



MARKET RESPONSE

General Terms and Conditions

These general terms and conditions describe the conditions under which MarketResponse delivers services and solutions and can be downloaded [here](#).

MarketResponse offers consulting and marketing services and develops data driven, creative content and campaigns. MarketResponse collects, collates and analyses data. MarketResponse grants software licenses, subscription services and remoted managed services to use the data, deliverables and work products. These Terms and Condition applies to all offerings. Some chapters apply only to the services and or usage rights a client uses.

1. Definitions

- 1.1 The definitions as defined in [Addendum 1](#) are used in the Terms and Conditions, an Addendum and/or an Order Form. MarketResponse may define additional terms in an Order Form or Addendum.

2. Legal framework

- 2.1 **Applicability.** These Terms and Conditions apply to all offers, orders, requests for Services and to all Order Forms and/or Agreements concluded or to be concluded between Parties, unless one or more of the provisions are explicitly deviated from in writing. Client's generally applied purchase or other conditions do not apply to any legal relationship between the Parties. In the event that these Terms and Conditions have once applied to a legal relationship between MarketResponse and Client, Client shall be deemed to have agreed in advance to the applicability of these Terms and Conditions to Order Forms and/or Agreements concluded and/or to be concluded thereafter.
- 2.2 **Third Party terms.** If the System and/or Services include any Third Party Software and/or Third Party Services, the terms used by this third parties are applicable to the Service.
- 2.3 **Amendments.** MarketResponse reserves the right to unilaterally amend these Terms and Conditions. The amended Terms and Conditions enter into force at the time they are published on the website of MarketResponse and are applicable to the Service from that time. MarketResponse will provide Client with written notice of the change with reference and link to the Terms and Conditions on the website.
- 2.4 **Agreement.** The Agreement is established when the Order Form is entered into in writing between Parties, or MarketResponse has begun performance of the Services with Client's knowledge or Client starts using Services or has access to Services. MarketResponse's records shall serve as full evidence to Client of the (conclusion of the) Agreement, subject to proof to the contrary provided by Client.

3. Services

- 3.1 MarketResponse shall perform the Services in a professional manner and in accordance with best industry practice. In addition, the following services are subject to the following supplements;
 - 3.1.1 **Consulting Services.** MarketResponse conducts Consulting Services in compliance with the standard for market opinion and social/data science and in accordance with applicable provisions of international code(s) of conduct. Consulting Services may also include making available or provide Deliverables and/or Data. Consulting Services do not include continued support or maintenance of any Work Product, unless such continued support or maintenance is detailed in the Order Form. MarketResponse will provide the

Consulting Services on either a Fixed Price basis or on a Time and Materials basis as described in the Order Form.

- 3.1.2 **Marketing Services.** MarketResponse shall perform and if applicable provide the Deliverables to Client as set out in the Order Form. MarketResponse creates a status report of relevant contacts with Client with respect to the Marketing Services. If the Client has not responded to the content of the status report within four (4) working days of it being sent, its contents shall be deemed correct and complete and the Parties shall be bound by its contents.
- 3.1.3 **Subscription Services.** During the Term, the Subscription Services includes access to a System containing Software and other technology installed in a MarketResponse managed (cloud) environment. Client must procure a separate subscription for each instance of the Subscriptions Service that Client accesses.
- 3.1.4 **Remote Managed Services.** During the Term, MarketResponse will perform Remote Managed Services described in the Order Form on business days for the Client environment(s) listed on the Order Form. Remote Managed Services do not include support of the System or any other Client or third party related infrastructure or services. MarketResponse will perform all Remote Managed Services remotely utilizing global resources.
- 3.1.5 **Hosted Managed Services.** During the term, MarketResponse will perform Hosted Managed Services that include provision of (a) the Software deployed within the System in a MarketResponse managed (cloud) environment, and (b) the managed service which include, but are not limited to the provision, installation, management, monitoring, security and support of the hosted environment.
- 3.2 **Changes.** For any change to the scope of Services or the assumptions set forth in the Order Form, MarketResponse will prepare a written change order describing: (a) the changes; (b) the impact of the changes on the Services and the project schedule; (c) the estimated timetable; and (d) any additional Fees and cost. Client will respond in writing to a change order within five (5) business days. If the change requires payment of additional Fees, MarketResponse will provide a proposed amendment to the Order Form. Until Parties mutually agree on the change order and sign an amendment, if required, MarketResponse may continue to perform the Services according to the change to the scope of the Services and if Services are performed that are not set forth in the Order Form, such services will be deemed to have been performed under separate Order Forms. These Order Forms are also and fully subject to the provisions of these Terms and Conditions and these Services will be paid for by Client to MarketResponse in accordance with MarketResponse's usual Fees.
- 3.3 **Acceptance Deliverable.** Client will accept or reject a Deliverable within ten (10) business days of delivery. If Client does not reject a Deliverable within this timeframe, the Deliverable is deemed to have been accepted. Client must notify MarketResponse in writing to reject a Deliverable and must specify the nature and scope of the deficiencies. If the Order Form does not specify any Deliverables, then the Services are deemed accepted as they are performed. If Client rejects a Deliverable, Parties will use reasonable efforts to follow these timeframes. Within five (5) business days after receipt of the rejection note, MarketResponse will either correct the deficiencies or propose the manner and timeframe for correcting the deficiencies. Client will accept or reject any proposal from MarketResponse for correcting any deficiencies within five (5) business days after receipt of MarketResponse's proposal. Client will accept or reject the corrected Deliverable within five (5) business days of MarketResponse's delivery. If Client rejects MarketResponse's proposal for correcting any deficiencies or rejects the corrected Deliverable, MarketResponse may terminate the Agreement for the Services and refund the Fees paid for the Deliverable. In such event, Client will delete or destroy the Deliverable. MarketResponse is not obliged to further compensation.
- 3.4 **Phases.** If it has been agreed that the Service will be performed in phases, MarketResponse will be entitled to postpone the start of the Service that belongs to a subsequent phase until Client has accepted, in writing, the Deliverables and/or Data of the preceding phase and all payments of Fees due have been made.
- 3.5 **Subcontracting.** MarketResponse may subcontract its performances under the Agreement. The costs will be charged to Client.

