

Blacksmith Terms of Service
 [Aug 24, version 24.2]

This notice is made and the terms set out below are published by Encompass Corporation UK Limited (a company registered in Scotland with Company Number SC493055), whose registered office is Level 3, 33 Bothwell Street, Glasgow, G2 6NL (Encompass), and whose email address is info@Encompasscorporation.com, and telephone number is +44 (0) 333 772 0002. Our website is located at www.Encompasscorporation.com. Encompass Corporation UK Limited is registered for VAT with VAT number 211 2643 58.

A glossary of the words and phrases used in these Blacksmith Terms of Service is set out below, together with rules to be applied to understand what they mean.

1. DURATION

The Agreement (comprising an Order and these Blacksmith Terms of Service) begins on the Commencement Date and continues for the Initial Term and afterwards for Renewal Terms unless terminated by either party (i) giving not less than ninety (90) days' notice to the other to expire at the end of the Initial Term or the then current Renewal Term or (ii) otherwise in accordance with the Agreement.

2. SERVICES

- 2.1 Encompass shall supply the Professional Services and make available the Blacksmith Service, and the Customer shall pay the Charges.
- 2.2 Subject to the Customer's compliance with the Agreement, Encompass hereby grants to the Customer and, where the Order so provides, its Affiliates, a non-exclusive, non-transferable licence to permit End Users to use the Blacksmith Service and, subject to clause 3 (*Data and Data Providers*), the Blacksmith Materials for the purpose of know your customer and customer due diligence processes.
- 2.3 The Customer is responsible for acquiring at its cost the necessary rights to use other software, works or materials required for the use of the Blacksmith Service, including Data (where the fees for which are not included in the Order); Customer must still pay the Charges where it does not do so.
- 2.4 The Customer shall not, and shall procure that End Users shall not:
 - 2.4.1 except to the extent permitted by Regulations, adapt, translate, arrange, or alter Blacksmith, reverse engineer, decompile or disassemble Blacksmith;
 - 2.4.2 circumvent or avoid the use of any security device or process designed to protect against unauthorised or unlawful use of the Blacksmith Service or Blacksmith;
 - 2.4.3 use the Services for the benefit of any third party, other than an Affiliate of the Customer where the Order so provides, including for, or in connection with, the provision of services which consist in whole or part in the use of the Services;
 - 2.4.4 redistribute, retransmit, or disseminate the Blacksmith Materials;
 - 2.4.5 use the Services otherwise than in accordance with the Agreement.
- 2.5 References in clause 2.4 to the doing of any act includes any attempt to do so, or to cause or permit any third party to do, or to attempt, the act in question.
- 2.6 The Customer hereby grants to Encompass, its agents, contractors, and providers of services to Encompass or any of its Affiliates, a non-exclusive licence to use data relating to the use of the Blacksmith Service by End Users for the purpose of aggregating the data with data relating to use of the Blacksmith Service by other customers, analysing use of the Blacksmith Service and preparing documents and reports relating to the Blacksmith Service, and disclosing and otherwise exploiting the documents and reports but not to disclose the identity of the Customer, its Affiliates, or End Users.

3. DATA

- 3.1 The Customer must ensure that the terms (if any) of a Data Provider applicable to the use of Data are suitable for its requirements.
- 3.2 Encompass undertakes no obligation or responsibility, and excludes all liability, under or in connection with the Agreement in relation to any and all Data, the acts or omissions of a Data Provider, or the systems used by a Data Provider, including for any and all of the following:
 - 3.2.1 the failure of a Data Provider to put into circulation any Data;
 - 3.2.2 the withdrawal or suspension of, or the imposition of restrictions on the use of or access to, any Data previously put into circulation by a Data Provider;
 - 3.2.3 the delay of a Data Provider in putting into circulation any Data; and
 - 3.2.4 the quality of Data.

4. CHARGES

- 4.1 The Customer shall pay the Charges plus the value added tax in cleared funds by direct credit for same day value to the bank account nominated by Encompass from time to time, without set-off in respect of any liability of Encompass within thirty (30) calendar days after the date of the invoice.
- 4.2 Unless stated otherwise on the Order, the Charges must be paid in Pound Sterling, and Encompass may charge for all applicable costs of the Customer's selected payment method.
- 4.3 All Charges are non-refundable except as required by law or as otherwise specifically provided in the Agreement.
- 4.4 The subscription fee in respect of the use of the Blacksmith Service and any other amounts used to calculate the fees under an Order shall be increased with effect from each anniversary of the Commencement Date by an amount equal to ten (10) per cent of the fee or amount having effect immediately before the relevant anniversary of the Commencement Date.

5. PERFORMANCE

- 5.1 Encompass shall provide the Professional Services with reasonable care and skill and in accordance with the Professional Services Terms and make available the Blacksmith Service in accordance with the Service Levels, except that (i) in determining the application of the Service Levels, all planned outage of the SaaS Services shall be excluded, (ii) Encompass gives no assurance or guarantee that use of the Blacksmith Service will be uninterrupted or error-free or that the Blacksmith Service will meet the Customer's requirements, and (iii) Encompass is not liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.
- 5.2 Any errors in and insufficiencies of the Blacksmith Service (if any) arising after an End User first uses the Blacksmith Service in production shall be dealt with as part of the Blacksmith Service to the exclusion of any other claim.
- 5.3 Encompass' sole liability and the Customer's exclusive remedy for a failure to provide or the defective or delayed provision of the Services, shall be for Encompass to reinstate Blacksmith or re-perform the relevant Service as soon as reasonably practicable.
- 5.4 Subject to the previous provisions of this clause, Encompass gives no assurance (whether by way of representation, warranty, undertaking or otherwise) as to the operation, quality, conformance to description or sample, functionality, or performance, of the Blacksmith Service or the Blacksmith, whether taken alone or as may be incorporated into any system or network.
- 5.5 Encompass may suspend the access to or use of the Blacksmith Service by any or all of the End Users if Encompass determines that use of the Blacksmith Service:
 - 5.5.1 is in breach of the Agreement;
 - 5.5.2 poses a security risk, or a risk to the integrity of the Blacksmith Service, including where the confidentiality of Security Information has been or may reasonably be believed to have been compromised, is adversely impacting or may adversely impact (as appropriate) the Blacksmith Service to the Customer or any third party;
 - 5.5.3 is in breach of Regulations; or
 - 5.5.4 where it is in the legitimate interests of Encompass to do so, including where there is a reasonable risk that the Customer may default in the payment of the Charges,
 and Encompass shall use its reasonable endeavours to notify the affected End Users before the suspension takes effect and as soon as reasonably practicable thereafter and may use any reasonable means to do so.

