

Performance Matters Circle of Excellence General Terms and Conditions

These terms and conditions, incorporating a web-user and privacy statement, shall apply to any and all agreements by and between Performance Matters Consulting LLC a private limited liability company formed under the laws of United States of America and with its principal place of business at 146 State Street, West Columbia, South Carolina 29169, United States of America, (“we” or “our” or “us”) and you (“Customer” or “you”) where Performance Matters Consulting supplies Circle of Excellence goods and services to its customers, including a free trial. The agreements and these terms and conditions are together the “Contract”. The Contract forms a supplemental agreement between Performance Matters and its customers relating to the Circle of Excellence goods and services and the Performance Matters Circle of Excellence application website (“website”). It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral. The headings and the title in the Contract or any other communication are included to make it easier to read but do not form part of the Contract.

Read the content and all provisions of the Terms carefully before selecting “I agree” when asked to do so. By so accepting the Terms, you are consenting to be bound by all provisions of the Terms. If you are not willing to be bound by the Terms, select “I disagree” when asked to accept them.

1. Definitions

The following definitions shall apply for the scope of these terms and conditions:

Access – means access to a Service by use of a browser and/or with the aid of a Login.

Administration Users – means individuals specifically designated as administration Users by the Customer.

Computer – means any device that is able to process data with the assistance of a programmable calculation specification.

Consumer – means any natural person who is provided with any Products or Services of Performance Matters for personal use.

Contract – means any contract for sale and purchase of Products or Services between Performance Matters and the Customer.

Customer – means a Consumer and/or an Enterprise supplied with the Products or Services of Performance Matters.

Enterprise – means any natural person, legal entity or partnership or other legal form having capacity that is not engaged in personal or familial usage in ordering or receiving Products or Services of Performance Matters while performing its commercial or independent professional or other work.

Fee – means the price or the License fee to be paid by a single Customer for each License to use Products and Services of Performance Matters.

Free Trial – means the ability of the Customer to use the Products and Services on a trial basis for a limited period of time free of charge.

Free Trial Period – means the earlier of (a) the end of the free trial period for which the Customer has registered or is registering to use the applicable Products or Services or (b) the start date on which the Customer purchased the Product or Service. Performance Matters is free to limit the trial periods for each Product and Service at its sole and absolute discretion.

Hosted Data – means all data and information maintained or stored within the hosted Product.

Hosting Services – means the Product and/or Services that the Customer is licensing.

Incident – means any question relating to a specific, discrete issue or problem that can be answered by its origin to a single cause.

License – means the right of the Customer to use the Circle of Excellence Products and Services subject to the standard business terms and conditions and in accordance with the relevant end user license and/or service level agreement applicable as at the date of the conclusion of the relevant agreement. The License shall stipulate the nature and scope of the right to use the Products or Services. For those Products for which an Update Service is provided, the License shall also constitute the right of the Customer to receive ongoing Updates/Upgrades during the term of the License period, if any, for the Software provided.

Login – means entering of identifier information into a Managed Service by Customer in order to access that Managed Service.

Merchant – means a Customer to whom Products and Services are provided expressly for the purpose of an onward or resale.

Order Document – means the written confirmation (usually in form of an invoice) provided by Performance Matters to the Customer setting out the specific Products and/or Services which the Customer is licensing from Performance Matters and the Fee payable for each Product and/or Service.

Product – means any Performance Matters Circle of Excellence Software.

Service – means Circle of Excellence software application managed by Performance Matters and deployed with a Customer over the internet with or without the aid of a Login.

Software – means Performance Matters Circle of Excellence programs in their object code, including any and all Updates and Upgrades thereof that Performance Matters makes available from time to time. Unless stated otherwise, the Software offered by Performance Matters is a multiple user version of the Software and hosted by Performance Matters unless specifically set up otherwise with the prior consent of Performance Matters.

Support – means a Service which Performance Matters offers to Customers inquiring for help desk support for Circle of Excellence Products or Services.

Terms – means the terms and conditions set out in these terms and conditions, as amended, altered, updated or otherwise restated by Performance Matters from time to time.

Update and Upgrade – means the updating of the Software. Classification of the updating as an Update or Upgrade is at the sole discretion of Performance Matters.

Update Service – means the ongoing updating of a Software through Updates and/or Upgrades and the provision of such Update and Upgrades to the Customer by Performance Matters. Some Software may require the Update Service for functional use. Performance Matters may at its sole and absolute discretion render services under its Update Service as an Update or an Upgrade.

