



THE HACKETT GROUP CONTRACTING TERMS NORTH AMERICA

EFFECTIVE May 21, 2019

NORTH AMERICA

GENERAL TERMS & CONDITIONS

AND APPENDICES

APPLICABLE TO

ALL HACKETT SERVICES

These General Terms & Conditions and Appendices (the "General Terms") shall apply to all Services (as hereinafter defined) delivered to the Client by Hackett, except when the applicability of the General Terms is excluded or restricted by law, regulations or written agreement or when amendments to these General Terms have been confirmed explicitly and in writing mutually. Any general terms and conditions proposed by the Client including those referenced in purchase orders are rejected explicitly.

The different Appendices of these General Terms are incorporated by reference and shall apply to a Statement of Work (as hereinafter defined) whenever the type(s) of Services proposed or provided by Hackett may be categorized under the relevant Appendix.

Whenever the contents or interpretation of the Statement of Work and the General Terms conflict, the General Terms shall take precedence. Whenever the content of an Appendix which contains terms and conditions related to a specific type of Service conflict with the Statement of Work or General Terms or an Appendix covering a broader range of services, the more specific Appendix applicable to the Services delivered shall take precedence over the more general Appendix which shall take precedence over the General Terms which shall take precedence over the Statement of Work.

DEFINITIONS:

"**Affiliate**" means any entity which is controlling, controlled by, or under common control with, any party to a Statement of Work, including Hackett or any Hackett Entity.

"**Agreement**" means the Statement(s) of Work and these General Terms.

"**Claim**" means any claim or proceeding of any nature including but not limited to contract, tort, breach of statutory duty, negligence or otherwise.

"**Client**" means the legal entity which confers the engagement to Hackett, and which is the other party to a Statement of Work.

"**Hackett**" means one or more of the legal entities which shall have been engaged by the Client for the Services under an Agreement.

"**Hackett Entity**" means The Hackett Group, Inc. and its respective subsidiaries and Affiliates, and their respective predecessors, successors and assignees.

"**Losses**" means any Claims, liabilities, damages, costs or expenses of any sort in any way relating to or arising out of the Agreement or the Services.

"**Services**" means the products, services, deliverables and work product described in a Statement of Work.

"**Statement of Work**" means the statement of work, proposal, letter agreement or equivalent document describing the Services to be performed by Hackett entered into between Client and Hackett and any amendments thereto, other than the General Terms.

"**Subcontractor**" means a third party (other than a Hackett Entity) to whom Hackett subcontracts any of the Services.