- 5.6 Where Encompass suspends access to or use of the Blacksmith Service under clause 5.5 or 7.4, the Customer remains responsible for all Charges, and in any other case, the Customer remains responsible for all Charges up to the date of the suspension (and after the Blacksmith Service is once again available for access or use) unless the Blacksmith Service is nevertheless provided in accordance with the Service Levels, in which case the Customer remains responsible for all Charges.
- 5.7 Encompass shall:
 - 5.7.1 as soon as reasonably practicable, disclose to the Customer any development that may have a material and adverse impact on its ability to perform the Services;
 - 5.7.2 co-operate with the Customer and any competent authority having authority in relation to the Customer or its Affiliates which are entitled to use the Services, including in connection with the discharge or exercise of any legal or regulatory duty, or any investigation by or on behalf of the Customer, such Affiliates, or competent authority, and that co-operation may include access to documentation, information, data, and premises in the possession or control of Encompass, subject to such safeguards as Encompass may require to protect the integrity, security, confidentiality, and safety of (as appropriate) its systems, data (including data of other customers), premises and staff; and
 - 5.7.3 use reasonable care and skill to supervise the performance of its obligations and liabilities under the Agreement and manage the associated risks.
- 6. USE OF THE ENCOMPASS SERVICE**
 - 6.1 The Customer shall, and shall procure that all End Users shall, use the Blacksmith Service in accordance with Regulations and all other terms of the Agreement.
 - 6.2 The Customer shall establish and maintain all reasonable technical and organisational measures against unauthorised or unlawful access to and use of the Blacksmith Service and accidental loss or destruction of, or damage to, the Blacksmith Service.
 - 6.3 The Customer shall not, and shall procure that End Users shall not, store, distribute or transmit any material through the Blacksmith Service that is unlawful, harmful, threatening, defamatory, obscene, infringes the rights of third parties, is harassing or racially or ethnically offensive, facilitates illegal activity, or promotes discrimination.
 - 6.4 The Customer assumes all risk of Loss incurred or sustained by the Customer or its Affiliates arising from reliance on the Blacksmith Service and the Blacksmith Materials, including with respect to compliance with Regulations.
- 7. SECURITY**
 - 7.1 The Customer shall keep accurate, complete, and up to date records of all End Users and the Security Information applicable to those End Users and shall ensure that the Blacksmith contains the requisite details of End Users.
 - 7.2 The Customer shall, and shall procure that each End User shall, keep the Security Information secure against unauthorised access or use and not disclose any Security Information to any other End User or other third party, nor cause or permit any End User or other third party to use Security Information on behalf of an End User.
 - 7.3 If any Security Information is disclosed or used without authorisation, or there are reasonable grounds to believe that to be the case, the Customer shall immediately notify Encompass, giving reasonable details of the circumstances, including the Security Information the security, integrity and confidentiality of which has or may have been compromised.
 - 7.4 Encompass may suspend or terminate the validity of any or all Security Information where any Security Information has been disclosed or used without authorisation, or where it believes that to be the case, and shall not be required to reinstate access to the Blacksmith Service to any or all affected End Users unless and until Encompass is satisfied that the security, integrity and confidentiality of the Blacksmith Service is no longer at risk.
 - 7.5 Encompass shall conduct industry standard checks, in accordance with its security policies from time to time, intended to detect the presence of a Virus in the Blacksmith Materials or which may affect the Blacksmith Service, and shall use all reasonable endeavours to remove any Virus so detected.
- 8. AUDIT**

Encompass is entitled on reasonable notice from time to time to require the Customer to permit or procure the permission for a duly authorised employee, agent or representative of Encompass to audit the use of the Blacksmith Service and the Blacksmith Materials, and to assess compliance with the Agreement, including for this purpose to access premises and systems, and to take copies of records.
- 9. TERMINATION**
 - 9.1 Either party may by giving notice to the other terminate the Agreement as from the date of expiry of the notice if the other commits a material breach of the Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) Business Days after the other has given notice containing details of the breach and requiring the breach to be remedied.
 - 9.2 Failure to pay the Charges when due is a material breach of the Agreement, and the period to which clause 9.1 refers (for the purpose of remedying the breach) is ten (10) Business Days.
 - 9.3 Except to the extent prohibited by Regulations, either party may at any time, by notice to the other, terminate the Agreement as from the date of expiry of the notice if an Insolvency Event occurs in relation to the other.
- 10. CONSEQUENCES OF TERMINATION**
 - 10.1 Termination of the Agreement does not affect the rights or liabilities of the parties which have accrued in accordance with this clause or otherwise have accrued due on or before termination, is without prejudice to any other rights that any party may have, and does not affect the continuance in force of clauses 2.6, 3, 6.5, 12 (*Intellectual Property Rights*), 13 (*Confidentiality*), 15 (*Indemnity and Third Party Claims*), and 16 (*Limitation of Liability*), which survive termination of the Agreement.
 - 10.2 The right to use the Blacksmith Service ends immediately upon termination of the Agreement, and (as between the parties) the Customer may retain and use the Blacksmith Materials acquired by the Customer prior to the date of termination on the same terms that applied immediately before termination.
 - 10.3 All Charges which are outstanding on the date of termination shall become immediately due and payable.
 - 10.4 Subject to clause 10.5, the Customer is entitled by notice in writing to Encompass, received within the three (3) months after the date of termination of the Agreement, to request the delivery-up of the Customer Data in the possession or control of Encompass, and Encompass shall provide a copy of the Customer Data in a .csv format or such other industry standard format that the Customer requires (acting reasonably) as soon as reasonably practicable after receipt of the Customer's notice.
 - 10.5 Encompass is entitled to retain Customer Data in accordance with the Agreement in accordance with Encompass' records retention policy from time to time or (if earlier) until such time as the Customer Data may not be retained in accordance with Regulations.
- 11. WARRANTIES**
 - 11.1 Each party warrants to the other that it has full right, power, and authority to enter into and perform its obligations under the Agreement.
 - 11.2 All warranties, conditions or terms not set out in the Agreement and which would otherwise be implied or incorporated into the Agreement by statute, common law or otherwise (other than as to title to goods and statutory interest) are hereby excluded except to the extent they may not be excluded or limited by law.
- 12. INTELLECTUAL PROPERTY RIGHTS**
 - 12.1 The Customer acquires no right, title or interest in or to Blacksmith, the Blacksmith Service or the Blacksmith Materials, or any of the Intellectual Property Rights subsisting in or relating to all or any of them, which (as between the parties) are owned by Encompass, or its licensors, and all rights are reserved save as set out in the Agreement.

