



DATA PLATFORM TERMS OF BUSINESS

- (A) Gill Research & Development Limited is a private limited company incorporated in England with registration number 03154453 and with its registered office at Ground floor, Centenary House, Peninsula Park, Rydon Lane, Exeter, EX2 7XE (**Gill**).
- (B) Gill provides access for its customers as a service to a data platform for analysing information collected by certain internet-of-things devices on a pay-per-use basis.
- (C) Where any person wishes to receive the benefit of Gill's data platform, such person may only do so in accordance with these terms and conditions (**Data Terms**), which shall form part of the contract between any such person and Gill for the provision of such services.
- (D) The meanings of capitalised words used in these Data Terms and various rules of interpretation that shall apply in these Data Terms are each set out at the end of these Data Terms at section 32 (*Interpretation*).

1. ORDER

- 1.1 Pursuant to these Data Terms, the Customer may request that Gill make available, and Gill may provide to the Customer, access to the Data Platform in accordance with an Order. The Customer shall not access the Data Platform except in accordance with the express terms of an Order.
- 1.2 Each Order shall incorporate these Data Terms and, in the event of any conflict between these Data Terms and any other statement forming part of an Order, the provisions of these Data Terms shall take precedence.
- 1.3 Each Order may be updated from time to time by agreement between Gill and the Customer in writing (including by email) and any pricing adjustments for such amended Orders shall be applied by Gill pro rata to the remaining time in the relevant Contract Year.

2. SERVICE TERM

Each Order shall commence on the date such Order is placed and shall continue for the Initial Term and any Renewal Periods until the effective date of termination of that Order in accordance with the provisions of these Data Terms (**Service Term**).

3. LICENCE

- 3.1 Subject to the restrictions set out in the terms of any Order (by way of example, restrictions on the maximum number of Devices or Users permitted under the terms of such Order) and subject to the remainder of this section 3, Gill hereby grants to the Customer a non-exclusive, non-sublicensable, non-transferable right and licence to permit Users to use and to access the Services during the Service Term for the Customer's internal business purposes only.

- 3.2 The Customer and the Customer's Users may only access and use the Data Platform within the scope of the licence granted by Gill in section 3.1, in the manner described in these Data Terms and any Order and only with valid user accounts made available to the Customer's Users by Gill.

- 3.3 THE CUSTOMER ACKNOWLEDGES THAT GILL ONLY PROVIDES ACCESS TO THE DATA PLATFORM "AS-IS" AND "AS-AVAILABLE".

- 3.4 The Customer:

- (a) has no right to receive a copy of or install the Data Platform on any IT infrastructure not provided by Gill or the Tech Provider;
- (b) may not permit any third party (other than its Affiliates) to access or use the Services; and
- (c) may not sublicense its rights granted under this section 3 without Gill's prior written consent, and Gill shall be entitled to charge additional Fees in relation to any such sublicences or additional licences granted.

- 3.5 From time to time, Gill may allow access to a demonstration instance of the Data Platform for certain of its distributors (**Demo Access**). Where Demo Access is granted, the Customer (being the relevant distributor) shall not use the Data Platform for live production purposes.

4. SERVICES

- 4.1 As consideration for payment of the Fees by the Customer, in accordance with terms of the Licence and subject to the terms and conditions of the relevant Order, Gill shall provide the Services to the Customer during the relevant Service Term in accordance with each Order.

- 4.2 Gill makes no commitment to provide any services other than those outlined in an Order. The Customer may use and access the Data Platform subject to the Licence only. If at any time during the Service Term, the Customer exceeds the Scope of Services, Gill shall be entitled to invoice the Customer at its standard pricing for such increased usage upon becoming aware of such increased usage and the Customer shall pay such additional amounts when invoiced in accordance with the provisions of section 7 (*Charges and Payment*).

- 4.3 Where the Data Platform is not performing as expected, the Customer's Administrators (only) may issue support requests to Gill during Business Hours using the contact details provided in the relevant Order and in response to such support requests, Gill shall use reasonable endeavours to provide a remedy, fix or workaround to restore the Services to their standard functionality (**Support Services**).

4.4 The Support Services do not include monitoring, interpretation and/or corrective action with respect to any results or outputs generated by the Data Platform and the Customer understands and acknowledges that all results require manual interpretation.

5. GILL RIGHTS AND RESPONSIBILITIES

5.1 Subject to the remainder of this section 5, Gill undertakes that the Services will be provided with reasonable skill and care.

5.2 Gill warrants that, at the time each Order is entered into, it has the necessary licences, authorisations and consents in place to deliver the Services in accordance with the Licence.

5.3 The undertaking at section 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Documentation or the instructions of Gill or a Tech Provider, or modification or alteration of the Services by any party other than Gill or Gill's duly authorised contractors or agents.

5.4 IF GILL FAILS TO COMPLY WITH THE UNDERTAKING AT SECTION 5.1, GILL WILL USE REASONABLE ENDEAVOURS TO CORRECT ANY SUCH NON-COMPLIANCE PROMPTLY, OR PROVIDE THE CUSTOMER WITH AN ALTERNATIVE MEANS OF ACCOMPLISHING THE DESIRED PERFORMANCE. SUCH CORRECTION OR SUBSTITUTION CONSTITUTES THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE UNDERTAKING IN SECTION 5.1.

5.5 GILL DOES NOT WARRANT THAT:

- (a) THE CUSTOMER'S USE OF THE SERVICES WILL BE FREE FROM FAULTS, DEFECTS OR ERRORS OR SHALL BE UNINTERRUPTED;
- (b) THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS;
- (c) THE SERVICES WILL BE FREE FROM VULNERABILITIES OR VIRUSES; OR
- (d) THE SERVICES WILL COMPLY WITH ANY HEIGHTENED CYBERSECURITY REQUIREMENTS.

5.6 No advice or information obtained by the Customer from Gill shall create any warranty which is not expressly stated in these Data Terms.

5.7 From time to time, updates, upgrades and security patches to the Data Platform (and/or to any development, customisation or configuration of the Data Platform) may be implemented by each of the Tech Provider and/or Gill (as appropriate).

5.8 Gill is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, nor is Gill liable for any failures of alarms or notifications issued by the Data Platform

under any circumstances, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of any communications facilities.

5.9 Nothing in these Data Terms nor any Order shall prevent Gill from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under any Order.

5.10 The warranty in sections 5.2 does not cover:

- (a) issues caused by additions, changes, alterations, modifications, amendments, enhancements, configurations or extensions to the Data Platform, or attempts at doing so, by or on behalf of the Customer (other than by Gill or its Affiliates); or
- (b) the combination or incompatibility of the Data Platform with the equipment, hardware, operating system or third-party software or interfaces of the Customer or any third party that is not a Gill subcontractor.