- 1) **Procedure for Services.**
 - a) The Agreement constitutes the whole agreement between the Client and Hackett in relation to the Services. The Agreement supersedes any previous agreement, proposal, understanding or communication, written or oral, relating to its subject matter. No variation to an Agreement shall be effective unless it is documented in writing, provided, however, that the scope of Services set forth in the Statement of Work may be changed by agreement of the parties in writing, including by e-mail or facsimile.
 - b) Services are initiated only after a completed Statement of Work has been approved and signed by an authorized individual for Client and for Hackett. The Agreement shall be concluded at the moment that the Statement of Work, signed by the Client and Hackett, has been received by Hackett and – if applicable – shall be effective retroactively as from the date Hackett started its performance there under. If Hackett has already started work (e.g. by gathering information, project planning or giving initial advice) then the Client agrees that the Agreement is effective as of the start of such work. Client will be obligated to pay Hackett the reasonable value of any Services performed during such period, but in no case less than actual hours worked as a percentage of the total project estimated fees specified in the Statement of Work(s), plus reimbursable expenses.
 - c) If the Client and the beneficiary of the Services are separate legal entities – including, without limitation, natural persons – and either is an Affiliate of the other, the Client warrants and represents that the (other) party or parties having an interest in the Services accept the terms and conditions of the Agreement fully, failing which the Client shall indemnify and hold Hackett harmless from and against all Losses connected with the breach of such warranty or representation.
- 2) **Statements of Work.** Hackett agrees to perform the Services in a professional manner as detailed in each applicable Statement of Work. Hackett reserves the right to requote a Statement of Work if its acceptance by Client does not occur within thirty (30) days after issuance. A separate Statement of Work or Statement of Work amendment will be prepared and signed by both parties whenever there is a new or changed project objective, scope of deliverable(s) or when a change in project assumptions has a material impact on project cost including estimates.
- 3) **Client Responsibilities.** The Hackett project team(s) will give full cooperation and timely access to all required Client personnel during the course of Hackett's Services and Client is responsible for timely review and turnaround of all documents requiring Client approval. Hackett, its employees, agents, and subcontractors (i) can rely upon any instructions or information provided by Client or any persons designated in writing by Client and (ii) will incur no liability for such reliance. In addition, Hackett shall not be liable for any default or delay in performance of its obligations hereunder to the extent the same is caused, directly or indirectly, by (x) the failure of Client to comply with any of its obligations hereunder or (y) any unavailability or work absence of the appropriate Client personnel. The Services performed hereunder, and all work product delivered in connection therewith shall be deemed accepted if, within five (5) days after delivery, Client has not provided to Hackett written notice identifying in reasonable detail any basis for not approving the work product. Within thirty (30) business days of completion of each project initiated by a Statement of Work, a completion memorandum signed by the Hackett Project Director will be delivered to Client.
- 4) **Payment.** As compensation for the Services hereunder, Client agrees to pay Hackett pursuant to the fee schedule set forth in each Statement of Work. All fees referred to in these General Terms or any Statement of Work are in U.S. Dollars and do not include any duties or taxes. All such duties and taxes, whenever imposed, shall be payable by Client. Income or other taxes that are required to be paid or withheld by the Client, under the laws of jurisdictions other than the United States, in connection with the Services hereunder, shall be the sole obligation of the Client. Hackett may, at its option, submit bi-weekly invoices to Client unless otherwise specified in the applicable Statement of Work. Except as otherwise provided in an applicable Statement of Work, Client agrees to remit payment in full on each invoice to Hackett within thirty (30) days after the date of such invoice. Hackett reserves the right to charge and collect a service fee on any unpaid, past-due amount equal to the lesser of (a) one and one half percent (1-1/2%) per month or (b) the highest interest rate legally permitted. Client will reimburse Hackett for all reasonable collection expenses, including reasonable attorneys' fees and court costs incurred in the collection of delinquent amounts.
- 5) **Expenses.** Client agrees to reimburse Hackett for expenses incurred in carrying out Hackett's activities under an Agreement. Examples of such expenses include, mileage, and out-of-town travel costs such as airline tickets, meals, ground transportation and

lodging.

6) **Termination.**

- a) Except as otherwise provided under the additional terms set forth in any Appendix, either party may terminate consulting service engagements (i.e. not including Advisory) under an Agreement without cause upon the giving of at least thirty (30) days' advance written notice to the other (provided, however, that all payment obligations incurred by Client to date must be current at the time of such notice of termination in order for such notice to be effective). In addition, either party may terminate a Statement of Work upon an Event of Default (as hereinafter defined).
- b) "Event of Default" shall mean the occurrence of a breach of any term of an Agreement or any applicable Statement of Work which, for payment related breaches, remains uncured after the tenth (10th) day after written notice, and which, for all other breaches, remains uncured after the thirtieth (30th) day after written notice, provided, however, that the above 30-day period shall be increased to 120 days if the default is reasonably curable within 120 days and so long as the party attempting to cure demonstrates to the other party's reasonable satisfaction that it is diligently attempting to accomplish such a cure.
- c) Upon the expiration or earlier termination of any Statement of Work(s), all charges related to all work performed by Hackett, including without limitation, any expenses incurred by Hackett under such outstanding Statement of Work(s), through the expiration date or the effective date of the termination of such Statement of Work(s), will immediately become due and payable to Hackett without demand there for. In the event such expiration or termination occurs prior to the completion of the services to be rendered under any Statement of Work(s) which calls for milestone, progress or objective based billing, Client shall pay Hackett for all services rendered and expenses incurred by Hackett as set forth in the applicable Statement of Work(s), including services and expenses related to any milestone, progress point or objective Hackett is working to complete at the time the applicable Statement of Work(s) expires or is terminated.

