SOFTWARE SUBSCRIPTION AGREEMENT

This Software Subscription Agreement (“**Agreement**”) is entered into effective as of [DATE] (“**Effective Date**”) between **Vantage Technologies GmbH**, a Swiss Private Limited Company, with registration number CH-130.4.015.657-1, and with its principal place of business located at Churerstrasse 135, CH-8808 Pfäffikon, Switzerland ("**Vantage**"), and [NAME] a [TYPE OF COMPANY], and with its principal place of business located at [ADDRESS]("**Customer**") (collectively referred to as the “**Parties**” and individually a “**Party**”).

RECITALS

**WHEREAS**, Vantage develops and provides a hosted software service which enables customers to input and access a variety of data, to generate related reports , and to manage individual staff performance through a workflow management system (collectively, the “Hosted Services,” as further defined in Section 1 below);

**WHEREAS**, Customer desires to access such Hosted Services, and Vantage desires to provide such Hosted Service, in accordance with the terms and conditions set forth herein;

**NOW, THEREFORE** in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, Customer and Vantage agree as follows:

TERMS AND CONDITIONS

1. Hosted Services

Vantage shall deliver to Customer, and/or provide Customer access via Vantage’s proprietary platform, the hosted software services identified in Exhibit A attached hereto, as may updated and revised from time to time by Vantage upon thirty (30) days’ prior notice (collectively the “**Hosted Services**”).

1. Limitations On Use of the Hosted Services by Customer

Customer agrees to the following restrictions on use of the Hosted Services:

