



# CONSULTING SERVICES SUPPLEMENTAL TERMS AND CONDITIONS

SINCH and Customer have agreed that SINCH will provide to Customer certain Consulting Services. These supplemental terms and conditions (“Consulting Supplement”) to the General Terms and Conditions (the “**Agreement**”) for SINCH Products and Services apply solely to Consulting Services and not to any other SINCH product or service. In case of conflict the terms of the Scope Document shall prevail over any Service Description.

## 1. DEFINITIONS

1.1 “**Change Request**” means a change request made in accordance with section 4 of this Schedule and in the form made available by SINCH from time to time or included in the Order Form.

1.2 “**Confidential Information**” means, with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, and/or (iii) Customer financial information, and with respect to SINCH: (i) the Consulting Services, documentation, SINCH materials and Work Product and Deliverables, and (ii) information regarding SINCH research and development, product or services offerings, pricing and availability.

Confidential Information of either SINCH or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.

1.3 “**Consultants**” means employees and third party contractors which SINCH utilizes to provide Consulting Services to Customer.

1.4 “**Consulting Services**” means Consulting Services as defined in the Agreement in conjunction with the applicable Service Descriptions, Statements of Work (SoW) and/or Scope Documents.

1.5 “**Deliverables**” means those specific Work Products which are explicitly identified as a “Deliverable” under the applicable Order Form.

1.6 “**Intellectual Property Rights**” means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.7 “**Material Defect**” means the Deliverable fails to substantially comply with the applicable and corresponding acceptance criteria for that Deliverable set forth in the Order Form.

1.8 “**Scope Document**” (or in some cases referred as “Statement of Work”) means the document that is provided with and becomes part of the Order Form and which defines sometimes in conjunction with a Service Description the Consulting Services to be provided.

1.9 “**Service Description**” means pre-defined descriptions of services available on request which in conjunction with a Scope Document defines the Consulting Services to be provided and becomes part of the Order Form.

1.10 “**Taxes**” unless otherwise stated in the Order Form, it means federal, state or local sales, VAT, GST, foreign withholding, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Customer’s account.

1.11 “**Work Product**” means any work product or tangible results produced by or with SINCH, including works created for or in cooperation with Customer.

## 2. PROVISION OF SERVICES

### 2.1 Personnel



SINCH will, at its sole discretion (i) select the Consultants to be deployed to deliver Consulting Services; and (ii) reserves the right to replace any Consultant at any time with a Consultant having equivalent skills.

## **2.2 Replacement**

If at any time Customer or SINCH is dissatisfied with the material performance of a Consultant or a Customer project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change (which also, in the case of SINCH, shall be subject to staffing availability).

## **2.3 Delays**

If any Consulting Service, in whole or in part, cannot be provided by SINCH due to a Customer issue and Customer fails to provide SINCH with reasonable advance notice, the time spent by SINCH resources on such Consulting Service will be charged to Customer.

## **2.3 Rights**

Customer shall ensure to have all necessary license rights including third party license rights required to allow SINCH to perform the Consulting Services. For avoidance of doubt, the Customer grants Sinch, free of charge and for the purposes of the performance of the Services, the right to use its brands, logos and distinctive marks for the duration of the Agreement. Authorised use shall include a limited right of reproduction and, to the extent necessary, modification or adaptation, of these brands, logos and distinctive marks for the purposes of executing the Service.

## **3. CHANGE REQUEST PROCEDURES**

Either party can request changes to the Consulting Services. SINCH is not required to perform under a Change Request prior to the execution by the parties of the applicable Change Request.

## **4. TERM AND TERMINATION**

### **4.1 Term**

Each Consulting Service shall be effective as of the Effective Date set forth in an applicable Order Form, and shall remain in effect until end of term or completion of the Consulting Services or terminated earlier by either party in accordance with the applicable Agreement terms.

### **4.2 Termination for Convenience**

Consulting Services (excluding fixed-price Consulting Services) may be terminated by either party upon thirty (30) days' prior written notice.

### **4.3 Effect of Termination**

Customer shall be liable for payment of all costs, fees and expenses up to the effective date of termination for (i) any completed, partially completed or scheduled Consulting Services from any phase or milestone (ii) any reasonable committed costs or expenses; (iii) any non-refundable travel costs including visa costs and related expenses.

All Confidential Information (excluding Consulting Services Deliverables) of the other party shall upon request of the other party be returned to the Disclosing Party or destroyed with certification of such destruction from an authorized individual.