- 7) **Intellectual Property.** Except as otherwise provided in these General Terms or in any applicable Statement of Work, and only upon final payment in full, Client shall own all rights to Services and work product originally developed for and provided to Client under an Agreement and Hackett agrees to assign all such rights to Client. Hackett shall retain the right to

reuse the ideas, concepts, know-how, and techniques derived from the rendering of the Services so long as it does not require the disclosure of any of Client's Confidential Information (as defined below). Hackett retains and shall be entitled to any and all protections afforded under State and Federal statutory or common law with respect to any materials, which it considers proprietary, and which were prepared, developed or used by Hackett prior to or outside the course of completing the Services performed under the terms of a Statement of Work ("Hackett's Intellectual Property"). In the event (and to the extent) that any deliverable contains any items or elements which are Hackett's Intellectual Property, Hackett grants to Client an irrevocable, perpetual, royalty-free license to use, execute, display, and/or perform such to the extent it is necessary to fulfill the scope of work described in the applicable Statement of Work. These protections shall not cover Confidential Information as defined in Clause 8 of these General Terms. All software, technology or proprietary information not owned by Hackett or Client shall be protected under the terms and conditions of separate licensing agreements. Unless otherwise stated herein or in a Statement of Work, the reproduction, distribution or transfer, by any means or methods, whether direct or indirect, of any of Hackett's Intellectual Property, Confidential Information or proprietary information or of its agents or any third party licensed software by the Client is strictly prohibited.

8) **Confidentiality and EU Data Privacy.**

- a) Confidentiality. Client and its employees and agents may have access to private and confidential information owned or controlled by Hackett, including the confidential and proprietary information and materials referenced in the Statement of Work, as well as information relating to Hackett's data, best practices, methodology, algorithms, programs, software, security keys, specifications, drawings, business information, pricing and other data, as well as the existence of any dispute between the parties. Similarly, Hackett and its employees and agents may have access to private and confidential information owned or controlled by Client relating to technical or business information of a proprietary nature or relating to Client's business operations. All such Hackett information and Client information shall be "Confidential Information". The Confidential Information acquired by either party under an Agreement through its employees or agents shall be and remain the disclosing party's exclusive property, and the receiving party shall keep, and its employees and agents shall not copy or disclose such Confidential Information to others without the disclosing party's prior written approval, shall

return all tangible copies of such Confidential Information to the disclosing party promptly upon request, and shall destroy all electronic copies promptly upon request. The Confidential Information of the disclosing party may be used by the receiving party only in connection with the Services. Nothing herein shall limit either party's use or dissemination of information which (i) is at the time of disclosure, or thereafter becomes, a part of the public domain through no act or omission of the other party, its employees or agents; or (ii) was in the other party's possession as shown by written records prior to the disclosure and had not been obtained either directly or indirectly from another party under an obligation not to disclose such information; (iii) is hereafter disclosed to the other party by a third party who did not acquire the information directly or indirectly from the disclosing party hereunder; (iv) was independently developed by the other party without use of the Confidential Information, as evidenced by written records; or (v) is required by law, regulation or auditing standards to be disclosed, but only to the extent and for the purposes of such required disclosure. Nothing obligates Hackett to divulge to Client any information for or related to which Hackett has previously undertaken an obligation of confidentiality for the benefit of any party other than Client. Hackett shall be permitted to identify Client as a participant in the Hackett Programs.

- b) **EU Data Protection.** Capitalized terms defined in the remainder of this Clause 8 shall, unless otherwise defined herein, have the meaning given to them in the Data Privacy Appendix (the “**DPA**”) located at <https://www.thehackettgroup.com/about/contracting-terms/> and which is incorporated by reference as if fully set forth herein. Client will not transmit to Hackett any Personal Data or other information that may be used to identify any living individual without the express written agreement of the Parties that such Personal Data is required to complete the Services, and advance written notice of what the Personal Data is and its means of transmission is given to Hackett (“**Permitted Personal Data**”). Client will be responsible for obtaining any consents required by Data Protection Law, including the **GDPR**, which may be required of any individual Data Subject prior to transmitting the Permitted Personal Data to Hackett. If Personal Data is transmitted outside of these requirements, Hackett will delete such data promptly upon discovery (which shall mean putting such data beyond reasonable use), but in no event shall Hackett be deemed to

be engaged in any commissioned data processing except for in relation to Permitted Personal Data.