5.11 In relation to Gill's warranty under section 5.2, the Customer shall:

- (a) notify Gill with full details of a breach of the relevant warranty as soon as it is reasonably able upon becoming aware of the problem; and
- (b) provide Gill with such information, assistance and co-operation to resolve the relevant problem as is reasonable in the circumstances,

and Gill's liability under such warranties shall be reduced to the extent caused by the Customer's failure or delay under this section 5.11.

5.12 Gill's warranty under section 5.2 shall cease to apply whilst payment of any sums due from the Customer, except sums which have been genuinely and reasonably disputed by the Customer in good faith in accordance with these Data Terms, have not been received in full by Gill by the due date.

5.13 Except for the express warranties provided under these Data Terms, and to the fullest extent possible permitted by law, the Data Platform and all materials and any media on which they are delivered are provided "as-is" and "as-available" and all conditions, warranties, terms and obligations other than those set out in these Data Terms, whether express or implied by statute, common law or otherwise, are excluded, including, without limitation, any implied, warranties, or conditions of merchantability, satisfactory, quality, fitness for a particular purpose, or non-infringement arising, from course of performance, dealing, usage or trade.

5.14 To the fullest extent permitted by law, Gill bears no responsibility or liability for any data, information or content produced or provided by external sources,

including websites, platforms, products, services or APIs which may be accessible or made available by the Customer, the Data Platform or the Tech Provider (**Other Content**). Any Other Content is accessed and used by the Customer on an "as-is" and "as available" basis.

5.15 Throughout the Service Term, the Services, Data Platform and any related function, features or components may be subject to change, at the Tech Provider's (or Gill's) sole discretion, in accordance with the Tech Provider's (or Gill's) continuous development of the Data Platform. Such changes may be made without liability to the Customer, provided that such changes shall not materially reduce the functionality of the Technology.

5.16 Gill shall be entitled to change the Tech Provider and/or the Data Platform, from time to time, without the consent of the Customer, and, where it does so, Gill shall use reasonable endeavours to ensure that the replacement technology is of a similar quality, security standard and functionality as the outgoing technology.

5.17 GILL SHALL BE ENTITLED TO AMEND THESE DATA TERMS FROM TIME TO TIME BY NOTIFYING THE CUSTOMER IN WRITING (INCLUDING BY EMAIL) OF ITS PROPOSED AMENDMENTS AND THE CUSTOMER SHALL BE DEEMED TO ACCEPT SUCH AMENDMENTS UNLESS THE CUSTOMER PROVIDES ANY OBJECTIONS TO SUCH AMENDMENTS IN WRITING (INCLUDING BY EMAIL) TO GILL WITHIN 30 DAYS OF GILL'S INITIAL NOTIFICATION OF ITS PROPOSED AMENDMENTS.

5.18 Gill shall be entitled to, and the Customer hereby permits Gill to, and grants Gill a licence to, use and refer to the Customer's name and logo (only) in Gill's marketing and promotional materials (including, but not limited to, its website) unless the Customer requests in writing that it wishes Gill not to do so.

6. CUSTOMER RIGHTS AND RESPONSIBILITIES

6.1 In relation to Users, the Customer undertakes that:

- (a) the number of Administrators and End Users that it authorises to access and use the Services and the Documentation shall not exceed any number set out in the relevant Order (or such number as is otherwise agreed in writing from time to time);
- (b) each User shall keep a secure password for their use of the Services, such password shall be changed no less frequently than once every six (6) months and each User shall keep their password confidential;
- (c) it shall maintain a written, up to date list of current Users and provide such list to Gill within five (5) Business Days of Gill's written request, at any time;
- (d) it shall ensure that each User complies with the provisions of these Data Terms as though those provisions applied to each User, and shall be liable to Gill for all acts and omissions of each User, as if those acts and omissions were the Customer's own; and

(e) it will promptly notify Gill in writing if:

- (i) any changes to the Customers Users' access rights or permissions are required;
- (ii) the Customer becomes aware that the confidentiality of the details used to access the accounts of any User is compromised; or
- (iii) the Customer becomes aware of any unauthorised use of the Data Platform.

6.2 The Customer shall permit Gill or Gill's designated auditor to audit compliance with these Data Terms, any Order and any relevant Tech Provider Terms. Each such audit may be conducted no more than once per Contract Year, at Gill's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business.

6.3 The Customer represents that, at the time each Order is entered into, it has had the opportunity to review the Documentation and all elements of the Data Platform and has exercised its independent judgement to procure the same and is satisfied that the Data Platform is sufficient and suitable for its purposes.

6.4 The Customer acknowledges and agrees that the Data Platform is not a "computer program" in the sense referred to in the Copyright, Designs and Patents Act 1988 (as amended from time to time), as the Customer does not take possession of the Data Platform, has no control over the Data Platform and the Data Platform is fully hosted and maintained by Gill or the Tech Provider and provided as a service to the Customer, and as such, sections 50A to 50C and 296A of the Copyright, Designs and Patents Act 1988 (as amended) shall not apply to the Data Platform.

6.5 The Customer shall not:

- (a) access, store, distribute or transmit any material during the course of its use of the Services that: is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property, and Gill reserves the right, without liability or prejudice to its other rights, to disable the Customer's access to any material that breaches the provisions of this section;
- (b) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Data Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means, or attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise

reduce to human-perceivable form all or any part of the Services;

- (c) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services;
- (d) use the Services and/or Documentation to provide services to third parties, unless otherwise agreed in writing in the relevant Order;
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Users;
- (f) use the Services in a manner or for any purpose that is not permitted by these Data Terms, the relevant Order or the relevant Tech Provider Terms;
- (g) manipulate or exploit access or use of the Services in an attempt to avoid incurring Fees or exceed usage limits or quotas;
- (h) breach or attempt to bypass any security measures of the Data Platform, including in relation to any penetration or security testing (or by authorising or directing anyone to do the same) without the prior written consent of Gill and the Tech Provider;
- (i) forge its domicile or origin of requests, including the faking of TCP/IP packet headers, email headers or any part of any message describing its origin or route, operate any network services, such as open proxies, open mail relays, open recursive domain name servers, or any similar activities;
- (j) attempt to obtain or assist third parties in obtaining, access to the Services other than as provided under these Data Terms; or
- (k) introduce or permit the introduction of any Virus or Vulnerability into network and information systems of Gill or any Tech Provider.