User – means the authorized, non-current user designated by the Customer having Access to the Software.

Virtual Community – means an online community of Users that (i) contains a collective, shared repository for user, group data, and search functionality, and (ii) permits Access to the underlying database by only one unique instance of the Software.

Headings to any of the terms and conditions are included to facilitate reference only and shall not affect the construction hereof.

2. Scope

The Terms set out the legal framework and shall apply to any and all Contracts by Performance Matters with its Customer concerning the delivery and maintenance of its Circle of Excellence Products and/or Services, in particular, the provision of Software and its Updates, Upgrades, Services and the rendering of related service, support and advice. The Terms shall also apply to visitors using the Circle of Excellence website of Performance Matters, Customers using Products and Services during a Free Trial during the Free Trial Period and shall regulate all other contractual relationships between Performance Matters and its customers until a Contact has been agreed. The Terms shall apply to both Enterprise and Consumers.

If the Customer is an Enterprise, the Terms shall also apply to any and all future agreements between Performance Matters and the Customer without any further reference to them.

In addition to the Terms, other relevant end user license agreements between Performance Matters and the Customer shall be applicable to any use of Products and in case of Services, the relevant service level agreement(s) shall be applicable in addition to the Terms. In case of any conflict between the Terms and/or any other end user license agreement and/or any service level agreement, the provisions of the Terms shall prevail.

The Terms apply exclusively and shall prevail over any other general terms and conditions of the Customer without any reservation even if the same have been communicated to Performance Matters, except where Performance Matters has approved them in writing. The Terms shall also apply to all cases where Performance Matters provides its Products and/or Services to the Customer without any reservations and with the knowledge of contradicting or differing terms of the Customer.

The Terms shall also be applicable for all Products and/or Services provided by Performance Matters to Customer for which no consideration is due, including during the Free Trial Period. Performance Matters reserves its right to change, update, amend or modify the Terms at any time. Such changes will be notified to the Customer in writing (e-mail shall be sufficient for this purpose) or by posting a relevant notice on the website of Performance Matters. The Customer may object to the notified changes. If the Customer does not object to notified changes or any part thereof, within 4 (four) weeks after receipt of

the notification ("Objection Period"), the notified changes will be deemed as fully accepted by the Customer. If the Customer objects to the notified changes within the Objection Period, the Contract will continue on the present Terms. Objections, notifications and other notices by the Customer to Performance Matters shall be sent to the corporate address of Performance Matters as set out in the website of Performance Matters.

3. Conclusion of a Contract

The presentation of any Products and Services by Performance Matters on the internet and in prospectuses, catalogues or other product or information brochures shall solely serve to inform and guide the Customer only. They shall not constitute any binding offer by Performance Matters, but merely an opportunity for the Customer to make a binding contractual offer in the form of an order.

A legally binding Contract between Performance Matters and the Customer shall only be concluded if the Customer places an order and Performance Matters accepts such order by way of a written order confirmation (an e-mail shall be sufficient for the purpose) or the provision of Product and/or Service by Performance Matters to the Customer, for example, per download or the provision of a Login.

Any and all orders accepted by Performance Matters are subject to the Terms and the applicable license agreements, if any, and/or, the applicable service level agreement, if any. If Products and/or Services are accessed by electronic means, the Customer may accept the Terms by clicking on the "I accept" button on the website of Performance Matters, which contains and refers to the Terms valid at that time.

If the Customer does not accept the Terms, it must refrain from installing, copying or otherwise using the Product and Services accessed by electronic means. Should the Customer be entitled to withdraw from the Contract based on any applicable statutory rights and should the Customer utilize this right within the relevant statutory period, the applicable license agreement, if any, and/or the relevant service level agreement, if any, shall be withdrawn at the same time.

Any deviations from and modifications to the Terms must be expressly agreed between the parties in writing. For Performance Matters these shall only be valid, when executed by authorized employees or legal representative.

4. Subject matter

The subject matter of any Contracts which are concluded subject to the Terms between the Customer and Performance Matters shall be the right of the Customer to use the Products and/or Services provided by Performance Matters in accordance with the Terms and the relevant end user license agreement, if any, and/or the relevant service level agreement, if any. Upon payment of the agreed Fee, the Customer shall be granted with these the relevant right(s) of use.