1. **Authorized Users**.Customer may only use and access the Hosted Services itself, and permit the use and access to the Hosted Services by Customer’s employees and contractors who (i) need to use such Hosted Services in the course of performing their duties, (ii) have been provided a user ID by Customer, and (iii) have agreed to the end user license agreement terms prior to commencing use of the Hosted Services (“**EULA**”), as such EULA may be modified from time to time by Vantage (collectively, the “**Authorized Users**”). In the event of any conflict between the EULA and this Agreement, the terms of this Agreement shall control.
2. **Permitted Use**. Customer and each of the Authorized Users shall only be permitted to use and access the Hosted Services to upload Customer Data and to generate reports for Customer’s own use, as further defined in Exhibit A (“**Permitted Use**”) and no other purpose. As such, Customer will not (i) make any Data Service or Report available to, or use any Hosted Services for the benefit of, anyone other than Customer or its users, (ii) sell, resell, license, sublicense, distribute, rent or lease any Hosted Services, (iii) intentionally interfere with or disrupt the integrity or performance of the Hosted Services, (iv) attempt to gain unauthorized access to Vantage systems or networks, (v) use the Hosted Services in order to build a competitive product or service, or (vi) access the Hosted Services (or provide such access to a third party) for benchmarking purposes external to Customer. In no event shall the Hosted Services be used for any purpose other than the Permitted Use. “**Customer Data**” means all patient data, information, and other content (regardless of whether de-identified) of any type and in any format, medium, or form, whether audio, visual, digital, screen, GUI, or other, that is uploaded by Customer to the Hosted Services.
3. **Harmful Code**. Customer shall not knowingly include any virus, Trojan horse, worm, backdoor, or other data or software or the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software in any Customer Data that is being uploaded to and/or used with the Hosted Services.
4. **Vantage Ownership**. Customer acknowledges that the Hosted Services, the Vantage website, computer application software, data contained therein and all modifications, and updates thereto (collectively the “**Software**”), and any Intellectual Property Rights therein, are sole and exclusive property of Vantage. Customer agrees not to contest Vantage’s ownership in the Software or seek to invalidate any intellectual property rights Vantage has in and to the Software. Customer shall not seek to register the copyright in the Software or computer code contained therein with any government agency or take any action regarding the Software which would tend to harm Vantage’s rights therein. The Software and any related documentation are proprietary to Vantage and protected by applicable international Intellectual Property Rights laws. “**Intellectual Property Rights**” means any and all intellectual property rights in any part of the world, whether registered or unregistered, and all applications for and renewals or extensions of such rights, including rights comprising or relating to: (i) patents, patent disclosures and inventions (whether patentable or not); (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith; (iii) works of authorship, designs, copyrights and copyrightable works (including computer programs), rights in data and databases and any moral right to claim authorship of a work, any right to object to any distortion or other modification of a work and any similar right; (iv) trade secrets, know-how, and other confidential information; and (v) all similar or equivalent rights or forms of protection.
5. **Rights to Data.** Client hereby grants to Vantage Technologies a non-exclusive, transferrable, perpetual right to use any de-identified, anonymized, aggregated data uploaded or input to the Software by Client, only for the purposes of enhancing, improving, further developing and thereafter commercializing additional algorithms, performance benchmarking services and other derivative analytic products and services which enhance the performance of Vantage for users ("New Products and Services"), subject to Section 11 Confidentiality and Exhibit "D" Customer Privacy and Security Statement. Vantage Technologies hereby grants to Client a non-exclusive, transferrable, perpetual right to access and use, without compensation, any and all New Products and Services.
6. **No Reverse Engineering.** Customer shall not copy, translate, reverse engineer, modify, decrypt, decompile, disassemble, create derivative works based on or otherwise attempt to discover the source code or underlying ideas, techniques or algorithms, including the review of data structures or similar materials produced or used by or in the Software, or permit any of the Authorized Users to do so. Customer shall not incorporate the Software, any code or data contained therein or any modifications, and updates thereto into any other software, website or other manner nor permit any other person or entity to do so.
7. **Trade Secrets.** Customer recognizes that Vantage regards the Software as its proprietary information and as confidential trade secrets of great value. Customer agrees not to provide, distribute or to otherwise make available in any form the Software, or any portion thereof or any data in the Software, to any person other than the Authorized Users without the prior written consent of Vantage. Customer further agrees to treat the Software with at least the same degree of care with which Customer treats its own confidential information and in no event with less care than is reasonably required to protect the confidentiality of the Software. Customer shall maintain the confidentiality of all trade secrets during and after the term of this Agreement. Customer shall not use this information in any other business or in any manner not specifically authorized or approved in writing by Vantage.
8. **Open Source Software**. Customer shall not use any Open Source Software (defined below) not provided by Vantage in conjunction with Customer’s use of the Hosted Services that could: (i) require the disclosure, licensing, or distribution of any source code or algorithms underlying any of the Hosted Services or Software; (ii) require the licensing or disclosure of the Hosted Services or Software free of charge; or (iii) otherwise impose any limitation, restriction, waiver of rights, or condition on the right or ability of the Company to have clear title to, use or distribute the Hosted Services or Software. “Open Source Software” means software that is distributed as “open source software” or under a similar license or distribution model (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL), and the Apache License).
9. **Covenants Essential**. Each of the covenants in this Section 2 and each portion thereof shall be construed as independent of any other covenant or provision. If all or any portion of a covenant is unenforceable due to its scope in terms of geography, duration, or activity covered or otherwise, but could be enforced if reduced in scope, then the parties agree to be bound by any lesser covenant subsumed within the terms of such covenant imposing the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of the applicable provision within this Section 2.
10. Hosted Services Fees
11. **Hosting Fees**. Customer shall pay Vantage the amount stated and in the manner provided in Exhibit A for the Hosted Services (the “**Hosting Fees**”). Vantage shall have the right to revise/increase the amounts to be paid by Customer for the Hosted Services on written notice to Customer for any Renewal Terms (defined in Section 5(d) below). Except as otherwise provided in this Agreement, all amounts paid to Vantage by Customer shall be non-refundable. Customer shall pay to Vantage the annual Hosting Fees in advance on or by the dates stipulated in Exhibit A, upon receipt of an invoice (the “**Payment Date”**).
12. **Taxes.** The Hosting Fees do not include any applicable taxes. Customer is responsible for any and all applicable taxes.
13. **Late Payments.** Any Hosting Fees that are not paid by Customer by the Payment Date will be addressed pursuant to Vantage’s finance collections policy. In the event that, after receipt of written notice of late payment, the Hosting Fees are not paid by Customer within seven (7) days of the late payment notice, Vantage shall have the right to suspend the Hosted Services. Vantage’s denial of access to the Hosted Services in case of unjustified non-payment following this procedure shall not be considered a breach of this Agreement.
14. **Payment Details**. Vantage’s preferred payment method is via electronic funds transfer using the following banking details:

|  |  |
| --- | --- |
| Account Name: |  |
| Bank Name: |  |
| Branch Name: |  |
| Bank SWIFT Code: |  |
| Bank Account Number: |  |
| Bank Account Currency: |  |

If Customer needs an alternate form of payment, Vantage shall work with Customer to facilitate such alternative.