6.6 The Customer shall:

- (a) provide Gill with all necessary co-operation in relation to the Services, and all necessary access to such information as may be required by Gill in order to provide the Services, including but not limited to Customer Data and security access information;
- (b) comply with any rules and policies governing the access and use of the Data Platform as set out in the Order, including the provisions of the Tech Provider Terms or such other requirements as are reasonably notified by Gill from time to time;
- (c) use the Data Platform in accordance with applicable laws and codes of practice in force;
- (d) carry out all other Customer responsibilities set out in these Data Terms in a timely and efficient manner and,

in the event of any delays in the Customer's provision of such assistance, Gill may adjust any agreed timetable or delivery schedule as reasonably necessary;

- (e) maintain all necessary licences, consents and permissions necessary for Gill, its contractors and agents to perform their obligations under these Data Terms, including, without limitation, providing the Services;
- (f) ensure Gill is provided with the contact details of Customer Personnel who are authorised to take all steps necessary to facilitate Gill complying with Gill's obligations and making such Customer Personnel available at reasonable times, including at all times in relation to critical incidents;
- (g) ensure that its network and systems comply with any reasonable specifications provided by Gill or the Tech Provider from time to time; and
- (h) be, to the extent permitted by law and except as otherwise expressly provided in these Data Terms, solely responsible for procuring, maintaining and securing its network connections and communications links from its systems to the data centres of Gill and the Tech Provider, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or communications links or caused by the internet.

6.7 The Customer takes sole responsibility for all outcomes resulting from the Data Platform. Gill shall be required to provide access to the Support Services and such access shall be the Customer's sole and exclusive remedy in relation to any fault with, or defect in, the Data Platform.

6.8 The Customer warrants that it has all the necessary rights, permits and licenses to use and deploy any relevant Devices and to gather all data to be processed on the Data Platform.

6.9 The Customer is not permitted to interface or interoperate, or to create or implement any integrations (either by itself or with any third party), between the Data Platform and any other software, hardware, data or third-party service, other than with Gill's prior written consent and, in any case, only having obtained any other necessary permits, consents or licences.

6.10 The Customer acknowledges that the Data Platform has not been created to meet the Customer's individual requirements. Gill shall have no responsibility, nor bear any liability, for the Customer's business operations, including the Customer's compliance with all applicable laws and the Customer shall be solely responsible, including to any regulators, for ensuring the outputs of the Data Platform are suitable for its requirements.

- 6.11 The Customer is entitled to make a reasonable number of copies of the Documentation as is necessary to support the Customer's permitted use of the Data Platform under and in accordance with the Tech Provider Terms although Gill will have no obligation to update or revise any copies of the Documentation created under this section.
- 6.12 The Customer must have in place appropriate processes and infrastructure and implement adequate security measures to ensure its application and environments are secured to safeguard the Data Platform from unauthorised access, use, copying or from breach of any restrictions on use of the Data Platform and to safeguard the systems of Gill and the Tech Provider from any unauthorised access or use.
- 6.13 The Customer acknowledges and agrees that if it does not comply with, or delays in complying with, its obligations under this Agreement or an assumption or dependency stated in this Agreement proves incorrect, then Gill will be relieved of its obligation to supply the Services to the Customer (and any associated liability) to the extent Gill is prevented from performing such obligations as a result of such failure by the Customer and Gill may charge the Customer any reasonable, additional costs incurred by it to perform or re-commence performing the Services to the extent incurred as a result of such failure by the Customer.

7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay the Fees to Gill in accordance with this section 7 and the terms of any Order.
- 7.2 Unless otherwise agreed in an Order, Gill shall invoice the Customer in advance for the Fees payable in respect of the relevant Initial Term or Renewal Period in full and the Customer shall pay each invoice within the 30 days after the date of such invoice.
- 7.3 The Customer may withhold payment of particular Fees (or elements of such Fees) that it reasonably disputes in good faith (**Disputed Amount**) on the basis that Gill has not performed in accordance with the provisions of these Data Terms or the relevant Order. The Customer may not withhold payment for any non-disputed element of Fees. The Customer must raise such dispute within the time for payment of the relevant invoice, failing which such invoice shall be deemed to be undisputed and no amount may be withheld.
- 7.4 If Gill has not received payment within 30 days after the due date of any invoice, save for any Disputed Amount, without prejudice to any other rights and remedies of Gill interest shall accrue on a daily basis on such due amounts at an annual rate equal to 6% over the then current base lending rate of Barclays Bank in London from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.5 All amounts and fees stated or referred to in these Data Terms:

- (a) shall be payable in pounds sterling;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added tax or equivalent, which shall be added to Gill's invoice(s) at the appropriate rate as assessed in the jurisdiction in which the Customer is physically located and utilises the Data Platform, as applicable; and
- (d) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.6 IN THE CASE OF MULTIPLE-YEAR SERVICE TERMS, UNLESS OTHERWISE AGREED IN WRITING, ON EACH ANNIVERSARY OF THE DATE OF AN ORDER, GILL MAY LEVY AN INCREASE TO THE FEES FOR THE COMING YEAR BY REFERENCE TO ANY INCREASES IN GILL'S OWN BUSINESS COSTS AND GILL SHALL PROVIDE 45 DAYS' NOTICE IN WRITING OF SUCH PROPOSED INCREASE IN FEES.

7.7 If the Customer's internal processes require a purchase order or purchase order number to be submitted with an invoice, the Customer shall provide to Gill such purchase order and/or purchase order number with the signed Order. Payment of invoices shall not be delayed or withheld by the Customer due to the Customer's internal ordering processes or formalities, including the requirement and or failure to provide a purchase order number.

8. PROPRIETARY RIGHTS

- 8.1 Gill warrants to the Customer that Gill or its Affiliates or licensors (including the Tech Provider) own all right, title and interest, including all Intellectual Property Rights, in and to the Data Platform, including any development, customisation or configuration, and any other materials provided to the Customer through the provision of the Services.
- 8.2 All right, title and interest in any Intellectual Property Rights in or relating to the Data Platform, including any development, customisation or configuration, and any other materials provided to the Customer through the provision of the Services, including any Documentation or similar materials (whether developed before, on or after the Effective Date) belong to, and shall remain vested in, Gill and its Affiliates or their licensors (including the Tech Provider).
- 8.3 The Intellectual Property Rights in any development, customisation or configuration of the Data Platform, including within the Customer's own instance of the Data Platform, shall vest with Gill (and/or its licensors), and shall be considered Gill's confidential information (**Gill's Developed IPR**). Gill hereby grants a revocable, non-sublicensable (other than to Affiliates), non-transferable licence to the Customer to use Gill's Developed IPR during the Service Term for the purpose of receiving the Services.

