



W consulting Terms of Service

Version:	1.1
Date of version:	May 2000
Created by:	Mark Kidd
Approved by:	Mark Kidd
Confidentiality level:	External use

As used herein, the term, "you" and "your" refers to the individual or entity that is using the Services, as defined below, and "we" and "our" refers to W Technical Consulting. (also referred to as "W consulting"). These W consulting General Terms of Service including Exhibit A attached (Data Processing Agreement) (these "Terms") govern your use of our services such as W consulting, which includes the W consulting-proprietary software and third party licensed software that powers our services, and any related software applications, as well as any Content Files (defined below), and any related user documentation (collectively the "Services"). **By using the Services, you agree to these Terms. As discussed more in Section 3 below, you retain all rights and ownership you have in your content that you make available through the Services.**

1. How this Agreement Works.

- **1.1. Choice of Law.** These Terms, and our provision and your use of the Services are governed by the laws of the Republic of Mauritius You may have additional rights under mandatory law. We do not seek to limit those rights to the extent prohibited by law.
- **1.2. Eligibility.** You may only use the Services if you are (a) over 18 years old and (b) allowed by law to enter into a binding contract.
- **1.3. Privacy.** The Privacy Policy at <http://wconsulting.co.za/privacy.html> governs any personal data or personally identifiable information you provide to us. **The Services are subject to the terms of the W consulting Privacy Policy.**

- **1.4. Availability.** Services descriptions may be accessible worldwide but for clarity, this does not mean all Services or service features are accessible in all languages or all areas, or that user-generated content available via the Services is legally compliant in all areas. It is your responsibility to make sure your use of the Services is available and legally compliant in your area.
- **1.5 Discontinuance of Services.** We may discontinue any or all of the Services at any time without liability to you or anyone else. If we discontinue a Service, you have the right to request a refund in writing within thirty (30) days of discontinuance, in which case, we will provide you with a pro rata refund for any unused fees for that Service for which you may have prepaid, in which event, your right to use the discontinued Service (or all Services, as the case may be) will terminate. This will be your sole remedy in the event we discontinue any or all of the Services.

2. Use of Service.

- **2.1. W consulting ID.** You need to sign up for a W consulting user account by providing all required information in order to access or use Services and by receiving a unique user credential (the "W consulting ID"). If you represent an organization and wish to use the Services for your organization's use, we recommend that you, and all other users from your organization, create a W consulting account using your organization's contact information. In particular, we recommend that you use your organization's email address. You agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the sign up process; and (ii) maintain and promptly update the information provided during sign up to keep it true, accurate, current, and complete; and (iii) not share your W consulting account with any third party. If you provide any information that is untrue, inaccurate, outdated, or incomplete, or if W consulting has reasonable grounds to suspect that such information is untrue, inaccurate, outdated, or incomplete, W consulting may terminate your user account and refuse current or future use of any or all of the Services.
- **2.2. Activation.** The Services may require you to take certain steps to activate your license or validate your subscription. If we determine that the Services have been used fraudulently or without authorization, we may reduce the functionality, operability, or availability of the Services, and/or suspend or terminate the license or subscription.
- **2.3. License.** Subject to your compliance with these Terms and the law, we grant you a limited, personal, non-exclusive, non-transferable, non-sublicenseable, fee-bearing license to install and use the Services for your or your organization's internal business purposes or in accordance with the contract between your organisation and W consulting, so long as your applicable license and/or subscription is valid.
- **2.4. License Limitations** You may activate the Services on up to the number of devices specified in the agreement between your or your organisation and W consulting.
- **2.5. Restrictions.** We (and our licensors) remain the sole owner of all right, title, and interest in the Services. We reserve all rights not granted under these Terms. Without limiting the generality of the foregoing, unless permitted in these Terms, you must not (and must not permit any third party to):
 - a. modify, port, adapt, or translate any software or other intellectual property elements underlying the Services;

- b. reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of any software or other intellectual property elements underlying the Services. (If however, directly applicable law prohibits enforcement of the foregoing, you may engage in reverse engineering solely for purposes of obtaining such information as is necessary to achieve interoperability of independently created software with the Services, or as otherwise and to the limited extent permitted by directly applicable law, but only if: (a) such reverse engineering is strictly necessary to obtain such information; and (b) you have first requested such information from W consulting and W consulting failed to make such information available (for a fee or otherwise) under reasonable terms and conditions. Any information supplied to or obtained by you under this section is the confidential and proprietary information of W consulting, may be used by you only for the purpose described in this section, and will not be disclosed to any third party or used to create any software which is substantially similar to the expression of the software underlying the Services);
- c. use or offer the Services on a service bureau basis;
- d. host or stream the Services or allow access to the Services;
- e. circumvent technological measures intended to control access to the Services or develop, distribute, or use with the Services, products that circumvent the technological measures;
- f. rent, lease, sell, sublicense, assign, or transfer your rights in the Services, or authorize any portion of the Services to be copied onto another's device.
- g. make any copy of the any software or other intellectual property elements underlying the Services without preserving all copyright and other proprietary notices that appear on or in the Services or such software or other intellectual property elements;
- h. use W consulting's name, logo, trademarks, service marks, or other branding elements without W consulting's prior written consent on a case-by-case basis. Such consent, if granted, is subject to revocation by W consulting at any time. Any use of the foregoing shall be in compliance with W consulting's then-current trademark usage and branding guidelines;
- i. If you license the multi-user Services commonly referred to as a "Global License" (or such other product or service name that W consulting may designate from time to time) (for such purposes, a "Global License"), then the W consulting Global License administrator may designate W consulting Global License seats pursuant to the applicable documentation for W consulting Global License. In addition, should a W consulting Global License user no longer require use of W consulting Global License, the administrator may reassign such usage rights to a new W consulting Global License user, so long as the maximum number of W consulting Global License users (for whom licenses have been purchased) is not exceeded; and so long as the transfers are to support employee turnover or user role changes whereby the user no longer requires access to the Services.
- **2.6. Global Licenses.** Any conditions specified in a Global License agreement shall supersede agreements in this Terms of Service agreement.