1. Audit Rights

Upon reasonable prior written notice to Customer, during the term of this Agreement, and for a period of three (3) years thereafter, Vantage and/or its independent accountants will have the right, during Customer’s normal business hours, to inspect the Customer’s books and records to verify the accuracy of any Fees paid or payable under this Agreement, any reimbursable expenses, and to verify compliance with the terms and conditions of this Agreement.

1. Term and Termination
2. **Term**. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the Initial Term Expiration Date set forth in Exhibit A (the “**Initial Term**”) or until terminated earlier at any time in the event of: (i) a material breach by the other Party which remains uncured after thirty (30) days written notice thereof; (ii) upon mutual written agreement by the Parties; or (iii) written notice by one Party to the other at least thirty (30) days in advance of its desire to terminate.
3. **Immediate Termination.** Notwithstanding Section 5(a), this Agreement shall terminate effective immediately if: (i) either Party files for bankruptcy, or otherwise goes into receivership, becomes insolvent or makes an assignment for the benefit of creditors; or (ii) a writ of attachment or execution is levied on a Party or its assets and is not released or satisfied within ten (10) days thereafter, or (iii) if a receiver is appointed in any proceeding or action against a Party with authority to take possession or control of that Party’s assets.
4. **Early Termination.** In the event this Agreement is terminated early by Vantage pursuant to Section 5(a)(iii), Vantage shall return to Customer the pro-rata amount paid by Customer for any unused months remaining in the term. Otherwise, no portion of the fees paid to Vantage shall be refundable under any circumstances, except to the extent that Customer becomes subject to a binding governmental limitation of funding clause.
5. **Renewal**. Unless otherwise set forth in Exhibit A, this Agreement shall automatically renew annually for one (1) year term(s), conditioned on Customer being current and in good standing with all obligations to Vantage, and not being in breach of this Agreement at the time of annual renewal (and each such renewal shall be a “**Renewal Term**,” and collectively with the Initial Term, shall be the “**Term**”).
6. **Effect of Termination.** On termination or expiration of this Agreement, all rights granted to Customer and any Authorized Users to access and use the Hosted Services and Software shall terminate and Customer shall immediately discontinue use of the Software and Hosted Services and shall cause all Authorized Users to stop use of the Software and Hosted Services. In all cases, all licensed Software, if any, that are in the possession of Customer shall be promptly returned to Vantage. Within ten (10) days after termination of this Agreement, Customer shall furnish to Vantage a certificate which certifies with respect to each of the Software that, through its best effort and to the best of its knowledge, the original and all copies, in whole or in part and in any form, of each of the Software have been destroyed, and all access to Authorized Users to the Hosted Services has been terminated.
7. **Survival**. Sections 2(c)-(f), 2(h), 4, 5(e), 5(f), and 7-13, and any other term or condition which by its nature should survive, will survive any termination or expiration of this Agreement.
8. Compliance with Applicable Law

Customer shall be responsible for complying with all Applicable Laws that pertain to use of the Hosted Services. Customer’s failure to comply with this Section shall constitute a material breach of this Agreement. “**Applicable Laws**” means all applicable statutes, laws, rules, regulations, codes, ordinances, releases, orders, declarations, directives, decrees, requirements and restrictions of any jurisdiction, government agency or instrumentality, including but not limited to laws on data protection, anti-bribery and anti-corruption.