Any and all other rights to the Products and Services, in particular the legal or equitable title, and any and all other rights of publication, reproduction, processing, translation and other exploitation rights, shall be remain with Performance Matters.

If any Contract has been withdrawn, rescinded or terminated for whatever reason or at the end of the Free Trial Period, the Customer's License for the Products or Services shall be terminated forthwith. The Customer shall receive no further Updates and/or Upgrades from Performance Matters and will not be granted further Access to any systems or receive Services.

Products or Services provided by Performance Matters may have specific product specifications and minimum operating requirements for the operating system with which the Software or Service is compatible and for which these are supported by Performance Matters. Software or Services may not be compatible or usable with operating systems which are not specified in the relevant product description and specifications. Therefore the production specifications for Software and Services form an integral part of the relevant Contract.

5. Provision and use of Software and Services

When using the Products and Services, the Customer shall at all times comply with the Terms as well as the terms of use of any license agreement, if any, and/or any service level agreement applicable at the time of concluding the relevant Contract.

Unless expressly set forth in any Order Document, Performance Matters grants to the Customer a limited, worldwide, non-exclusive, non-transferable License to permit the User to access, use, perform and display the Product through the Hosting Services. The License and Hosting Services term for any Product and/or Services obtained from Performance Matters through cloud computing services will be for an initial period of 12 (twelve) months and will automatically renew for successive terms of 12 (twelve) months each at the then current Fees and existing number of licenses unless either party provides a written objection for automatic renewal at least 30 (thirty) days prior to the end of the end current term.

Should a Customer acquire more than one License, all new Licenses will expire on the same date as the first License and will be renewed thereafter for joint successive terms of 12 (twelve) months each at the then current Fees in accordance with the terms and conditions of this Agreement.

Performance Matters utilizes contract cloud computing services. However, Performance Matters may consider and shall hereby have the right to utilize internal resources to provide Hosting Services.

The Customer and its User(s) will not upload as part of the Hosted Data any information protected under any applicable privacy, health or security regulations, and personally identifiable information. The Customer and all Users will comply and will otherwise use the Product and Hosting Services in compliance with all applicable laws and regulations and in a manner that does not violate or infringe any rights of any third party.

The Circle of Excellence Software and Services must not be reproduced, disassembled, translated or decompiled (i.e. recompilation into the source code), unless expressly permitted by the relevant license agreement. If the Customer wishes to reverse engineer, translate, decompile or disassemble the Software or Services ("De-compilation") for the purpose of achieving interoperability with other computer programs used by the Customer, the Customer shall immediately contact Performance Matters before De-compilation of the Software or the Service and request the provision of the

respective information necessary for the achievement of such interoperability. Performance Matters may at its sole and absolute discretion refuse De-compilation by a Customer.

The Customer may not rent, lease or loan the Software or Services or provide any commercial hosting services by means of the Software or Service. Customers are not permitted to use the Software or Services of Performance Matters for purposes other than processing their own data. Customers are permitted to acquire and use the Software and Services solely for the purpose of gaining their own competitive advantage.

Products or Services for which no special License for use on several computers is available, its use shall be solely restricted to the use on one computer of the Customer at any one time. For this purpose, the Customer may use any computer available that meets the system requirements and for which the License has been granted. For Products and Services for which product specifications provide special Licenses for multiple usage, multiple usage shall be permissible only if and to the extent that the Customer was granted the relevant type and/or number of Licenses by Performance Matters. Unless explicitly granted in the relevant License, the Customer shall not have the right to access the Software or Services by simultaneous or multiple use of the same Login.

Estimates of time for completion of the installation of any Product or Services are only estimates and Performance Matters takes no responsibility for any delay in the provision of services caused by factors outside its control. The Customer shall use all reasonable skills, care and attention to ensure that all information Performance Matters may reasonably require for the provision of any Product or Services is provided on a timely basis and is accurate and complete. The Customer shall also notify Performance Matters if it subsequently learns that the information provided is incorrect or inaccurate or otherwise should not be relied upon.

Performance Matters undertakes to make all reasonable efforts for the Customer to have access and make use of specific Products and Services available 24 (twenty-four) hours a day, provided such service availability has been specifically agreed in the relevant license agreement. Performance Matters reserves the right to block access to the Software and Services for the purpose of necessary and regular system maintenance or if there is an imminent danger to the overall provision of the Software or Service. No liability is accepted for any system failure due to events beyond the reasonable control of Performance Matters, in particular, force majeure, natural disaster or failures caused by internet providers.