- **2.7. Single User License.** Any conditions specified in a Single User License agreement shall supersede agreements in this Terms of Service agreement.
- **2.8. Updates.** The Services may automatically download and install updates from time to time from W consulting. These updates may take the form of bug fixes, new features, or new versions. You agree to receive such updates from W consulting as part of your use of the Services, as applicable.
- **2.9. Third Party Software.** The Services may contain third-party software, subject to additional terms and conditions.
- **2.10. Storage** When the Services provide storage, we recommend that you continue to back up your content regularly. We may create reasonable technical limits on your content, such as limits on file size, storage space, processing capacity, and other technical limits. We may suspend the Services until you are within the storage space limit associated with your account.
- **2.11. Content Files.** "Content Files" means W consulting-provided files such as character images, illustrations, templates, interactions, audio files or other pre-built content as part of the Services. Unless the documentation or specific license associated with the Content Files states otherwise, you may not use, display, modify, reproduce, and distribute any of the Content Files.
- **2.12. Other License Types.**
- **(a) Pre-release Version.** We may designate the Services as a pre-release or beta version ("Pre-release Version"). Pre-release Version does not represent the final product and may contain bugs that may cause system or other failure and data loss. We may choose not to commercially release the Pre-release Version. You must promptly cease using the Pre-release Version and destroy all copies of Pre-release Version if we request you to do so, or if we release a commercial version of the Pre-release Version. Any separate agreement we enter into with you governing the Pre-release Version will supersede the provisions on Pre-Release Version set out in this section. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PRE-RELEASE VERSIONS ARE PROVIDED BY W CONSULTING WITHOUT WARRANTY, SUPPORT, OR INDEMNIFICATION.
- **(b) Academic Version.** If we designate the Services as being for use by educational users ("Academic Version"), then you may only use the Academic Version if you meet the eligibility requirements provided for by W consulting. W consulting or its authorized resellers will determine if you meet the academic requirements.
- **(c) Trial Licenses.** Trial licenses are available under a one-time evaluation period. You agree to provide W consulting certain information as indicated on the trial download form. At the end of the trial period, and unless the trial is converted to a paid subscription, the Services will automatically terminate, and W consulting will delete any content that was uploaded to the Storage provided for as part of the trial. W consulting reserves the right to terminate your trial at its sole discretion. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRIAL VERSIONS ARE PROVIDED BY W CONSULTING WITHOUT WARRANTY OR INDEMNIFICATION.

3. Your Content.

- **3.1. Ownership.** You retain all rights and ownership of your content. We do not claim any ownership rights to your content.
- **3.2. Licenses to Your Content in Order to Operate the Services.** We require certain licenses from you to your content to operate and enable the Services. When you upload content to the Services, you grant us a non-exclusive, worldwide, royalty-free, sub-licensable, and transferable license to access, use, reproduce, distribute, and translate the content as needed in response to

user driven actions (such as when you choose to store privately or share your content with others) for the legal duration of protection of such rights. **This license is granted for the purposes of: (a) providing, operating, or improving the Services; (b) responding to support requests; (c) detecting, preventing, or otherwise addressing fraud, security, unlawful, or technical issues; and (d) enforcing these Terms.**

- **3.3. Sharing Your Content.**

- **(a) Sharing.** Some Services may provide features that allow you to Share your content with other users or to make it public. "Share" means to email, post, transmit, upload, or otherwise make available (whether to us or other users) through your use of the Services. Other users may use, copy, modify, or re-share your content in many ways. Please consider carefully what you choose to Share or make public as you are entirely responsible for the content that you Share.
- **(b) Level of Access.** We do not monitor or control what others do with your content. You are responsible for determining the limitations that are placed on your content and for applying the appropriate level of access to your content. If you do not choose the access level to apply to your content, the system may default to its most permissive setting. It's your responsibility to let other users know how your content may be Shared and adjust the setting related to accessing or sharing of your content. Under an W consulting Global License plan the designated W consulting Global License administrator(s) is / are granted authority to delete or transfer your W consulting content to other users.
- **(c) Comments.** The Services may allow you to comment on content. Comments are not anonymous and may be viewed by other users. Your comments may be deleted by you, other users, or us.
- **3.4. Termination of License.** You may revoke this license to your content and terminate our rights at any time by removing your content from the Service. However, some copies of your content may be retained as part of our routine backups.
- **3.5. Feedback.** You have no obligation to provide us with ideas, suggestions, or proposals ("Feedback"). However, if you submit Feedback to us, then you grant us a nonexclusive, worldwide, royalty-free license, for the legal duration of protection of rights that is sublicensable and transferrable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, and modify the Feedback.

4. Account Information.

- **You are responsible for all activity that occurs via your account. Please notify W consulting Customer Support or your authorized W consulting reseller immediately if you become aware of any unauthorized use of your account. You may not (a) share your account information (except with an authorized account administrator) or (b) use another person's account.** Your account administrator(s) may use your account information to manage your access to the Services.

5. User Conduct.

- **5.1. Responsible Use.** The W consulting communities often consist of users who expect a certain degree of courtesy and professionalism. W consulting is committed to protecting W consulting's employees, partners, customers, and users from illegal or damaging actions by individuals, either knowingly or unknowingly. W consulting's platform and systems, including but not limited to computer equipment, software, operating systems, storage media, network accounts, websites, and file transfer sites are to be used for lawful and legitimate business purposes, in the course of

normal operations. Supporting the above is a team effort involving the participation and support of all individuals and organizations that deal with the Services. The purpose of this section is to outline the acceptable use of the Services, and are designed to protect W consulting and all customers and users against risks, including virus attacks, compromise of network systems and services, and legal issues. W consulting does not guarantee that by all users complying with this section, all risks and potential liability will be eliminated. Risks come from many different sources, and while W consulting has taken reasonable steps to ensure that the likelihood of risk is reduced, it cannot be completely eliminated.

- **5.2. Misuse.** You agree that you will not (directly or indirectly, through a third party):
- (a) copy, modify, host, stream, sublicense, or resell the Services;
- (b) enable or allow others to use the Services using your account information;
- (c) access or attempt to access the Services by any means other than the interface we provided or authorized;
- (d) circumvent any access or use restrictions put into place to prevent certain uses of the Services;
- (e) share content or engage in behaviour that violates anyone's Intellectual Property Right ("Intellectual Property Rights" means copyright, moral rights, trademark, trade dress, patent, trade secret, unfair competition, right of privacy, right of publicity, and any other proprietary rights);
- (f) upload or share any content that is unlawful, harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, lewd, profane, invasive of another's privacy, or hateful;
- (g) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (h) attempt to disable, impair, or destroy the Services;
- (i) disrupt, interfere with, or inhibit any other user from using the Services (such as stalking, intimidating, or harassing others, inciting others to commit violence, or harming minors in any way),
- (j) engage in chain letters, junk mails, pyramid schemes, spamming, or other unsolicited messages;
- (k) place advertisement of any products or services in the Services; unless specifically set out in a customised interface agreement;
- (l) use any data mining or similar data gathering and extraction methods in connection with the Services; or
- (m) violate applicable law.

