Master Service Agreement

Last updated on 2 May 2022.

*This Master Service Agreement ("**MSA**") sets forth the terms and conditions that apply to the purchase of DESelect products and services by a Customer who has signed a Sales Order with DESelect. This MSA is incorporated by reference into the terms of each Sales Order.*

In this MSA, "**Customer**" means the entity identified as "Customer" in the Sales Order and "DESelect" means DESelect B.V. or one of its affiliates if such affiliate is identified as "DESelect" in the signature line of the Sales Order with Customer. DESelect and Customer are hereinafter referred to individually as a **"Party"** and jointly as the **"Parties"**.

In consideration of the terms and conditions set forth in this MSA, the receipt and sufficiency of which is acknowledged by both Parties, the Parties agree as follows.

1. Definitions

1.1. For the purpose of this MSA, unless otherwise specified, capitalized terms will have the meaning ascribed to them below:

"Affiliate" means, in relation to the relevant Party, any person or entity controlling, controlled by, or under common control with such Party, whereby "control" means the power, direct or indirect, to direct or cause the direction of the management and policies of such entity whether by contract, ownership of shares, membership on the board of directors, agreement or otherwise and, in any event and without limitation of the foregoing, any entity owning more than 50% of the voting securities of a second entity shall be deemed to control that second entity (and "controlling" and "controlled" shall have a corresponding meaning).

"Agreement" means this MSA, its appendices, and the Sales Order signed by DESelect and Customer, including any schedules thereto.

"Americas" means the United States of America, Canada, Mexico, the islands of the Caribbean Sea and each country located in Central America or South America.

"Business Day" means from 9 AM to 5 PM in the time zone where DESelect is located on any day excluding weekends, public holidays and any other day that DESelect has notified Customer is a non-working day for DESelect.

"**Customer**" means the entity identified as "Customer" in the Sales Order.

"Customer Data" means all data proprietary to or held by Customer which is inputted or uploaded by or on behalf of Customer (through the Users or via the usage of APIs) when using the Platform and as processed or stored by DESelect as a result of Customer (through the Users) using the Platform. Customer Data shall also include output data resulting from the processing by the Platform of the entered data by Customer (through the Users).

"Confidential Information" of a Party means the information made available by or on behalf of such Party to another Party or its Representatives, whether in written, oral, electronic or other form, and which (i) is explicitly marked as confidential or proprietary, or (ii) should reasonably be considered confidential or is traditionally recognized to be of a confidential nature, regardless of whether or not it is expressly marked as confidential, including but not limited to, all materials, papers, databases, drawings, diagrams, calculations, figures, procedures, processes, business methodologies, contracts (including this Agreement), financial, technical and legal information, budgets, sales marketing, public relations, advertising and commerce plans, ideas, strategies, projections, business plans, strategic expansion plans, products and product designs. The Confidential Information of DESelect shall expressly include, without limitation, the Licensed Materials.

"Contract Start Date" means the Contract Start Date specified in the Sales Order.

"**DESelect**" means (i) DESelect B.V., or (2) one of its affiliates if such affiliate is identified as "DESelect" in the signature line of the Sales Order with Customer.

"Documentation" means all technical and functional Platform information that DESelect generally makes available from time to time to its customers at its sole discretion, whether digital or on paper, including but not limited to explanations of the features and functionality, technical restrictions and recommendations for use of the Licensed Materials.

"Force Majeure" means a temporary or permanent inability of a Party to fulfil its (non-monetary) obligations, resulting from unavoidable, unforeseeable and external facts and circumstances reasonably beyond the control of that Party. The following events shall in any case be considered as Force Majeure (without limitation): acts of God, actual or threatened acts of war or terrorism, insurrection or public revolt, fire, an import or export embargo imposed by the government, floods, explosion, weather conditions, strike or social action, labor shortages, sabotage, pandemics and all other circumstances generally qualified as force majeure.

"Home Country" means the country specified as "Country" in Customer's address stated in the Sales Order.

"Hosting Partner" means the provider of hosting services as contracted by DESelect and identified in the data processing agreement.

"Incident" means a malfunctioning of the Platform, having an adverse effect on the appearance, operation, functionality or performance of the Platform.

"Initial Term" means the period from the Contract Start Date until the end of the first annual subscription period specified in the Sales Order.

"Intellectual Property Rights" means any and all rights existing from time to time in and to patents, trademarks, copyrights, rights in software programs (both in object code and source code), design rights, database rights, proprietary rights in know-how, business names, trade names, trade dress, image rights, moral rights, rights relating to passing off, domain names and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the afore listed which may subsist anywhere in the world, and any other intellectual or industrial property rights in any country, in each case whether registered or not and including all existing or future applications (or rights to apply) for or registrations of such rights or renewal or extensions of such rights, in any applicable jurisdiction in the world, relating to all algorithms, apparatus, circuit designs and assemblies, concepts, data collections, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, images, materials, marketing and development plans, marks (including registered and unregistered trademarks and service marks, brand names, product names, logos, and slogans), methods, models, network configurations and architectures, procedures, processes, protocols, schematics, semiconductor devices, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers, user interfaces, web sites, works of authorship, and other forms of technology and intellectual property. The Intellectual Property of DESelect shall expressly include, without limitation, the Licensed Materials.

"**Insolvency Event**" means that a party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or is liquidated or ceases to do business, voluntarily or otherwise.

"Licensed Materials" means the applicable Platform (as identified in the Sales Order) and the Documentation.

"Maintenance and Support Services" are respectively the general maintenance and the support services related to the Platform provided by DESelect to Customer as described in clause 8.

"Out of Scope Incident" means an Incident that is not caused by or related to the Platform such as (without limitation) Incidents due to (i) malfunctioning of interfaces, (ii) the use of non-supported data formats or structures, hardware, programs, software, network, application or releases, (iii) the incorrect configuration of the Platform or incorrect installation of a fix not performed by or with the consent of DESelect, (iv) problems in third party software and (v) the unauthorized use, abuse or misuse, modification (not performed by and/or with the consent of DESelect) of the Platform or any act or omission of Customer or its Affiliates and Users contrary to the Documentation and/or terms and conditions as set forth in the Agreement (such as, without limitation the use of an unsupported release and/or usage on any other environments than Customer's production environment.

"Partner" means the legal entity who is a partner of DESelect and with whom Customer might have entered into a commercial agreement for the provision of a license to the Platform and/or services related to the use of the Platform.

"Platform" means the software, computer programs, platforms or applications owned and developed by DESelect, including but not limited to all algorithms, (source or object) code and methodology pertaining thereto as further described in the Sales Order.

"Product" means any product identified in the Sales Order to be delivered by DESelect to Customer.

"Renewal Term" means one (1) year, or such other period the Parties may agree to in a Sales Order.

"Representatives" means with, respect to any entity, the officers, directors, employees and contractors of such entity (including subcontractors), as well as those of any Affiliate or authorized user permitted to access the Licensed Materials or Services by such entity.

"Sales Order" means the written or electronic document or form signed by both Parties in accordance with clause 2 hereof, indicating the nature, the number of, and other specifics of the Licensed Materials and the scope of the Services subscribed to by Customer, including any specific conditions under which such offer is made including the applicable fees and other costs, and which forms an integral part of the Agreement.

"Services Fee" means all services fees specified in the Sales Order in respect of the Services.

"Services" mean development services, set-up services, implementation and integration services (including, but not limited to customizations), Maintenance and Support Services or such other services (such as professional services, the provision of training, hypercare or check-ins by a customer success manager to identify needs and troubleshooting, etc.) in relation to the Platform to be delivered by DESelect to Customer as may be agreed between the Parties from time to time and as are set out in the Sales Order. The term Services includes all Products and Services identified as such in the Sales Order.

"Subscription Fee" means all amounts payable by Customer to gain access to and use the Licensed Materials and to receive general Maintenance and Support Services, as specified in the Sales Order.

"Term" means the Initial Term together with any Renewal Term.

"User" means any physical person (such as employees, contractors and Partners) who is granted access to the Platform by Customer for the purposes of using the Platform (in accordance with its user role as amended by DESelect from time to time).

2. Application of MSA; Scope

2.1. Subject to the limitations set forth herein, DESelect agrees to sell, and Customer agrees to purchase, those Services set forth in the Sales Order signed by DESelect and Customer in accordance with this section and on the terms and conditions stated in the Agreement. Other than a Sales Order signed by both Parties, no communication between Customer and DESelect or any of their Affiliates, whether written or oral, creates any binding obligations on DESelect or Customer.