- 8.4 All right, title and interest in any Intellectual Property Rights in the Customer Data owned by or licensed to the Customer or any of its Affiliates prior to the Effective Date (other than by or on behalf of Gill or its Affiliates or their third-party licensors, including the Tech Provider) belong to and shall remain vested in or licensed to the Customer or its Affiliates (or their licensors) (**Customer IPR**). The Customer hereby grants a revocable, non-sublicensable (other than to Affiliates), non-transferable licence to Gill, its Affiliates and the Tech Provider to use the Customer IPR and the Customer Data for the purpose of providing the Services and performing any Order
- 8.5 The Customer hereby grants a perpetual, irrevocable licence to Gill and its Affiliates to use the Customer Data (in combination with the data gathered from other Gill customers), for training Gill's (and its Affiliates') data models and for providing industry insights and similar activities for the benefit of the Customer and/or Gill's other customers, provided always that at no time shall any Customer Data be disclosed or presented to any third party in a manner that would enable:
- (a) access to the underlying Customer Data itself; or
 - (b) identification of the Customer or of the fact that any Customer Data belonged or pertained to the Customer.
- 8.6 The Customer shall not do (nor authorise any third party to do) any act nor omit (nor authorise any other person to omit) to do any act which would or might reasonably be expected to invalidate or otherwise cause damage to or loss of any of Gill's Intellectual Property Rights or those of Gill's Affiliates, the Tech Provider or Gill's other licensors.
- 8.7 For the avoidance of doubt, ownership of any copies of the Documentation made by the Customer shall vest in Gill and/or the Tech Provider and the Customer hereby assigns (by way of present and future assignment) to Gill and/or to the Tech Provider all its right, title, interest and Intellectual Property Rights which it might otherwise hold or acquire in any such copies of the Documentation upon the creation of such copies.
- 8.8 The Customer must ensure that:
- (a) the Customer is permitted to provide the Customer Data to Gill and the Tech Provider for use in accordance with the Order and these Data Terms (including to disclose the Customer Data to any third-party suppliers used by Gill and the Tech Provider to provide the Services);
 - (b) the Customer Data does not infringe the rights of any third party, including any Intellectual Property Rights and third party's rights related to confidentiality, or any Applicable Data Protection Laws; and
 - (c) it has in place and has the right to use any hardware, communications links, equipment and software to

enable it to receive the Services (including as set out in the Documentation).

- 8.9 Notwithstanding any other provision of these Data Terms, Gill may, on its own behalf or at the request of the relevant Tech Provider, at any time and with as much prior notice as reasonably practicable, taking into account any notice periods that may be available under the relevant Tech Provider Terms, and without liability, remove, alter or disable access to any Services if Gill or the Tech Provider reasonably suspects that the relevant Customer Data have been provided, inputted or uploaded in breach of these Data Terms or of any law or regulation, or infringe or are likely to infringe the rights of any third party.
- 8.10 No party shall do (or authorise any third party to do) any act or omit (or authorise any other person to omit) to do any act which would or might reasonably be expected to invalidate or otherwise cause damage to or loss of any of the Intellectual Property Rights of the other party and each party shall do any act or sign any document necessary to give effect to the provisions of this section 8.

9. IPR INDEMNITY

- 9.1 Subject to the remainder of this section 9, each party to an Order (the **Indemnifying Party**) will indemnify the other party to an Order, where applicable (the **Indemnified Party**) against any claim made or brought against the Indemnified Party by any third party alleging that the Indemnified Party's use of any materials provided by the Indemnifying Party in connection with an Order infringe the Intellectual Property Rights of a third party (**IPR Claim**), provided that:

- (a) where Gill would otherwise be the Indemnifying Party:
 - (i) such IPR Claim has not arisen directly as a result of using or combining the Data Platform with any equipment, programs or materials not supplied by or on behalf of Gill or to the extent caused by third party software not supplied by or on behalf of Gill or in respect of which the Customer or its Affiliates have obtained a licence from a third party;
 - (ii) and where any IPR Claim relates to the Intellectual Property Rights in the Data Platform, Gill shall only be liable under the indemnity in this section 9.1 to the extent that Gill is itself so indemnified and successfully claims under such indemnification from the Tech Provider under the Tech Provider Terms;
- (b) the Indemnifying Party's obligations and liability under this section 9.1 will be reduced proportionately to the extent that any act or omission of the Indemnified Party (including its Users, licensors or Affiliates) contributed to the relevant IPR Claim arising; and
- (c) the Indemnified Party:

- (i) promptly gives the Indemnifying Party written notice of the IPR Claim;
- (ii) makes no admission of liability nor agrees to settle or compromise any IPR Claim without the Indemnifying Party's explicit prior written consent;
- (iii) gives the Indemnifying Party sole control of the IPR Claim and any negotiations for settlement; and
- (iv) provides the Indemnifying Party with all reasonable assistance in connection with its handling of the IPR Claim, at the expense of the Indemnifying Party.

9.2 The Indemnifying Party shall have no obligation under section 9.1 to the extent that any alleged infringement arises from:

- (a) any customisation, development, extension, addition, enhancement, change, alteration, modification or amendment to the relevant materials, or attempt at doing so, other than by or behalf of the Indemnifying Party;
- (b) failure by the Indemnifying Party to operate or use the relevant materials in accordance with any relevant instructions, including those set out in these Data Terms, an Order, the relevant Tech Provider Terms or the Documentation; or
- (c) operation or use of the relevant materials by unauthorised persons.

9.3 The Indemnifying Party may, in its sole discretion:

- (a) modify or replace the infringing materials to make them non-infringing;
- (b) obtain for the Indemnified Party the right to continue using the infringing materials; or
- (c) if the Indemnifying Party is unable to do those things in sections 9.3(a) and 9.3(b) within a reasonable period of time in the circumstances using commercially reasonable endeavours, either party may terminate the relevant Order as it relates to the alleged infringing materials upon 30 days' notice and make a pro rata refund of any amounts already paid by the Customer, to the extent that those amounts were intended to apply to the period after such termination.

9.4 This section 8.109 (*IPR Indemnity*) sets out the Indemnified Party's sole and exclusive remedies for any third-party claims of infringement of Intellectual Property Rights by the Indemnifying Party in respect of any Order.

10. INFORMATION SECURITY

10.1 The parties agree that if Incidents are detected or discovered, each of them shall co-operate with the

other and with the relevant Tech Provider to mitigate the Incident.

10.2 The Customer shall promptly inform Gill if it suspects or uncovers any Incident and shall use reasonable endeavours to promptly mitigate such Incident.

10.3 The Customer shall respond without delay to all queries and requests for information from Gill about any Incident, in particular bearing in mind the extent of any reporting obligations Gill or the Tech Provider may have under applicable data protection or cybersecurity legislation.

10.4 Subject to section 11 (*Data Protection*), in the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Gill to cooperate with the relevant Tech Provider to restore the lost or damaged Customer Data from the latest backup of such Customer Data and Gill shall have no further responsibility or liability for any loss, destruction, alteration or unauthorised access to or disclosure of the Customer Data.

10.5 The Customer is solely responsible for its use of the Data Platform and the activities of its Users, and for the accuracy, integrity, legality, reliability and appropriateness of all Customer Data. Gill has no control over the Customer Data uploaded to the Data Platform by a Customer and its Users. The Customer Data shall remain strictly the Customer's responsibility and the Customer shall ensure that the uploading of such Customer Data complies with international data protection laws and regulations governing the international or cross-border transfer of information. Accordingly, the Customer agrees to indemnify Gill and its employees, agents, affiliates, officers, directors and licensors against any claims arising as a result of the Customer's breach thereof.