6. Fees and Payment; Term and Renewal.

- **6.1. General.** You agree to pay any and all applicable charges associated with your account, in advance, regardless of usage. For non-credit card-based transactions, payment is due within thirty (30) days following the date of W consulting's invoice, and any amount not paid when due is subject to interest at a rate that is the lower of: (a) one percent (1%) per month or (b) the highest interest rate permissible under applicable law, and without limiting the generality of the foregoing, we reserve the right to suspend and/or terminate any order (and/or license, access, or other rights to the related Services) for which fees are not paid when due. No refunds or credits for subscription charges or other fees or payments will be provided to you if you elect to cancel or downgrade your Services plan or scope of license, access, or other rights with respect thereto.
- **6.2. Taxes and Third-Party Fees.** You must pay any applicable taxes, and any applicable third-party fee (including, for example telephone toll charges, mobile carrier fees, ISP charges, data plan charges, credit card fees, foreign exchange fees). We are not responsible for these fees. If you are required to withhold sales, transaction, VAT, GST, or similar tax from any payment to W consulting under this Agreement, you will be entitled to withhold or deduct such tax from the gross amount to be paid. However, you will "gross up" the payments so that W consulting receives the amount actually quoted and invoiced, and you will use all endeavors to reduce any such withholding tax payable to the lowest possible rate subject to compliance with all applicable laws and double taxation treaties. We may take steps to collect the fees you owe us. You are responsible for all related collection costs and expenses.
- **6.3. Credit Card Information.** You agree to keep your credit card and other billing information that is provided to W consulting up to date at all times. If you do not notify us of updates to your payment method, to avoid interruption of your service, we may participate in programs supported by your card provider to try to update your payment information, and you authorize us to continue billing your account with the updated information that we obtain.
- **6.4. Contract Term.** The term of this Agreement will commence in accordance with the applicable order form, and it will continue until terminated in accordance with Section 11 hereof.
- **6.5. Cancellation/Nonrenewal.** During the first thirty (30) days of your initial subscription, you may elect to cancel your order to the Services; in such event, W consulting will, as its sole obligation, refund your prepaid fees. Otherwise, but subject to Section 1, your account and subscription will be non-cancellable, and fees are non-refundable. Your and our right to extraordinary termination for cause shall remain unaffected. We shall be entitled to extraordinary termination as set out in Section 11.3 below. In case you terminate for cause, upon your written request (within thirty (30) days following the effective date of such termination), we will partially refund your prepaid fees for the remainder of the term. Subject to the foregoing terms, cancellations can be made by contacting W consulting Customer Support. Either you or W consulting may elect to not renew your account and subscription to the Service as of the end of your then current Service term, by providing notice, in accordance with these Terms, on or prior to the last day of the then-current term. Unless otherwise provided for in any form that W consulting and you mutually accept, the fees for your Services subscription for each subsequent term will be W consulting's standard, then-current charges for the applicable Services. Unless otherwise expressly set forth in these Terms, no refunds or credits for fees or payments will be provided to you if you terminate your subscription to the Services or cancel your account prior to the end of your then-effective subscription term. Following the termination or cancellation of

your subscription to the Services and/or related account, we reserve the right to delete all your data and content in the normal course of operation. Your data and content cannot be recovered once your account is cancelled.

- **6.6. Additional Commercial Terms for W consulting Global License.** The purchaser of an W consulting Global License subscription may purchase additional user subscriptions at any time. Added user subscriptions are priced at the rates available at the time of purchase and are prorated based on the days remaining in your contract. All W consulting Global License subscriptions under a specific plan will have the same scheduled subscription end date, subject to renewal as set forth herein. Further, upon renewal, W consulting will charge you for the number of seats at the time of such renewal.
- **6.7. Promotional Discount and/or Exchange/Conversion Credits** Under certain mutually agreeable circumstances, W consulting may, in its sole discretion, grant a promotional discount and/or an exchange and/or credit for unused portions of W consulting services, upgrades or licenses. Upon issuance of such promotional discount and/or an exchange or credit, you agree to terminate applicable agreements and waive W consulting's obligations and your rights thereunder. Additional details regarding the discount, exchange, and/or credit described above will be set forth in the applicable order which, by accepting such order, you thereby confirm that W consulting has no further obligations under such terminated and/or waived agreement or arrangement, as such obligations will be deemed fully satisfied by W consulting.

7. Your Warranty and Indemnification Obligations.

- **7.1. Warranty.** By uploading your content to the Services, you agree that you have: (a) all necessary licenses and permissions to use and Share your content and (b) the rights necessary to grant the licenses in these Terms.
- **7.2. Indemnification.** You will indemnify us and our subsidiaries, affiliates, officers, agents, employees, partners, and licensors from any claim, demand, loss, or damages, including reasonable attorneys' fees, arising out of or related to your content, your use of the Services, or your violation of these Terms.

8. Our Warranty and Indemnification Obligations.

- **8.1. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. WE MAKE NO COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICES. TO THE EXTENT PERMITTED BY LAW WE FURTHER DISCLAIM ANY WARRANTY THAT (A) THE SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE CONSTANTLY AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (B) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (C) THE QUALITY OF THE SERVICES WILL MEET YOUR EXPECTATIONS; OR THAT (D) ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED.**
- **8.2. Indemnification by Us.** If a third party initiates a claim against you, claiming that the Services directly infringe any copyrights or misappropriate any trade secrets, we will pay the costs and damages that a court (having final jurisdiction) awards against you in the lawsuit, to the extent that the costs and damages directly relate to the claim. Alternatively, we will pay the costs and damages that we agree to in a written settlement of the lawsuit. Our obligations under this paragraph apply only if you: (a) promptly notify us of the lawsuit in writing, (b) allow us to control the defense of the lawsuit and any related settlement negotiations, and (c) cooperate

with us and, at our request and expense, assist us in the defense or settlement of the lawsuit. Also, our obligations under this paragraph do not apply to any infringement claim based upon: (i) any use of the Services not in accordance with this Agreement; (ii) any use of the Services in combination with other products, equipment, software, or data that we do not supply; (iii) any use of any release of the Services other than the most current release made available to you or (iv) any modification of the Services by any person other than us. To the maximum extent permitted by law, this paragraph states our entire liability and your sole and exclusive remedy for infringement claims and actions against you.