1. Indemnification
   1. **By Vantage**. Vantage shall indemnify, defend and hold harmless Customer and its Representatives for, from and against any and all Losses incurred, arising out of, or relating to, any third party claim, investigation, action, proceeding, allegation or demand made or brought against any Customer and its Representatives arising out of, relating to or based on: (i) a breach by Vantage of its express representations and warranties and obligations hereunder; (ii) a claim of infringement or misappropriation of any third party’s Intellectual Property Rights by the provision or use of the Hosted Services; and/or (iii) Vantage’s gross negligence or willful misconduct; provided, however, Vantage shall have no obligation to indemnify Customer to the extent Customer is required to indemnify Vantage for such claims as set forth in Section 7(b). “**Losses**” shall mean any and all losses, liabilities, damages, demands, claims (including without limitation taxes), suits, proceeding, costs, payments and expenses (including any and all reasonable attorneys’ fees, reasonable costs of investigation, discovery, litigation and settlement, interest and any judgments, fines and penalties), the costs of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers. “**Representatives**” means a Party’s employees, independent contractors, officers, directors, partners, shareholders, agents, attorneys and third-party advisors.
   2. **By Customer**. Customer shall indemnify, defend and hold harmless Vantage and its Representatives for, from and against any and all Losses incurred, arising out of, or relating to, any third party claim, investigation, action, proceeding, allegation or demand made or brought against Vantage and its Representatives arising out of, relating to or based on: (i) a breach by Customer of its express representations and warranties and obligations hereunder; (ii) Customer’s use of the Hosted Services; (iii) the Customer Data; and/or (iv) Customer’s gross negligence or willful misconduct.
   3. **Infringement Exclusions**. Notwithstanding the foregoing, Vantage shall have no obligation under Section 7(a) above for any Losses based on: (i) use of the Hosted Services by Customer in combination with other business processes, products, devices, software, services or components which were not furnished to Customer by Vantage, if the infringement would not have occurred but for the combination; (ii) modification or alteration of any Hosted Services by Customer or its agents, if the infringement would not have occurred but for the modification or alteration; (iii) use of the Hosted Services after Vantage notifies Customer to discontinue use of the Hosted Services due to a claim, allegation or proceeding; or (iv) use of the Hosted Services for a purpose other than that for which they were designed or in violation of this Agreement.
   4. **Procedure**. The indemnified Party shall provide the indemnifying Party with: (i) prompt written notice of any claim requiring indemnification hereunder (but the failure to give such notice shall not relieve the indemnifying Party of any of its obligations under this Section 7(d) except to the extent that the indemnifying Party is materially prejudiced thereby); (ii) exclusive control over the defense and settlement of such claim, provided that any settlement will be subject to the indemnified Party’s prior written approval; and (iii) at the indemnifying Party’s sole cost and expense, proper and full information and assistance requested by the indemnifying Party in writing to settle or defend any such claim. The indemnified Party shall have the right to be represented by counsel of its own choosing and expense at any indemnification proceeding. In the event that the indemnifying Party does not promptly handle such claims, the indemnified Party shall have the right to take any and all actions necessary to protect its rights, and the indemnifying Party shall reimburse the indemnified Party for any costs that the indemnified Party incurs.
2. Warranties; Disclaimer.
   1. **Mutual Warranties**. Each Party hereby represents and warrants to the other Party that such Party’s execution, delivery and performance of this Agreement does not and will not: (i) conflict with or violate any Applicable Laws or governmental orders; or (ii) conflict with or require any consent under any contract, license, permit, franchise or other agreement to which it is a Party.
   2. **Vantage Warranties**. Vantage represents and warrants to Customer that (i) Vantage shall provide the Hosted Services in a professional manner consistent with industry standards, and (ii) Vantage’s provision of the Hosted Services will not knowingly infringe the Intellectual Property Rights of any third Party.
   3. **Customer Warranties**. Customer represents and warrants to Vantage that (i) Customer shall at all times comply with any privacy and data security laws applicable to its activities and geographic territory, (ii) the Customer Data does not infringe the Intellectual Property Rights or other privacy rights of any third party, and (iii) such Customer Data was gathered in compliance with the GDPR and all other Applicable Laws.
   4. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES ARISING OUT OF THE HOSTED SERVICES, SOFTWARE OR THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. VANTAGE DOES NOT WARRANT THAT THE HOSTED SERVICES OR THE SOFTWARE WILL BE PROVIDED UNINTERRUPTED OR ERROR-FREE.
3. Limitation of Liability.

IN NO EVENT WILL VANTAGE BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOST OPPORTUNITY COST) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE HOSTED SERVICES, OR SOFTWARE PROVIDED HEREUNDER, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF VANTAGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL VANTAGE’S LIABILITY FOR DIRECT DAMAGES FOR A SINGLE CLAIM UNDER THIS AGREEMENT EXCEED THE FEES PAID TO VANTAGE UNDER THE APPLICABLE ORDER IN THE TWELVE (12) MONTHS PRECEDING THE DATE ON WHICH SUCH CLAIM AROSE. IN NO EVENT WILL VANTAGE’S TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE FOR DIRECT DAMAGES UNDER THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CUSTOMER DURING THE TERM OF THIS AGREEMENT. Customer agrees that the disclaimer of warranties and limitations of liability in this Section 9 are a material inducement and consideration for Vantage to enter into this Agreement and provide the Data Services and Reports at their current pricing. Accordingly, such provisions shall be enforced as written even if a remedy fails of its essential purpose.