Performance Matters reserves all its rights on any claims or actions resulting from any unauthorized use of Products and/or Services by the Customer, including but not limited to, copyright claims and compensatory damages claims. Unauthorized use by the Customer may lead to criminal prosecution under the relevant laws. The provisions of this clause concerning reproduction and disclosure shall apply *mutatis mutandis* to the printable reports, if any, pertaining to the Products and Services provided by Performance Matters. Reference is also made to any supplementary terms and conditions of use under the license agreement, if any, and/or any service level agreement, if any.

Subject to any other terms and conditions specifically agreed between the parties and in consideration of any Fees, if any, agreed in advance between the parties, Performance Matters shall offer from time to time support services for Incidents to the Customer in relation to any Product or Service of Performance Matters.

Unless otherwise specified, no support service shall be provided by Performance Matters to the Customer for any damage or failure of the Product caused by (i) use of any products not provided by Performance Matters, (ii) unusual site conditions, (iii) neglect, improper use, fire or water damage, electrical disturbances, transportation by Customer, (iv) work or modifications carried by employees or any third party retained by Customer, (v) inability of third party products used in Customer systems environment to correctly process, provide or receive data, or the inability of these products to properly exchange data with any Products provided by Performance Matters.

No support service shall be provided by Performance Matters of whatsoever kind in relation to any products and services provided to the Customer by third party suppliers and Performance Matters shall not be liable for the compatibility, performance or non-performance of third party suppliers, their products or their services.

6. Delivery of Products and Services

The delivery obligations by Performance Matters shall be solely governed by (i) the specific order confirmation from Performance Matters, (ii) the Terms, (iii) the relevant license agreements, and (iv) the relevant service level applicable (if applicable) unless agreed otherwise between the parties in writing. Performance Matters may render partial deliveries where a partial delivery is reasonable for the Customer and does not materially and adversely impair the interests of the Customer.

Deviations of the delivered Products and/or Services from the documentation shall be permitted provided they are reasonable for and acceptable to the Customer and the material performance of the Product or Service required under the relevant agreement is met in full. Performance Matters reserves its right to make technical changes to the Products and/or Services which enhance their operability and performance or which are necessary for the operability of the Products and/or Services.

Should the ordered Products and/or Services be replaced by new Products and/or Services in the product range or model variants of Performance Matters and such new Products and/or Services render the qualities required under the relevant agreement just as well or better, Performance Matters has the right to deliver such new Products and/or Services instead of the ordered Products and/or Services.

If timely delivery is prevented by circumstances that are not just temporary or do not fall within scope of influence of Performance Matters (in particular, in the event of a strike, lock-out, unavailability of materials, force majeure, transport hindrances, plant closures or unavailability of internet connection), Performance Matters or the Customer may rescind the Contract if either cannot be expected to be bound by it any longer, without giving rise to any obligation to render compensatory damages to the other party.

7. Fees and other payments

Should any Fees or expenses become payable by the Customer to Performance Matters, they will be set out in the relevant Contract and shall be payable according to the agreed upon terms unless specified otherwise. Time for payment of fees and expenses shall be of the essence. If Performance Matters does not receive payment within 7 (seven) days of the invoice or due date, Performance Matters shall be

entitled, without any prejudice to any other rights that Performance Matters may have, to charge a commercial rate of interest on the outstanding fees and expenses and, after 30 (thirty) days from the invoice or due date, to suspend provision of all services until all sums due are paid in full. The Customer shall be solely responsible for work and fees of any other party engaged by it in connection with any Products or Services provided by Performance Matters, regardless of whether such party was introduced to the Customer by Performance Matters. Except as provided in the Contract, and/or the license agreement, if any, and/or the service level agreement, if any, Performance Matters shall not be responsible for providing or reviewing specialist advice or services.

All sums due in connection with any Product or Services will be subject to the payment of consumption, value-added or other relevant or comparable tax, where applicable.

Any extension of credit allowed by Performance Matters to the Customer may be changed or withdrawn at any time. Should the credit worthiness of a Purchaser have deteriorated prior to delivery of the Products, Performance Matters may require full or partial payment, or the security for payment by the Customer in a form acceptable to Performance Matters.