9. Limitation of Liability.

- **9.1. WE ARE NOT LIABLE TO YOU OR ANYONE ELSE FOR: (A) ANY LOSS OF USE, DATA, GOODWILL, OR PROFITS, WHETHER OR NOT FORESEEABLE; AND (B) ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), INCLUDING THOSE: (1) RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER OR NOT FORESEEABLE, (2) BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR (3) ARISING FROM ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR ACCESS TO THE SERVICES. NOTHING IN THESE TERMS LIMITS OR EXCLUDES OUR LIABILITY.**
- **9.2. OUR TOTAL LIABILITY IN ANY MATTER ARISING OUT OF OR RELATED TO THESE TERMS IS LIMITED TO R200 (ZAR) OR THE AGGREGATE AMOUNT THAT YOU PAID FOR ACCESS TO THE SERVICES DURING THE THREE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE LIABILITY, WHICHEVER IS LARGER. THIS LIMITATION WILL APPLY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THE LIABILITY EXCEEDING THE AMOUNT AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**
- **9.3. SUBJECT TO AND WITHOUT LIMITING OUR EXPRESS OBLIGATIONS SET FORTH IN THESE TERMS, (A) WE SPECIFICALLY DISCLAIM ANY LIABILITY FOR ANY ACTIONS RESULTING FROM YOUR USE OF ANY SERVICES; (B) YOU MAY USE AND ACCESS THE SERVICES AT YOUR OWN DISCRETION AND RISK; AND (C) YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE USE AND ACCESS OF ANY SERVICES.**
- **9.4. THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION 9 APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

10. Confidential Information.

- You acknowledge our claim that the Services and this website embody non-public information consisting of logic, design, and coding methodology, which constitute valuable confidential information and trade secrets that are proprietary to us and our licensors ("Confidential Information and Trade Secrets"). You agree (i) to not use or disclose our Confidential Information and Trade Secrets except as expressly provided herein, and (ii) to safeguard your right to access the Services and website, using the same standard of care which you use for its similar confidential materials, but in no event less than reasonable care.

11. Term; Termination.

- **11.1. Term.** The term of this Agreement will commence in accordance with the applicable order form.

- **11.2. Termination by You.** You may stop using the Services at any time. Unless otherwise expressly set forth in these Terms, termination of your account does not relieve you of any obligation to pay any outstanding fees or require W consulting to refund any prepaid fees.
 - **11.3 Termination by Us.** If we terminate these Terms for reasons other than for cause (to the extent permissible under applicable law), we will make reasonable effort to notify you at least 30 days prior to termination via the email address you provide to us with instructions on how to retrieve your content. We may at any time terminate these Terms (and your access to Services) with you if:
 1. (a) you breach any provision of these Terms (or act in a manner that clearly shows you do not intend to, or are unable to, comply with these Terms);
 2. (b) you fail to make the timely payment of fees for the Services, if any;
 3. (c) we are required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful);
 4. (d) we elect to discontinue the Services, in whole or in part, (such as if it becomes impractical for us to continue offering Services in your region due to change of law); or
 5. (e) there has been an extended period of inactivity (of thirty (30) days or more) in your free account.
 - **11.4. Termination by Administrator.** For group subscriptions, such as an a “Global License”, the designated subscription administrator(s) may terminate a user's access to a Service at any time. If the applicable administrator terminates your access, then you may no longer be able to access content that you (or, if applicable, other users of the group) have shared on a shared workspace within that Service.
 - **11.5. Effect of Termination.** If you terminate your subscription to the Services or cancel your account prior to the end of your then-current term (other than due to W consulting's material breach of these Terms of which you notify W consulting and afford W consulting not less than thirty (30) days to cure such breach), or we terminate or cancel your account due to your breach of these Terms, then in addition to other amounts you may owe W consulting, you must immediately pay any then unpaid fees and charges associated with the remainder of such term.
 - **11.6. Survival.** Upon expiration or termination of these Terms, the following sections will survive: 1.1 (Choice of Law), 1.3 (Privacy), 1.5 (Modification), 2.4 (License Limitations), 2.5 (Restrictions), 2.9 (Third Party Software), 3 (Your Content), 4 (Account Information), 5 (User Conduct), 6 (Fees and Payment; Term and Renewal), 7 (Your Warranty and Indemnification Obligations), 8 (Our Warranty and Indemnification Obligations), 9 (Limitation of Liability), 11.5 (Effect of Termination), 11.6 (Survival), 12 (Investigations), 13 (Export Control Laws), 14 (Dispute Resolution), 15 (Compliance with Licenses), and 16 (Miscellaneous). Upon the expiration or termination of the Services, the Services may cease to operate without prior notice.
- 12. Investigations.**
- **12.1. Screening.** We are not obligated to monitor content uploaded to the Services.

- **12.2. Disclosure.** We may access or disclose information about you, or your use of the Services, (a) when it is required by law (such as when we receive a valid subpoena or search warrant); (b) to respond to your requests for customer service support.

13. Export Control Laws.

- The Services and you use thereof are subject to the Republic of Mauritius, restrictions, and regulations that may govern the import, export, and use of the Services. You agree to comply with all such laws, restrictions, and regulations.

14. Dispute Resolution.

- **14.1. Process.** For any concern or dispute you may have, you agree to first try to resolve the dispute informally by contacting us. If a dispute is not resolved within 30 days of submission, then except as otherwise set forth in Section 18.2, you or W consulting may initiate a claim in the Republic of Mauritius. However, either party may initiate a claim before the expiration of such thirty (30) day period, if the claim relates to intellectual property, or to preserve either party's rights under applicable statutes of limitations.
- **14.2. Injunctive Relief.** Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services or content in violation of these Terms, you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

15. Compliance with Licenses.

- If you are a business, company, or organization, then we may, no more than once every twelve (12) months, upon seven (7) days' prior notice to you, appoint an independent third party auditor who is obliged to maintain confidentiality to inspect (including manual inspection, electronic methods, or both) your records, systems, and facilities to verify that your installation and use of any and all Services is in conformity with these Terms. Additionally, you will provide the auditor with all records and information requested, within 30 days of such request. If the verification discloses a breach of these Terms, you will immediately take steps to cure the breach and comply with these Terms, including but not limited to purchasing and paying for any necessary subscriptions. If the underpaid fees exceed 5% of the value of the payable license fees, then you will also pay for our cost of conducting the verification.

16. Miscellaneous.

- **16.1. Interpretation.** The English version of these Terms will be the version used when interpreting or construing these Terms. Section headings are provided for convenience only, and will not affect the interpretation of these Terms. Any words following the terms "including", "in particular", "for example", "such as", or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- **16.2. Notice to W consulting.** You may send notices to us to at the following address: W Consulting., Attn: W consulting, DG 35 Ruisseau Creole Center, Royal Road, Tamarin, Black River, 90921, Mauritius
- **16.3. Notice to You.** To the extent permitted under applicable law, we may notify you by email, postal mail, postings within the Services, telephonic or other legally acceptable means.

- **16.4. Entire Agreement.** These Terms constitute the entire agreement between W consulting and you regarding your use of the Services and the subject matter hereof, and these Terms supersede any prior agreements or understandings (whether written or oral) between W consulting and you relating to the subject matter hereof.
- **16.5. Assignment.** You may not assign or otherwise transfer these Terms or your rights and obligations under these Terms, in whole or in part, without our written consent and any such attempt will be void. We may freely assign or transfer our rights and/or obligations under these Terms to a third party. In addition, if you are purchasing through a reseller, distributor, or similar third party, you acknowledge and agree that W consulting reserves the right, upon notice, to require such third party to assign the relationship directly to W consulting (or to another third party that W consulting may specify), and in such event, you agree to fully comply and cooperate with such transfer and to do all things reasonably necessary to effect the same.
- **16.6. Severability.** If at any time any provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity, or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired thereby, and the remainder of the provisions of these Terms will remain in full force and effect. W consulting and you agree to endeavor in good faith negotiations to replace any illegal, invalid or unenforceable provision with a valid, legal and enforceable provision, the economic effect of which comes as close as possible to the illegal, invalid or unenforceable provision.
- **16.7. No Waiver.** Our failure to enforce or exercise any provision set forth in these Terms is not a waiver of that provision.