11. DATA PROTECTION

11.1 For the purposes of section 32 and this section 11, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach**, **special categories of personal data** and **processing** shall have the meaning given to them in the UK GDPR.

11.2 The Annex (*Data Processing Conditions*) to these Data Terms describes the subject matter, duration, nature and purpose of the processing and the personal data categories and data subject types which are relevant to the processing of personal data by both Gill and the Tech Provider under an Order.

11.3 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This section 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

11.4 For the purposes of Applicable Data Protection Laws:

- (a) the Customer shall act as controller of any Customer Personal Data; and

- (b) Gill shall process any Customer Personal Data as processor on behalf of the Customer; and
 - (c) the Tech Provider shall act as a subprocessor of any Customer Personal Data processed on the Data Platform.
- 11.5 Should the determination in section 11.4 change, the parties shall promptly enter into such additional contractual terms as are necessary to ensure that the processing of the Customer Personal Data pursuant to the relevant Order is in compliance with Applicable Data Protection Laws, which shall, in default of agreement between the parties as to the form of such additional contractual terms, be in a reasonable form provided by Gill which the parties shall promptly execute.
- 11.6 The Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of any Customer Personal Data to Gill and/or to the Tech Provider for the duration and purposes of the relevant Order and/or these Data Terms.
- 11.7 Without prejudice to section 11.3 above, in Gill's capacity as processor of the Customer Personal Data, Gill shall
- (a) process the Customer Personal Data only on the written instructions of the controller, which shall be to process such personal data for the purposes set out in the Annex (*Data Processing Descriptions*) to this Schedule unless the processor is required by Applicable Laws to process those personal data for additional purposes (**Purpose**). Where a party is relying on Applicable Laws as the basis for processing personal data, such party shall notify the controller of the same before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the processor from so notifying the controller on important grounds of public interest;
 - (b) implement appropriate technical and organisational security measures in accordance with Applicable Data Protection Laws which apply to a processor of personal data;
 - (c) ensure that any personnel engaged and authorised to access the Customer Personal Data are subject to contractual obligations of confidentiality or are under an appropriate regulatory, statutory or common law obligation of confidentiality;
 - (d) assist the controller as far as possible (taking into account the nature of the processing and the information and level of access available to the processor), and at the controller's cost and written request, in responding to any request from a data subject and in ensuring the controller's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the controller without undue delay on becoming aware of a personal data breach affecting any Customer Personal Data;
 - (f) at the written direction of the controller, delete or return any personal data and copies thereof to the controller on termination of the relevant Order unless the controller is required by Applicable Laws to continue to process that personal data. For the purposes of this section 11.7(f), personal data shall be considered deleted where it is put beyond further use by the processor; and
 - (g) maintain records to demonstrate its compliance with this section 11.7 and allow for reasonable audits by the controller's designated auditor, for this purpose, on reasonable written notice at the expense of the controller, provided that such audits may take place no more frequently than once in each period of 12 months from the date of execution of the relevant Order unless such audit relates to a material breach of these Data Terms which is substantiated by the Customer and which reasonably requires the conduct of an audit.
- 11.8 Where acting as processor of personal data under an Order, Gill shall, at the Customer's request, use reasonable endeavours to assist the Customer (being the controller of the relevant personal data) to comply with its obligations imposed under Applicable Data Protection Laws by or in relation to:
- (a) the rights of data subjects;
 - (b) assistance to a supervisory authority (including the United Kingdom's Information Commissioner's Office); and/or
 - (c) data protection impact assessments,
- provided that any such assistance shall be provided subject to a reasonable fee payable to the processor for the provision of such assistance.
- 11.9 The Customer, in its capacity as controller of the Customer Personal Data, provides its prior, general authorisation for Gill to:
- (a) appoint the Tech Provider as a subprocessor of the Customer Personal Data and for the Tech Provider to appoint or retain such processors as are required to provide the Data Platform;
 - (b) appoint each additional subprocessor listed in Part 2 of the Data Processing Annex to these Data Terms as a subprocessor of the Customer Personal Data and for each such subprocessor to appoint or retain such processors as are required to provide the Data Platform;
 - (c) appoint further subprocessors to process Customer Personal Data, provided that Gill:

(i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Gill in this section 11;

(ii) shall remain responsible for the acts and omissions of any such subprocessor as if they were the acts and omissions of Gill; and

(iii) shall inform the Customer of any intended changes concerning the addition or replacement of the subprocessors, thereby giving the Customer the opportunity to object to such changes, provided that if the Customer objects to the changes and cannot demonstrate, to Gill's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Laws, the Customer shall indemnify Gill for any losses, damages, costs (including legal fees) and expenses suffered by Gill in accommodating the objection.

(d) transfer Customer Personal Data outside of the UK, as required for the Purpose, provided that Gill shall ensure that all such transfers are implemented in accordance with Applicable Data Protection Laws. If necessary for the foregoing purposes the Customer agrees to enter into the international data transfer agreement issued by the Information Commissioner's Office (if the UK GDPR applies to the relevant transfer) or standard contractual clauses issued by the European Commission (if the EU GDPR applies to the relevant transfer).

11.10 Gill's liability for losses arising from breaches of this section 11 (*Data Protection*) is as set out in section 17 (*Limitation of Liability*) of these Data Terms.

12. BUSINESS CONTINUITY PLAN

Gill and the Customer agree to cooperate with each other in good faith during a Disaster Recovery Event, including acting reasonably in any decision to activate a business continuity plan.

13. AUDIT

Only to the extent that the Customer is subject to mandatory regulatory requirements imposed by the Customer's industry governing body, and such body (being of competent jurisdiction) imposes obligations on the Customer to ensure compliance by third-party service providers, such as Gill and/or the Tech Provider, Gill will, for its own part, use reasonable endeavours to facilitate the meeting of any such mandatory regulatory requirements specifically imposed by such regulatory bodies, provided such requirements are notified to Gill by the Customer in advance of execution of the relevant Order and do not contradict national or international laws to which Gill is subject, but Gill shall be under no obligation to procure any audit of a Tech Provider or such Tech

Provider's systems where such Tech Provider so refuses.

14. SUSPENSION

14.1 Gill is entitled, at its sole discretion, without incurring any liability to the Customer and without prejudice to its rights under any Order, to suspend all or parts of the Data Platform, including the accounts of any individual Users, immediately, where:

(a) an emergency situation exists or Gill or a Tech Provider are required to perform emergency maintenance or upgrades;

(b) there is suspected unauthorised third-party access to the Data Platform;

(c) any outstanding fees have not been paid in full within 30 days of their due date;

(d) Gill has reasonable grounds for suspecting that there has been fraudulent or illegal use of the Data Platform by the Customer or any User; or

(e) the Tech Provider suspends access to the Data Platform.