- 12.2 Encompass shall defend the Customer or its Affiliates authorised to use the Blacksmith Service (**Relevant Licensees**) against, or at the option of Encompass settle, any claim, allegation, action, dispute or proceedings (**Claim**) by a third party that the Services infringe any Intellectual Property Rights, and shall be responsible for any damages, reasonable costs (including legal fees) and expenses finally awarded against the Relevant Licensees in respect of the Claim or payable under a settlement of the Claim approved by Encompass in writing.
- 12.3 If an infringement to which clause 12.2 refers occurs or may occur, Encompass may procure for Relevant Licensees the right to continue using the Services in accordance with the Agreement or render the Services non-infringing without any material reduction in quality, functionality, or performance.
- 12.4 If Encompass is unable to cure an infringement, Encompass may terminate the Agreement with effect from the date set out in the notice and refund any Charges prepaid in respect of the unexpired term of the Agreement.
- 12.5 This clause constitutes the Customer's exclusive remedy and Encompass' only liability for Claims.
- 13. CONFIDENTIALITY**
- 13.1 Each party undertakes to the other in relation to the Confidential Information of the other:
- 13.1.1 to keep confidential all Confidential Information;
- 13.1.2 not to disclose Confidential Information without the other's prior written consent except:
- (a) to those of its employees who need to know the Confidential Information; or
- (b) on a need to know basis in connection with a due diligence process in connection with mergers, acquisitions, disposals, capital, contributions, or funding, and otherwise in accordance with the Agreement; and
- 13.1.3 not to use Confidential Information except in accordance with the Agreement or for the purposes of performing its obligations under the Agreement, and in particular not to use Confidential Information to obtain a commercial, trading or any other advantage.
- 13.2 Clause 13.1 does not apply to Confidential Information to the extent that it is:
- 13.2.1 already in the possession of the recipient free of any duty of confidentiality on the date of its disclosure;
- 13.2.2 in the public domain, other than as a result of a breach of the Agreement;
- 13.2.3 disclosed to the recipient or any of its Affiliates by a third party after initial disclosure of the Confidential Information, except where the recipient or its Affiliate (as appropriate) is aware or ought reasonably to be aware that the third party is subject to a duty of confidence owed to the disclosing party or any of its Affiliates or is otherwise prohibited from disclosing the information in the circumstances in which the disclosure is made; or
- 13.2.4 required to be disclosed pursuant to Regulations or in connection with proceedings before a court or for the purpose of receiving legal advice, but only to the extent and for the purpose of that disclosure.
- 13.2.5 If a party is to disclose Confidential Information under clause 13.1.2(b), that party shall ensure, to the extent it is able to do so, that every person to whom disclosure is made pursuant to that clause uses such Confidential Information solely for such purposes and is bound by obligations of confidentiality.
- 13.3 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of clause 13, and accordingly a party will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of clause 13 ..
- 14. DATA PROTECTION**
- 14.1 Compliance and roles of the parties**
- 14.1.1 Each party shall comply with Data Protection Legislation.
- 14.1.2 The parties acknowledge that, as between them, in relation to the Customer's and its Affiliates' use of the Blacksmith Service, the processing of personal data by the Customer and its Affiliates (as appropriate, and each being a **Controller**) shall be as controller; subject to clause 14.1.5, the Controller shall determine the purpose for which and the means by which Relevant Personal Data are processed by Encompass on behalf of the Controller whilst performing the Services, and Encompass shall be the Controller's processor.
- 14.1.3 Nothing in the Agreement precludes Encompass and its Affiliates from using knowledge, skill and experience acquired as a result of providing the Blacksmith Service or from processing personal data which Encompass or its Affiliates acquires from sources other than the Customer or its Affiliates, for the purpose of improving or correcting Blacksmith.
- 14.1.4 At the Commencement Date, in relation to the Customer's or its Affiliates use of the Blacksmith Service, the subject matter of the processing of personal data, the nature and purpose of the processing, the type of personal data that are anticipated will comprise the personal data so processed, and the associated categories of data subjects, are described in Schedule 3 (*Relevant Personal Data*).
- 14.1.5 The parties do not intend Encompass to access any personal data processed by a Controller other than as may be strictly necessary for the provision of maintenance and support of Blacksmith, and any such access will be purely incidental and ad hoc and therefore very limited in practice; in those circumstances (in accordance with Data Protection Legislation) Encompass is neither a processor nor a controller in its own right in relation to any processing that may take place.
- 14.2 Return or destruction of personal data**
- All personal data acquired by a party from another for the purposes of the Services, including in the case of the Customer the Relevant Personal Data, shall be returned or deleted (at the option of the requesting party) on request save to the extent required by the requested party to discharge its obligations under the Agreement or under Regulations, and any personal data which is retained shall be returned or (as far as reasonably practicable) deleted immediately it is no longer required for such purposes.
- 14.3 Documented instructions**
- 14.3.1 Encompass shall process Relevant Personal Data in accordance with documented instructions from the Controller, except:
- (a) where and to the extent an instruction is contrary to processing which Encompass (or any person doing so under the authority of Encompass) must perform under Regulations, of which reasonable prior notice has been given to the Customer by Encompass, unless the Regulations prevent or restrict the giving of the notice on important grounds of public interest; or
- (b) the instruction gives rise to a Data Protection Termination Event, in which case Encompass is excused from complying with the instruction until the earlier of parties resolving the issue giving rise to the Data Protection Termination Event, this agreement terminates, or the right of Encompass to terminate this agreement under clause 14.8 lapses.
- 14.3.2 All processing of Relevant Personal Data in accordance with the Agreement shall be deemed to be pursuant to the documented instructions of the Controller.
- 14.3.3 Encompass shall inform the Controller if, in Encompass' opinion, any of the Controller's instructions would breach Data Protection Legislation having regard to the information then available to Encompass.
- 14.3.4 The Customer on its own behalf, and as agent for its Affiliates entitled to use the Blacksmith Service, hereby authorises Encompass and Sub-processors to process Relevant Personal Data as part of the Services in accordance with the Agreement.
- 14.3.5 Except on documented instructions from the Controller or otherwise provided by the Agreement, Encompass shall not transfer any Relevant Personal Data to any country or territory outside of the United Kingdom other than to members of the European Economic Area, or the European Economic Area other than to the United Kingdom, or to any international organisation.
- 14.3.6 If a Sub-processor processes Relevant Personal Data as part of Cloud Services at a location outside of the United Kingdom other than the European Economic Area, or the European Economic Area other than the United Kingdom, and not in a country considered by the United Kingdom or European Commission respectively to provide adequate protection for the processing of personal data, Encompass shall ensure that the processing which takes place in that location is subject to adequate protection in accordance with Data Protection Legislation.