17. DMCA.

- We respect the Intellectual Property Rights of others and we expect our users to do the same. We will respond to clear notices of copyright infringement consistent with the Digital Millennium Copyright Act ("DMCA").

18. Jurisdiction-Specific Terms.

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This section applies to specific jurisdictions. If there is any conflict between this section and other sections, then this section governs in relation to the relevant jurisdiction:

- **18.1. Australia:**
- (a) NOTHING IN THIS AGREEMENT IS INTENDED TO LIMIT YOUR NON-EXCLUDABLE RIGHTS UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH).
- (b) DESPITE ANY OTHER PROVISION OF THESE TERMS, IF THE COMPETITION AND CONSUMER ACT 2010 (CTH) OR ANY OTHER LEGISLATION STATES THAT THERE IS A GUARANTEE IN RELATION TO THE SERVICES SUPPLIED BY W CONSULTING IN CONNECTION WITH THESE TERMS, AND W CONSULTING'S LIABILITY FOR FAILING TO COMPLY WITH THAT GUARANTEE CANNOT BE EXCLUDED BUT MAY BE LIMITED, SECTIONS 9.1, 9.2 AND 9.3 DO NOT APPLY TO THAT LIABILITY. INSTEAD, W CONSULTING'S LIABILITY FOR THAT FAILURE IS LIMITED TO (AT THE ELECTION OF W CONSULTING), IN THE CASE OF A SUPPLY OF GOODS, W CONSULTING REPLACING THE GOODS OR SUPPLYING EQUIVALENT GOODS OR REPAIRING THE GOODS, OR IN THE CASE OF A SUPPLY

OF SERVICES, W CONSULTING SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

- (c) If for any reason the provision of the Services under or in connection with these Terms constitutes a "Taxable Supply" in Australia (or similar term under the laws of other jurisdictions) for GST or similar purposes, then at or before the time the Services fees are payable, you must pay W consulting an amount equal to the GST or similar tax or withholding for the Services (in addition to the fees otherwise payable for the Services), and W consulting will give you a Tax Invoice (or similar receipt or acknowledgement) for the Service. For the purpose of this section, GST means the goods and service tax under the Good and Services Tax Act 1999 (Cth) and capitalised terms have the meaning given in that Act.
- **18.2. Other.**
- (a) THE FOLLOWING PARAGRAPH DOES NOT APPLY TO PURCHASERS IN THE US: THESE TERMS AND THE SERVICES ARE OFFERED ONLY TO PERSONS WHO ARE NOT CONSUMERS UNDER ANY APPLICABLE LAW. IF YOU ARE A CONSUMER, YOU ARE NOT AUTHORIZED TO ENTER INTO THESE TERMS AND MUST FOLLOW THE RETURN PROCEDURE SET FORTH BELOW. IN PARTICULAR, IF YOU RESIDE WITHIN THE EUROPEAN UNION, YOU ARE A CONSUMER IF YOU ARE A NATURAL PERSON PURPORTING TO ENTER INTO THIS AGREEMENT FOR ANY PURPOSE OUTSIDE YOUR TRADE, BUSINESS, CRAFT OR PROFESSION. IF YOU ARE NOT AUTHORIZED TO ENTER INTO THESE TERMS, OR IF YOU DO NOT AGREE TO ALL OF THE TERMS, THEN YOU MUST NOT INSTALL, ACCESS, COPY OR USE THE SERVICES, AND YOU MUST, WITHIN 3 DAYS, DELETE AND PERMANENTLY ERASE FROM ALL COMPUTER MEMORY AND STORAGE MEDIA ALL COPIES OF THE SERVICES AND RELATED SOFTWARE, AND TO OBTAIN A REFUND, YOU MUST NOTIFY W CONSULTING IN WRITING THAT YOU HAVE COMPLIED WITH THE FOREGOING.
- (b) If you reside in Australia, New Zealand, Japan, mainland China, Hong Kong S.A.R., Macau S.A.R., Taiwan R.O.C., the Republic of Korea, India, Sri Lanka, Bangladesh, Nepal, or a member state of the Association of Southeast Asian Nations (ASEAN), then the Singapore International Arbitration Centre (SIAC) will administer the arbitration in Singapore under its Rules of Arbitration, which rules are deemed to be incorporated by reference in this section. Otherwise, the London Court of International Arbitration (LCIA) will administer the arbitration in London under the LCIA Arbitration Rules. There will be one arbitrator that you and W consulting both select. The arbitration will be conducted in the English language, but any witness whose native language is not English may give testimony in the witness' native language, with simultaneous translation into English (at the expense of the party presenting the witness). Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties.

EXHIBIT A

DATA PROCESSING AGREEMENT

(For Customers Subject to GDPR)

- THIS AGREEMENT ("DPA") is entered into as of May 25, 2018 ("Effective Date"), by and between W Consulting., located at Unit 15C Unicity Office Park, Black River, Mauritius, 90921 ("W consulting"), and the customer agreeing to the Underlying Agreements (defined below) ("Customer"). Customer is entering into this Agreement on behalf of itself and its Authorized Affiliates. All references herein to Customer also apply to Customer's Authorized Affiliates.
- WHEREAS, W consulting and Customer have entered into, and may in the future enter into, one or more agreements, that require W consulting to provide certain Services to Customer (the "Underlying Agreement(s)"); and
- WHEREAS, in providing the Services to Customer pursuant to the Underlying Agreement(s), W consulting may Process Personal Data on behalf of Customer; and
- WHEREAS, if and to the extent W consulting Processes Personal Data on behalf of Customer, the parties will be subject to the GDPR and applicable "Data Protection Laws and Regulations"; and
- WHEREAS, if and to the extent W consulting processes Personal Data on behalf of Customer, Customer will be acting in the capacity of Controller (data exporter), and W consulting will be acting in the capacity of Processor (data importer);
- NOW, THEREFORE, in consideration of the foregoing, and in reliance on the mutual agreements contained herein, the parties agree as follows:
 - **1. Definitions.**
 - 1.1 "Adequacy Certification" means a jurisdiction, data transmission mechanism (such as the Standard Contractual Clauses) or data protection certification (such as the EU-U.S. and Swiss-U.S. Privacy Shield) which is compliant with Data Protection Laws and Regulations for the onward transfer of Personal Data from the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom.
 - 1.2 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the Customer entity signing this DPA. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
 - 1.3 "Authorized Affiliate" means any of Customer's Affiliate(s) which (a) is subject to the data protection laws and regulations of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom, and (b) is permitted to use the Services pursuant to the DPA between Customer and W consulting, but has not signed its own agreement or order form with W consulting and is not a "Customer" as defined under this DPA.
 - 1.4 "Controller" means the entity which determines the purposes and means of the Processing of Personal Data.