3.6 **Security.** MarketResponse will employ reasonable security measures designed to: (i) protect the System against unauthorized access, usage, or other threats; and (ii) protect Confidential Information. Except as expressly specified in the Agreement MarketResponse does not represent or guarantee that the System complies with any applicable laws or regulations that impose specific data security obligations for the storage or processing of Client Materials and/or Data. Client is solely responsible for determining the suitability of the System in light of any such applicable laws or regulations.

4. Intellectual Property

4.1 **No transfer of ownership.** The Agreement does not transfer any ownership rights and/or Intellectual Property Rights. MarketResponse and its licensors retain these rights to the Services, Deliverables, Software, Data, Documentation, Work Product, Confidential Information, source code, and any techniques, skills, data, concepts or know-how MarketResponse utilizes or develops while performing the Agreement. Client and Users will not remove any copyright or Intellectual Proprietary Rights notice from any Offerings. Client retains ownership to Client Materials.

4.2 **Source code.** The source code of the Software is a Trade Secret of MarketResponse. Client and Users will not access source code or attempt to reverse engineer, reverse assemble or decompile the Software or System.

4.3 **Naming.** MarketResponse shall at all times have the right to mention its name (or have its name mentioned) or remove its name (or have its name removed) with reproduction, communication to the public or distribution of Offerings.

5. Technical Support and Transmission

5.1 **General.** Technical support for the Software or System or for the transmission of Data is included during the Term as documented in MarketResponse's technical support policies, which may be updated from time to time and which policies are set out in the service level agreements for those services, which will be attached as Addendum to an Order Form and form part of the Agreement. These Services do not include support of the infrastructure or services of Client or third party. Client may obtain additional support services from MarketResponse by executing an Order Form and paying additional Fees to MarketResponse.

5.2 **Transmission.** Data is made available to Client via Software and/or the System or is transmitted via MarketResponse's secure transmission environment, unless otherwise agreed by Parties by Order Form. MarketResponse is not responsible for the consequences of the transmission or transporting of Data and/or Deliverables on the instructions of the Client.

5.3 New releases/versions.

5.3.1 *Software/System.* Technical support also includes access to all new releases, updates, bug-fixes, security patches and other corrective code that MarketResponse makes generally available. Client agrees to use reasonable efforts to install such content for Software not hosted by MarketResponse. If Client chooses not to install current release of the Software or instructs MarketResponse not to install the current release of the Software in a System, the level of technical support will diminish over time. During ongoing development, MarketResponse may rename Services or add, change or delete individual components or functionality.

5.3.2 *Data.* MarketResponse makes best efforts to keep the Data accurate and access or usage rights for Data includes access to up to date versions of the Data.

5.4 **Client contacts and notification.** Client must establish knowledgeable technical contacts who are qualified to provide MarketResponse with information necessary for MarketResponse to diagnose and remedy any problems. When requesting technical support, Client will notify MarketResponse of any modifications to the Software or System not made by MarketResponse. Failure to comply with these terms may result in longer response and resolution time.

6. License

- 6.1 This section describes the standard usage or access rights for Offerings. The Order Form may contain additional or different usage or access rights.
- 6.1.1 *MarketResponse Hosted Service.* For any MarketResponse Hosted Service, Client may access the System during the Term. MarketResponse may require Users to register for a profile in order to obtain access to the System.
- 6.1.2 *Software.* For any Software Offering installed outside of a System, MarketResponse grants Client a license to use the Software during the Term.
- 6.1.3 *Work Product.* If the Offering includes Work Product, MarketResponse grants Client a royalty-free license to use the Work Product during the Term. If the Work Product relates to Software or a System, Client will use the Work Product only in connection with the applicable Software or System and during the Term of the Agreement for the Software or System.
- 6.1.4 *Deliverables.* If the Offering includes Deliverables, with the exception of Data, MarketResponse grants Client a royalty-free license to distribute and communicate to the public the rights deriving from the Deliverables under the condition precedent that all Fees, taxes, costs and expenses have been paid. This licence shall only relate to the Intellectual Property Rights of MarketResponse deriving from the part of the Deliverable that MarketResponse itself has created. In case of rights deriving from result of Third Party Services and/or Third Party Software in (parts of) the Deliverables, including fonts, software, house style elements, press publication, (moving) image and audio acquisition, MarketResponse shall indicate the owner of these rights to Client. Client is responsible for acquiring or lawfully using these rights. MarketResponse is entitled to use (parts of) the Deliverables reasonably for its own publicity, acquisition of orders and promotion.
- 6.1.5 *Data.* MarketResponse grants Client a royalty-free license to extract and to review the Data which MarketResponse has made available to Client on the basis of the Order Form during the Term, unless otherwise use is explicitly agreed between Parties by Order Form. The use of the Data may be subject to further terms of use which may be amended by MarketResponse from time to time.
- 6.2 **Users.** This permitted use described in this section 6 extend to Users. The Order Form specifies the number of Users that may access the System.
- 6.3 **Limitation.** Client will only use the Offering described in this section 6 for the agreed purpose as agreed between Parties by the Agreement and solely in its own operations and for the benefit of its own operations in the Territory. If the Clients operates in more than one country, then Client Related Entities may also benefit from this use. All license grants and usage rights are non-exclusive, non-assignable and non-transferable. Client has no right to grant sublicenses, unless otherwise explicitly agreed to between Parties in writing under the condition that the Terms and Conditions shall apply in full to the legal relationship between Client and his (sub)licensee. For every deviation from the agreed use established by MarketResponse, Client will owe an additional (usage) fee, based on the nature and extent of the additional or non-agreed use.
- 6.4 **Restrictions.** Client will not use any Offering or Documentation to (a) bring an intellectual property infringement claim against MarketResponse; or (b) create or assist a third party in creating an offering that competes with MarketResponse. Client may use any Documentation only to support Client's use of the Software.
- 6.5 **Login Code.** When MarketResponse receives the Fee for the Services for each Term, MarketResponse will provide Client with a Login Code valid for that Term. Client may need to apply for a new Login Code for changes to the Authorized Environment, operating system or Software version. MarketResponse is not required to provide the Login Code if Client is in breach of the Agreement or has not paid any undisputed Fees for the Software. Client will notify MarketResponse immediately upon becoming aware of any loss or theft of their password or Login Code or any authorized use of the password or Login Code and Client should immediately take effective measures to prevent or to terminate the unauthorised use of the Services.