If the Customer agrees to pay for any fees or expenses by credit card or direct debit (whether on a fixed or variable basis), the Customer must ensure that sufficient credit is or sufficient funds are available, otherwise if the Customer fails to pay, Performance Matters may add a surcharge in addition to any other remedies Performance Matters has under the Term or any relevant license agreement, if any, or any relevant service level agreement, if any.

All fees as outlined in the contract must be paid. Fees are based on subscriptions purchased and not utilization. Furthermore payments cannot be cancelled and are non-refundable. Subscription quantities cannot be reduced during the term of the contract.

8. Rights, Title, and Ownership

All rights, title and ownership in the Services reside exclusively in Performance Matters. All references in this Agreement to the "sale" or "purchase" of the Services signify only the delivery of Services subject to the terms set forth in this Agreement.

9. Duties of Customer

The Customer acknowledges that it is impossible, under the current state of technology, to develop data processing programs which are completely faultless under all service conditions. Hence, the due and proper use of the Products and/or Services may require the installation of all Updates/ Upgrades for the respective Software or Services by the Customer or Performance Matters. Performance Matters reserves the right to Update/ Upgrade the customer to the most recent product version. If the Customer has not installed the current Updates/ Upgrades of Performance Matters, the protection of the Software or Services against computer viruses and other malware (e.g. any software and other dataset which may cause damage or undesirable functions in the Computer or in the system of a user) may be materially impaired. In certain cases installation of the Software (supported product versions) or Service and its Updates/ Upgrades as well as regular downloading of the full and current Updates/ Upgrades shall be the sole responsibility of the Customer.

The Customer shall familiarize itself with the key functions of the Products and Services acquired or obtained and shall bear the entire risk as to whether the Product or Service meets the individual requirements and needs of the Customer.

The Customer is solely responsible for the accuracy, quality, integrity and lawfulness of its own data and the lawfulness of the means by which it acquired the Products or Services. The Customer shall make all reasonable effort to prevent unauthorized access to or the unauthorized use of the Software and Services by third parties and shall inform Performance Matters without delay of any such unauthorized access or use. The Customer shall not make the Software and Services accessible to other users or sell, resell, rent or lease or use them to transmit or store illegal, offensive or other unlawful or unauthorized data material or to infringe third parties' rights. The Customer shall not use the Software and Services to store or transmit malicious software or to otherwise try to gain unauthorized access to Software or Services provided by Performance Matters or seek unauthorized access to systems or networks linked to the systems provided by Performance Matters.

The Customer shall notify Performance Matters without undue delay of any changes to its e-mail address and other contact details for Performance Matters to be able to send to the Customer security and other relevant information for the use of the Software and Services. Performance Matters shall not be liable for any damages resulting from the Customer's failure of complying with its notification obligations.

10. Website information

Unless otherwise stated, the information and services features on the Circle of Excellence website of Performance Matters are available within the stated regions and territories. All advertising, if any, is intended solely for the relevant market(s) and any visitor of the website is solely responsible for evaluating the fitness for a particular purpose of any downloads, programs and text available through the website.

Redistribution or republication of any part of the website or its content is prohibited, including such by framing or other similar or any other means, without the express written consent of Performance Matters. Performance Matters does not warrant that the service from the website will be uninterrupted, timely or error free, although it is provided to the best ability. Performance Matters may use IP (internet protocol) addresses to analyze trends, administer the site, track user's movements, and gather broad demographic information for aggregate use. IP addresses are not linked to personally identifiable information. Additionally, for systems administration, detecting usage patterns and troubleshooting purposes, the web servers of Performance Matters automatically log standard access information including browser type, access times, URL requested, and referral URL. This information is not shared with any third parties and is used only within Performance Matters on a need-to-know basis. Any individually identifiable information related to this data will not be used in any way different to that stated above.

Like most interactive websites, the Performance Matters Circle of Excellence website or ISP (internet service provider) retained by Performance Matters uses cookies to enable it to retrieve user details for each visit. Cookies are used in some areas of the website to enable the functionality of this area and

ease of use for those people visiting. During each visit to the Performance Matters website, routine information is being gathered and stored (e.g. IP-address, time and length, operating system, browser and pages visited) to prevent abuse and misuse of Performance Matters websites, communities and forums.

Users of the Performance Matters Circle of Excellence website may not create a link to any page without the prior written consent of Performance Matters. If the user does create a link to a page of the website, the user does so at his/ her own risk and the exclusions and limitations set out in the Terms will to apply to their use of the Performance Matters website by linking to it.