- 14.4 Organisational and technical measures**
- Encompass shall establish and maintain technical and organisational measures in accordance with ISO27001 against Data Protection Events occurring in relation to Relevant Personal Data, and regularly test, assess, and evaluate them with reasonable care and skill and in accordance with Regulations.
- 14.5 Relevant Personnel**
- Encompass shall ensure that Relevant Personnel have committed themselves to be bound by confidentiality provisions.
- 14.6 General data protection obligations**
- 14.6.1 Encompass shall without undue delay, and in any event no later than reasonably required to enable the Controller to fulfil its duties under Data Protection Legislation:
- (a) provide such information as the Controller may reasonably require in relation to Relevant Personal Data or its processing and allow for and contribute to audits, including inspections, in accordance with clause 5.7.2;
- (b) pass on to the Controller any enquiries or communications (including subject access requests) from data subjects relating to their Relevant Personal Data or its processing;
- (c) provide to the Controller such information in the possession or control of Encompass as may be required for the purpose of responding to any such data subject; and
- (d) report to the Controller any security incidents or breaches relating to the Relevant Personal Data and provide such information as the Controller may reasonably require in relation to the incident or breach.
- 14.6.2 Encompass shall assist the Controller with the conduct of data protection impact assessments in relation to Relevant Personal Data and responding to requests of data subjects to exercise their rights in respect of the processing of their Relevant Personal Data, subject to payment by the Customer of a reasonable charge in respect of such assistance.
- 14.7 Sub-processors**
- 14.7.1 A list of the appointed Sub-processors and a description of the Cloud Services on which Encompass relies from time to time (**Sub-processor Information**) is available from Encompass on request; Encompass is liable for a breach of the Agreement which is caused by the acts or omissions of Sub-processors.
- 14.7.2 After the Commencement Date, Encompass shall not without the prior specific written consent of the Customer (on its own behalf and on behalf of all (if any) other Controllers) engage a sub-contractor or confer on any other third party (directly or indirectly) authority to process Relevant Personal Data, including in the course of Cloud Services, and if such consent is provided by the Customer in relation to a sub-contractor, without first entering into a contract with that sub-contractor under which the sub-contractor agrees to comply with obligations the same as those set out in the Agreement so far as material in relation to the processing of Relevant Personal Data.
- 14.7.3 Encompass may implement a mechanism for giving notices of changes to the Sub-processor Information automatically, and (where Encompass does so) the Customer shall make use of that mechanism; any notice given by Encompass of a change to the Sub-processor Information shall be received by the Customer on its own behalf and as agent for each other Controller, and the Customer shall be deemed to have received notice of the change to the Sub-processor Information within five (5) Business Days after the relevant change is communicated to the Customer by Encompass using the mechanism to which this clause refers.
- 14.7.4 Instructions in relation to the processing of Relevant Personal Data given by the Customer must be addressed to Encompass and may include the correction, deletion or blocking of Relevant Personal Data where the Blacksmith Service does not enable the Customer to do so itself.
- 14.7.5 Encompass and Sub-processors are entitled to suspend the performance of instructions from the Controller which it believes contravenes Data Protection Legislation until the Controller has confirmed or modified the instruction accordingly; the Customer shall immediately in writing confirm or modify the instructions of a Controller after being requested by Encompass to do so.
- 14.7.6 The policies and procedures of Sub-processors providing the Cloud Services, and the terms having effect from time to time between Encompass and such Sub-processors, in relation to the processing of Relevant Personal Data as part of the Cloud Services (**Relevant Sub-processing**) are included in the Agreement (with such changes as are necessary being deemed to be made) (**Additional Data Processing Terms**), and shall apply to any Relevant Sub-processing of Relevant Personal Data to the exclusion of any provisions to the contrary in the Agreement.
- 14.7.7 The manner in which and the extent to which the Controller exercises or is entitled to exercise rights under the Agreement in respect of Relevant Personal Data that are the subject of the Relevant Sub-processing shall be subject to the Additional Data Processing Terms.
- 14.8 Data Protection Termination Events**
- Where a Data Protection Termination Event occurs, Encompass is entitled to terminate the Agreement by giving not less than sixty (60) days' notice to the Customer, and shall refund any Charges paid in advance in respect of the period from the date of termination to the end of the Initial Term or then Renewal Term (as appropriate), pro rata on a time basis according to the proportion of the subscription term which that period represents.
- 14.9 Controller rights**
- As soon as reasonably practicable after a request from the Customer to do so, Encompass shall enter into any deed or other document with the Controller (other than the Customer) in order to enable the Controller to comply with Data Protection Legislation in relation to the processing of Relevant Personal Data under the Agreement.
- 15. THIRD PARTY CLAIMS**
- 15.1 The Customer shall indemnify Encompass, its Affiliates, Data Providers, and its or their officers, employees, agents and contractors (**Indemnified Persons**) in respect of all Loss incurred or sustained by the Indemnified Persons arising from or in connection with any claim by any third party relating to use of the Blacksmith Service by End Users, or by or on behalf of the Customer or its Affiliates except where and to the extent the claim is due to the fraud, negligence or breach of the Agreement by Encompass.
- 15.2 Where an Indemnified Person claims under clause 15.1, or a Relevant Licensee claims under clause 12.2, in either case in respect of a claim of a third party (**Third Party Claim**) the rights of the Indemnified Person or the Relevant Licensee (as appropriate) (**Claiming Party**) are subject to and conditional on the Claiming Party satisfying the following:
- 15.2.1 as soon as reasonably practicable giving Encompass or the Customer (as appropriate) (**Defending Party**) written notice of the Third Party Claim;
- 15.2.2 not admitting liability or making any offer, promise, compromise, settlement or communication with the third party in respect of the Third Party Claim;
- 15.2.3 surrendering to the Defending Party or its insurers in the name of the Claiming Party the conduct of the defence, settlement or counterclaim of the Third Party Claim, and providing to the Defending Party or its insurers all reasonable information and assistance in connection with the defence or settlement of the Third Party Claim (as appropriate); and
- 15.2.4 where the Claiming Party is a Relevant Licensee, the Customer having complied with the Agreement.
- 16. LIMITATION OF LIABILITY**
- 16.1 This clause sets out the maximum liability of Encompass in respect of a breach by Encompass of the Agreement, including any willful or deliberate breach of contract, and a tortious act or omission (including negligence), breach of statutory duty or misrepresentation, of Encompass in connection with the Agreement (each being an **Event of Default**), and all other liability is excluded, except that