6.6 **Authorized Environment.** The Authorized Environment and any back –up environment must be controlled by Client or its Client Related Entity, employees or contractors, including third party cloud providers. Client will notify MarketResponse of changes to the Authorized Environment. Some Software is not available for use on all types of Authorized Environments.

6.7 **Upgrades.** Client must contact MarketResponse to change any factor impacting applicable usage or access rights. These changes may result in additional Fees calculated and invoiced based on the date of change.

7. Term

7.1 **Term.** The Agreement is effective upon the last date of signature of acceptance of the Order Form and will remain in effect for the Term.

7.2 **Renewal.** The Parties may agree to renew the Services for additional period(s). Unless otherwise set for in the Agreement, renewal is accomplished by MarketResponse sending an invoice for the applicable Fee and Client paying the invoice.

7.3 **Multi-period initial term.** The Order Form may specify a multi-period term consisting of multiple Option Periods and will set forth a payment schedule under which the multi-period Fee is paid upfront or on an installment basis. The multi-period term may consist of Committed Periods and/or subsequent Option Periods. Client will pay the Fee for the Committed Periods even if Client discontinue its use of the Service or the use of the Software prior to the expiration of the Committed Periods. However, either Party may terminate the Agreement for cause according to the *Termination* section 11.

8. Client's Responsibilities

8.1 Client will:

8.1.1 *Consulting- and Marketing Services.*

- (a) provides accurate information and access to Client personnel required for MarketResponse to perform the Services;
- (b) verify the accuracy of its Client Materials while using the Consulting - and Marketing Services;
- (c) review any Work Product and Deliverables as MarketResponse reasonably requests;
- (d) comply with the terms and conditions of use provided by MarketResponse and will follow MarketResponse's reasonable instructions with respect to the Services, including but not limited to specific instructions around processing Personal Data contained in the Data.
- (e) use the recent versions of Data and Software made available by MarketResponse.
- (f) inform all Users of the relevant terms of the Agreement and be responsible for their adherence to such terms;
- (g) back up all systems, data or software that MarketResponse will access when performing the Consulting - and Marketing Services and duplicate, document and protect all data and software Client uses with these Services;
- (h) implement reasonable measures to prevent MarketResponse's inadvertent access to any Confidential Information not necessary for MarketResponse's performance of the Consulting- and Marketing Services;
- (i) make available facilities and equipment reasonably required for MarketResponse to perform any on-site Consulting - and Marketing Services;
- (j) provide and use a Client Tool to limit and control MarketResponse's access to the system and data required for MarketResponse to perform the Consulting - and Marketing Services;

8.1.2 *MarketResponse Hosted Services.* For MarketResponse Hosted Services Client will:

- (a) assume responsibility for any damages resulting from Client's decision to continue running a prior version of the Software in the System that MarketResponse has informed Client is no longer eligible for MarketResponse's standard technical support;
 - (b) inform all Users of the relevant terms of the Agreement and be responsible for their adherence to such terms;
 - (c) keep records of where any Software is installed and used;
 - (d) keep records of the extent of usage of the Software or System relative to the usage rights and provide a copy of such records to MarketResponse upon request;
 - (e) designate a single delivery contact for Login Codes;
 - (f) use the Services consistent with the Term and Conditions.
- 8.1.3 *Subscription Service.* Client is responsible for:
- (a) Client's infrastructure, including communication links and any other technology or hardware required for the System to operate properly between Client and MarketResponse;
 - (b) the security of access credentials, where under the Login Code, including ensuring only authorized Users have access to the System or their respective passwords; and
 - (c) any virus Client introduces into the System through Client Materials or otherwise.
- 8.1.4 *Remote Managed Services.* In case of Remote Managed Services Client will make the following available to MarketResponse at no charge:
- (a) systems, facilities, personnel, equipment and necessary security measures to support the Software as defined in specifications that MarketResponse provides; and
 - (b) an appropriate MarketResponse-approved system access method that enables MarketResponse to access the system of Client to perform remote managed Services.
 - (c) Client will grant MarketResponse remote access to its system as needed for utilizing the MarketResponse preferred secure connectivity toolset to enable MarketResponse to perform Remoted managed Services.
- 8.2 **Failure or delay.** MarketResponse is not liable for any performance delay caused by Client's failure or delay to perform these responsibilities as mentioned in this section 8.
- 8.3 **Prohibited activities.** Client and Users will not use the System or Software to: (i) send spam or other unsolicited marketing or communications; (ii) infringe on any party's intellectual property or privacy rights; (iii) send or store harassing, abusive, libellous, or obscene materials; (iv) falsify or delete transmission information; (v) misuse or abuse passwords, Confidential Information, the Software, other software, equipment, networks or network devices of MarketResponse or any third party; (vi) download the Software, other software, or, Data or data other than the Client Materials made available by MarketResponse; (vii) impair the functionality of the System; (viii) perform, or cause to be performed, any external penetration or security testing of the System; (ix) violate any applicable laws or regulations; or (x) violate the rules of any other service provider engaged by or for the benefit of Client.
- 8.4 Users will not use any open source software in connection with the System or Software if the license to the open source software requires that any part of the System or Software be disclosed or distributed in source code form, made available free of charge, or modifiable without restriction. Client will promptly notify MarketResponse and use best efforts to remedy any violations of this section by Users.
- 8.5 MarketResponse may suspend access to the System or use of the Software if Client violates these sections 8.3 and 8.4.