- c) With respect to Clients who are located within the European Union, or who are otherwise subject to the requirements of the GDPR, and save as set out in Clause 8(d) below, Hackett will Process all Permitted Personal Data that is supplied to us by Client or on Client's behalf as Client's Processor for the purpose of providing the Services and will Process such Permitted Personal Data in accordance with the terms set out in the DPA. Client understands and agrees that such data may be held on servers outside the European Economic Area (EEA) and be provided to and used by Hackett or others engaged with Hackett in providing the Services and Hackett may provide Permitted Personal Data to its overseas offices as required to provide the Services or administrative functions related to the Services, subject to the conditions set out in the DPA. Client expressly consents to Hackett's use of its overseas personnel on this basis. Hackett will provide a list of its entities upon Client's request, who will be Processing the Permitted Personal Data under this Agreement. Hackett may also send data, including Personal Data, outside the EEA to our primary data center in the USA for disaster recovery purposes and we may send Personal Data outside the EEA, for example, to one of our overseas offices to provide Services or for one or more of the purposes set out above. Any such transfer of Personal Data will be for the same limited purposes and under similar security conditions to those applied to the processing of Permitted Personal Data by Hackett within the EEA and will be processed in accordance with the GDPR.
- d) In those circumstances where Hackett collects or Processes Personal Data relating to the Client in the capacity of a Controller (as such term is defined in the DPA) then Hackett will process such Personal Data in accordance with Data Protection Law and its privacy statement which is available at (<https://thehackettgroup.com/privacy-statement/>). Where appropriate and/or where requested by Hackett, Client will ensure its employees and other relevant individuals are made aware of this privacy statement.
- 9) **Warranty.**
- a) Hackett warrants that the Services to be performed

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hereunder shall be performed in a timely and professional manner and will comply in all material respects with the descriptions and representations regarding the Services set forth in the applicable Statement of Work. Hackett further warrants that all Services developed hereunder will be of original development by Hackett and will not infringe upon or violate any known patent, copyright, trademark, trade secret or other property right of any third party that is enforceable in the U.S. Where Hackett supplies any goods supplied by a third party, Hackett does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to Hackett.

- b) EXCEPT AS EXPRESSLY STATED HEREIN, HACKETT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO CLIENT OR ANY OTHER PERSON WITH RESPECT TO ITS SERVICES, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING MERCHANTABILITY, SUITABILITY, CAPACITY, FITNESS FOR A PARTICULAR OR OTHER PURPOSE (IRRESPECTIVE OF ANY PREVIOUS COURSE OF DEALING BETWEEN THE PARTIES OR CUSTOM OR USAGE OF TRADE) OR RESULTS TO BE DERIVED FROM THE USE OF SUCH SERVICES OR ITEMS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
- 10) **Subcontractor.** Hackett reserves the right to utilize contracted employees or subcontractors to meet its requirements under the terms, conditions and obligations stated in an Agreement.
- 11) **Publicity.** Both Hackett and Client may use the other as a favorable reference and indicate to third parties that such party provides or receives (as applicable) services hereunder. The parties may disclose the existence and general nature of an Agreement, but the fees paid hereunder shall be considered Confidential Information. Hackett, in connection with its marketing activities, can disclose to prospective clients general information of Client including the use of the Client's trademarks, service marks and trade names.
- 12) **Solicitation.** During the term of an Agreement and for two years thereafter, without Hackett's prior written consent, neither Client nor any of its affiliates shall, directly or indirectly, solicit for partnership, employment, offer partnership or employment to, employ or engage in any capacity including as a partner, consultant or advisor any individual who is then employed or engaged, or any individual who was employed or engaged within the preceding twelve (12) months, by Hackett or its Affiliates unless and until Client pays to Hackett, as liquidated damages and not as a penalty, an amount equal to the aggregate salary, wages, fees (including bonuses) or their functional equivalents, paid by Hackett, its parent or any of their respective affiliates to such employee during the twelve (12) months prior to the date such employee is employed or engaged by Client. The parties agree that this is the best measure of damages to Hackett due a breach of this provision.
- 13) **Limitation of Liability.** The Parties agree that except as prohibited by law, if Hackett or any of its Affiliates, or any of their respective officers, directors, employees, agents, subcontractors or shareholders, is ever liable to Client for one or more breaches, disputes, controversies or claims arising under or in connection with Services provided hereunder (whether any such breach, dispute, controversy or claim is based upon contract, tort, statute, equity or any other legal theory), except for claims for personal injury arising out of Hackett's willful misconduct or gross negligence and/or Hackett's infringement of a third party intellectual property rights, then, (i) the cumulative amount of all damages and penalties, if any, recoverable by Client for all such breaches, disputes, controversies and claims will not exceed, in the aggregate, an amount equal to the total amount of the fees (excluding unamortized prepaid fees, if any) paid by Client under the applicable Statement of Work from which the breach, dispute, controversy or claim arose, (ii) recovery of such amount as limited hereby will be Client's sole and exclusive remedy, and (iii) Client releases Hackett and its parent(s), subsidiaries, affiliates, and their respective officers, directors, employees, agents, subcontractors and shareholders, from any liability in excess of such amount. IN NO EVENT WILL HACKETT OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS OR SUBCONTRACTORS, BE LIABLE TO CLIENT OR ANY OTHER PERSON FOR (I) ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HACKETT OR SUCH OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (II) PUNITIVE DAMAGES, LOSS OF ANTICIPATED PROFITS, SAVINGS OR BUSINESS, LOSS OF COMMERCIAL REPUTATION OR OTHER ECONOMIC LOSS, OR (III) DAMAGES THAT COULD HAVE BEEN AVOIDED, USING REASONABLE DILIGENCE, BY CLIENT OR SUCH OTHER PERSON.
- 14) **Remedies and Dispute Resolution.** If a dispute arises out of or relates to an Agreement, or the breach thereof, then the parties agree to use the dispute resolution process set forth in Exhibit A attached hereto. Because a breach of any obligations set forth in Clauses 7 and 8 will irreparably harm either party and substantially diminish the value of each party's proprietary rights or its Confidential Information, Client and Hackett agree that if either party breaches any of its obligations there under, the other party shall, without limiting its other rights or