- nothing in the Agreement shall affect the liability of Encompass for death or personal injury, fraud, under clause 12.2, or any other liability to the extent it cannot be excluded or limited by law.
- 16.2 Encompass' total financial liability for all Events of Default in each period of twelve (12) months or part thereof (a **Contract Year**) during the term of the Agreement commencing on the Commencement Date and each anniversary of the Commencement Date shall not exceed an amount equal to the Charges paid and payable from time to time during the Contract Year.
- 16.3 In no event is Encompass liable for any Loss for which the Customer has assumed the risk under the Agreement, loss of profit, loss of reputation, loss of business, revenue or goodwill, anticipated savings, loss or damage to data, or for any consequential or indirect loss, and regardless of whether the loss or damage would arise in the ordinary course of events, is reasonably foreseeable, is in the contemplation of the parties, or otherwise.
- 17. RIGHTS OF THIRD PARTIES**
- 17.1 Except as provided in this clause, the Agreement does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it.
- 17.2 The following are beneficiaries under the provision to which this clause refers and may enforce the benefit of it under the Contracts (Rights of Third Parties) Act 1999 except that the parties may rescind or vary the provision in question without the consent of the relevant third party:
- 17.2.1 Affiliates to which the Order refers are entitled to the benefit of the Customer's rights under the Agreement to the extent they use the Services;
- 17.2.2 Indemnified Persons under clause 15.1;
- 17.2.3 competent authorities in respect of any right expressly conferred on competent authorities under the Agreement.
- 18. PUBLICITY**
- 18.1 Subject to obtaining the Customer's prior consent, which may not be unreasonably withheld or delayed, Encompass may identify the Customer as a user of the Blacksmith Service from time to time.
- 18.2 The Customer agrees to provide editorial input and approve (acting reasonably) content for:
- 18.2.1 a press release to be used within ninety (90) days after the Commencement Date stating that the Customer has acquired the Blacksmith Service, including a statement from a senior executive in the Customer's organisation on why the Blacksmith Service was chosen; and
- 18.2.2 a case study to be released within the twelve (12) months after the Commencement Date describing the Customer's use of the Blacksmith Service, including a statement from a senior executive in the Customer's organisation on the benefits gained.
- 19. GENERAL**
- 19.1 Entire agreement**
- 19.1.1 The Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior statements and other representations, agreements, understandings, and other dealings made by or involving the parties or any third party relating to its subject matter (collectively or any of them being **Dealings**).
- 19.1.2 Each party has entered the Agreement without relying on Dealings other than as expressly set out in the Agreement.
- 19.1.3 No party shall have a claim in respect of Dealings expressly set out in the Agreement other than for breach of contract, which shall be to the exclusion of any other claim in respect of those Dealings.
- 19.2 Force majeure**
- The obligations of Encompass under the Agreement shall be suspended for so long as and to the extent that their performance is prevented, hindered, or delayed by any event which is beyond the reasonable control of Encompass, including acts of God, war, terrorism, fire, and natural disasters.
- 19.3 Remedies cumulative**
- The rights of the parties provided by the Agreement are cumulative and (unless otherwise provided in the Agreement) are not exclusive of any rights or remedies of the parties provided by law or in the Agreement.
- 19.4 Notices**
- 19.4.1 Any notice to be given under the Agreement shall be in writing, and shall either be delivered by hand, email, or sent by first class pre-paid post (or in the case of overseas post, by airmail). Delivery by courier shall be regarded as delivery by hand.
- 19.4.2 Notices (other than notices sent via email) shall be sent to the registered office or principal place of business in the United Kingdom (if any) of the relevant party to the Agreement.
- 19.4.3 A notice shall be deemed to have been served if:
- (a) delivered by hand at the address referred to in clause 19.4.2, at the time of delivery;
- (b) sent by first class pre-paid post to the address provided for by clause 19.4.2, at the expiration of two (2) Business Days after the time of posting;
- (c) sent by airmail, to the address provided for by clause 19.4.2, at the expiration of seven (7) Business Days after the time of posting; or
- (d) sent by email (with receipt confirmed), immediately, except that if the email produces an automated response reporting a failure to deliver, delayed delivery to the intended recipient, or an "out of office" (or similar) notification, the notice shall not be taken to have been served.
- 19.4.4 If a notice would otherwise be deemed to have been delivered outside working hours (being 9.00 am to 5.00 pm) on a Business Day under the preceding provisions of this clause, it shall be deemed to have been delivered at the opening of such normal working hours on the next Business Day.
- 19.4.5 In proving service of the notice, it shall be sufficient to show that delivery by hand was made or that the envelope containing the notice was properly addressed and posted in accordance with this clause.
- 19.4.6 A party may notify the other of a change to its name, relevant person, address, or email address for the purposes of this clause, provided that such notification shall only be effective on:
- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is deemed to have been served, the date falling five (5) Business Days after notice of any such change is deemed to have been given.
- 19.4.7 For the avoidance of doubt, the parties agree that the provisions of this clause shall not apply in relation to the service of any claim form, application notice, order, judgment or other document relating to or in connection with any proceedings.
- 19.5 Waiver**
- Any failure or neglect by either party to enforce any of the provisions of the Agreement shall not be construed nor deemed to be a waiver of that party's rights and does not affect the validity of the whole or part of the Agreement nor prejudice that party's rights; any waiver by either party of its rights under the Agreement does not operate as a waiver in respect of any subsequent breach.
- 19.6 Invalidity**
- If any provision of the Agreement is held to be illegal, invalid or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of the Agreement and the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.
- 19.7 Interception of communications**
- The Customer acknowledges that telephone calls and e-mails to Encompass may be intercepted for the purpose of monitoring and keeping a record of communications, consents to Encompass doing so, and agrees that any record so made may be submitted in evidence to any court in any proceedings with respect to the Agreement.
- 19.8 Assignment and sub-contracting**
- 19.8.1 The Customer shall not without the prior written consent of Encompass assign, transfer, charge, dispose of, deal with or sub-contract its rights or obligations under the Agreement.
- 19.8.2 Encompass may assign its rights under the Agreement, including the right to receive the whole or part of the Charges.
- 19.9 Amendment**
- 19.9.1 Subject to clause 19.9.2, Encompass is entitled from time to time to amend this Encompass Customer Services Agreement and any such amendment shall take effect from the date on which the revised form of the document is first made available for inspection by Encompass at www.Encompasscorporation.com/customer-service-agreement.
- 19.9.2 Encompass may not amend this Encompass Customer Services Agreement where and to the extent the amendment would change the Order, the provisions of clauses 12.2, 18 (*Limitation of Liability*), or in any other way entitle Encompass to render no performance at all under the Agreement or performance substantially different than that which ought reasonably to be expected by the Customer.
- 20. GOVERNING LAW**
- This Agreement, and any non-contractual obligations arising in connection with the Agreement, shall be governed by and construed in accordance with English law.
- 21. ADDRESS FOR SERVICE**
- Where the Customer is incorporated or established in any jurisdiction other than England and Wales or Scotland, as soon as reasonably practicable after being requested to do so by Encompass, the Customer shall irrevocably appoint an agent for service of process in England and Wales or Scotland.