2.2. The terms and conditions set forth in this MSA, including its appendices, apply to and are incorporated in full by reference into each Sales Order executed between DESelect and Customer and to all Licensed Materials and Services provided by DESelect to Customer regardless of whether or not such Sales Order states that it is subject to this MSA. Each Sales Order signed by Customer and DESelect constitutes a separate Agreement legal and binding in accordance with its terms, effective as of the relevant Contract Start Date stated in the Sales Order and constituting the MSA, the relevant Sales Order and all appendices and exhibits thereto.

2.3. Customer acknowledges that the proper functioning of the Platform might require Customer to obtain sufficient third party licenses and user accounts (such as, without limitation, licenses from Salesforce or another third-party provider) throughout the entire Term of this MSA, as further specified in the Sales Order. Customer remains solely responsible towards DESelect for acquiring the necessary third party licenses (if any, and as applicable).

2.4. If Customer has purchased licenses or any services related to the Platform via a Partner of DESelect or any other third party, the terms and conditions as set forth herein remain unaltered and shall remain applicable to Customer's use of the Platform. Customer acknowledges that DESelect shall in no way be liable or responsible for the quality of the services provided by such Partners or third parties.

2.5. Customer represents and warrants that the person signing the Sales Order on behalf of Customer (i) has full legal authority to bind Customer to the Agreement; (ii) has read and understands the Agreement; and (iii) agrees on behalf of Customer to this Agreement.

2.6. Except as expressly stated in any Sales Order, DESelect does not accept nor agree to any standard or pre-printed terms or conditions appearing on form documents provided by Customer, whether before, contemporaneous or subsequent to the Contract Start Date, including any purchase orders, invoices, specifications and other communications relating to the relevant Services and Customer expressly waives the application of its own general and special terms and conditions, even where it is stated therein that only those conditions may apply and even if such terms and conditions were not protested by DESelect. DESelect may, at its option, provide to Customer a sales order confirmation or other document summarizing purchase terms. In case of any conflict between the terms of such confirmation or document with the Sales Order or this MSA, the Sales Order and this MSA shall prevail in all cases.

2.7. Customer expressly acknowledges and agrees that the Agreement (including this MSA, the Sales Order and any amendment hereto) may be executed and signed through electronic signature technology (including by clicking on a button stating "I accept") such electronic signature is the legally binding equivalent to their handwritten signature. Delivery of a fully executed copy through electronic signature technology shall have the same force and effect as delivery of an original hardcopy. To the maximum extent permitted by applicable law, Customer will not, at any time in the future, repudiate the meaning of such electronic signature or claim that its electronic signature is not legally binding.

2.8. Customer may not place purchase orders pursuant to any government contract without the prior written consent of DESelect. No terms and conditions applicable to government contracts will apply to this Sales Order or any order unless approved in advance, in writing, by Customer and DESelect.

3. License

3.1. Subject to the terms and conditions of the Agreement and in consideration of the timely payment of the Subscription Fees by Customer to DESelect, DESelect grants to Customer (and to those Affiliates as indicated in the Sales Order) a personal, restricted, non-exclusive, non-transferable and non-assignable license, without the right to sublicense (except to the extent expressly permitted in the Sales Order), to use the Licensed Materials in good faith for its internal business purposes, through its Users, in object code and in accordance with this Agreement and the applicable Documentation, for the Term of the Agreement.

3.2. The extent of the license granted under this Agreement is restricted to the scope expressly set forth herein, and there are no implied licenses under this Agreement. DESelect reserves any right not expressly granted to Customer hereunder.

3.3. With respect to its activities under this Agreement, Customer shall comply with all applicable laws, rules and regulations applicable to it and obtain any licenses, permits, or other approvals required to be obtained by it, including in all cases as relates to the use of the Licensed Materials. Customer acknowledges that the Licensed Materials and/or the Services may be subject to trade, import or export control laws of Belgium, the United States or any other applicable jurisdiction including Customer's Home Country. Customer agrees not to export or re-export the Licensed Materials or Services (including providing access to the Licensed Materials or Services in a country other than Customer's Home Country) in violation of any such laws, rules or regulations. Customer represents and warrants that it is not the target of any economic or trade sanctions of Belgium or the United States and that it will not make the Licensed Materials available to any person who is a target of such sanctions. Customer will promptly notify DESelect if Customer becomes aware that any of the statements above are or have become untrue of Customer becomes aware that it is not or will not be in compliance with this section.

3.4. Except to the extent permitted by this Agreement or applicable law, Customer shall not directly or indirectly (including without limitation through the actions of any of its Affiliates, Users, or in general, any third party) (i) arrange or create derivative works based on the Licensed Materials without DESelect's express written consent; (ii) assign, distribute, sub-license, hire, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Materials, or use the Licensed Materials on behalf of any third party or make them available to any third party, nor allow or permit a third party to do any of the same; (iii) copy, duplicate, reverse engineer, reverse compile, disassemble, record or otherwise reproduce the Licensed Materials or any part of them except as expressly provided in this Agreement; (iv) remove or alter any copyright or other proprietary notice on any of the Licensed Materials; (v) intentionally distribute any virus, or other items of a destructive or deceptive nature or use the Platform for any unlawful, invasive, infringing, defamatory or fraudulent purpose; or (vi) remove or in any manner circumvent any technical or other protective measures in the Platform. Customer will inform DESelect in writing of any infringement on these usage rights within ten (10) business days after the infringement took place. For the avoidance of doubt, Customer has no right to access the software code (including object Code, intermediate code and source code) of the Platform, either during or after the Term.

3.5. Customer is permitted to make as many copies of the Documentation as are reasonably necessary for operational security, disaster recovery or back-up purposes. Such copies shall in all respects be subject to this Agreement and shall be the property of DESelect. Any use of the copies made pursuant to this clause is strictly limited to internal use.

3.6. The Licensed Materials are delivered "as is" and shall be deemed accepted by Customer upon activation thereof.

3.7. Customer acknowledges that the Licensed Materials may contain advice and recommendations. Unless explicitly agreed otherwise, Customer bears full responsibility for the use and/or implementation of such advice and recommendations and DESelect shall have no liability for Customer's reliance on such advice or recommendations even if DESelect is aware of such reliance.

3.8. In the event Customer uses the Platform for Salesforce, Customer acknowledges and agrees that their registration information may be disclosed to Salesforce and used by Salesforce pursuant to its privacy policy available at http://www.salesforce.com (as amended from time to time). DESelect shall have no liability for any actions or inaction of Salesforce.

4. User obligations and restrictions

4.1. The Platform may only be accessed and used by the Users selected by Customer, in accordance with their respective user roles available within the Platform. The number of Users that may access the Platform is strictly limited to the number of subscriptions ordered by Customer (as specified in the Sales Order). Customer remains solely responsible towards DESelect with

respect of the usage of the Platform by its Users and for the payment of the corresponding Subscription Fee in accordance with the Sales Order.

4.2. Customer acknowledges that the use of the Licensed Materials is limited to the subscription plan(s) as specified in the applicable Sales Order. Customer may at any time request an upgrade or downgrade of its subscription package, which may result in re-pricing in accordance with clause 15 and the then-current prices.

4.3. DESelect has the right to monitor and inspect the usage of the Licensed Materials by Customer (including but not limited to monitoring the number of Users and volume of documents and information) to ensure that the Subscription Fees to be paid by Customer are correct. If such inspection or monitoring shows that Customer has underpaid the amount of the Subscription Fees due to DESelect, without prejudice to any other rights and remedies available to DESelect, DESelect shall invoice and Customer shall promptly pay the amount of such underpayment to DESelect together with any applicable late payment interest.

4.4. Upon DESelect's request, Customer shall provide DESelect with such information and access to its systems as may reasonably be requested by DESelect to verify compliance with this Agreement. If such inspection or monitoring shows that Customer breaches the terms and conditions of this Agreement, DESelect may terminate the Agreement in accordance with the modalities as set forth in this Agreement (or alternatively, at DESelect's option, refuse or suspend any access to and use of the Platform) for material breach and without prejudice to any other rights or remedies available to DESelect pursuant to this Agreement or applicable law.