14.2 Subject to Gill providing as much prior notice as reasonably practicable in the relevant circumstances and such suspension being reasonably necessary to address the relevant situation, Gill is entitled, at its sole discretion, without incurring any liability to the Customer and without prejudice to its rights under any Order, to suspend all or parts of the Data Platform, including the accounts of any individual Users:

(a) to implement service changes, updates, upgrades or security patches to the Data Platform (which are not of an emergency nature);

(b) if Gill reasonably believes that the Customers, or any of the Customer's User's, use of the Data Platform is likely to adversely impact other customers, or their customers' end users', use of the Data Platform or the hosting environment;

(c) if Gill reasonably believes that suspension is required to comply with applicable law or any legal obligations to third parties;

(d) if the Tech Provider suspends its service to Gill;

(e) if Gill changes Tech Provider and, having given all reasonable endeavours to avoid a suspension, is required to suspend any Services temporarily pending deployment to a new Tech Provider;

(f) if Gill becomes aware of any actual or potential IPR Claim against the Customer;

(g) if the Customer is in breach of any Order (including the provisions of these Data Terms);

- (h) if the Data Platform, in Gill's reasonable opinion, is being misused by any third party (other than where fraudulent or illegal use of such Technology is suspected).

14.3 Any suspension or downtime resulting from Gill's rights under this section 14 shall be limited to the minimum extent necessary in the circumstances, as reasonably determined by Gill.

14.4 If the Customer's right to access or use any or all of the Data Platform is so suspended, through no fault of Gill or any Gill Affiliate, the Customer will remain responsible for all Fees relating to the Data Platform during the period of suspension.

15. CONFIDENTIALITY

15.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the Effective Date in connection with the supply of the Services, including but not limited to:

- (a) the terms of these Data Terms, any Order and the relevant Tech Provider Terms;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, plans, intentions or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (c) any information developed by the parties in the course of carrying out an Order and the parties agree that:
 - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Gill Confidential Information; and
 - (ii) Customer Data shall constitute Customer Confidential Information.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers (including, in the case of Gill, any Tech Provider).

15.2 The provisions of this section shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this section);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed.

15.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with an Order including as permitted under these Data Terms (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this section 15.

15.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this section.

15.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this section 15.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

15.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

15.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this section are granted to the other party, or to be implied from these Data Terms, any Order or any Tech Provider Terms.

15.8 On termination or expiry of an Order, each party shall:

- (a) destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- (b) erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
- (c) certify in writing to the other party that it has complied with the requirements of this section, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this section shall continue to apply to any such documents and materials retained by a recipient party.

15.9 No party shall make, or permit any person to make, any public announcement concerning any Order without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

15.10 Except as expressly stated in these Data Terms, no party makes any express or implied warranty or representation concerning its Confidential Information.

15.11 The above provisions of this section 10 shall continue to apply after termination or expiry of any Order.

16. MUTUAL WARRANTIES AND COVENANTS

Each of Gill and the Customer warrants to the other that:

16.1 as far as it is aware, no additional authorisation, consent, approval, filing or registration with any court or government department or commission, or agency or instrumentality is or will be necessary or required to enter into and give effect to its obligations under any Order;

16.2 it has in full force and effect the corporate authorisations necessary to authorise its execution, delivery and performance of any Order;

16.3 it (and its Affiliates) has the resources, experience and expertise to perform all of its obligations under any Order;

16.4 the obligations under any Order are valid, binding and enforceable against it; and

16.5 in its corporate capacity, no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place or to the knowledge of any of its officers, pending or threatened against it or any of its property which, if adversely determined, is likely to have a material adverse effect on its obligations to perform under any Order.

17. LIMITATION OF LIABILITY

17.1 Except as expressly and specifically provided in these Data Terms:

(a) the Customer assumes sole responsibility for results obtained from its use of the Services, and for conclusions drawn from such use, and Gill shall have no liability for any losses or damage caused by errors or omissions in any information, instructions or materials provided to Gill or the Tech Provider or inputted or uploaded to the Data Platform by the Customer in connection with the Services or for any actions taken by Gill at the Customer's direction; and

(b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these Data Terms and the Services are provided to the Customer on an "as is" and "as available" basis.

17.2 Where the Customer incurs any losses, damages or costs of any kind whatsoever as a result of: (i) a lack of availability or uptime of the Data Platform; or (ii) loss or corruption of Customer Data on or caused by the Data Platform, in each case as opposed to as a result of any direct act or omission of Gill, Gill shall only be liable to the Customer to the extent Gill, acting reasonably, actually recovers any compensatory damages from the Tech Provider in relation to the same incident or series of incidents and Gill's liability shall be excluded to the maximum extent permitted by law in relation to any claims for damages, costs or losses of any kind for any amounts in excess of any sum Gill actually so recovers.

17.3 Where the Customer incurs any losses, damages or costs of any kind whatsoever as a result of any defect, issue or fault of any kind with the Data Platform, access to the Support Services shall be the Customer's sole and exclusive remedy.

17.4 Where Gill provides Demo Access to one of its distributors, such provision shall be made on an "as is" and "as available" basis only and, to the maximum extent permitted by law, without any warranties (express or implied) and with no liability to the Customer (being the relevant distributor) for any losses, damages, costs or fines of any nature

whatsoever. The Customer acknowledges and accepts that such exclusion of liability by Gill is wholly reasonable in the context of any Demo Access.

17.5 Subject to the other provisions of this section 17:

(a) Gill shall not be liable whether in tort (including for negligence or breach of statutory duty), in contract, for misrepresentation or restitution, in relation to any data protection or cybersecurity breach or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, pure economic loss or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising in connection with any Order; and

(b) Gill's total aggregate liability in contract (including in respect of all indemnities set out in these Data Terms), in tort (including negligence or breach of statutory duty), for misrepresentation or restitution, in relation to any data protection or cybersecurity breach or otherwise, arising in connection with any Order, shall be limited, in the aggregate, to the total Fees paid by the Customer during the 12 months immediately preceding the date on which the claim arose (less any amounts previously successfully claimed by the other party in relation to the same Order).

17.6 Nothing in these Data Terms, nor in any Order, excludes the liability of the Customer for any breach, infringement or misappropriation of Intellectual Property Rights of Gill or any Tech Provider.

17.7 Nothing in this Agreement limits liability which cannot be limited under law, including, where relevant:

- (a) fraud or fraudulent misrepresentation;
- (b) death or bodily injury arising as a result of the negligence of Gill or its individual representatives.

17.8 Nothing in these Data Terms limits the Customer's liability to pay any Fees payable under any Order.

17.9 The limitations of liability in this section 17 have effect in relation both to any liability expressly provided for under these Data Terms, any Order and to any liability arising by reason of the invalidity or unenforceability of any provision thereof.

17.10 To the extent permitted by law, in the case of contributory negligence, the liability of either party will be apportioned proportionately with any other party by the extent, if any, to which the acts or omissions of or on behalf of the first party (including those of any of their Affiliates, licensors or personnel) caused or contributed to the relevant loss or damage suffered or incurred.