1. Nonexclusive Relationship

The Parties’ relationship is nonexclusive. Vantage has the right to perform services for others during the term of this Agreement, including services that are similar to the services performed hereunder. Subject to Customer’s obligations in Section 2, Customer has the right to engage others to perform services similar to those provided by Vantage.

1. Confidentiality

## **Definition of Confidential Information**.  “**Confidential Information**” means any information related to the business and current, future and proposed products and services of the Party disclosing such information (“**Disclosing Party**”), including for example and without limitation, the Disclosing Party Property (as defined in Section 11(d) below), and the Disclosing Party’s information concerning research, development, design details and specifications, financial information, procurement requirements, customer lists, business forecasts, sales information, marketing plans and business plans, in each case whether or not marked as “confidential” or “proprietary.”

## **Nondisclosure and Nonuse Obligations**.  Except as expressly permitted in this Agreement or as may be authorized in writing by the Disclosing Party, the Party receiving such Disclosing Party Property (the “**Receiving Party**”) will not (i) use any Confidential Information of the Disclosing Party except as necessary to perform its obligations under this Agreement, or (ii) disseminate or in any way disclose the Confidential Information of the Disclosing Party to any third party other than its Representatives have a need to know such Confidential Information under this Agreement and who are bound by obligations of confidentiality.  Notwithstanding the foregoing, or anything in this Agreement to the contrary, Customer acknowledges and agrees that Vantage may use one or more third party subcontractors to perform part or all of the Data Services, and accordingly, the Confidential Information of Customer (including Customer Data) may be transferred to such third party subcontractors; provided, however, that such third party subcontractors shall be bound by obligations of confidentiality. Receiving Party shall treat all Confidential Information with the same degree of care as Receiving Party accords to Receiving Party’s own confidential information, but in no case shall Receiving Party use less than reasonable care.  Receiving Party shall immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information.  Receiving Party shall assist the Disclosing Party in remedying any the unauthorized use or disclosure of the Confidential Information.  Receiving Party agrees not to knowingly communicate any information to the Disclosing Party in violation of the proprietary rights of any third party.

## **Exclusions from Nondisclosure and Nonuse Obligations**.  Receiving Party’s obligations under Section 11(b) do not apply to any Confidential Information that Receiving Party can demonstrate: (i) was in the public domain at or subsequent to the time the Confidential Information was communicated to Receiving Party by the Disclosing Party through no fault of Receiving Party; (ii) was rightfully in Receiving Party’s possession free of any obligation of confidence at or subsequent to the time the Confidential Information was communicated to Receiving Party by the Disclosing Party; or (iii) was independently developed by Receiving Party without use of, reference to, or reliance on any Confidential Information communicated to Receiving Party by the Disclosing Party.  A disclosure of any Confidential Information by Receiving Party (x) in response to a valid order by a court or other governmental body, or (y) as otherwise required by law will not be considered to be a breach of this Agreement; provided, however, that Receiving Party provides prompt prior written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent the disclosure; provided, further that any Confidential Information so disclosed shall retain its confidential nature for all other purposes.