Performance Matters does not actively monitor or review the content of other party's websites which may from time to time link to the website of Performance Matters. Opinions expressed or material appearing on such websites are not necessarily shared or endorsed by Performance Matters and should not be regarded as the publisher of such opinions or material. Every user of the Performance Matters Circle of Excellence website must be aware that Performance Matters is not responsible for the privacy practices, or content, of these websites. Performance Matters encourages users of its website to be aware when they leave the Performance Matters website and to read the privacy statements contained in the Terms below. Every user should evaluate the security and trustworthiness of any other site connected to the website of Performance Matters or accessed through the website by the user, before disclosing any personal information to them. Performance Matters will not accept any responsibility for any loss or damage in whatever manner, howsoever caused, resulting from the user's disclosure to third parties of personal information.

Performance Matters may have several e-mail addresses linked to the website for different queries. These and other contact information can be found on the "Contact Us" or similar link on the website of Performance Matters or via literature of Performance Matters or via the stated telephone number, facsimile or mobile telephone number(s).

Copyright and other relevant intellectual property rights exist for Performance Matters on all text relating to the services and the full content of the Performance Matters website.

The logo of Performance Matters is registered and the brand names and specific services of Performance Matters featured on the website, specifically "Circle of Excellence" are internationally trade marked even if such trade mark has not yet been registered or awarded.

11. Privacy

Performance Matters contracts with third party service providers and suppliers (including distributors and resellers) to deliver certain products, services and customer solutions. Performance Matters may share personal information with its service providers and suppliers to the extent needed to deliver the service or respond to requests for information on Products or Services or otherwise support the business needs of its customers.

Third party service providers and suppliers receiving personal information are expected to apply the same level of privacy protection as contained in the Terms. They are required to keep confidential the personal information received from Performance Matters and are not permitted to use it for any

purpose other than as originally intended. Some Performance Matters Product and Services may be co-branded and offered in conjunction with other companies. Except as described in the Terms, Performance Matters is not in the business of selling or renting customer information to others and will not share personally identifiable information with other third parties without their permission, unless required by, or in connection with, any law enforcement action, criminal litigation, or applicable law and regulation, or in connection with a prospective or actual sale, merger, transfer or other reorganization of all or parts of its business. Performance Matters reserves the right to fully use and disclose any information collected via its website that is not in a personally identifiable form.

Performance Matters uses third-party intermediaries to manage credit card and other forms of payment processing. These intermediaries are not permitted to store, retain, or use billing information except for the sole purpose of credit card or other forms of payment processing on behalf of Performance Matters.

Performance Matters does not require that customers, business partners or visitors to its website provide Performance Matters with detailed personal information. The decision to provide personal information is voluntary. If any website visitor or Customer does not provide the personal information requested, the visitor or Customer may not be able to proceed with the activity or receive the benefit for which the personal information is being requested. Any website visitor or Customer can always unsubscribe or choose not to receive promotional information from Performance Matters by following the specific instructions in the e-mail the customer receives or by notifying Performance Matters depending on which website is at issue. It may take a reasonable period of time to process any website visitor and Customer request, however, not longer than 30 (thirty) days.

Performance Matters may post a list of Customers and/or testimonials on its website(s) that contain information such as customer names, business activities, usage of the Products or Services and general data. Performance Matters will endeavor to obtain the prior consent of each Customer before posting any information on such a list or posting testimonials.

12. Data Protection

Performance Matters shall take all reasonable and appropriate administrative, physical and technical security measures to maintain the confidentiality and integrity of Customer data. Performance Matters nor disclose any Customer data, unless this has been explicitly permitted by the Customer or this is strictly necessary to prevent any damage to the Products and Services or any systems maintained, operated or provided by Performance Matters.

By agreeing to these Terms, the Customer grants Performance Matters a general authorization in the meaning of Article 28 (2) of Regulation (EU) 2016/679 to engage processors for the purposes of providing the Performance Matters Services.

List of processors and sub-processors:

Alliant Systems – A provider for route accounting software. Based in the US.

Circle of Excellence LLC – A processor for operational purposes based in the US.

Performance Matters Consulting LLC. – A processor for operational purposes based in US.

Microsoft Azure Web Services – A sub-processor for hosting services in the US (Privacy Shield certified)

Google Analytics – Service provided for optimizing user experience in the application. Based in the US (Privacy Shield certified).