17.11 Gill shall not have any responsibility or liability for:

- (a) any defect, failure or other deficiency to the extent caused by or contributed to by use of the Data Platform in conjunction with any equipment,

configuration, network or environment exceeding or otherwise inconsistent with the relevant Documentation; or

- (b) any of Gill's breaches, delays or failures to perform any obligations under these Data Terms or any Order to the extent caused by the Customer's breach, delay or failure to perform any of the Customer's obligations under these Data Terms or any Order.

17.12 The parties acknowledge that the provisions of this section 17 are fair and reasonable and recognise the respective sizes of the parties, the nature of the Data Platform and Services delivered and each party's ability to insure or take action against losses in the event of any liability.

17.13 If any exclusion, limitation, disclaimer or other provision in this section 17 is held to be invalid for any reason by a court of competent jurisdiction and Gill becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort or otherwise will not exceed £1,000 in any circumstances.

17.14 The parties acknowledge that any breach of their obligations in respect of the other party's Intellectual Property Rights or Confidential Information pursuant to this Agreement may not be adequately compensated by money damages alone and therefore each party shall be entitled without proof of special damage, in addition to any other right or remedy available to it (including an action for damages), to seek the remedies of injunction, specific performance and other equitable relief for any actual, threatened or potential breach.

17.15 The parties agree that the provision of the Services under any Order constitutes a supply of services, not a supply of goods, given the nature of the Data Platform, in particular the fact that the Data Platform is deployed via cloud computing from the Tech Provider's environment.

18. TERMINATION

18.1 Without affecting any other right or remedy available to it, either party may terminate any Order with immediate effect by giving written notice to the other party if:

- (a) the other party suffers an Insolvency Event;
- (b) the other party fails to pay any amount due under the relevant Order on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;
- (c) the other party commits a material breach of any other term of the relevant Order and (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so; or

- (d) the Tech Provider terminates its agreement with Gill to supply the Data Platform.

18.2 Gill may terminate any Order (in whole or in part) immediately by providing notice in writing to the Customer where the Customer commits a non-trivial infringement, or permits or facilitates any third party to commit a non-trivial infringement, of Gill's or its licensors' Intellectual Property Rights (and, by way of example, an accidental misuse of Gill's logo or branding would be considered a trivial infringement of Gill's Intellectual Property Rights for the purposes of this section), which shall be considered breaches of the relevant Order by the Customer, and, prior to exercising any such right to terminate, Gill shall be entitled (in its sole discretion) to suspend the relevant Services pending its final decision to terminate.

18.3 Either party may terminate an Order before commencement of a Renewal Period by giving notice in writing to the other party not less than 30 days prior to the end of the Initial Term or the current Renewal Period, with such termination to take effect at the end of such Initial Term or Renewal Period.

18.4 On termination of any Order for any reason:

- (a) all licences granted under any Order shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) Gill may destroy or otherwise dispose of any of the Customer Data in its possession unless Gill receives, no later than ten days after the effective date of the termination of any Order, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Gill shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Gill in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of any Order which existed at or before the date of termination shall not be affected or prejudiced.

19. FORCE MAJEURE

Neither party shall be in breach of any Order nor liable for delay in performing, or failure to perform, any of its obligations under any Order if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, Internet failures, computer viruses, cyber-attacks,

telecommunications or any other equipment failures, electrical power failures, strikes, labour disputes, riots, insurrections, quarantine lockdowns, civil disturbances, shortages of labour or materials, fires, flood, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals or non-performance by third parties. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for six weeks, the party not affected may terminate these Data Terms by giving 30 days' written notice to the affected party.

20. VARIATION

No variation of these Data Terms or of any Order shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. WAIVER

21.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

21.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

22. RIGHTS AND REMEDIES

Except as expressly provided in any Order, the rights and remedies provided under any Order are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

23.1 If any provision or part-provision of any Order, including these Data Terms, is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of any Order.

23.2 If any provision or part-provision of any Order, including these Data Terms, is deemed deleted under section 23.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. ENTIRE AGREEMENT

24.1 Each Order and Summary of Work, including these Data Terms, constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

24.2 Each party acknowledges that in entering into any Order, including these Data Terms, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in any Order, including these Data Terms.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in any Order, including these Data Terms.

24.4 Nothing in this section shall limit or exclude any liability for fraud.

25. ASSIGNMENT

25.1 The Customer shall not, without the prior written consent of Gill, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under any Order, including these Data Terms.

25.2 Gill may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under any Order, including these Data Terms.

26. NO PARTNERSHIP OR AGENCY

Nothing in any Order, including these Data Terms, is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

27. THIRD PARTY RIGHTS

No Order, including these Data Terms, confers any rights on any person or party (other than the parties to these Data Terms and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. NOTICES

28.1 Any notice given to a party under or in connection with any Order, including these Data Terms, shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to an address used by the relevant party in the ordinary course.

28.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside 9.00 am – 6.00 pm on any Business Day (**Business Hours**) in the place of receipt, when Business Hours resume.

28.3 This section does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29. DISPUTE RESOLUTION

29.1 If a dispute arises under or in connection with any Order, including these Data Terms, including any dispute arising out of any amount due to a party and any question regarding the existence, validity or termination of any Order, including these Data Terms, (**Dispute**), then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this section 29 (**Dispute Notice**).

29.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):

- (a) appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this Agreement (**Designated Representative**); and
- (b) notify the other party of the name and contact information of its Designated Representative.

29.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable.

29.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, the parties shall next seek settlement of the Dispute by mediation in accordance with the LCIA Mediation Rules issued by the London Court of International Arbitration (**LCIA**), which rules are deemed to be incorporated by reference into this clause (**Mediation**).

29.5 If the Dispute is not settled by Mediation, as prescribed under clause 29.4, within 180 days of the commencement of the Mediation, or such further period as the parties shall agree in writing, the Dispute shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules, issued by the LCIA, which rules are deemed to be incorporated by reference into this clause (**Arbitration**).

29.6 In any Arbitration commenced pursuant to this clause:

- (a) the number of arbitrators shall be one; and
- (b) the seat, or legal place, of arbitration shall be London, United Kingdom.

29.7 The language to be used in any Mediation or Arbitration required by this clause shall be English.

30. GOVERNING LAW

Each Order (including these Data Terms) and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

31. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with any Order or its subject matter or formation (including non-contractual disputes or claims).

32. INTERPRETATION

32.1 The definitions and rules of interpretation in this section apply in these Data Terms and in any Order.

Affiliate means any "subsidiary" or "subsidiary undertaking" of the relevant party, any "holding company" of the relevant party, and any "subsidiary" or "subsidiary undertaking" of such "holding company" (as those terms are defined in sections 1159 and 1162 of the Companies Act 2006).

Applicable Laws means:

- (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom; and
- (b) to the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which Gill is subject.