Glossary

1. DEFINITIONS

In the Agreement, unless the context otherwise requires, capitalised expressions in the body of the Agreement have the meaning given to them, and the following definitions apply:

Affiliate means in relation to a party, any person who controls, is controlled by, or is under common control with, that party, and **control** means the beneficial ownership of more than fifty percent (50%) of the issued share capital of, or the legal power to direct or cause the direction of, the person in question (or its holding company as the case may be), and **controlled** shall be construed accordingly.

Blacksmith means the proprietary web-based application, including application programming interfaces, owned by Encompass or its Affiliates which consolidates corporate, personal, property, asset and other data sets from Data Providers, in such form as Encompass releases from time to time.

Blacksmith Materials means any or all Data obtained by the Customer or its Affiliates (as appropriate) through use of the Blacksmith Service in accordance with the Agreement in the form processed by the Customer or its Affiliates (as appropriate) using Blacksmith.

Blacksmith Service means access to Blacksmith and the Data.

Business Day means Monday to Friday excluding public and bank holidays in the United Kingdom.

Charges means the fees and other costs (excluding value added tax (which is payable by the Customer in addition)) set out in the Order or otherwise payable by the Customer under the Agreement.

Cloud Services means services supporting Blacksmith, including by way of platform-as-a-service or infrastructure-as-a-service (as those expressions are defined by The National Institute of Standards and Technology in the USA or any replacement body).

Commencement Date has the meaning given to it on the Order or, if earlier, shall be the date on which an End User first uses the Blacksmith Service.

Confidential Information means in relation to a party or its Affiliates, the terms of the Agreement, and all other information and trade secrets relating to that party's or its Affiliates' business or customers which come into the possession of the other party or its Affiliates pursuant to the Agreement, whether orally, or in documentary, electronic or other form, including all such information held by the other as of the Commencement Date including, in the case of Encompass, Blacksmith and the form in which Data are visualised or presented on Blacksmith from time to time, and in the case of the Customer, the Customer Data.