9. Client Materials

- 9.1 **License.** MarketResponse may use and Client grants hereby to MarketResponse an irrevocable, perpetual, transferable license to use any feedback and any Client Materials related to any Services in any format and any ideas, concepts, know how, formulas, designs, improvements, inventions, techniques or processes contained in that feedback and/or Client Materials.
- 9.2 **Data classification forms.** Before providing any Client Materials to MarketResponse, Client will complete any data classification forms that MarketResponse requests. Client will only transmit Client Materials to MarketResponse using MarketResponse approved methods.
- 9.3 **Format.** Client's failure to provide any required Client Materials in a mutually agreed upon format and timeframe, and in a usable condition, may delay MarketResponse's performance of the Agreement. The Parties will manage any resulting schedule changes through a change control process according to section 3.2, and additional Fees may apply.
- 9.4 Client is responsible for: (i) the integrity of the Client Materials; (ii) backing up the Client Materials, and (iii) mitigating the risks inherent in storing or transmitting the Client Materials through the System, including the risk of data loss.
- 9.5 **Infected files.** Client shall be obliged to inform MarketResponse without delay as soon as it becomes aware of any infected files that it has shared with or transferred to MarketResponse and/or data and systems to which MarketResponse's Data and/or Systems are exposed in connection with the Agreement.
- 9.6 **Exclusion.** MarketResponse's warranties, indemnities and technical support set forth in the Agreement and these Terms and Conditions do not apply to Client Materials.
- 9.7 **Clients Materials used in a System.** Client must obtain MarketResponse's prior written approval before using Client Materials owned by a third party data provider in the System. If any third party data provider requires that MarketResponse sign a separate data use agreement in order to use such data to perform the Agreement, then Client, MarketResponse and the provider will sign a three party agreement. Notwithstanding the terms of any such data use agreement, the data provided by the third party will be deemed Client Materials, and the Client warranties and indemnification applicable to Client Materials in the Agreement will apply.
- 9.8 **Violation.** If MarketResponse believes the Client Materials violate applicable law or third party rights, MarketResponse may either: (a) require Client to remove the Client Materials from the System; or (b) disable the Client Materials.
- 9.9 **Support.** Client is responsible for: (i) providing or arranging for the provision of all support, maintenance, and upgrades for Client Materials, including up-to-date virus protection; and (ii) coordinating the timing of such activities with MarketResponse. Client may direct the Client Materials provider to contact MarketResponse on Client's behalf for technical support issues if the provider believes the issue is connected to the System.
- 9.10 **Removal.** MarketResponse may disable or remove Client Materials in the event of any emergency situation or any threat or perceived threat to the System related to the Client Materials. MarketResponse will not be responsible for any adverse performance impact to the System or downtime attributable to Client Materials or to any such disengagement. In addition, MarketResponse is not responsible for any compromises to the confidentiality, integrity, or availability of the System or Client Materials that are attributable in whole or in part to Client's use of Client Materials.

10. Fees

- 10.1 Fees are listed in the Order Form. Fees and rates mentioned in previous Offerings shall not automatically apply to future Offerings. If, after the Agreement has been established wages and/or prices change, MarketResponse will be entitled to adjust the agreed rate accordingly, unless Parties have made other written arrangements in this respect. This shall also apply to the annual price indexation. Annual, the Fee

and rates are increased by the price indexation for services (DPI) calculated by the CBS (Centraal Bureau voor de Statistiek).

- 10.2 **Services.** MarketResponse will provide the Services on either a Fixed Price basis or an hourly or daily rate basis or a license Fee basis as described in the Order Form.
- 10.3 **Renewal Fees.** The Order Form may specify renewal Fees for a multi-period Term or Option Period(s). If the Order Form does not specify the renewal Fee for the Option Period, and if applicable, MarketResponse will use reasonable efforts to provide Client ninety (90) days' advance notice of the renewal Fee.
- 10.4 **Taxes, expenses and costs for third parties.** Fees do not include applicable taxes or other levies imposed or travel and living expenses or costs for Third Party Services or Third Party Software. MarketResponse will invoice Client monthly for actual travel and living expenses and third parties costs MarketResponse incurs while performing Services.
- 10.5 **Additional cost or services.** If MarketResponse has to make additional costs or perform additional services as a result of acts or omissions of Client, MarketResponse is entitled to charge these costs and fees for these services to Client.
- 10.6 **Invoicing.** MarketResponse will invoice Client monthly for Fees due or MarketResponse will invoice Client for the Fixed Price according to the schedule in the Order Form.
 - 10.6.1 *Consulting- and Marketing Services.* Costs for Third Party Services, such as commercial production - and other media costs and/or Third Party Software must be received by MarketResponse from Client before MarketResponse is obliged to pay these costs. Distribution costs for advertising mailings must be received by MarketResponse from Client prior to dispatch.
 - 10.6.2 *MarketResponse Hosted Services and/or Remoted Managed Services.* MarketResponse will invoice Client for the Fee for the first Term when the Terms begins or Client executes the Order Form. MarketResponse will invoice Client the renewal Fee for any renewal Option Period or annually in advance of each annual period.
 - 10.6.3 *License/usage Fee.* MarketResponse will invoice Client for the Fee for license, access and usage monthly per month in arrears.
- 10.7 **Payment.** Payments must be made within fourteen (14) days of the invoice date. All costs associated with the collection of invoices, both judicial and extrajudicial, with a minimum of 15% of the invoice amount shall be borne by Client.
- 10.8 **Suspension.** MarketResponse is entitled to suspend the Services and/or delivery of the Deliverables until payment has been made, without prejudice to all other rights of MarketResponse. Client is not entitled to suspend its obligations under the Agreement or to set off any payment against amounts payable to MarketResponse.
- 10.9 **Retainer.** Retainers are not available and non-refundable after the Term unless specifically stated in the Agreement.
11. **Termination**
 - 11.1 Each Party may terminate all or part of this Agreement with immediate effect, without having to observe a period of notice, without any notice of default or judicial intervention being required, without prejudice to all other rights of MarketResponse and without any compensation to Client being due, in the event of:
 - (a) the other Party, despite a written notice of default and a period of thirty (30) days to rectify its default, fails to comply with its obligations; or
 - (b) Client violates MarketResponse's Intellectual Property Rights; or
 - (c) the other Party becomes or is deemed to be insolvent or unable to pay its debts or a petition is presented, or meeting convened or resolution passed, with respect to bankruptcy of the other Party or