4.5. Customer shall inform DESelect immediately of any breaches of information security within its organization (or of a third party acting on its behalf or under its control).

5. Activation and Services

5.1. The Sales Order shall specify the scope of the Services and the applicable Services Fees. Customer acknowledges that the Services Fees may be on a time and material basis or on fixed price basis as determined by the Parties. Any such Services shall be provided in accordance with this Agreement, expressly including the applicable Sales Order.

5.2. DESelect will make commercially reasonable efforts to set-up the Platform within ten (10) Business Days, or by the date otherwise agreed upon in the Sales Order (the **"Activation Date"**), provided (i) the required (user) access to its systems and applications and (ii) all other requested or required information necessary for DESelect to commence and finalize the set-up.

5.3. All Services shall be delivered "as is" and shall be deemed accepted by Customer upon delivery thereof by DESelect.

6. Customer Data

6.1. Customer acknowledges that the Platform consists of certain algorithms and artificial intelligence and that for a proper and seamless functioning of the Platform, Customer is responsible to feed the Platform with sufficient Customer Data. Customer Data may only be inputted in accordance with the guidelines provided in the Documentation.

6.2. Customer shall solely be liable and responsible for the accuracy and correctness of Customer Data. DESelect shall not be liable for (i) damages or liability resulting from incorrect Customer Data inputted in the Platform and (ii) any action or decision from Customer or its Affiliates and Users, based on the output from the Platform or otherwise resulting from such party's use of the Platform.

6.3. All Customer Data shall remain property of Customer. Customer hereby grants DESelect a non-exclusive, royalty-free, worldwide, non-revocable, sub-licensable, transferable, perpetual (with as a minimum the duration of the Intellectual Property Rights) license to use, copy, store, modify, transmit and display such Customer Data and the right to use such Customer Data for the performance of its obligations under this Agreement and after being aggregated and anonymized to improve the functioning and provision of the Licensed Materials.

6.4.   Customer warrants to DESelect that Customer Data shall not infringe the Intellectual Property Rights or other legal rights of any third party, and shall not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

6.5.   Customer acknowledges and agrees that it shall solely be responsible for Customer Data that is distributed, accessible or generated through the Platform. In particular, Customer represents and warrants that no Customer Data is distributed through the Platform that in any manner in DESelect's sole discretion: (i) violates any applicable, local, state, national, regional or international law, statute, ordinance or regulations; (ii) is illegal, criminal, deceptive, fraudulent or otherwise unlawful, or invasive of others privacy; or (iii) adversely or negatively affects or reflects DESelect's name, reputation or goodwill.

6.6.   Customer acknowledges and agrees that any violation by Customer of the provision of this clause 6 shall be a material breach of this Agreement and shall entitle DESelect, at its sole option (i) to immediately terminate (or alternatively, at DESelect's option, refuse or suspend any access to and use of the Platform) for material breach, without any formalities being required and without prejudice to any other rights or remedies available to DESelect pursuant to this Agreement or under applicable law; and/or (ii) immediately remove or block the concerning Customer Data.

6.7.   Unless explicitly agreed otherwise, Customer is solely responsible for the safety and security of Customer Data and for making the necessary back-ups in order to avoid loss and/or corruption of Customer Data, including the storage of the output data resulting from the usage of the Platform by Customer or its Users. For the avoidance of doubt, DESelect is not responsible for the storage of Customer Data in third party software or applications and any third party obligations and guarantees regarding the storage of such Customer Data shall be solely set forth in the agreement concluded between Customer and such third party.

7.   Third Party Components and Hosting

7.1.   Customer acknowledges and agrees that in order to use the Licensed Materials, it needs appropriate hardware, networks, operating systems, and data transmittal lines with appropriate communication applications and environments.

7.2.   Subject to section 18, DESelect does not give any direct, indirect, explicit or implicit, warranty whatsoever to provide uninterrupted availability of the Platform, however, DESelect guarantees an uptime of ninety-nine-point five percent (99,5%). In case of prolonged downtime lasting more than twenty-four (24) hours, the subscription period will be extended with the corresponding downtime. Customer acknowledges and agrees that (i) the foregoing is the sole and exclusive remedy in the event of downtime and that (ii) DESelect shall not be responsible for any non-availability of the Platform to the extent due to any Hosting Partner or third-party service provider.

7.3.   Excluded from downtime described in clause 7.5 is: (i) any planned downtime as defined in clauses 7.6and 7.7; (ii) any period of unavailability lasting less than fifteen (15) minutes; and (iii) any unavailability caused by force majeure.

7.4.   Customer acknowledges that the hosting services and the Platform might not be available during periods of planned maintenance by DESelect or the Hosting Provider. If reasonably feasible, any planned maintenance will be performed outside of Business Days and DESelect will inform Customer (via email and/or on screen messages) as soon as reasonably possible of any planned maintenance and, in any event no later than twenty-four (24) hours beforehand. DESelect or the Hosting Partner will not be held liable for any damages resulting from such unavailability of the Platform.

7.5.   DESelect and the Hosting Provider reserve the right to conduct any unplanned maintenance at any time if necessary for security reasons or other reasons requiring immediate maintenance. DESelect or the Hosting Partner will not be held liable for any damages resulting from such unavailability of the Platform.

8.   Maintenance and Support Services

8.1. As from the Contract Start Date and subject to the timely payment of all applicable Subscription Fees and Services Fees (if any), DESelect shall use commercially reasonable efforts to provide Maintenance and Support Services in relation to the Platform in accordance with the provisions set out below.

8.2. DESelect shall provide Maintenance Services to Customer during the Term. In particular, DESelect reserves the right to make, in its sole discretion, changes and Updates to the functionalities of the Platform, from time to time, provided that DESelect shall not change any material functionalities of the Platform without prior notification to Customer. DESelect does not ensure that Services on the currently licensed Platform, shall remain compatible with any new release, which is used or will be used by Customer. Customers shall be obliged to follow the life cycle of the Platform and implement any new releases or versions. For the avoidance of doubt, whereas Updates are included in the Subscription Fee, Upgrades are not included therein but need to be purchased by Customer in a separate Sales Order. For the purpose of this clause an **"Update"** means a hotfix, patch or minor version update to the Platform. For the purpose of this clause an **"Upgrade"** means a major upgrade or new edition of the Platform.

8.3. DESelect shall use commercially reasonable efforts to provide Support Services to Customer during the Term. In particular, DESelect shall provide functional and technical support in Dutch and English in relation to the use of the Platform, including customer services as set forth herein. In any event, the Support Services shall be limited to what is deemed commercially reasonable in DESelect's sole discretion, taking into account the purchased support package.

8.4. Out of Scope Incidents are not included in the Support Services, however Customer may request DESelect to provide Services regarding such Incidents for which DESelect may charge additional fees (on time and material basis at the then-current rates). DESelect shall use commercially reasonable efforts to resolve such Out of Scope Incidents, without any binding commitment whatsoever.

9. Intellectual Property Rights

9.1. DESelect is and remains the sole and exclusive proprietary holder or owner of all Intellectual Property Rights related to the Licensed Materials and the Services (including any new versions, updates, customizations, enhancements, modifications or improvements made to the Licensed Materials or the Services). For the avoidance of doubt, any and all Intellectual Property Rights developed or created in the course of the provision of the Services or during the use of the Platform (including the creation of specific queries developed by Customer, its Users or DESelect) shall vest in DESelect upon their creation.

9.2. Except for the limited license granted pursuant to clause 3, no other rights in respect of the DESelect Intellectual Property Rights shall be granted or transferred to Customer in connection with this Agreement. Nothing in this Agreement shall convey any title or proprietary right or Intellectual Property Rights in or over the Licensed Materials or Services to Customer or any third party. Customer agrees not to remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Licensed Materials, or visible during its operation or on media. Customer shall incorporate or reproduce such proprietary markings in any permitted back-up or other copies.

9.3. In the event that, notwithstanding any prohibition thereto, Customer (or a third party acting on its behalf or under its control) modifies, improves or creates derivative works of or from the Platform or Documentation (collectively, "Improvements"), DESelect shall own all rights, titles and interests, including any Intellectual Property Rights, in and to such Improvements and Customer hereby assigns any right, title and interest (including Intellectual Property Rights) in such Improvements to DESelect and agrees to secure any additional confirmations, assignments or other instruments or documents as may be necessary to vest title to any such Improvements in DESelect as contemplated by this clause. No amount shall be payable by DESelect to Customer for the assignment of any rights in such Improvements.