Microsoft – Service provider for email communication. Based in the US (Privacy Shield certified).

Wesvic Systems – A sub-processor and hosting services provider based in the US.

Once Customer data is transfer to Performance Matters, Performance Matters shall remain in control of the data for the purposes and in compliance with any applicable data protection act in force from time to time. Performance Matters shall remain the owner of all customer-specific data (recorded data, processed data, stored data, issued data) and shall solely be entitled to dispose of them. Performance Matters shall be under no obligation to check the data and contents stored for the Customer in terms of the legal admissibility of their collection, processing and use; this shall remain the exclusive responsibility of the Customer.

Performance Matters shall only be entitled to gather, process and/or use the customer-specific data exclusively upon the instructions of the Customer (e.g. in order to comply with deletion and blockage obligations) and this instruction shall hereby be duly given by the Customer in accordance with the terms of the Terms, any license agreement, or any service level agreement, if any; in particular, Performance Matters shall not be entitled to make customer-specific data available to third parties in any manner without the prior written consent of the Customer. The same shall also apply if such disclosure entails any modification or amendment of the customer-specific data. Performance Matters shall, however, be entitled to process and use Customer data within what is permissible under the relevant data protection laws and regulations., in compliance will all applicable and relevant data protection legislation. Customer specific data is being gathered, processed and used to fulfil Customer orders and purchases and to generally improve the content and functionalities of Products and Services. The Customer may object or withdraw its consent under these Terms at any time to the gathering, processing and usage of customer-specific data for marketing, market- and product-research purposes by sending a relevant request to the business address of Performance Matters Consulting at 146 State Street, West Columbia, South Carolina 29169. After receipt of such objection or withdrawal of consent, Performance Matters will refrain from using any relevant Customer information for marketing, market- and product-research purposes with immediate effect.

All parties shall use all documents, information and data which they receive to implement the Terms and which they have designated as confidential only to implement the Terms and keep them confidential as long as and to the extent they have become common knowledge. The parties shall ensure that also their respective members of staff are bound by the confidentiality obligations.

14. Data Processing Contract

For the purposes of Article 28 of Regulation (EU) 2016/679, these Terms constitute the data processing contract between the Customer as the data provider and Performance Matters as the data processor. The Customer hereby instructs Performance Matters to process the data as described in these Terms.

Subject matter and nature of processing. Performance Matters provides the software as a service to collect, store, aggregate and organize the personal data of data subjects determined by Performance Matters and agreed to by the Customer. The software has been designed to work as a KPI (key performance indicator) tool. Performance Matters will process data on behalf of the Customer until the termination of the Services in accordance with these Terms.

Performance Matters ensures that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

15. Warranties and Limitation of Liability

Unless expressly agreed otherwise, the Products and Services provided by Performance Matters shall be in line with the current-state-of-the-art technology and shall conform to all relevant product information and specifications provided by Performance Matters. Performance Matters does not warrant that the Products and Services will be fit for purposes beyond the fulfillment of the obligations of Performance Matters under the relevant license agreement and/or service level agreement.

The Customer shall immediately inspect the Products and Services after delivery and inform Performance Matters in writing about any defects thereof without delay. Performance Matters warrants that the Software or Services will work for a period of 30 (thirty) days after the date of receipt of the relevant license to use the Software or Services.

The Customer is advised that based on the current state-of-the-art technology program errors cannot be excluded with complete certainty in spite of exercising greatest conscientious care and diligence and that it is not possible to develop Software or Services that detect any existing virus or other malware, i.e. software and any other dataset that causes damaging or undesirable functions in the Computer or in the system of a user.

The Customer shall examine the quality of the Products and Services provided by Performance Matters as soon as possible, and shall immediately notify Performance Matters in the event that defects exist for which Performance Matters must warrant. If a Customer fails to notify Performance Matters of any defects without delay, the Products and/or Services provided by Performance Matters are deemed to have been accepted to the extent that there are no defects involved which were not recognizable in the course of customary examination. If the defects are discovered at a later date, notification must be given immediately upon their discovery, otherwise the Products and Services are deemed to have been accepted with respect to such defects.

Defects in the Products and Services shall be rectified by Performance Matters within a reasonable period after notification of the defect. The rectification of any defects shall be undertaken at the choice of Performance Matters, by way of repair or substitute delivery of the Product or Service free of charge and against reimbursement of all reasonable costs.