- 1.5 "Customer Data" means all electronic data submitted by or on behalf of Customer, or an Authorized Affiliate, to W consulting's Services.
- 1.6 "DPA" means these terms and conditions including ATTACHMENT 1 TO EXHIBIT A (Standard Contractual Clauses including related Appendices).
- 1.7 "Data Protection Laws and Regulations" means all applicable laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under this DPA, including without limitation the GDPR and laws implementing or supplementing the GDPR.
- 1.8 "Data Subject" means the identified or identifiable person to whom Personal Data relates.
- 1.9 "GDPR" means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.10 "Personal Data" means any Customer Data relating to (i) an identified or identifiable natural person, and (ii) an identified or identifiable legal entity (where such information is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws and Regulations).
- 1.11 "Processing" and "Process" mean any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- 1.12 "Processor" means the entity which Processes Personal Data on behalf of the Controller.
- 1.13 "Trust & Compliance Documentation" means the documentation regarding privacy, data security, and Sub-processor information applicable to the specific Services purchased by Customer, as may be updated periodically, and accessible via W consulting's website or by request, or as otherwise made reasonably available by W consulting.
- 1.14 "Services" means the Services and/or software and/or software-as-a-service (SaaS) provided by W consulting.
- 1.15 "Standard Contractual Clauses" means the agreement executed by and between Customer and W consulting and attached as ATTACHMENT 1 TO EXHIBIT A, pursuant to the European Commission's decision (C(2010)593) of 5 February 2010 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.
- 1.16 "Sub-processor" means any Processor engaged by W consulting.
- 1.17 "Supervisory Authority" means an independent public authority which is established by an EU Member State pursuant to the GDPR.
- **2. Services.** W consulting provides the Services to Customer under the Underlying Agreement(s). In connection with the Services, the parties anticipate that W consulting may Process Customer Data that contains Personal Data relating to Data Subjects.
- **3. Designation of Controller and Processor.** The parties agree that with regard to the Processing of Personal Data, Customer is the Controller, W consulting is the Processor, and that W consulting will engage Sub-processors pursuant to the requirements of this DPA.

- **4. Responsibilities.**
- 4.1 W consulting will Process Personal Data in accordance with the Data Protection Laws and Regulations that are directly applicable to W consulting's provision of the Services.
- 4.2 Customer shall in its use of the Services, Process Personal Data in accordance with the Data Protection Laws and Regulations. Customer's instructions to W consulting for the Processing of Personal Data shall comply with Data Protection Laws and Regulations; provided, however, that as of the Effective Date hereof, Customer's initial and complete instructions to W consulting for the Processing of Personal Data are provided to W consulting in the Underlying Agreement(s). Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data.
- **5. Processing Purposes; Confidentiality.** W consulting shall keep Personal Data confidential in accordance with the Underlying Agreement(s) and shall only Process Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) Processing in accordance with the Underlying Agreement(s) and applicable order form(s); (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other documented, reasonable instructions provided by Customer (for example, via email) where such instructions are consistent with the terms of the Underlying Agreement. W consulting shall not be required to comply with or observe Customer's instructions if such instructions would violate the applicable Data Protection Laws and Regulations.
- **6. Scope of Processing.** The subject-matter and scope of Processing of Personal Data by W consulting is limited to the performance of the Services pursuant to the Underlying Agreement(s). The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Appendix 1 To Attachment 1 (Exhibit A) to this DPA.
- **7. Data Subject Requests.** To the extent legally permitted, W consulting shall promptly notify Customer if W consulting receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("Data Subject Request"). Factoring into account the nature of the Processing, W consulting shall assist Customer by appropriate organizational and technical measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws and Regulations. In addition, to the extent Customer, in its use of the Services, does not have the ability to address a Data Subject Request, W consulting shall, upon Customer's request, provide commercially-reasonable efforts to assist Customer in responding to such Data Subject Request, to the extent that W consulting is legally authorized to do so, and the response to such Data Subject Request is required under Data Protection Laws and Regulations. To the extent legally permitted, Customer shall be responsible for any costs arising from W consulting's provision of such assistance.
- **8. W consulting Personnel.** W consulting shall ensure that its personnel engaged in the Processing of Personal Data are informed of the confidential nature of the Personal Data, have received appropriate training regarding their responsibilities, and have executed written confidentiality agreements. W consulting shall take commercially-reasonable steps to ensure the reliability of any W consulting personnel engaged in the Processing of Personal Data. W

consulting shall ensure that W consulting's access to Personal Data is limited to those personnel assisting in the provision of the Services in accordance with the Underlying Agreement(s).

- **9. Data Protection Officer.** W consulting may appoint a data protection officer, but only if required by Data Protection Laws and Regulations. Inquiries should be sent to: privacy@wconsulting.co.za
- **10. W consulting's Sub-processors.**
- 10.1 Customer acknowledges and agrees that W consulting may engage third-party Sub-processors in connection with the provision of the Services. W consulting agrees to publish a current list of Sub-processors via W consulting's applicable Trust & Compliance Documentation.
- 10.2 In order to exercise its right to object to W consulting's use of a new Sub-processor, Customer shall notify W consulting in writing regarding the appointment of each third-party Sub-processor. In the event Customer objects to a new Sub-processor, and that objection is not unreasonable, W consulting will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially-reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Sub-processor without unreasonably burdening the Customer. If W consulting is unable to make available such change within a reasonable time period, which shall in no event exceed thirty (30) days, Customer may terminate the subscription and/or applicable order(s) with respect only to those aspects of the Services which cannot be provided by W consulting without the use of the objected-to new Sub-processor by providing written notice to W consulting. W consulting will refund Customer any prepaid fees covering the remainder of the term of such order form(s) following the effective date of termination with respect to such terminated Services. If termination of applicable order form(s) is not feasible, then Customer may terminate the Underlying Agreement(s) by thirty (30) days prior written notice to W consulting.
- 10.3 Upon request, W consulting will provide to Customer copies of Sub-processor agreements; provided, however, that to the extent that such Sub-processor agreements contain commercial information or provisions unrelated to information required by applicable Data Protection Laws and Regulations, such unrelated information may be removed by W consulting in its discretion.
- 10.4 W consulting will not transfer any Personal Data to a Sub-processor which does not provide an Adequacy Certification reasonably satisfactory to W consulting in connection with such transfer.
- **11. Flow Down Provisions for Sub-processor Agreements. Liability for Sub-processors.**
- 11.1 W consulting shall impose the same obligations of W consulting regarding GDPR hereunder to its Sub-processors.
- 11.2 W consulting shall be liable for the acts and omissions of its Sub-processors to the same extent W consulting would be liable if performing the services of each Sub-processor directly under the terms of this DPA, except as otherwise set forth in the Underlying Agreement(s).
- **12. Security Measures.** W consulting shall maintain appropriate organizational and technical measures for protection of the security (including protection against unauthorized or unlawful Processing, and against unlawful or accidental destruction, alteration or damage or loss, unauthorized disclosure of, or access to, Customer Data), confidentiality, and integrity of Customer Data, as set forth in W consulting's applicable Trust & Compliance Documentation. W consulting regularly monitors compliance with these measures. W consulting will not materially

decrease the overall security of the Services during Customer's and/or Customer's Authorized Affiliates' subscription term.