9.4. DESelect will be given prompt written notice of any third-party claim on an alleged or actual infringement by the Licensed Materials made available by DESelect and will be granted the right to control and direct the defense and settlement of such a claim. Customer shall be entitled to participate in such proceedings at its own cost. DESelect shall keep Customer regularly informed

of the status of the proceedings and/or settlement negotiations. Customer agrees to reasonably cooperate with DESelect in the defense and settlement of such a claim. In the event the Licensed Materials as referenced above, in DESelect's reasonable opinion, are likely to become or actually become the subject of a claim of infringement as set out above, DESelect shall have the right, at its option and expense, (i) to modify or replace the (alleged) infringing material so that it becomes non-infringing while preserving substantially equivalent functionality; or (ii) to obtain for Customer the right to continue to use such materials as per the terms of this Agreement. In case any alleged or actual Intellectual Property Rights infringement relating to the Services or Platform arises Customer shall immediately cease the use thereof. In case Customer neglects this obligation, DESelect may at its sole discretion terminate the Agreement with immediate effect and without any compensation or indemnification.

9.5.   Customer shall indemnify, defend and hold DESelect and its affiliates harmless from and against any damages, losses, costs and expenses (including reasonable attorneys' fees) suffered or incurred by DESelect arising out of Customer's infringement of any third party's Intellectual Property Rights.

9.6.   DESelect shall have no liability for any claim which is based upon (i) Customer's or its Users' unauthorized use of the Licensed Materials, (ii) Customer's, its Users' or any third party's modification of any of the Licensed Materials, (iii) Customer's or its Users' use of the Licensed Materials in unauthorized or incompatible combination with any non-DESelect products or services, or (iv) Customer's failure to integrate or install any corrections to the Licensed Materials issued by DESelect, if DESelect indicated that such update or correction is required to prevent a potential infringement.

10.   Confidentiality

10.1.   Each Party shall treat as confidential and keep secret all Confidential Information relating to the other Party and shall not disclose it to any third party, other than its employees, advisors, agents or consultants where such disclosure is necessary for the performance of this Agreement and provided that they are bound by confidentiality obligations at least as strict as those provided herein, any Confidential Information learned during the negotiation and performance of the Agreement. Confidential Information disclosed in the Agreement shall not be used by the recipient thereof for any purpose other than as required for the performance of its obligations under the Agreement.

10.2.   The Parties shall take sufficient measures to maintain the confidentiality of all Confidential Information and to prevent the unauthorized access to the disclosing Party's Confidential Information. The Parties in particular agree that they (i) shall not copy or otherwise exploit any component of the Confidential Information other than as provided herein, nor make any disclosures with reference thereto to any third party; (ii) shall ensure that all copies of the Confidential Information (made in accordance with the provisions of the Agreement) contain a permanently legible reproduction of the other Party's copyright notice and a confidentiality notice; (iii) shall promptly notify the other Party if it becomes aware of any breach of confidence and give the other Party all reasonable assistance in connection with its efforts to retrieve the material and mitigate the effects of the exposure or loss.

10.3.   The provisions of this clause shall not apply to any Confidential Information which (i) is published or comes into the public domain other than by a breach of the Agreement; (ii) can be proven to have been known by the receiving Party before disclosure by the disclosing Party; (iii) is lawfully obtained from a third party that is not bound by a duty of confidentiality; or (iv) can be shown to have been created by the receiving Party independently of the disclosure and other than as part of the project.

10.4.   If and to the extent required in accordance with a judicial or other governmental order, the receiving Party may disclose Confidential Information, provided that the receiving Party (i) gives the disclosing Party reasonable notice prior to the disclosure in order to seek a protective order or equivalent, unless the receiving Party is legally prohibited from doing so; (ii) reasonably cooperates with the disclosing Party in its reasonable efforts to obtain a protective order or other appropriate remedy; (iii) discloses only that portion of the Confidential Information that it is legally required to disclose; and (iv) uses reasonable efforts to obtain reliable written

assurances from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

10.5. Upon the Disclosing Party's written request at any time, including following the expiration or termination of this Agreement, the Receiving Party shall promptly cease to use the Confidential Information and, to the extent permitted under applicable Regulatory Requirements and if reasonably possible, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party provided under or in connection with this Agreement and shall provide the Disclosing Party with a written statement certifying that all such material has been returned or destroyed.

10.6. The obligations set out in this clause 10 shall enter into force as from the start of the negotiations between the Parties and shall survive indefinitely after the termination or expiration of the Agreement. These confidentiality obligations in the Agreement replace any prior non-disclosure agreement signed between the Parties.

11. Privacy and Data Protection

11.1. The Parties shall comply with all applicable legal requirements regarding privacy and data protection, including without limitation the data protection laws that apply where DESelect is located, and in accordance with the data processing agreement attached in Appendix 1 to this Agreement.

11.2. In particular, Customer represents and warrants to DESelect that it has the legal right to disclose any Personal Data that is made available to DESelect under or in connection with this Agreement, that Customer has a valid legal ground to process such Personal Data and that it shall inform all Data Subjects about such processing activities by Customer and/or DESelect (as applicable) in accordance with applicable law.

12. Non-competition

12.1. Customer shall not during the Term of this Agreement and for a period of twenty four (24) months after its termination, whether directly or indirectly, alone or together with any other persons, on their own account or in conjunction with, through or on behalf of any persons, agents, intermediaries, joint ventures or alliances, whether as contractor, director, shareholder, consultant, subcontractor, employee or in any other capacity provide to third parties in the geographical area of DESelect, a product and/or service that is similar to or has the same functionalities as DESelect's Platform or Services.

13. Non-solicitation

13.1. Customer shall not, during the Term of this Agreement and for a period of twenty four (24) months after its termination, without the prior written authorization of DESelect, directly or indirectly, solicit, entice away or hire any of DESelect's employees or independent contractors, or otherwise approach them for this purpose or recommend them for employment or appointment as independent consultants to third parties.

14. Third Party Claims

14.1. Customer shall indemnify, defend and hold DESelect harmless from and against any and all damages, losses, costs and expenses (including reasonable attorney fees) suffered or incurred by DESelect (including its Affiliates, agents, contractors, directors, employees or representatives) arising out of Customer's infringement or alleged infringement of any third party's Intellectual Property Rights or any other rights of such third party.

15. Fees and Payment Terms

15.1. Customer shall pay the Subscription Fees, Services Fees and any other amounts due to DESelect annually upfront as specified in the applicable Sales Order, unless expressly agreed otherwise between the Parties.

15.2. In the event DESelect has been requested to perform certain additional Services, the applicable Services Fees and/or any other amounts due to DESelect shall be invoiced separately.

15.3. Invoices shall be sent in PDF-format to Customer's email address, specified in the Sales Order. Customer shall pay any amounts within thirty (30) days after the applicable invoice date, provided that the first invoice shall be paid no later than within thirty (30) days after the Contract Start Date.

15.4. All payments under this Agreement shall be done by bank transfer, wireless transfer, credit card or any other agreed payment method (using such payment details as notified by DESelect to Customer from time to time).

15.5. All amounts payable to DESelect under the Agreement shall be paid without the right to set off or counterclaim and free and clear of all deductions or withholdings whatsoever unless the same are required by law, in which case Customer undertakes to pay DESelect such additional amounts as are necessary in order that the net amounts received by DESelect, after all deductions and withholdings, shall not be less than such payments would have been in the absence of such deductions or withholdings. Customer is responsible for payment of all general, state or local import, usage, value added, withholding or other taxes associated with the supply or use of the Services or Platform. Customer shall promptly reimburse DESelect for any such taxes or duties paid by DESelect.

15.6. Any amounts of undisputed invoices that have not been paid within thirty (30) days after the invoice date shall automatically and without notice be subject to a late payment interest of one percent (1%) or the maximum extent permitted by applicable law. The interest shall be compounded monthly as of the due date until receipt of full payment by DESelect. In addition, Customer shall pay all costs incurred by DESelect as a result of the (extra)judicial enforcement of Customer's payment obligation under this clause. If Customer fails to pay any outstanding amounts within thirty (30) days from receipt of a written default notice, DESelect shall be entitled to suspend its obligations and Customer's rights hereunder until receipt of payment of such outstanding amounts. Each invoice made by DESelect shall be deemed to have been accepted by Customer if it is not disputed by registered letter sent to DESelect wherein the reason for the dispute is explained, and this within thirty (30) days after the invoice date of that specific invoice.