the other Party takes or suffers any similar action in consequence of debt or insolvency in any jurisdiction.

- 11.2 Each Party may terminate the Agreement and/or any Order Form for Services for an indefinite period after six (6) months without any compensation due upon giving six (6) months' written notice to Client.
- 11.3 In addition to MarketResponse's termination rights set forth in the Terms and Conditions, MarketResponse may terminate an Order Form or Agreement upon thirty (30) days prior written notice; without any compensation due: (i) Client's use of the Offerings poses a security risk to the System or any other MarketResponse customer; may harm the System or any other customer of MarketResponse, or may subject MarketResponse or any third party to liability; or (ii) applicable law prohibits MarketResponse from providing the Offering to Client. MarketResponse may terminate the Order Form or Agreement upon five (5) day's written notice in the event Client uses the Offering for fraudulent or illegal activities. If a (cloud) service provider terminates the agreement with MarketResponse to provide their facilities for the System, MarketResponse may, upon at least six (6) months written notice to Client after the notification of termination is received by MarketResponse, either relocate the System to an alternate internet data center; or if relocations is not commercially reasonable, terminate the Order Form or Agreement and refund to Client a pro rata portion of any Fees paid by Client for the time remaining in the Term.
- 11.4 **In writing.** Termination of the Agreement, in whatever manner, must be effected in writing.
- 11.5 **Consequences of expiration or termination.** Obligations in the Agreement and Terms and Condition that by their nature are continuing survive expiration or termination. In addition the terms of the Agreement and Terms and Conditions will continue to apply if MarketResponse continues to provide an Service to Client while the Parties are in good faith negotiating to renew the Service. MarketResponse's provision of the Service during any such negotiation is not fee waived.
- 11.6 If the Agreement terminates or expires, the license(s) granted to Client, its access and usage rights shall terminate forthwith by operation of law, in which case MarketResponse is not required to pay any compensation to Client and Client will immediately cease use of MarketResponse's Intellectual Property Rights and Offerings, including Deliverables and Data and delete any content and applications relating to the Offerings, Data, media, Login Codes, or Documentation. Parties may agree in good faith negotiating to transfer the Intellectual Property Rights of MarketResponse deriving from Deliverables for a reasonable fee.
- 11.7 If, at the time of termination or expiring of the Agreement, MarketResponse has already performed Services in execution of the Agreement, these Services and/or Deliverables and the payment obligations of Client in connection therewith will not be subject to cancellation and Client is immediately obliged to pay MarketResponse compensation in proportion to the completion thereof.
- 11.8 In the event of termination or expiring of the Agreement, the Parties will consult with regard to the termination of the Service, the timetable for the transfer of the Services to Client or to a successor service provider and the transfer of the Client Materials or other outputs from the use of the Services. If the Service is terminated or expired while this transfer has not taken place, MarketResponse will be entitled to charge Client for the reasonable costs of retaining Client Material or other output. MarketResponse has no obligation to retain Client Materials or other outputs from the use of the Services after a period of thirty (30) days and thereafter will delete or render inaccessible all Client Materials and other outputs unless the Order Form specifies different retention practices required for compliance with applicable law.
- 11.9 At Client's request, MarketResponse will, at Market Response's usual Fees, support Client in the transition of the Services to Client or to a successor service provider and the transfer of the Client Materials or other outputs from the use of the Services. MarketResponse will not be liable for any loss resulting from such transition or transfer.