- **13. Third-Party Certifications and Audit Results.** W consulting shall keep all third-party certifications and audit results set forth in the Trust & Compliance Documentation. Upon Customer's written request at reasonable intervals, and subject to the confidentiality obligations set forth in the Underlying Agreement(s), W consulting shall make available to Customer a copy of W consulting's then most recent third-party certifications or audit results, as applicable.
- **14. Notifications Regarding Customer Data.** W consulting shall (i) implement and maintain reasonable and appropriate data security and incident management policies and procedures, as specified in the Trust & Compliance Documentation, and (ii) notify Customer without undue delay after becoming aware of the unlawful or accidental destruction, alteration or damage or loss, unauthorized disclosure of, or access to, Customer Data, including Personal Data, transmitted, stored or otherwise Processed by W consulting or its Sub-processors of which W consulting becomes aware (hereinafter, a "Customer Data Incident"), as required to assist the Customer in ensuring compliance with its obligations to notify the Supervisory Authority in the event of Personal Data breach. W consulting shall make reasonable efforts to identify the cause of such Customer Data Incident, and take those steps as W consulting deems necessary and reasonable in order to remediate the cause of such a Customer Data Incident, to the extent that the remediation is within W consulting's reasonable control. The obligations set forth herein shall not apply to incidents that are caused by either Customer or Customer's Users.
- **15. Return of Customer Data.** W consulting shall return Customer Data to Customer, and to the extent allowed by applicable law, delete Customer Data in accordance with the procedures and time periods specified in the Trust & Compliance Documentation, unless the retention of the data is requested from W consulting according to mandatory statutory laws.
- **16. Authorized Affiliates.** The parties agree that, by executing this DPA, the Customer enters into this DPA on behalf of itself, and as applicable, in the name and on behalf of its Authorized Affiliate(s), thereby establishing a separate DPA between W consulting and each such Authorized Affiliate, subject to the provisions of the Underlying Agreement(s). Each Authorized Affiliate agrees to be bound by the obligations under this DPA, and to the extent applicable, the Underlying Agreement(s). An Authorized Affiliate is not and does not become a party to the Underlying Agreement(s), and is only a party to this DPA. All access to and use of the Services by Authorized Affiliate(s) must comply with the terms and conditions of the Underlying Agreement(s) and any violation thereof by an Authorized Affiliate shall be deemed a violation by Customer.
- **17. Communications.** The Customer that is the contracting party to the Underlying Agreement(s) shall remain responsible for coordinating all communication with W consulting under this DPA, and shall be entitled to transmit and receive any communication in relation to this DPA on behalf of its Authorized Affiliate(s).
- **18. Exercise of Rights.** Where an Authorized Affiliate becomes a party to the DPA, it shall to the extent required under applicable Data Protection Laws and Regulations be entitled to exercise the rights and seek remedies under this DPA, except where applicable Data Protection Laws and Regulations require the Authorized Affiliate to exercise a right or seek any remedy under this DPA against W consulting directly by itself, the parties agree that (i) solely the Customer that is the contracting party to the Underlying Agreement(s) shall exercise any such right or seek any

such remedy on behalf of the Authorized Affiliate, and (ii) the Customer that is the contracting party to the Underlying Agreement(s) shall exercise any such rights under this DPA in a combined manner for all of its Authorized Affiliates together, instead of doing so separately for each Authorized Affiliate.

- **19. Liability.** Each party's liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs involving Customer's Authorized Affiliates, whether in contract, tort or under any other theory of liability, is subject to the limitation of liability, damage waiver, and liability cap provisions of the Underlying Agreement(s), and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates under the Underlying Agreement(s) and all DPAs taken together. W consulting's and its Affiliates' total liability for all claims from the Customer and all of its Authorized Affiliates arising out of or related to the Underlying Agreement(s) and each DPA shall apply in the aggregate for all claims under both the Underlying Agreement(s) and all DPAs established under this Agreement, including by Customer and all of Customer's Authorized Affiliates, and shall not be understood to apply individually and severally to Customer and/or to any Authorized Affiliate that is a contractual party to any such DPA. Each reference to the DPA herein means this DPA including its attached Attachments and Appendices.
- **20. Data Protection Impact Assessment.** Upon Customer's request, W consulting shall provide Customer with reasonable cooperation and assistance needed to fulfil Customer's obligation under the GDPR to carry out a data protection impact assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to W consulting. W consulting shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating to this Section 21 of this DPA, to the extent required under the GDPR.
- **21. Standard Contractual Clauses.**
- 21.1 The Standard Contractual Clauses apply to (i) the legal entity that has executed the Standard Contractual Clauses as a data exporter and its Authorized Affiliates, and (ii) all Affiliates of Customer established within the European Economic Area, Switzerland and the United Kingdom, which have signed Order Forms for the Services. For the purpose of the Standard Contractual Clauses the aforementioned entities shall be deemed "data exporters."
- 21.2 For the purposes of Clause 5 of the Standard Contractual Clauses, the following is deemed an instruction by the Customer to process Personal Data: (a) Processing in accordance with the Underlying Agreement(s) and applicable order form(s); (b) Processing initiated by Users in their use of the Services and (c) Processing to comply with other reasonable instructions provided by Customer (e.g., via email) where such instructions are consistent with the terms of the Underlying Agreement(s).
- 21.3 The parties agree that the audits described in Clause 5 and Clause 12 of the Standard Contractual Clauses shall be carried out in accordance with the following specifications: following Customer's written request, and subject to the confidentiality obligations set forth in the Underlying Agreement(s), W consulting shall make available to Customer information regarding the W consulting's compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits set forth in the Trust & Compliance Documentation, to the extent that W consulting makes them generally available to its customers.