Customer means the person identified as such on the Order, and in any other circumstances the person whom the individual, who accesses the Blacksmith Service with the consent of Encompass, represents.

Customer Data means all information and data provided by the Customer or its Affiliates to Encompass for the purposes of using the Services, the Blacksmith Materials and (to the extent different) Relevant Personal Data.

Data means all or any data put into circulation by a Data Provider from time to time and accessible or accessed (as the case may be) by means of use of the Blacksmith Service.

Data Protection Event means accidental, unauthorised or unlawful processing of, access to, loss of or damage to personal data.

Data Protection Legislation means Regulations relating to the processing of personal data in the course of the provision (in the case of Encompass) and the use (in the case of the Customer and its Affiliates) of the Blacksmith Service under the Agreement.

Data Protection Termination Event means any of the following, namely: (i) the Customer does not consent to the appointment of any Sub-processor under clause 14.7.4; (ii) an instruction from the Customer under clause 14.3.1 is necessary to enable the Customer to meet mandatory legal requirements and a Sub-processor is not able to accommodate the requested changes, or (iii) Encompass cannot comply with the Agreement in relation to the processing of Relevant Personal Data due to terms having effect between Encompass and its Sub-processors (other than Affiliates of Encompass) or the cessation of services provided by the Sub-processor (other than due to the act or omission of Encompass or its Affiliates).

Data Provider means, in relation to Bankers Almanac, RELEX (or its successor in title) and, in relation to Swift KYC Registry, Swift (or its successor in title), and any other provider of data identified in the Order.

End User means an employee of the Customer, or other representative of the Customer, who has been duly approved by Encompass, and who has access from time to time to the Blacksmith Service.

Insolvency Event means each and any of the following in relation to a party (a) any action (corporate or otherwise), legal proceedings or other procedure or step taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a party; (ii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a party or any of its assets; (iii) the enforcement of any security over any assets of a party; or (iv) the attachment, sequestration, distraintment upon or execution over or affecting any material asset of a party, which in any case is not withdrawn or dismissed as soon as reasonably practicable; (b) the party is unable to pay its debts as they fall due or is insolvent, or the other party perceives (acting reasonably) that to be the case; (c) party enters into a composition or arrangement with any creditor, or its creditors or any class of them; or (d) any analogous event occurs in any jurisdiction in which the party is incorporated or established.

Intellectual Property Rights means any and all patents, trade marks, business names, copyright, moral rights, database rights, rights in designs, rights in inventions, and any and all other intellectual property rights, whether or not registered or capable of registration and whether subsisting anywhere in the world and including all applications and rights to apply for any of them together with all or any associated goodwill.

Initial Term means a trial period of 30 days, followed by a 12 month period commencing on the 30th day after the Commencement Date. Charges will become payable for the full Initial Term on the 30th day after Commencement Date

Loss includes all or any loss, damage, cost and expense.

Order means a written request by the Customer (in terms agreed with Encompass) for the provision by Encompass of the Services in such form as Encompass may require, which is executed by Encompass and the Customer.

Professional Services means the services described in the Order.

Professional Services Terms means the terms set out Schedule 2 (*Professional Services Terms*)

Regulations means all legislation, and all rules or regulations of any kind, including orders, instructions or directions of a competent authority, and all related official guidance, whether enacted or enforced by any competent authority.

Renewal Term means each period of twelve (12) months commencing at midnight on the last day of the Initial Term and each anniversary of it.

Relevant Personal Data means personal data of the kind described in Schedule 3 (*Relevant Personal Data*) which are processed by the Customer or its Affiliates (as appropriate) in the course of using the Services.

Relevant Personnel means representatives and personnel of Encompass who have access to Relevant Personal Data.

Security Information means the log-in details, private keys or passwords or other access controls used in connection with the Blacksmith Service to access the Blacksmith Service.

Service Levels means, in relation to the Blacksmith Service, the service levels adopted by Encompass from time to time, a copy of which is available on request.

Services means the Professional Services and the Blacksmith Service, or any of them.

Sub-processor means any legal or natural person proposed to be authorised or authorised (as appropriate) to process Relevant Personal Data from time to time, including a sub-contractor of Encompass and any other third party which is a party to a contract under which such processing is authorised to take place.

Virus means any code or data designed or adapted to impair or otherwise adversely affect the operation of any computer or equipment, prevent or hinder access to any program or data (whether by rearranging the same within the computer or equipment or any storage medium or device, or by altering or erasing the program of data in whole or part, otherwise), including computer viruses and other similar things.

2. REFERENCES

In the Agreement:

- 2.1 references to:
- 2.1.1 words and phrases that are defined in Regulations shall have the meaning in the Regulations, and **personal data, processing, disclosure, controller, and processor** have the meaning in Data Protection Legislation;
 - 2.1.2 the **Schedules** are to the schedules to the body of this document;
 - 2.1.3 a statutory provision includes a reference to any modification, consolidation, or re-enactment of the provision from time to time in force, and all subordinate instruments, orders or regulations made under it;
 - 2.1.4 either party includes, where appropriate, persons deriving title under it;
 - 2.1.5 **subsidiary and holding company** have the meanings given to them by section 1159 of the Companies Act 2006;
 - 2.1.6 **includes or including** shall be construed as without limiting the generality of the preceding words;
 - 2.1.7 **indemnify** means on demand to indemnify and keep indemnified, and hold harmless, the party to be indemnified on an after-tax basis;
 - 2.1.8 any document (including the Agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with the Agreement;
 - 2.1.9 writing includes any method of reproducing words in a legible and non-transitory form, including e-mail; and
 - 2.1.10 rights include the rights and remedies of the party in question;
- 2.2 the singular includes the plural and vice versa; and
- 2.3 the headings are for convenience only, and do not affect the interpretation of the Agreement.