## **5. INTELLECTUAL PROPERTY RIGHTS**

5.1 All title to and rights in the Consulting Services, Deliverables and Work Products, and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Consulting Services and/or Deliverables (whether or not developed for Customer), shall be the sole and exclusively property of SINCH or its Affiliates. Customer agrees to execute and to ensure its third parties execute such documentation as reasonably necessary to secure SINCH's or SINCH Affiliate's title over such rights.

5.2 Provided that all amounts due under an Order Form are timely paid in full and all claims have been satisfied, Customer is granted a non-exclusive, non-transferable license for the duration of the term of the Order Form, so long



as Customer complies with the terms of the relevant Order Form and the attachments thereto, including without limitation the General Terms and Conditions (collectively, the "Agreement"), and this Agreement, to use any Deliverables and Work Products provided to it by SINCH under the relevant Order Form under this Agreement in order to run Customer's and its Affiliates' internal business operations, and otherwise to the same extent as Customer is granted a license or right to use the SINCH service, software, documentation and SINCH Confidential Information in the Agreement.

5.3 Customer must immediately notify SINCH in writing if any third-party gains unauthorized access to SINCH proprietary materials or Confidential Information. Customer shall take all reasonable steps to stop such unauthorized access.

## **6. FEEDBACK**

Customer may at its sole discretion, provide SINCH with input, comments or suggestions from Customer, regarding SINCH's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the software, products and/or services of SINCH, (collectively "Feedback"). Customer grants to SINCH and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense through multiple tiers, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media.

## **7. CONSULTING SERVICES WARRANTY**

### **7.1 Good industry practices**

SINCH warrants that:

- (a) its Services will be performed in a professional workman-like manner by Consultants with the skills reasonably required for the Services; and
- (b) for ninety (90) days following provision of the Services, the Deliverables will materially conform with the applicable specifications for that Deliverable. For clarity, the warranty period for Deliverables (if any) resulting from any subscription based Services will in no event exceed the termination date of the subscription based Services.

SINCH does not warrant error-free or uninterrupted operation of any Service or Deliverable or that SINCH will correct all non-conformities.

### **7.2 Notification**

Customer shall notify SINCH within ninety (90) days of provision of the Services or Deliverable in writing of the alleged warranty breach and provide SINCH with a precise description of the problem and all relevant information reasonably necessary for SINCH in order to rectify such warranty breach.

### **7.3 Remedy**

Provided Customer has notified SINCH in accordance with section 7.2 of a warranty breach and SINCH validates the existence of such warranty breach, SINCH will, at its option:

- (a) re-perform the applicable Services or Deliverable;
- (b) refund the fee paid or reallocate quota for the specific non-conforming Service or Deliverable.

This is Customer's sole and exclusive remedy for a warranty breach.

### **7.4 Exclusions**

This warranty shall not apply

- (a) if the Deliverables are not used in accordance with any applicable documentation provided or
- (b) if the alleged warranty breach is caused by a modification to the Deliverable, Customer or third-party software.

### **7.5 Disclaimer**



SINCH and its licensors disclaim all warranties express or implied or statutory, including without limitation, any implied warranties of merchantability or fitness for a particular purpose except to the extent that any warranties implied by law cannot be validly waived.

## **8. LIMITATION OF LIABILITY, LIABILITY CAP FOR CONSULTING SERVICES**

Consulting Services shall be subject to the limitation of liability provision as set forth in the General Terms and Conditions (the "Agreement"), except that the following shall replace and supersede the section with respect to the liability cap as set forth in the Agreement: For any Consulting Services provided under the Agreement, under no circumstances and regardless of the nature of any claim shall the maximum aggregate liability of either party (or their respective Affiliates or SINCH's subcontractors) to the other or any other person or entity under or in connection with the Agreement, exceed the total fees paid for the applicable Consulting Service under the relevant Order Form or, in the case of Consulting Services which are subscription based or billed on a monthly or annual basis, the fees paid in the twelve (12) month period preceding the date of the incident giving rise to the liability.

## **9. NON-SOLICITATION**

Neither party shall knowingly solicit or hire, the other party's employees involved in the Consulting Services during the term or for a period of six (6) months from the termination of the applicable Order Form, without the express written consent of the other party. This provision shall not restrict the right of either party to solicit or recruit generally in the media.