* 1. **Ownership and Return of Confidential Information and the Disclosing Party Property**.  All Confidential Information and any materials and items that the Disclosing Party furnishes to Receiving Party by the Disclosing Party, whether delivered to Receiving Party by the Disclosing Party or made by Receiving Party in the performance of services under this Agreement and whether or not they contain or disclose Confidential Information (collectively, the “**the Disclosing Party Property**”), are the sole and exclusive property of the Disclosing Party.  Within five (5) days after any request by the Disclosing Party, Receiving Party shall destroy or deliver to the Disclosing Party, at the Disclosing Party’s option, (i) all the Disclosing Party Property and (ii) all materials and items in Receiving Party’s possession or control that contain or disclose any Confidential Information.  Upon request, Receiving Party will provide the Disclosing Party a written certification of Receiving Party’s compliance with Receiving Party’s obligations under this Section 11(d).
  2. **Customer Communications**. Customer acknowledges and agrees that Vantage may use any individual contact information provided by Customer to provide product information and other business to business communications in connection with this Agreement. In the event Customer desires to opt-out from receiving such communications (except for communications related to the Hosted Services themselves), Customer may do so by requesting to be removed in writing via email to [info@govantage.io](mailto:info@govantage.io).  Communications may still be transmitted after the opt-out request has been submitted but before it has been processed.
  3. **Feedback.** Customer acknowledges and agrees that any feedback, suggestions, comments, improvements, modifications and other information (including any ideas, concepts, “know-how” or techniques contained therein) that Customer provides to Vantage about Vantage, the Hosted Service or its performance (collectively, “**Feedback**”) shall not be deemed as Customer’s Confidential Information, and Customer hereby grants to Vantage a perpetual, irrevocable, fully paid up, royalty free, transferable, sublicensable and assignable license to use, copy, modify, perform, display and create derivative versions of such Feedback for any lawful purpose, including developing, manufacturing and marketing products incorporating the Feedback, without obligation or compensation of any kind to Customer, and Customer waives all rights whatsoever to object to Vantage’s license in or to all Feedback.

1. Protection of Customer Data.

* 1. **General**. Vantage will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data and Personal Data. “**Personal Data**” shall have the meaning as set forth in Regulation 2016/679 of the European Parliament and of the Council (i.e., the “**General Data Protection Regulation**” or “**GDPR**”). Vantage will use measures to protect Customer Data and Personal Data that are no less stringent than Vantage use to protect Vantage’s own data.
  2. **Maintenance Services**. Vantage may take possession of Personal Data in the course of providing maintenance services to its customers, where a problem report related to the Hosted Services is submitted by the Customer as part of a service request to Vantage. In such cases the Personal Data is either immediately de-identified or is stored in a secured and safe location.
  3. **Consulting Services**. In cases where Vantage is exposed to Personal Data while performing agreed upon consulting services related to the Hosted Services, such Vantage personnel are not authorized to retain Personal Data in whole or part, or in any form (printed paper, an electronic file on a Vantage laptop, for example), to disclose Personal Data to third parties or allow Personal Data to leave the Customer premises, systems or networks either physically or electronically without the affected Customer’s consent.
  4. **Processing of Personal Data.** To the extent that Customer provides any Personal Data to Vantage, whether in the course of providing Customer Data or otherwise, Customer agrees that Vantage shall have the right to process such Personal Data as required to provide the Hosted Services as the Data Processor (as such term is defined in the GDPR) and that Customer shall be the Data Controller (as such term is defined in the GDPR). Customer acknowledges and agrees that Vantage shall rely on Customer to secure all necessary consents to enable Customer to lawfully transfer any Customer Data (including Personal Data) to Vantage and to enable Vantage to process such Customer Data in the course of providing access to the Hosted Services. The Parties acknowledge and agree that this Agreement may be further supplemented by a Data Processing Addendum, which, upon execution, shall supersede this Section 12(e) in the event of any inconsistencies between the Data Processing Addendum and this Section 12(e).