15.7. Customer expressly acknowledges and agrees that any upfront payments made pursuant to this Agreement are final and non-refundable. If the Agreement is terminated early, Customer shall not be entitled to a refund whatsoever. For the avoidance of doubt, termination will in no event relieve Customer of its obligation to pay any fees payable to DESelect for the period prior to the effective date of termination.

15.8. DESelect reserves the right to increase its Subscription and Services Fees from time to time on the basis of the Agoria index (or such other equivalent index for the applicable DESelect seat) in accordance with the conditions imposed by the laws of the applicable DESelect seat.

15.9. Such price adjustment shall become effective the next Renewal Term. DESelect will inform Customer about the intended changes in writing (including without limitation by email), prior to the coming into force of such amendments or changes, upon which Customer shall have thirty (30) days to avoid renewal of the Agreement upon written notice. Customer's continued use of the Platform after such notice period will constitute acknowledgment and acceptance of the modified Subscription and/or Services Fees.

15.10. In the event the use of the Platform, Services or Support Services give rise to additional costs and/or expenses for Customer from third parties (including but not limited to software integration costs), such costs are exclusively Customer's responsibility and cannot be claimed from DESelect.

16. Term & Termination

16.1. The Agreement shall commence on the Contract Start Date and shall continue for the Initial Term. After the Initial Term, the Agreement shall automatically renew for consecutive Renewal Terms, unless: (i) either Party notifies the other Party in writing of its intention not to renew the Agreement at least sixty (60) days before the end of the Initial Term or the then current Renewal Term; or (ii) unless terminated earlier in accordance with this clause 16; or (iii) unless explicitly agreed otherwise by the Parties.

16.2. Either Party may immediately terminate, and DESelect may immediately suspend, the whole or any portion of the Agreement without any judicial intervention, without being liable for compensation and without prejudice to its rights to damages and any other rights, remedies and/or claim to which it may be entitled by law, upon providing the other Party with written notice of termination if (i) the other Party performs a material breach to any provision of the Agreement and fails to cure such material breach within thirty (30) calendar days after receipt of written notice of the material breach, (ii) the other Party has an Insolvency Event, or (iii) the other Party breaches its obligations under the provisions regarding the license, Intellectual Property Rights, confidentiality and data protection.

16.3. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a material breach of this Agreement: (i) a Force Majeure Event; (ii) a fault or failure of Customer's computer systems or networks; (iii) any breach by Customer of this Agreement; (iv) scheduled maintenance or support carried out in accordance with this Agreement; or (v) any downtime caused by security reviews of third party service providers on which DESelect is reliable.

16.4. Customer acknowledges that in the event the Agreement is terminated in accordance with this section 16, Customer is not entitled and both DESelect and (if applicable) Salesforce or another third-party provider are under no obligation to provide the Licensed Materials, to refund any fees paid by Customer to DESelect, or to assume the relationship with Customer. Without prejudice to any other rights and remedies available to DESelect, Customer acknowledges and agrees that DESelect shall be entitled to immediately terminate the Agreement, without any formalities being required, in case Customer breaches or violates (i) DESelect's Intellectual Property Rights (expressly including the license grant pursuant to clause 3) or Confidential Information; or (ii) its obligations under the applicable data protection laws and the data protection agreement.

16.5. Additionally, Customer agrees that DESelect may immediately terminate the Agreement, without any formalities being required, in the event (i) DESelect is prevented or otherwise suspended from distributing the Licensed Materials, regardless of the underlying reasons for such suspension; or (ii) in the event Customer's access to the applicable third party software is suspended or terminated by the third-party software provider, regardless of the underlying reasons. Such termination will in no event give rise to any liability, refund or damages on account of Salesforce (or another third-party provider) or DESelect, unless expressly agreed otherwise. DESelect will, with respect to any Sales Order in effect, as of such termination or expiration date, for the remainder of the then-current term of each such Service Order continue its obligations under this Agreement.

17. Consequences of Termination

17.1. Upon termination of the Agreement for whatsoever reason (i) Customer shall promptly pay to DESelect all amounts due and payable under this Agreement up to and including the date of termination (including, but not limited to the fees payable pursuant to an annual commitment, if applicable); (ii) all licenses granted to Customer shall automatically terminate and Customer shall return to DESelect all copies in whatever form or medium of the Licensed Materials (or alternatively destroy any such copies that cannot be returned and confirm in writing to DESelect that such copies have been destroyed); (iii) except as required to comply with any applicable legal or accounting record keeping requirement, each Party shall return the other Party's Confidential Information, including their Intellectual Property, that are in the possession or under the control of that respective Party (or alternatively destroy any copies thereof that cannot be returned and confirm the other Party in writing that such copies have been destroyed).

18. Warranty; Disclaimers and Exclusive Remedy

18.1. THE CLIENT ACKNOWLEDGES AND AGREES THAT THE LICENSED MATERIALS AND SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR TRADE USAGE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, NOR DO WE WARRANT THAT THE SOFTWARE OR SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE, OR

REGARDING THE SECURITY, ACCURACY, RELIABILITY, TIMELINESS OR PERFORMANCE OF THE SERVICES. DESELECT MAKES NO WARRANTY ABOUT THE SUITABILITY OF THE LICENSED MATERIALS OR SERVICES FOR ANY PURPOSE AND DO NOT WARRANT THAT THE LICENSED MATERIALS OR SERVICES WILL MEET CLIENT'S REQUIREMENTS.

18.2.   Customer hereby acknowledges and agrees that any modification or attempted modification of the Platform by any party other than DESelect shall void DESelect's warranties with respect to the Platform and shall be deemed to represent a material breach of this Agreement by Customer (provided that Customer (or its Users or affiliates) caused the modification or attempted modification or at least negligently omitted to prevent it).

19.   Limitation of Liability

19.1.   TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, DESELECT'S LIABILITY ARISING OUT OF OR IN CONNECTION TO THIS AGREEMENT WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR ANY OTHER LIABILITY THEORY), SHALL NOT EXCEED (1) IN THE AGGREGATE IN ANY TWELVE (12) MONTH PERIOD, AN AMOUNT EQUAL TO THE SUBSCRIPTION FEES ACTUALLY PAID DURING THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH THE RELEVANT EVENT OR SERIES OF EVENTS FIRST OCCURRED, AND (2) IN THE AGGREGATE IN ANY THREE (3) YEAR PERIOD, AN AMOUNT EQUAL TO THE SUBSCRIPTION FEES ACTUALLY PAID DURING THE THREE (3) YEARS PRECEDING THE DATE ON WHICH THE RELEVANT EVENT OR SERIES OF EVENTS FIRST OCCURRED.

19.2.   TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DESELECT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE LICENSED MATERIALS, THE SERVICES PROVIDED, OR THE USE OF OR INABILITY TO USE THE LICENSED MATERIALS OR SERVICES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. WITHOUT LIMITING THE FOREGOING, DESELECT SHALL NOT BE LIABLE IN ANY WAY FOR DISCONTINUING AN OLDER RELEASE OF THE PLATFORM OR FOR DAMAGES CAUSED BY WRONGFUL OR OUT OF SCOPE USE OF THE PLATFORM. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DESELECT BE LIABLE FOR DAMAGES IN RELATION TO ANY EVENTS OR SERIES OF EVENTS THAT OCCUR MORE THAN TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH CUSTOMER HAS NOTIFIED DESELECT OF THE EVENT OR SERIES OF EVENTS.

19.3.   Customer agrees that DESelect can only be held liable as per the terms of the Agreement to the extent the damages suffered by Customer are directly attributable to DESelect. The exclusions and limitations of liability under this clause shall operate to the benefit of DESelect's Affiliates and subcontractors on whom DESelects relies for the execution of its obligations under this Agreement, to the same extent as such provisions operate to the benefit of DESelect.