12. Warranties and disclaimers

12.1 Intellectual property warranty.

- 12.1.1 MarketResponse warrants it has the right to license the Software, Data or Work Product or provide the Offering to Client.
- 12.1.2 Client warrants that (i) it has the right to provide the Client's Material's to MarketResponse; and (ii) MarketResponse may legally use the Client Material, and (iii) Client and Users will comply with the Terms and Conditions, any third party usage rights and applicable laws related to the Clients Materials.
- 12.2 **Virus warranty.** MarketResponse warrants that when delivered, each commercially available release of the Software will not contain a virus and substantially conform to its Documentation. As Client's exclusive remedy for breach of this warranty, MarketResponse, at its option, will (i) repair the Software; (ii) replace the Software; or (iii) terminate the applicable Order Form and refund the Fees paid for the Software during the then-current annual period or any prepaid Fees under the order Form.
- 12.3 **Compliance warranty.** Client warrants that the reproduction or disclosure or distribution (publication, transmission and receipt) of all Client Materials complies with all applicable laws including, without limitation, laws relating to Intellectual Property Rights, defamation, consumer protection, personal privacy and false of deceptive trade practices.
- 12.4 **Skilled personal warranty.** MarketResponse warrants that the Services will be performed by skilled personnel. As Client's exclusive remedy for breach of this warranty, MarketResponse will refund the Fees paid for the Services at issue.
- 12.5 **Warranty disclaimers.** MarketResponse and its third party licensors disclaim all other warranties, express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose, or arising as a result of custom or usage in the trade or by course of dealing. MarketResponse makes no warranty that the Software or the System will operate error-free or without interruption or that any data transmissions to, from, or through the System will be completely secure. MarketResponse makes no warranty that the transmission of Data through its secure transmission environment will be completely secure. MarketResponse does not warrant or represent that Client 's use of the Offering will result in Client's compliance with any applicable law.
- 12.5.1 **Delivery times disclaimer.** MarketResponse makes no warranty with respect to the agreed delivery times for Deliverables, and failure to deliver on time does not entitle the Client to compensation for damages, termination of the Agreement or non-performance of any obligations towards MarketResponse.
- 12.6 **Disclaimer of third party actions.** MarketResponse disclaims any and all liability arising from actions or inactions of a third party.
- 12.7 **Disclaimer impair or disrupt connections.** MarketResponse exercises no control over the flow of information to and from the System, MarketResponse's network, or other portions of the internet. Such flow depends in large parts on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the System. MarketResponse will use commercially reasonable efforts all actions it deems appropriate to avoid or remedy such events, but MarketResponse cannot guarantee that such events will not occur. MarketResponse disclaims any and all liability resulting from or related to internet or network failures, except as otherwise expressly provided in the Agreement,
- 13. Exclusions of damages; limitation of liability**
- 13.1 **Exclusion of damages.** Neither Client, MarketResponse, nor MarketResponse's third party licensors are liable for indirect damages. Neither MarketResponse nor MarketResponse's third party licensors are liable for any third party claim against Client. MarketResponse's third party licensors are not liable for any direct damages.
- 13.2 **Limitation of liability.** The total amount Client may recover from MarketResponse for all claims arising from or relating to the Agreement is limited in the aggregate to the Fees Client has paid for the Services at issue during the applicable annual period in which the claim arose. Liability shall at all times be limited to the amount paid out for the case in question according to MarketResponse s liability insurer. The limitation

of liability shall apply in full in the event of liability vis-à-vis several Clients, in which case MarketResponse shall pay to all Clients jointly no more than the amount referred to in this section.

- 13.3 **Applicability.** Some jurisdictions do not allow limitations of liability or exclusions of certain types of damages so certain provisions of this section may not apply to Client. However the provisions apply to the greatest extent permitted by applicable law. For the Netherlands this section does not apply to liability arising from (i) wilful misconduct or gross fault; (ii) bodily injury and death; (iii) the indemnification by Client section 14.5; or (iv) Client's violating of the Intellectual Property Rights of MarketResponse. MarketResponse's liability will be reduced in the proportion in which the Client's culpable action or omission, if any, contributed to the damage.

14. Indemnification

- 14.1 Provided Client complies with the Agreement, MarketResponse will defend and indemnify Client for any third party claim against Client for any Intellectual Property Rights violation relating to the Deliverable, Data, any Software or Work Product included in a MarketResponse Hosted Service.
- 14.2 Client will promptly notify MarketResponse in writing of any such claim. Client will allow MarketResponse to control the litigation or settlement of any if such claim and will cooperate with MarketResponse in the investigation, defence and settlement. MarketResponse will indemnify Client by paying for the costs and fees Client incurs at MarketResponse's direction.
- 14.3 If any Intellectual Property Right claim is made or, in MarketResponse's opinion, is likely to be made, MarketResponse may: (i) modify the Offering; (ii) obtain rights for Client to continue using the Offering; or (iii) terminate Client's license to use the Offering without any notice of default or judicial intervention being required, and without any compensation being due and refund any Fees paid by Client for the then-current annual period or for the Offering at issue. Client will abide by MarketResponse's decision.
- 14.4 MarketResponse's indemnification obligation does not apply to claims based on: (i) Client's combination of the Offering with other software, data, or materials; (ii) Client's modification to the Offering; (iii) prior versions of the Software or Data if Client had not installed the latest version or updates to the Software or Data prior to the date the claim arose as instructed by MarketResponse; or (iv) Client's unique specifications for the Offering.
- 14.5 Client will indemnify MarketResponse for any claim, including claims of supervisory authorities, made against MarketResponse arising from or relating to: (i) the Client Materials; or (ii) Client's violation of its obligations in section 12 (*Warranties*) and section 8 (*Client's Responsibilities and Prohibited activities*) of these Terms and Conditions; or (iii) use of prior versions of the Data and Software; or (iv) the use of an incorrect basis for processing of the Data by Client or its inadequate provision of information to data subjects while processing of Data. MarketResponse will notify Client of any of such claim. MarketResponse will allow Client to control the litigation or settlement of any of such claim and will cooperate with Client in the investigation, defence and settlement. Client will indemnify MarketResponse by paying for the costs and fees MarketResponse incurs. MarketResponse may participate at MarketResponse's own expense.

15. Data protection and Personal Data

- 15.1 Client will not disclose or transmit Personal Data to MarketResponse unless: (i) specifically authorized under the Order Form; (ii) required for technical support. In such event the Data Processing Addendum as attached as Addendum 2 will apply to MarketResponse's processing of Personal Data.
- 15.2 **Usage rights.** Client will comply with the specific terms of use of the Data provided by MarketResponse and will follow MarketResponse's instructions around processing the Personal Data contained in the Data.
- 15.3 **Data processing.** Client is also the processing controller and is therefore responsible and liable for purposes and manner of use of the Data and Personal Data included therein and/or knowledge insights based thereon and the provision of information about them to data subjects. Client shall be liable For payment to MarketResponse of any administrative fine imposed by a regulator, insofar as that administrative fine or damage suffered is the result of the Client's attributable failure to fulfil its obligations.