3. CUSTOMER AFFILIATES

The Customer is liable for the acts and omission of its Affiliates as if they were its own, and each obligation of the Customer under the Agreement, and any reference to an act or omission of the Customer, unless the context otherwise requires, includes (in the case of the former) an obligation to procure that the obligation (where necessary) is performed by an Affiliate of the Customer, and (in the case of the latter) any act or omission of an Affiliate of the Customer.

SCHEDULE 2
Professional Services Terms

1. **SUPPLY OF PROFESSIONAL SERVICES**
- 1.1 The allocation between the parties of responsibility for the tasks required in connection with the Professional Services and the times for their performance that are known at the Commencement Date are described in this clause and more particularly in the Order, and a party's responsibilities are deemed to include all other tasks that are reasonably incidental to the performance of the tasks so allocated.
- 1.2 Encompass' responsibilities in relation to the Professional Services include the following:
 - 1.2.1 establishing the project teams and governance framework;
 - 1.2.2 preparation of a project initiation document that outlines key activities, timelines and milestones and identifies key personnel;
 - 1.2.3 organising and attending workshops;
 - 1.2.4 support policy definition and design;
 - 1.2.5 where appropriate, providing API specifications to Blacksmith and the support described in the Order to assist the Customer integrate its applications with Blacksmith to create a single point of access;
 - 1.2.6 provide training to be agreed with the Customer for testing and ongoing usage; and
 - 1.2.7 enable to access the Blacksmith Service.
2. **PERFORMANCE**
- 2.1 The parties shall co-operate in any reasonable arrangements relating to the timely undertaking of the Professional Services and shall provide such information and assistance as the other may require (acting reasonably) in relation to discharging their responsibilities.
- 2.2 Encompass shall have the right and duty to manage all tasks required to be undertaken for the purposes of, or in connection with, the Professional Services.
- 2.3 The parties shall undertake their respective responsibilities under the project plans prepared by Encompass and otherwise the Professional Services shall be undertaken and completed within a reasonable time.
- 2.4 Encompass is discharged in whole or part from performing the Professional Services under this paragraph and in accordance with clause 19.2 (*Force majeure*).
- 2.5 Encompass is discharged from its obligations (but only to the extent and for so long as the relevant circumstances affect Encompass' performance) where any of the following applies (**Relief Event**):
 - 2.5.1 the responsibilities of the Customer and the actions and events in relation to the Professional Services which need to be performed or (as the case may be) to occur, or not to occur, for Encompass to perform the Professional Services are not met other than due to any act or omission of Encompass or its sub-contractors;
 - 2.5.2 information or data provided by or on behalf of the Customer is inaccurate, incomplete, or misleading, or is not provided in accordance with agreed timescales or otherwise timeously after receipt of a request from Encompass;
 - 2.5.3 the Customer omits to inform Encompass of any modification to or replacement of any agreement to which the Customer or any of its Affiliates is a party that is relevant to the provision of the Professional Services, or does not do so in accordance with agreed timescales or otherwise timeously after receipt of a request from Encompass; or
 - 2.5.4 the Customer is in breach of the Agreement.
- 2.6 Where a Relief Event applies for any reason other than any act or omission of Encompass or its sub-contractors, the Customer shall indemnify Encompass in respect of any incremental costs and expenses incurred by it in performing its obligations under the Agreement, including costs (calculated in accordance with the rates set out in the Order) in respect of personnel who are ready and willing to perform tasks allocated to Encompass as part of the Professional Services but who have been prevented, hindered or delayed by the Relief Event.
3. **COMPLETION OF THE PROFESSIONAL SERVICES**
- 3.1 Encompass shall demonstrate to the Customer (acting reasonably) that the Professional Services have been completed in accordance with the Agreement, including by way of tests that the parties agree in writing.
- 3.2 The Customer must not unreasonably withhold confirmation that the Professional Services have been completed in accordance with the Agreement and shall notify Encompass promptly on becoming aware of any errors or insufficiencies in the implementation of Blacksmith in sufficient detail to enable Encompass to replicate the error or insufficiency.
- 3.3 Upon receipt of a notice under paragraph 3.2, Encompass shall use reasonable endeavours to correct the errors or insufficiencies so that the Blacksmith Service is ready for use.
- 3.4 The Blacksmith Service shall be ready for use on the earlier to occur of the following:
 - 3.4.1 the rectification of the errors or insufficiencies (if any) by Encompass; and
 - 3.4.2 the expiry of ten (10) Business Days after completion of the implementation of Blacksmith, if the Customer has not by the end of that period notified Encompass of any errors or insufficiencies in Blacksmith.
4. **CHANGE CONTROL**
- 4.1 The Customer may at any time request, and Encompass may at any time recommend, changes to the Professional Services (**Project Changes**).
- 4.2 Neither the Customer nor Encompass shall unreasonably withhold or delay its agreement to any Project Change.
- 4.3 Until a Project Change is agreed in writing by the parties in accordance with this Schedule, the Agreement shall remain in effect as if the request or recommendation had not been made.
- 4.4

SCHEDULE 3

Relevant Personal Data

5. **NATURE AND PURPOSE OF THE PROCESSING**
All processing as may be required in order to support:
 - 5.1 the anti-money laundering (**AML**) and counter-terrorism financing (**CTM**) policies and procedures of the Customer and its Affiliates; and
 - 5.2 any form of due diligence relating to an actual or prospective counterparty to any dealings with the Customer or any of its Affiliates (**Due Diligence**).
6. **TYPE OF PERSONAL DATA**
Any or all information relating to a person which is required (as determined by the Customer or its Affiliates) for the Customer or its Affiliates to comply with Regulations and best practices relating to AML and CTM, to conduct Due Diligence, and such other purposes as may be agreed between the parties from time to time.
7. **CATEGORIES OF DATA SUBJECTS**
Individuals who are past, present or potential clients or customers of the Customer or any of its Affiliates, or who may be officers, shareholders, or employees of those clients or customers, or who may in any way be connected with those clients or customers.