19.4.   Neither Party shall be liable to the other Party in respect of any losses arising out of a Force Majeure Event.

20.   Miscellaneous

20.1.   **Insurance** – DESelect will in aggregate, at its expense, during the Term maintain coverage of insurance policies with the following limits (which coverage may be provided as part of one or more group facilities covering DESelect and its Affiliates):

20.1.1.   Comprehensive General Liability Insurance, with limits not less than €1,250,000 per occurrence and €2,500,000 in the aggregate, covering bodily injury, personal injury and property damage;

20.1.2.   Technology Errors and Omissions Insurance, with limits of not less than €1,250,000 per claim and €2,500,000 in the aggregate;

20.1.3. Privacy and network security liability ("Cyber") Insurance, with limits of at least €100,000 per claim and €2,000,000 in the aggregate, providing protection against liability for privacy breaches, system, breaches, denial or loss of service, introduction, implantation or spread of malicious software code and unauthorized access to or use of computer systems.

20.2. **Entire agreement** – The Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in the Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of the Agreement. Without limitation to the foregoing, each Party's only remedies for breach of or otherwise in respect of any such untrue statement which is expressly stated in this Agreement shall be for breach of contract as provided in this Agreement. Appendices form an integral part of the Agreement and will remain in force as long as the Agreement remains in force.

20.3. **Severability** – If any provision of the Agreement is held to be unenforceable or contrary to law (in whole or in part), the other provisions shall nevertheless continue in full force and effect. The provisions found to be unenforceable or contrary to law shall automatically be enforceable to the fullest extent permitted by applicable law and shall be interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by applicable law. Each Party shall use its best efforts to negotiate promptly and in good faith a valid replacement provision with an equal or similar economic effect.

20.4. **Amendment; Waiver; Cumulative Remedies** – The terms and conditions of the Agreement may be modified or amended only by written agreement (including through electronic signature technology) executed by duly authorized representatives of both Parties hereto. Any obligation under this Agreement may be waived only by a written document signed by the Party entitled to the benefits of such term or provision. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or conditions, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given and shall not constitute a continuing waiver or consent. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies available to a Party at law or in equity.

20.5. **Survival** – The provisions of the Agreement that are expressly or implicitly intended to survive termination, shall survive expiration or termination of the Agreement, including without limitation, the provisions relating to Intellectual Property Rights, Confidential Information, data protection, and limitation of liability.

20.6. **Assignment** – DESelect may assign, transfer and/or subcontract this Agreement, in whole or in part, (including the rights and obligations hereunder) to any Affiliate without Customer's prior written consent. Customer shall not assign or otherwise transfer any of its rights or obligations under the Agreement without DESelect's prior written consent.

20.7. **Force Majeure** – Neither Party will be responsible or liable for any failure or delay in the performance of its obligations under the Agreement arising out of or caused by Force Majeure. In the event of Force Majeure, the Party shall inform the other Party at least within a reasonable time, this is at least within thirty (30) days after becoming aware of such Force Majeure event, about the nature of the Force Majeure and the fact that it wants to rely on this clause. The Party must, within reasonable time, provide the other Party with evidence of the existing Force Majeure, the date when the Force Majeure comes or has come into effect, and also when it will have ceased to exist. In case of Force Majeure, the Party is obligated to mitigate damage, and must use its reasonable efforts to keep the consequences to a minimum. In the event of a failure to comply with the abovementioned procedure, the Party shall be prevented to rely on the Force Majeure event and this Force Majeure clause.

20.8. **Notices** – Any notice required to be served by the Agreement shall in first instance be given by electronic mail to the email addresses set out in the Sales Order (or as otherwise made available by the Parties). All notices given by electronic mail, shall only be valid in case

confirmation of receipt was expressly given by electronic mail from the addressed Party to the Party sending the notice within five (5) Business Days. In case no confirmation of receipt was given by the addressed Party within five (5) Business Days, all notices can be done in writing and served by personal delivery, registered letter, addressed to such Party at its address set forth in the Sales Order (or as otherwise made available by the Parties). All notices shall be deemed to have been given either (i) if by hand, at the time of actual delivery thereof to the receiving Party at such Party's address, as provided above, (ii) if sent by overnight courier, on the next Business Day following the day such notice is delivered to the courier service, or (iii) if sent by registered or certified mail, on the fifth (5th) Business Day following the day such mailing is made.

20.9. **Interpretation** – In the Agreement (unless the context shall otherwise require or permit) (i) reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted from time to time; (ii) words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and incorporate; and each case vice versa; (iii) the headings or captions to the clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement. If any translation of the Agreement (or any part thereof) is prepared, that translation is for convenience purposes only, and the English language version of the Agreement will exclusively state and control the parties' rights and obligations under the Agreement.

20.10. **Conflict** – In case of conflict between the provisions of any contractual documents applicable between the Parties, the documents shall prevail in the following order of precedence (with the first in order document prevailing over a later in order document) unless expressly agreed otherwise between the Parties in writing: (i) the applicable Sales Order, (ii) the appendices to this MSA, (iii) this MSA.

20.11. **Relationship of the Parties** – The relationship between DESelect and Customer is that of independent contractors.

20.12. **Relationship of DESelect and any Partners** – If Customer has purchased consultancy, support or other professional services related to the use of the Platform via a Partner, Customer acknowledges that (i) the use of the term "partner" is for reference purposes only, (ii) that the relationship between DESelect and the relevant Partner is that of independent contractors, , and (iii) the Partner nor any of its representatives may make any representation, warranty or promise on behalf of DESelect, anything to the contrary shall be the Partner's sole responsibility.

20.13. **Publicity** – DESelect shall have the right to use any trademarks, logos or other marks of Customer (including Customer's corporate name) for client references on DESelect's website, social media announcements and sales presentations.

20.14. **Special terms and conditions** – The Parties undertake to comply with the additional special terms and conditions (if any), as set out in the Sales Order.

20.15. **Dispute resolution** – Before initiating proceedings before the competent courts, the Parties shall exercise reasonably good faith efforts to amicably settle any disputes that might arise during the execution of the Agreement. The Parties agree to negotiate in good faith to resolve any dispute between them regarding this Agreement. If the negotiations do not resolve the dispute to the reasonable satisfaction of the Parties, then each Party will nominate one senior officer as its representative. These representatives will, within ten (10) business days of a written request by any of the Parties, call a meeting and will attempt in good faith to resolve the dispute. If the dispute cannot be resolved by such senior officers in such meeting, the Parties agree that they will, if requested in writing by either Party, meet within ten (10) business days after such written notification for one day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within, ten (10) business days after the one-day mediation, either such Party may begin litigation proceedings. This procedure will be a prerequisite to either of the Parties issuing legal proceedings in respect of any dispute regarding this Agreement.

20.16. **Applicable law and jurisdiction** –

20.16.1. If Customer's Home Country is located in the Americas, (a) this Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of any statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflicts of laws provisions, and (b) except as provided for in section 20.14 (Dispute resolution), a Travis County, Texas District Court shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with such Agreement) and each Party submits to the exclusive jurisdiction of such court.

20.16.2. If Customer's Home Country is not located in the Americas, (a) this Agreement and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of any statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of Belgium, without regard to conflicts of laws provisions, and (b) except as provided for in section 20.14 (Dispute resolution), the enterprise court of Antwerp, Belgium, shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with such Agreement) and each Party submits to the exclusive jurisdiction of such court.

20.16.3. The Parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods.

20.17. **Third Party Rights** – Except for DESelect's Affiliates and as provided in section 19.3, which shall have the benefit of the Agreement as third party beneficiaries and may enforce the terms of the Agreement against Customer directly, a person who is not a party to this Agreement shall not acquire any rights under it or be entitled to benefit from or enforce any of its terms. The parties may by agreement terminate, rescind or vary the terms of the Agreement at any time and in any way without the prior consent of or notice to DESelect's Affiliates.

20.18. **Specific Performance** – Each party acknowledges and agrees that a breach by it of any term of the Agreement related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information will or may result in irreparable and continuing damage to the other party and/or its Affiliates for which there may or will be no adequate remedy at law, and that notwithstanding any other provision in this Agreement, in the event of such breach or any threatened breach by the other party, the non-breaching party and/or its Affiliates shall be entitled to apply for injunctive relief, including any notice of objection or opposition therefrom, and such other and further equitable relief and precautionary measures as may be appropriate before any courts including those in Customer venue.

20.19. **Signatures** – Sales Order may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Customer and DESelect expressly agree and acknowledge that Sales Orders and any amendments to the Agreement may be executed and signed through electronic signature technology (including by clicking on a button stating "I accept") and such electronic signature is deemed to have the same legal effect as delivery of an original signed copy. To the maximum extent permitted by applicable law, Customer will not, at any time in the future, repudiate the meaning of such electronic signature or claim that its electronic signature is not legally binding.