- 15.4 **Trusted (third) party.** For questions about the processing of Personal Data, Client may contact MarketResponse's privacy officer and/or MarketResponse's data protection officer who is registered with the Dutch Data Protection Authority. MarketResponse may receive and match (Personal) data at the request of one or more Clients. MarketResponse guarantees that one party will not obtain access to data of the other party and will enter into a multi-party agreement upon request.
- 15.5 **MarketResponse obligations.** Upon expiration or termination of the Order Form, MarketResponse will delete or render inaccessible all Personal Data received by Client for performing the Services in the System, unless the Order Form specifies different retention practises required for compliance with applicable law. MarketResponse may: (i) retain one copy of the Personal Data as necessary to comply with legal, audit or internal MarketResponse requirements; and (ii) defer the above activities to the extent and for the duration that MarketResponse cannot reasonable and practically expunge Personal Data from the System. As long as MarketResponse retains any Personal Data in the System this *Data Protection and Personal Data* of this section 15 will continue to apply to such Personal Data.
- 15.6 **Sensitive Information.** Unless authorized in the Order Form, Client will not use Sensitive Information in the System or transmit Sensitive Information to MarketResponse. If Client uses or transmits any Sensitive Information in the System in violation of this section, Client will reimburse MarketResponse for any costs associated with its removal.
- 15.7 **Control.** Client acknowledges that to every delivery of Data, control addresses or characteristics may have been added by MarketResponse. Such control addresses or characteristics have been added to protect the Data, in order to control the way in which the Data is used. Misuse and/or use of the Data in violation of what has been agreed upon is deemed to be demonstrated at all times, if this can be made plausible on the basis of the control addresses or characteristics explicitly designated as such by MarketResponse and/or its licensor(s) and is therefore conclusive evidence.
- 15.8 MarketResponse, as the controller as referred to in the applicable law with respect to the Data, is authorised to periodically carry out (or have carried out) a check on the use and the processes used by Client to secure the Data provided or put into use by MarketResponse. To this end, Client will provide the necessary cooperation and, inter alia, provide insight into actual use of the Data by Client and the security procedures and protocols used. With reference to section 18.5, MarketResponse will inform Client in writing (or by email) thirty (30) days prior to the audit and indicate in which information Client would like to have insight. If and insofar as, in the opinion of the Client, inspection of the Client's security procedures poses an unacceptable risk to that security, a more general description of the security measures taken will suffice.
- 15.9 **Data breach.** If and insofar as there is a breach of the security of the Client's systems, as a result of which access is or has been gained to MarketResponse's Data, which has serious adverse consequences for the protection of the Personal Data processed, Client shall inform MarketResponse thereof as soon as possible after discovery so that MarketResponse can fulfil its reporting obligation towards supervisors and data subjects. Client will then contact MarketResponse's privacy officer.
- 16. Confidential Information**
- 16.1 Both during the term of the Agreement and after its termination or expiration, Parties are obliged to observe secrecy of Confidential Information. The recipient will use the discloser's Confidential Information only to perform its obligations under the Agreement. MarketResponse may also use Client's Confidential Information to provide Client analysis for other MarketResponse Services. Recipient will not disclose discloser's Confidential Information received in connection with the Agreement to any third parties without discloser's prior written approval.
- 16.2 This restriction does not apply to information that is: (i) generally available to the public; (ii) released by discloser without restriction; (iii) independently developed or acquired by recipient; (iv) known to the recipient prior to receipt from discloser; or (v) revealed pursuant to court order or as required by applicable law, provided that recipient uses reasonable efforts to promptly notify discloser of such requirement prior to compliance in order to permit discloser to seek protection against disclosure.

16.3 MarketResponse may also report the terms of the Agreement to MarketResponse's third party licensors and partners and list Client as a MarketResponse customer in its annual report or other commercial materials.

17. Non Solicitation

17.1 For twenty four (24) months after the completion of the applicable Order Form, Client will not solicit for hire any individual who provides Services.

18. General

18.1 **Entire agreement.** The Agreement will be binding upon both Parties upon Client's acceptance and it contains the entire understanding between the Parties with respect to its subject matter and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties.

18.2 **Force Majeure.** Except for Client's obligations to pay the Fee, no Party shall be liable to the other for total or partial failure to perform any of its obligations or duties under this Agreement for any failure or delay in performance caused by factors beyond its reasonable control, including, but not limited to, restrictions of applicable law, epidemics or pandemics, labor disputes, third party mechanical or other equipment breakdowns, explosions, fiber optic cable cuts, interruption or failure of telecommunication or digital transmission links, internet failure or delays, cyber-attacks, storms, or any other event that prevents performances. Should any event of Force Majeure continue for a period of 60 days or more, then the unaffected Party shall be entitled to terminate this Agreement by written notice to the affected Party.

18.3 **No Waiver.** Failure to require compliance with a part of the Agreement is not a waiver of that part. Nothing in the Agreement waives any remedy MarketResponse may have under the Agreement at law, in equity, or otherwise.

18.4 **Non assignment.** Client will not assign the Agreement or any of its rights or obligations without MarketResponse's written permission. MarketResponse may assign the Agreement to any third party or affiliate by notice to Client.

18.5 **Audit.** Upon thirty (30) days' notice to Client, MarketResponse may conduct an audit during Client's normal business hours to verify Client's compliance with an Order Form. If the audit reveals that Client owes additional fees, Client will pay the amount owed. If MarketResponse needs to conduct an audit at Client's reasonable request, the cost of this audit are for Client.

18.6 **Amendment.** No amendment of the terms of the Agreement shall be valid or binding unless made by prior written agreement between the Parties and signed by their duly authorized representatives.

18.7 **Severance.** To the extent permitted by law all provisions of these Terms and Conditions shall be severable and no provision shall be affected by the invalidity or unenforceability of any other provision.

18.8 **Relationship of Parties.** Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the Parties or constitute or be deemed to constitute any Party as agent of any other for any purpose whatsoever and no Party shall have authority or power to bind the others or to contract in the name of the others in any way or for any purpose.

