees not to impede, disable or otherwise undermine such license manager's operation.

**10.3 Independent Contractor.** Model Match and Customer are independent contractors. Neither Model Match nor Customer (nor any of their respective employees, contractors, and agents) are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.

**10.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Except as provided in section 10.9, Customer and Model Match consent to the jurisdiction of the state courts of the State of California located in Orange County and the U.S. District Court for the Central District of California.

**10.5 Entire Agreement and Modifications.** Each party acknowledges that it has read the Agreement and agrees that the Agreement is the complete and exclusive statement of the parties and supersedes and merges all prior proposals understandings and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any customer request for proposal or the standard printed terms on any Customer purchase order. Model Match reserves the right at any time to modify these Terms of Use and to add new or additional terms or conditions on Customer's use of the Products and/or Services. Such modifications and additional terms and conditions will be effective immediately and incorporated into these Terms of Use. Model Match further reserves the right at any time to modify its Privacy Policy, and such modifications will be effective immediately and incorporated into the Privacy Policy. Customer's continued use of the Products and/or Services will be deemed acceptance of modifications to these Terms of Use or the Privacy Policy and of any new or additional terms or conditions on Customer's use of the Products and/or Services.

**10.6 Severability.** In the event a provision of the Agreement is determined to be invalid, illegal or unenforceable in whole or in part, such invalidity, illegality or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions of the Agreement will continue in full force and effect.

**10.7 Waiver.** The failure of either party at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

**10.8 Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. No party shall assign this Agreement or any of its rights or delegate any of its duties or obligations hereunder without the prior written consent of the other party; provided, however, that Model Match may assign this Agreement and all of its rights and obligations hereunder as part of a merger or sale of substantially all the assets or stock of Model Match.

**10.9 Arbitration.** Except for collection actions for payment of fees and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a

preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this Agreement or to its breach shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted before a single arbitrator from a panel of persons having experience with and knowledge of electronic computers and the computer business, and the arbitrator selected will be an attorney licensed to practice in the state of California. The place of arbitration shall be Irvine, California, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

**10.10 Force Majeure.** Neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the Party seeking protection under this section, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, explosions, epidemic, pandemic, any law or direction of any governmental entity, emergencies, civil unrest, viruses or denial of service attacks, telecommunications failure, or failure of the internet or internet service provider. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused, except that any inability by either party to perform due to a force majeure for a period of three (3) months shall be grounds for a termination of the Agreement in accordance with this Section.

**10.11 Notices.** Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by first class registered mail, or air mail, as appropriate, or (iii) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid to the contact person and address set forth in the signature block of the Order Form. Notices shall be considered to have been given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service, provided in each case that delivery in fact is affected. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this section.

**10.12 Reference.** Customer acknowledges and accepts that Model Match may refer to Customer as a customer in sales presentations, RFP documents, internal and external marketing activities. Customer agrees to be available upon reasonable request for reference calls/site visits, publication interviews, marketing case studies and other potential activities that will assist Model Match in acquiring new customers.

**10.13 Construction.** Unless the context of these Terms of Use clearly requires otherwise, references to the plural include the singular, the singular the plural, and the part the whole.