Applicable Data Protection Laws means all laws and regulations which apply to the processing of the Customer Personal Data, including:

(c) where the processing is subject to the UK GDPR:

- (i) the UK GDPR, the Data Protection Act 2018, and any other national laws, regulations, secondary legislation, and binding codes of practice in the United Kingdom, as amended or replaced from time to time, which, in each case, apply to the processing of the Customer Personal Data; and

(d) to the extent the EU GDPR applies:

- (i) the EU GDPR, and the laws and regulations of the European Union or the relevant member state of the European Union to which Gill is subject which, in each case, apply to the processing of the Customer Personal Data.

Administrators means those employees, agents and independent contractors of the Customer who are authorised by the Customer to administer the Services on behalf of the Customer, which shall include changing certain Device attributes, inhibiting a Device's alarms, accessing Support Services and reporting Incidents.

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours means 9am to 4.30pm (in the United Kingdom) on Business Days.

Commissioner means the United Kingdom Information Commissioner or any replacement authority from time to time.

Confidential Information means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in section 15 (*Confidentiality*).

Contract Year means each period of 12 months, with the first such period starting on the Effective Date.

Customer means any person who enters into an Order with Gill.

Customer Data means the data or documents owned by or licensed to the Customer or its Affiliates (including the Customer Personal Data) created by, inputted or uploaded to the Data Platform by the Customer, its Users or Gill (on the Customer's behalf) for the purpose of the Customer's use of the Services, including any and all data created or collected by Devices.

Customer Personal Data means any personal data owned by, controlled by, or processed by the

Customer which Gill processes on behalf of the Customer pursuant to an Order and/or these Data Terms.

Data Platform means the Customer's instance of the cloud-based data analytics platform made available by Gill to its customers from time to time.

Demo Access has the meaning given to it in section 3.5.

Devices means any devices owned by the Customer or licensed to the Customer (from Gill, its Affiliates or third parties) that gather data and transmit such data into the Data Platform.

Documentation means the documents, videos and other information made available to the Customer by Gill (or the relevant Tech Provider) online via such web addresses as shall be notified by Gill to the Customer from time to time which set out a description of the Services and user instructions for the Data Platform, further details of which may be included in the relevant Order.

Effective Date means the date referred to as the "Start Date" in the relevant Order.

End Users means those employees, agents and independent contractors of the Customer who are authorised by the Customer to access the Data Platform to perform standard tasks such as viewing dashboards, device telemetry data and attributes and alarms but who do not have any of the other rights of use or administration granted to an Administrator.

EU GDPR has the meaning given to it in section 3(10A) of the Data Protection Act 2018.

Fees means all fees payable by the Customer to Gill as set out in the relevant Order.

Functionality means the software functionality of the Data Platform that is made available to the Customer as may be further described in the relevant Order.

Gill Data means any documents, know-how, intellectual property, data, information or other materials owned (or licensed) by Gill or its Affiliates which are inputted or uploaded to the Data Platform or otherwise made available to the Customer by or on behalf of Gill or its Affiliates, including any developments, customisations or configurations of the Data Platform.

Heightened Cybersecurity Requirements means any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, which are applicable to either the Customer or a User relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive (EU) 2016/1148, Commission Implementing Regulation (EU) 2018/151 or the Network and Information

Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Incident means any Vulnerability, Virus or security incident which may affect the information technology assets of either party or of a Tech Provider.

Initial Fee means the amount payable as the initial payment in any Order.

Initial Term means the initial contract period set out in an Order, typically 12 months.

Insolvency Event means, in relation to the other party to these Data Terms, that:

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (c) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in section 32.1(a) to (h) (inclusive);
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of any Order is in jeopardy.

IPR Claim has the meaning given to it in Section 9.1.

Licence means the licence to use and access the Services granted under section 3 of these Data Terms, as amended pursuant to any additional terms or restrictions in a relevant Order.

Maintenance Windows means periods of time during which Gill or a Tech Provider may perform preventative maintenance, patches, upgrades and updates to the Data Platform.

Order means a contract, however formed, between any person and Gill, under which Gill agrees to provide the Services, which contract shall incorporate these Data Terms.

Purpose the purpose for which the Customer Personal Data is processed, as set out in section 11.7(a) of these Data Terms.

Renewal Period means a rolling extension period of the term of an Order.

Scope of Services means the scope of the Customer's Licence and access to the Data Platform, as set out in the Order, including the number of Users, number of Devices and any specified data rates.

Services means the provision of the Data Platform (including the related Documentation) and the related Support Services by Gill to a Customer pursuant to an Order.

Service Term has the meaning given to it in section 2 of these Data Terms.

Support Services has the meaning given to it in section 4.3.

Tech Provider means any third-party original supplier of the Data Platform or any component of the Data Platform.

Tech Provider Terms means any terms of business issued by a Tech Provider for supplying the Data Platform to Gill or its Affiliates.

UK GDPR has the meaning given to it in section 3(10) of the Data Protection Act 2018.

User means an Administrator or an End User (and **Users** means all Administrators and all End Users).

Virus means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability of the same, and the term Vulnerabilities shall be interpreted accordingly.

- 32.2 Section, schedule and paragraph headings shall not affect the interpretation of these Data Terms.
- 32.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 32.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 32.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 32.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 32.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date and shall include all subordinate legislation made as at the Effective Date.
- 32.8 A reference to **writing** or **written** excludes fax but not email.
- 32.9 References to sections and schedules are to the sections and schedules of these Data Terms.

Data Processing Annex

Part 1 - Data Processing Descriptions

Scope and subject matter of the processing	The scope and subject of the processing shall be Gill's provision, and the Customer's receipt, of the Services, as further specified in the relevant Order.
Duration of the processing	The processing shall continue until the Services are terminated in accordance with the terms of the relevant Order. Both Gill and the Customer may process personal data after termination of the relevant Order only in accordance with the terms of the relevant Order and these Data Terms.
Nature and purpose of the processing	Processing is undertaken by Gill in connection with the provision of the Services to the Customer.
Personal data categories of Customer Personal Data	The following types of personal data shall form part of the Customer Personal Data to be processed by Gill (and the relevant Tech Provider) relating to personnel of a Customer or its stakeholders, suppliers, customers and other counterparties: name; address; email address; phone numbers; and employer.
Data subject types	The likely data subject types for Customer Personal Data are employees, directors, officers, agents, shareholders, stakeholders, customers, suppliers and counterparties of the Customer.

Part 2 – Approved Subprocessors

Subprocessor	Server Location	Headquarters	Role / Activities
ThingsBoard, Inc. ("Tech Provider")	EEA	USA	Cloud-based IoT data platform provider. The "Tech Provider" as referenced in these Data Terms.
Typeform SL	EEA	EEA	Customer onboarding workflow provider
Zapier, Inc.	EEA	USA	Provider of integrations between onboarding workflows and IoT data platform
Sendinblue t/a "Brevo"	EEA	EEA	Automated email communications