18.9 **Language.** Parties may enter into all or a portion of the Order Form or Agreement in a non-English language. In that event, the Order Form or Agreement will be binding as written but the Terms and Conditions will be binding in English.

19. Governing law and jurisdiction

19.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and construed in accordance with the law of the Netherlands and the Parties irrevocably agree that any dispute or claim arising out of or in connection with the Agreement shall be submitted exclusively to a competent court of Midden-Nederland (The Netherlands) in the Netherlands.



MARKET RESPONSE

Addendum 1 – Definitions

A reference to writing or written includes email.

Addendum: means any addendum incorporated into an Order Form.

Agreement: means the terms identified in the Order Form, including any Addendum. Invoices also form part of the Agreement.

Authorized Environment: means the physical hardware, virtual machine, private cloud, public cloud account, or other environment where the Software is installed.

Client: means the client entity identified on an Order Form.

Client Material: means any materials and data, including but not limited to Personal Data that Client provides to MarketResponse.

Client Related Entity: means a separate legal entity that is controlled by, is under common control with, or controls Client. The term “control” means: (i) for commercial entities, ownership of more than fifty percent of the voting stocks or asset of an entity, or (ii) for non-profit or governmental entities statutory or other documented legal authority over the general budget and contracting rights of an entity.

Client Tool: means assigned credentials which will be enable access to Client’s computing system via Client’s VPN, or any other remote connection and scoped access to data.

Committed Period: means a period during which neither party may terminate an Order Form for convenience, except as set forth in the *Termination* section 11.

Confidential Information: means any information of a confidential nature, including but not limited to Personal Data, Trade Secrets, source code, Data, Client Materials, and the Login Code.

Consulting Services: means consulting services identified on an Order Form.

Data: means all data of MarketResponse or used by MarketResponse and/or results of data analyzes and/or data science.

Deliverable: means all present and future tangible and intangible objects, anywhere in the world and/or other materials and/or data, including Data which occupy a place of their own in the market resulting wholly or partly from the Services, including any improvement, enhancement, adjustment or modification to the Deliverable.

Documentation: means the user documentation that MarketResponse may make available for Software.

Fee: means the fee that Client will pay to MarketResponse under the Order Form.

Fixed Price: means a pre-defined project model where MarketResponse provides Services for a set Fee.

Hosted Managed Services: means hosted managed services Offering, including but not limited to hosted private (cloud) services and hosted public cloud services identified on the Order Form.

Intellectual Property Rights: consists of any copyrights and related rights of performing artists, producers of video- or sound recordings and broadcasting organisations, database rights, design rights, trademark rights, tradename rights, domain name rights, patents, plant variety rights, rights of the Confidential Information, including Trade Secrets and any other comparable rights, anywhere in the world, including any entitlements to, applications for, registrations of or priority rights for such rights or any other rights related to these rights.

Login Code: means a code that enables the Software to operate for the applicable Term.

Marketing Services: means marketingservices identified on an Order Form.

MarketResponse: means the private company with limited liability MarketResponse Nederland B.V. (trade register number 31030821); or Underlined B.V. (trade register number 54017238); or Reputations Content & Campagnes B.V. (trade register number 20063575); all having their place of business at Stationsplein 32 in (3511 ED) Utrecht, unless another MarketResponse entity is defined in the Order Form.

MarketResponse Hosted Services: means Hosted Managed Services, Subscription Services, Anything as a Service (XaaS), or other hosted Services made by MarketResponse.

Offering: means the MarketResponse offering listed on the Order Form, which may include Software, Services, Data, Deliverables, Work Products, MarketResponse Hosted Services offering, or any other offering made available by MarketResponse.

Option Period: means any annual period following the initial term where Client may agree to renew the Order Form for a renewal Fee specified in the Order Form.

Order Form: means the ordering document in writing entered or will be entered into between MarketResponse and Client that specifies the Offering, Fee and other commercial terms.

Party/Parties: means MarketResponse and/or Client.

Personal Data: means information relating to an identified or identifiable natural person.

Remote Managed Services: means remote managed services Offering identified on the Order Form.

Sensitive Information: means (i) credit or debit card numbers, personal identification numbers, passwords or other similar information used for payments or to access personal or financial information; (ii) patient, medical or other protected health information ; (iii) genetic data, biometric data, or data about an individual's criminal history; (iv) government-issued personal identification number (such as social security numbers, driver's license numbers or passport numbers); (v) classified or technical data controlled US International Traffic in Arms Regulation; or (vi) materials that require a United States export license, license exception or other United States government authorization.

Services: means all services, which may include Consulting - and/or Marketing – and/or Subscription Services, Hosted Managed Services, use of or access to Software or Remote Managed Services and activities carried out by or on behalf of MarketResponse for Client pursuant to the Agreement and/or Order Forms or any other offering made available by MarketResponse.

Software: means software of MarketResponse, including its embedded subcomponents, licensed to Client under an Order Form or accessed by Client in a System.

Subscription Service: means the subscription service identified on the Order Form.

System: means any hosted environment used to carry out a MarketResponse Hosted Service.

Time and Materials: means a consultative model where (a) MarketResponse provides Consulting Services at hourly or daily rate; (b) the only Deliverables are MarketResponse's time and a limited license to any Work Product resulting from the Consulting Services.

Term: means twelve (12) months, unless otherwise set forth in the Order Form.

Terms and Conditions: means these terms and conditions.

Territory: means the country where the principal place of business of client is located, unless otherwise set forth in the Order Form.

Third Party Services: means any services of third parties required for the Services.

Third Party Software: means any third party software required for use with the Software.

Trade Secrets: consists of any information which in whole or in part is not known outside Parties or is not generally known among or readily accessible outside Parties to persons within the circles that normally deal with the kind of information in question.

User: means any individual authorized by Client to access an Service.

Work Product: means computer code or other materials delivered by MarketResponse in connection with Consulting Services including any improvement, enhancement, adjustment or modification to the Work Product.