<u>**APPENDIX 1 - DATA PROCESSING AGREEMENT**</u>

DESelect (hereafter referred to as "Processor") and Customer hereafter referred to as "Controller"), hereinafter collectively referred to as "Parties" and individually as "Party", having regard to the fact that,

- For the purposes described in the Main Agreement concluded between the Parties, the Controller has instructed the Processor, acting for and on the instructions of the Controller, to process personal data of the Controller;
- The Controller (article 4, 7 GDPR) has determined the purpose of and the means for the processing of personal data as governed by the terms and conditions referred to herein and will issue lawful instructions to the Processor with respect to said personal data;
- The Processor (article 4, 8 GDPR) has undertaken to comply with this data processing agreement (hereinafter: "the Data Processing Agreement") and to abide by the security obligations and other relevant provisions of EU Data Protection Law to the extent any such processing falls within the material and territorial scope of EU Data Protection Law or any Non-EU Data Protection Laws as defined below;
- the Parties, having regard also to article 28 GDPR, wish to lay down their rights and obligations in writing in this Data Processing Agreement,

have agreed as follows:

ARTICLE 1.   DEFINITIONS

"**EU Data Protection Law**" means all data protection laws and regulations applicable to Europe, including (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ("GDPR"); (ii) Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector; (iii) applicable national implementations of (i) and (ii); and (iii) in respect of the United Kingdom ("UK") any applicable national legislation that replaces or converts in domestic law the GDPR or any other law relating to data and privacy as a consequence of the UK leaving the European Union);

"**Europe**" means, for the purposes of this DPA, the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom;

"**Non-EU Data Protection Laws**" means the California Consumer Privacy Act ("CCPA"); the Canadian Personal Information Protection and Electronic Documents Act ("PIPEDA"); and the Brazilian General Data Protection Law ("LGPD"), Federal Law no. 13,709/2018;

"**SCCs**" means the standard contractual clauses for processors as approved by the European Commission or Swiss Federal Data Protection Authority (as applicable).

The terms "personal data", "Controller", "data subject", "Processor" and "¨processing" shall have the meaning given to them under Data Protection Laws or if not defined thereunder, the GDPR, and "process", "processes" and "processed" shall be interpreted accordingly.

ARTICLE 2.   PROCESSING OBJECTIVES

2.1.   The Processor undertakes to process personal data on behalf of the Controller in accordance with the documented conditions laid down in this Data Processing Agreement in accordance with the lawful instructions of the Controller. The processing will be executed exclusively within the framework of the Agreement, and for all such purposes as may be agreed upon subsequently.

2.2.   The Processor shall refrain from making use of personal data for any purpose other than as specified by the Controller. The Controller will inform the Processor of any such purposes which are not contemplated in this Data Processing Agreement.

2.3.   All personal data processed on behalf of the Controller shall remain the property of the Controller and/or the relevant data subjects unless provided otherwise by the main Agreement.

2.4.   When acting in its capacity of Processor, Processor shall take no unilateral decisions regarding the processing of the personal data for other purposes, including decisions regarding the provision thereof to third parties and the retention period of the personal data.

ARTICLE 3.   PROCESSOR'S OBLIGATIONS

3.1.   The Processor has furnished sufficient details regarding the measures it has adopted to comply with its obligations under this Data Processing Agreement, EU Data Protection Law and if applicable, Non-EU Data Protection Laws. On reasonable request of the Controller, Processor will provide additional information to the Controller.

3.2.   At the reasonable request of the Controller, the Processor will assist the Controller to ensure compliance with the obligations regarding data breach notifications/communications and notice (including, without limitation any notices pursuant to the CCPA), and provided that all reasonable costs will be reimbursed by Controller, Data Protection Impact Assessments and Prior Consultations, taking into account the nature of processing and the information available to the Processor. More specifically, with respect to "Shine the Light" inquiries pursuant to the CCPA and to the extent that Controller cannot provide an adequate response to such inquiries, Processor will abide by all notice requirements pursuant to the CCPA, specifically those relating to "Shine the Light" inquiries pursuant to the CCPA on the basis of which Controller may be obliged to disclose what personal data was shared with third parties for direct marketing purposes if any.

3.3.   The Processor ensures that persons authorized to process the personal data have committed themselves to a duty of confidentiality or are under an appropriate statutory obligation of confidentiality.

3.4.   The Processor will act in accordance with all instructions of the Controller with regard to the processing of the personal data in the context of this Data Processing Agreement.

3.5.   The Processor will comply with all applicable legislation, regulations and codes of conduct with regard to the processing protection and security of personal data, including but not limited to EU Data Protection Law if any processing falls within the territorial and material scope of EU Data Protection Law and to the extent that it is applicable, Non-EU Data Protection Laws. The Processor acknowledges to be familiar with said legislation, regulations and codes of conduct.

3.6.   The Processor is not allowed to transfer, and/or in any way disclose to a third party (for avoidance of all doubt, the term "third party" does not include other processors or sub-processors as described in Article 4 of this Data Processing Agreement), personal data for its own purposes or any purpose other than those mentioned in this Data Processing Agreement.

3.7.   At the Controller's request, the Processor is obliged to grant the Controller access to the personal data, or provide the personal data to the Controller in a manner and format that the Controller considers appropriate.

ARTICLE 4.   TRANSMISSION OF PERSONAL DATA

4.1.   The Controller authorizes the Processor to engage sub-processors which are located in the European Economic Area or in a country which has obtained an "adequacy decision" from the European Commission. The Controller also authorizes the Processor to engage sub-processors which

have put in place binding corporate rules within the meaning of article 47 of the GDPR as verified by the Processor. Furthermore, a list of pre-approved sub-processors can be found in Schedule 2 hereto.

4.2.   The Processor shall inform the Controller of any intended changes concerning the addition or replacement of other sub-processors, thereby giving the Controller the opportunity to reasonably object to such changes. The Processor's obligations arising under the terms of this Data Processing Agreement apply also to whomsoever processes personal data under the Processor's instructions.

4.3.   If the Processor is required to process personal data outside of the European Economic Area by Union or Member State law to which the Processor is subject and to the extent processing is not happening in a country which has received an "adequacy decision" by the European Commission pursuant to article 45 of the GDPR nor by a sub-processor which is held to abide by binding corporate rules pursuant to article 47 of the GDPR, the Processor shall inform the Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest and will only do so if it can ensure compliance with applicable law by way of EU-Model Clauses (SCCs) or other legally accepted safeguards, as applicable and it will provide evidence of compliance on first request of the Controller, unless that law prohibits to provide such information.

ARTICLE 5.   DUTY TO REPORT

5.1.   In the event of a data breach, as referred to in articles 32-34 of the GDPR, the Processor shall, to the best of its ability, notify the Controller thereof without undue delay, after which the Controller shall determine whether or not to inform the Data Subjects and/or the relevant regulatory authority(ies). This duty to report applies irrespective of the impact of the leak. The Processor will endeavour that the furnished information be complete, correct and accurate.

5.2.   If required by law and/or regulation, the Processor shall cooperate with notifying the relevant authorities and/or Data subjects. The Controller remains the responsible party for any statutory obligations in respect thereof.

5.3.   The duty to report includes in any event the duty to report the fact that a data breach has occurred, including details regarding:

- the (suspected) cause of the leak;
- the (currently known and/or anticipated) consequences thereof;
- the (proposed) solution;
- the measures that have already been taken.

ARTICLE 6.   SECURITY

6.1.   The Controller has taken note of the security measures that the Processor has adopted in relation to the personal data as further detailed in Schedule 3 hereto. These security measures are deemed sufficient as the Processor's infrastructure for processing is materially compliant with ISO 27001 certification or similar ISO or SOC 2 Type 2 certifications.

6.2.   Taking into account the nature of the personal data, its processing as referred to in Article 2.1, the associated risks, the prior art, and security-related costs, the Processor has implemented appropriate technical and organizational security measures against loss or any form of unlawful processing (such as unauthorized disclosure, deterioration, alteration or disclosure of personal data) that are acceptable to both Parties.

6.3.   The Controller will only make the personal data available to the Processor if it is assured that the necessary security measures have been taken. The Controller is responsible for assessing the appropriateness of the security measures. The Controller will use its rights as provided under article 9

of the Data Processing Agreement to ensure an adequate level of protection during the entire duration of this Data Protection Agreement.