In no event shall the Customer be entitled to demand the source code for any Product or Service with regard to any defects.

The Customer shall notify Performance Matters without undue delay if a third party asserts claims against the Customer based on the infringement of any intellectual property rights by the Product

and/or Services. Should there be any information of such, whether in written documents or correspondence or in other forms, the Customer shall provide these to Performance Matters without delay.

The warranty contained in the Terms is the only explicit warranty given by Performance Matters to the Customer. It shall substitute all other explicit warranties and guarantees, if any, contained in the documentation, the packaging or any other communication. Without limiting the extent permitted by law, Performance Matters provides the Products, Services and any services relating thereto on an “as-is” and “with-all-faults” basis only.

Performance Matters explicitly excludes all other warranties or guarantees, explicit, implied, legal, or otherwise, including but not limited to any implied warranty, guarantee or duty to provide for the merchantability, suitability for a specific purpose, reliability or availability, accuracy or completeness of answers, results, efforts of experts, the lack of viruses and the application of a specific level of care. All conditions, warranties or representations expressed or implied by statute, common law or otherwise in relation to the Products and Services are hereby excluded.

Performance Matters shall not be liable for any direct damages of the Customer resulting from gross negligence or intentional misconduct of Performance Matters. Performance Matters shall not be liable for the acts and/or omissions of any staff or other third party support retained by Performance Matters.

Actions based on any warranty or other claim for defects in the Products or Services provided by Performance Matters shall be barred at the end of 3 (three) months after delivery to the Customer, even if the defect was only discovered by the Customer at a later date.

16. Notices and Communication

Any notice required to be given in writing shall be deemed to have been duly given if sent by pre-paid post, facsimile or e-mail addressed to the party concerned at its principal place of business or last known address. All written notices to Performance Matters should be sent to 146 State Street, West Columbia, South Carolina 29169.

Electronically transmitted correspondence or information transmitted by Performance Matters cannot be guaranteed to be secure or error free and it may be adversely affected or unsafe to use. Performance Matters will not accept any liability from or in connection with the electronic communication of information to the Customer. The Customer should let Performance Matters know if it does not want to communicate electronically with Performance Matters.

17. Miscellaneous

In the event of any violation by the Customer of the duties set out in the Terms, Performance Matters shall be free to either suspend the use of the Products or Services by the Customer in whole or in part or to terminate the Contract or any licenses or any service level agreement, if any, for cause and without notice.

Performance Matters reserves the right to audit Customer usage to ensure adherence with these terms and conditions and to ensure that each Performance Matters Circle of Excellence license is being used by a single user only as per the standard terms and conditions.

Performance Matters may assign or transfer the Terms as a whole, or any of its rights or obligations under it, without first obtaining the written consent of any other party, including a Customer. Nevertheless, should Performance Matters seek consent from a Customer, such consent may not be unreasonably withheld or delayed. Customers may not assign or transfer the Terms as a whole, or any of its rights or obligations under it, to any third party without first having obtained prior written consent of Performance Matters.

If any provision in the Terms is held to be invalid, in whole or in part, such provision shall be deemed not to form part of the Terms. In any event, the enforceability of the remainder of the Terms will not be affected, provided always that if any such deletion substantially affects or alters the commercial basis of the Terms, the parties shall negotiate in good faith to amend and modify them as may be necessary or desirable in the circumstances.

Performance Matters reserves its right to change the Terms from time to time as it sees fit. The continued use of visitors of the website will signify acceptance by the user of any adjustment to the Terms. If there are any changes in the privacy policy contained in the Terms, Performance Matters will announce when the changes have been made on its website. If there are any changes in how Performance Matters uses its website, relevant notifications will be made. Any changes to the privacy policy will be posted on the Performance Matters website 30 (thirty) days prior to the change taking place.

If any dispute arises between the Customer and Performance Matters, both parties will attempt to resolve the dispute in good faith by senior level negotiations. Where both parties agree that it may be beneficial, both parties shall seek to resolve the dispute through mediation. If the dispute is not resolved through negotiation or mediation within a reasonable period of time, the relevant commercial courts of South Carolina, United States of America shall have exclusive jurisdiction in connection with the resolution of the dispute.

Except as otherwise specified in these Terms, all notices related to these Terms will be in writing and will be effective upon (a) the second business day after mailing, or (b), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant Services system administrator designated by you.

Last update: October 11, 2021