- 21.4 The parties agree that the certification of deletion of Personal Data that is described in Clause 12 of the Standard Contractual Clauses shall be provided by W consulting to Customer only upon Customer's request.
- 21.5 In the event of a conflict between the terms of the DPA and the Standard Contractual Clauses, the Standard Contractual Clauses will prevail.
- **22. Audits.** Customer may contact W consulting in accordance with the "Notices" Section of the Underlying Agreement(s) to request an on-site audit of the procedures relevant to the protection of Personal Data. Customer shall reimburse W consulting for any time expended for any such on-site audit at the W consulting's then-current professional services rates, which shall be made available to Customer upon request. Before the commencement of any such on-site audit, Customer and W consulting shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by W consulting. Customer shall promptly notify W consulting and provide information about any actual or suspected non-compliance discovered during an audit. The provision in this section shall by no means derogate from or materially alter the provisions on audits as specified in the Standard Contractual Clauses.
- **23. Assignment.** This DPA shall inure to the benefit of, and be binding upon, any successor to all or substantially all of the business and assets of either party, whether by merger, sale of assets, or other agreements or operation of law.
- **24. Force Majeure.** Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, terrorism, acts of God, epidemic, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or complete or partial failure of the Internet, provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.
- **25. Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which shall constitute one and the same instrument. Any signature page of any such counterpart, or any facsimile transmission thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any facsimile transmission of any signature of a party shall be deemed an original and shall bind such party.
- **26. Order of Precedence.** With respect to the rights and obligation of the parties vis-à-vis each other, in the event of a conflict between the terms of the Underlying Agreement(s) and this DPA, the terms of this DPA will control. In the event of a conflict between the terms of this DPA and the Standard Contractual Clauses, the terms of the Standard Contractual Clauses will control.
- **27. Miscellaneous.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and merges all prior communications, understandings, and agreements. This Agreement may be modified only by a written agreement signed by the parties. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision of this Agreement is declared

invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

ATTACHMENT 1 TO EXHIBIT A

Standard Contractual Clauses

(processors)

- For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection
- Name and address of the data exporting organisation:
 - The Customer
 - (the data exporter)
 - And
- Name and address of the data importing organisation:
 - W Consulting. A Mauritius corporation with offices at, DG 35 Ruisseau Creole, Royal Road, Tamarin, Black River, 90921
 - (the data importer)
- each a "party"; together "the parties",
- HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1 To Attachment 1 (Exhibit A).
 - Clause 1
 - Definitions
 - For the purposes of the Clauses:
 - 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
 - 'the data exporter' means the controller who transfers the personal data;

- 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- 'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals, and in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.
- Clause 2
- Details of the transfer
 - The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 To Attachment 1 (Exhibit A) which forms an integral part of the Clauses.
- Clause 3
- Third-party beneficiary clause
 - The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
 - The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
 - The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by

contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

- The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.
- Clause 4
- Obligations of the data exporter
- The data exporter agrees and warrants:
 - that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
 - that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
 - that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 To Attachment 1 (Exhibit A) to this contract; that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
 - that it will ensure compliance with the security measures;
 - that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
 - to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
 - to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2 to Attachment 1 (Exhibit A) , and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

- that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- that it will ensure compliance with Clause 4(a) to (i).
- Clause 5
- Obligations of the data importer
- The data importer agrees and warrants:
 - to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
 - that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
 - that it has implemented the technical and organisational security measures specified in Appendix 2 To Attachment 1 (Exhibit A) before processing the personal data transferred;
 - that it will promptly notify the data exporter about:
 - any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - any accidental or unauthorised access, and
 - any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
 - to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
 - at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

- to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 To Attachment 1 (Exhibit A) which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.
- Clause 6
- Liability
- The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
- If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.
- The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
- If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.
- Clause 7

- Mediation and jurisdiction
- The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - to refer the dispute to the courts in the Member State in which the data exporter is established. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.
- Clause 8
- Cooperation with supervisory authorities
 - The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
 - The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
 - The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).
- Clause 9
- Governing Law
 - The Clauses shall be governed by the law of the Member State in which the data exporter is established.
- Clause 10
- Variation of the contract
 - The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.
- Clause 11
- Subprocessing

- The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
- The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
- The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
- The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.
- Clause 12
- Obligation after the termination of personal data processing services
- The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.
- **APPENDIX 1 TO ATTACHMENT 1 (EXHIBIT A)**
- This Appendix forms part of the Clauses.

- The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.
- Data exporter
- The data exporter is:
 - (i) the legal entity that has executed the Underlying Agreement(s) as the Customer and the Standard Contractual Clauses as the Data Exporter, and (ii) all Affiliates.
- Data importer
- The data importer is:
 - W Consulting. A Mauritius corporation with offices at DG 35 Ruisseau Creole, Royal Road, Tamarin, Black River, 90921. The data importer is a software and/or Software as a Service (SaaS) provider.
- Data subjects
- Data exporter may submit Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of data subjects:
 - Employees and other personnel of data exporter and data exporter Affiliates.
 - Employees and other personnel of contractors of data exporter and data exporter affiliates.
- Categories of data
 - Data exporter may submit Personal Data to the Services, the extent of which is determined and controlled by the data exporter in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:
 - Name
 - Employer
 - Contact Information
 - Image
 - Title
 - Location
 - Language Preference
 - Professional Biography
 - IP Address
 - Special categories of data (if appropriate)
 - The Personal Data transferred concern the following special categories of data: not applicable.
- Processing operations

- The Personal Data transferred will be subject to the following basic processing activities:
- Data importer is (i) providing software for data exporter to use for purposes of creating training and course content, and (ii) will archive Personal Data uploaded by data exporter (or data exporter affiliates, where applicable) in online Services hosted by data importer in the United States of America. Data importer will not further access or process the relevant Personal Data unless necessary to provide the Services pursuant to the Underlying Agreement(s), as instructed by the Data Importer, or as may be incidentally necessary in order for data importer to perform maintenance activity the Services. The purpose of Provider's processing will be to allow data exporter (or data exporter Affiliates) to access and use the online Services.

- **APPENDIX 2 TO ATTACHMENT 1 (EXHIBIT A)**
- 1. Technical and Organizational Security Measures

- W consulting shall maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, including Personal Data, as set forth in the Trust & Compliance Documentation. W consulting regularly monitors compliance with these safeguards. W consulting will not materially decrease the overall security of the Services during a subscription term.

- **APPENDIX 3 TO ATTACHMENT 1 (EXHIBIT A)**
- List of sub processors
 - Microsoft Office 365 - <https://products.office.com/en-us/business/office>
 - Primary Purposes - Email / Calendar / Internal Distribution Lists / SharePoint pages / OneDrive / Skype for Business
 - Microsoft Dynamics 365 - <https://dynamics.microsoft.com/en-us/>
 - Primary Purposes - CRM
 - MailChimp - <https://www.mailchimp.com>
 - Primary Purposes - Mailing updates to clients for updates and new events they may attend covered by their subscriptions
 - Clickmeeting - <https://www.clickmeeting.com>
 - Primary Purposes - Online live webinars
 - Zoom – <https://www.zoom.com>