ARTICLE 7.   HANDLING REQUESTS FROM INVOLVED PARTIES

7.1.   Where a Data Subject submits a request to the Processor to get access to his or her personal data, as stipulated by article 15 GDPR, or to rectify said personal data, as stipulated by article 16 GDPR, the Processor will forward the request to the Controller and the request will then be dealt with by the Controller. The Processor may notify the Data Subject thereof.

7.2.   The Processor also assists the Controller with appropriate technical and organizational measures, insofar as this is possible, for the fulfillment of the controller's obligation to respond to requests regarding other rights of the Data Subjects. All reasonable costs made for these Services will be reimbursed by Controller.

ARTICLE 8.   NON DISCLOSURE AND CONFIDENTIALITY

8.1.   All personal data received by the Processor from the Controller and/or compiled by the Processor within the framework of this Data Processing Agreement is subject to a duty of confidentiality vis-à-vis third parties.

8.2.   This duty of confidentiality will not apply in the event that the Controller has expressly authorized the furnishing of such information to third parties, where the furnishing of the information to third parties is reasonably necessary in view of the nature of the instructions and the implementation of this Data Processing Agreement, or if there is a legal obligation to make the information available to a third party.

ARTICLE 9.   AUDIT

9.1.   As stipulated under article 3.1, Controller confirms that Processor at the time of execution of the Agreement, sufficiently complies with applicable privacy and data protection regulation and legislation. In order to confirm compliance with this Data Processing Agreement throughout the performance of the Agreement, the Controller shall be at liberty to conduct an audit by assigning an independent third party who shall be obliged to observe confidentiality in this regard. Any such audit will follow the Processor's reasonable security requirements, and will not interfere unreasonably with the Processor's business activities.

9.3.   The audit may only be undertaken when there are specific grounds for suspecting the misuse of personal data, and no earlier than two weeks after the Controller has provided written notice to the Processor.

9.4.   The findings in respect of the performed audit will be discussed and evaluated by the Parties and, where applicable, implemented accordingly as the case may be by one of the Parties or jointly by both Parties.

9.5.   All expenses for these audits will be borne by the Controller, including man-days performed by the Processor.

ARTICLE 10.   DURATION AND TERMINATION

10.1.   This Data Processing Agreement is entered into for the duration set out in the Agreement, and in the absence thereof, for the duration of the cooperation between the Parties.

10.2.   The Data Processing Agreement may not be terminated in the interim.

10.3. This Data Processing Agreement may only be amended by the Parties subject to mutual consent.

10.4. At the choice of the Controller, the Processor deletes or returns all the personal data (different from the data in the Processor's Salesforce Marketing Cloud environment) to the Controller after the end of the provision of services relating to processing, and deletes existing copies unless Union or Member State law requires storage of the personal data or the Processor has acquired the right to lawfully continue processing as data controller.

ARTICLE 11. ACCOUNTABILITY

11.1. Without prejudice to any provisions limiting liability in the Main Agreement, Controller shall indemnify and hold harmless the Processor for any claims against or fines imposed on the Processor based on a processing activity which was performed in accordance with the Controller's instructions.

11.2. Without prejudice to any provisions limiting liability in the Main Agreement, Processor will indemnify and hold harmless the Controller of any loss, penalties, claims and/or damage that is owed or suffered by the Controller as a result of a breach by the Processor of this Data Processing Agreement, and/or (ii) a violation by the Processor of applicable laws and regulations regarding the processing of personal data.

11.3. Controller represents and warrants that it complies with all applicable legal obligations regarding privacy and data protection. Furthermore, the Controller represents and warrants that the contents are not unlawful and do not infringe any rights of a third party. In this context, the Controller indemnifies the Processor for all costs, damages, fines, expenditure resulting from any claims and actions by third parties.

ARTICLE 12. MISCELLANEOUS

12.1. The Data Processing Agreement and the implementation thereof will be governed by Belgian law without prejudice to other mandatory provisions of any other legal system, including, without limitation, Non-EU Data Protection Laws, if and when applicable.

12.2. Any disputes that may arise from this Data Processing Agreement will be submitted exclusively to the body that also has jurisdiction to rule on any disputes that arise from the Main Agreement.

12.3. Logs and measurements taken by the Processor shall be deemed to be authentic, unless the Controller supplies convincing proof to the contrary.

12.4 The Parties may contact each other using the contact details set out below. The Parties shall be under obligation continuously to inform each other of changes to contact details.

12.5 In the event of any conflict between this Data Processing Agreement and any clauses in the MSA regarding the processing of Personal Data, this Processing Agreement will prevail.

12.6 If any provision of this Data Processing Agreement is held to be invalid or unenforceable in whole or in part, it shall (to the extent that it is invalid or unenforceable) be deemed severable and the validity of the other provisions of this Data Processing Agreement and the remainder of the provisions in question shall not be affected. If the severed provision is fundamental to achieving the purpose of this Data Processing Agreement, the parties shall negotiate in good faith to remedy the invalidity, illegality or unenforceability of the provision or otherwise amend this Data Processing Agreement to carry out its purpose.

For Processor:

Contacts such as specified in the Sales Order.

For Controller:

Name: Jonathan van Driessen

Position: CTOE-mail: dpo@deselect.com

Schedule 1: Description of the Processing

ARTICLE 1. Subject matter of Processing

DESelect is a segmentation solution for Salesforce Marketing Cloud, making it easy for users to create campaign segmentations without having to write SQL queries. DESelect provides users with a drag-and-drop interface, while in the backend creating SQL (Query Activities) that can be run inside Marketing Cloud to select a set of data from data extensions / data views.

Any data that the Controller stores in its Salesforce Marketing Cloud data may be processed by DESelect.

ARTICLE 2. Nature and purpose of Processing

The only 2 points in the application where DESelect accesses data in data extensions (tables potentially containing personal data) are:

1) When rendering the preview.
   Here 20 records are queried from the target data extension after the query has run, so a preview of the results can be shown to the user. This preview data is presented in the UI and not stored on the DESelect servers.
2) When processing data for picklists
   When defining picklists in the Admin Panel, users can choose to have DESelect automatically identify the distinct values that are stored in a data extension, and propose these as values in a dropdown that users can use when building selections. The resulting values are stored as picklist options in metadata.

Asides from this, dedicated DESelect employees may gain access to data stored in the Controller's Salesforce Marketing Cloud environment in order to provide support.
Support is provided by gaining remote access to the data controller's DESelect installation and by that also gaining view access to the data controller's customer data residing in Marketing Cloud.

ARTICLE 3. Type of Personal Information [specific elements such as name, email address]

1) Salesforce Marketing Cloud data subjects:

This may include any types of personal data stored in the Data Controller's Salesforce Marketing Cloud environment, which may include:

- Contact details

- Commercial information

- Transactional information

2) Data Controller's employees using DESelect as a work tool

- User information (which is derived from Salesforce Marketing Cloud via

single sign-on)

- Logging of activities performed while using DESelect

ARTICLE 4. Type of Personal Information [specific elements such as name, email address]

Customers, employees, partners, or any other data categories the data controller stores in its Salesforce Marketing Cloud environment.

Schedule 2: Approved Sub-Processors

Approved sub-processors at the Effective Date of this Data Processing Agreement:

NAME	COMPANY BUSINESS ADDRESS	ADDRESS AND LOCATION OF THE PERSONAL DATA	DESCRIPTION OF PROCESSING
DigitalOcean	101 Avenue of the Americas 10th Floor New York, NY 10013, United States	DigitalOcean datacenter AMS3, Science Park 610, 1098 XH Amsterdam, The Netherlands	Storage of the DESelect meta-data (technical information on selections, DESelect folders, etc), and name, email, and username of DESelect users. ISO/IEC 27001:2013 Certification

Schedule 3: Cybersecurity

DESelect implements and maintains technical and organizational measures to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. The security measures include measures
- to encrypt personal data;
- to encrypt browser connections to its systems and services;
- to help ensure ongoing confidentiality, integrity, availability, and resilience of DESelect's systems and services;
- to help restore timely access to personal data following an incident;

DESelect may update the security measures from time to time provided that such updates do not result in the degradation of its overall cybersecurity.

DESelect holds the ISO-27001 certification, available upon request.