1. General
2. **Export Control**. Customer understands that Vantage may be subject to regulation by government agencies which prohibit export or diversion of certain technical products to certain countries. Customer warrants that it will comply in all respect with the export and re-export restrictions set forth in the EULA or otherwise communicated by Vantage to Customer. Customer agrees to indemnify and hold Vantage harmless from any loss, damages, liability or expenses incurred by Vantage as a result of Customer’s failure to comply with such export regulations or restrictions.
3. **Independent Contractor Relationship**. Each Party hereto, including its officers, agents and employees shall be at all times an independent contractor relative to the other Party. Nothing in this Agreement shall be construed to make or render either Party, including any of its officers, directors, agents or employees, an agent, servant or employee of, or a joint-venturer of or with, the other.
4. **Assignment**. Neither Party may assign or otherwise transfer this Agreement without the prior written consent of the other Party; provided, however, that either Party shall have the right to assign this Agreement without consent in the event of the sale of all or substantially all of the Party’s assets that pertain to the Hosted Services or the Software, or in the event of a merger or change of control, whether by operation of law or otherwise. To the extent a Party is permitted by the other Party, or by operation of law, to assign this Agreement or any part of it, all provisions hereof shall be binding upon successors and assigns.
5. **Notices**. Any notice hereunder shall be deemed to be sufficiently given and any delivery hereunder deemed made when delivered in person or sent by registered or certified mail or courier addressed to Vantage and to Customer at the addresses stated above, or at such changed address as either Party shall have specified by written notice. Notice shall be deemed received five (5) days after deposit in the mail, and one day after sent by courier.
6. **Modifications; Waiver**. Any changes to this Agreement shall not be enforceable unless agreed to by both Parties, in writing, and duly executed by authorized representatives of both Vantage and Customer. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
7. **Headings; Interpretation**. Paragraph headings are shown herein for convenience only and shall not affect the meaning or interpretation hereof. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing an instrument to be drafted. The Exhibits referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
8. **Press Releases**. Except as may be required by Applicable Law or listing standard, neither Party will issue or release any public announcement, statement, press release, or other publicity relating to this Agreement without the prior written consent of the other Party in each instance.
9. **Force Majeure**. Neither Party shall be liable for the failure to perform its obligations under this Agreement due to events beyond such Party’s reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God or acts in compliance with any applicable law, regulation or order (valid or invalid) or any court or governmental body.
10. **Legality and Severability**. If any portion of this Agreement is determined to be illegal or unenforceable under the law, then that portion shall be stricken from the Agreement without effect to that remainder of the Agreement that can be given effect independently of such invalid terms.
11. **No Agency**. Each of the Parties will be deemed to be an independent contractor and not an agent, joint venture, partner or representative of the other, and neither may create any obligations or responsibilities on behalf of or in the name of the other. Nothing contained in this Agreement, nor any marketing or other materials referring to the Parties, will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Under no circumstances may Customer hold itself out to be a partner, employee, franchisee, representative, servant, or agent of Vantage.
12. **Further Assurances**. Each Party will, upon the reasonable request of the other Party and at the requesting Party’s sole cost and expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.
13. **Arbitration; Venue**. The Parties agree to settle any dispute, controversy, or claim arising out of this Agreement or relating thereto, including enforceability, arbitrability, breach or termination of this Agreement, which cannot be settled by negotiation within thirty (30) calendar days of the matter first being identified in writing to the other Party, by binding arbitration in accordance with the Swiss Rules of International Arbitration (“SRIA”) of the Swiss Chamber of Commerce in force on the date the notice of arbitration is filed under SRIA by one or more arbitrators appointed in accordance with SRIA. The place of arbitration shall be Zurich, Switzerland. The language of the arbitration shall be English. Notwithstanding the foregoing, Vantage shall have the right to seek and obtain relief at law or in equity in any jurisdiction, without the necessity of posting a bond and without arbitration, in the event of an actual or threatened breach by Customer of Sections 5 or 6 hereof, or any other action by Customer which materially threatens the intellectual property rights, reputation or goodwill of Vantage.
14. **Choice of Law**. The validity, enforceability and interpretation of this Agreement shall be construed in accordance with and governed by the laws of Switzerland, irrespective of the principles of conflicts of law therein. The United Nations Convention of Contracts for the International Sale of Goods is expressly excluded from any interpretation of this Agreement. The English language version of this document is the original and controls when interpreting this Agreement. Customer waives any right it may have under the law of Customer’s location to have this Agreement written in the language of Customer’s location.
15. **No Third Party Beneficiaries**. This Agreement is for the sole benefit of the Parties, their respective permitted successors and assigns, and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
16. **Entire Agreement**. This Agreement, together with all Exhibits, constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
17. **Counterparts**. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered by facsimile, electronic mail or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective as of the date first written above.

**VANTAGE TECHNOLOGIES GMBH [CUSTOMER]**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# EXHIBIT A

# HOSTED SERVICES AND FEES

* + - 1. Initial Term Expiration Date
      2. Permitted Use

*[Describe the Customer’s areas of permitted use]*

* + - 1. Hosted Services

*[List the specific Hosted Services to be provided to Customer]*

* + - 1. Fees

*[List the specific Fees to be paid by Customer]*

* + - 1. Renewal Requirements

*[List any specific requirements to be entitled to automatic renewal]*