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- remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights there under, including without limitation protection of its proprietary rights. The parties agree that a party need not invoke the procedures set forth on Exhibit A attached hereto prior to seeking injunctive or declaratory relief.
- 15) **Choice of law and venue.** The Agreement shall be ~~governd~~ by and construed in accordance with the laws of the State of Florida, without regard to the conflict of laws provisions thereof. Each of the parties hereby submits to the exclusive jurisdiction of the United States District Court for the Southern District of Florida or of any Florida State court sitting in Miami-Dade County for purposes of all legal proceedings arising out of or relating to the Agreement and the transactions contemplated hereby. Each of the Parties irrevocably waives, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
- 16) **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO, HEREBY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH AN AGREEMENT OR ANY STATEMENT OF WORK AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO AN AGREEMENT.
- 17) **Attorney's Fees.** The prevailing party in any action related to or arising out of an Agreement or any Statement of Work, whether such action is at the trial or appellate level, shall be entitled to its reasonable attorney's fees and court costs.
- 18) **Waiver.** No waiver by either party of any default or defaults by the other party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character, or shall be effective unless in writing duly executed by a duly authorized representative of such party. Neither the failure by either party to insist on any occasion upon the performance of the term provisions of the Agreement nor time or other indulgence granted by one party to the other shall act as a waiver of such breach of acceptance of any variation or the relinquishment of any such right or any other right under the Agreement, which shall remain in full force and effect. The rights and remedies set forth in the Agreement are in addition to
- any rights or remedies a party may otherwise have at law or in equity.
- 19) **Severability and Survival.** If any provision of an Agreement should be held by a court of competent jurisdiction to be void or unenforceable, such provision shall be deemed severed from the Agreement, and the remainder of the Agreement shall remain in full force and effect. Any obligations which have accrued prior to the termination or expiration of an Agreement and which are not otherwise expressly discharged pursuant to such Agreement shall remain in full force and effect until performed.
- 20) **Independent Parties.** Nothing in an Agreement shall be construed to constitute either of the parties hereto as a partner, joint venture, agent, representative or employee of the other party.
- 21) **Assignment.** Neither party may assign an Agreement, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, an Agreement may be assigned by either party without the consent of the other to an entity controlling, controlled by or under common control with said party or in the event of a transfer of all the assets or voting stock of a party as part of a merger, acquisition or divestiture.
- 22) **Entire Agreement.** An Agreement pursuant to which Hackett performs Services for Client hereunder, constitutes the entire agreement of the parties with respect to the subject matter hereof, and no amendment, modification, or addition hereto, or waiver hereof, shall be effective unless in writing, specifying such amendment, modification, addition or waiver, and signed by the party sought to be bound thereby. The parties hereto agree that for the purpose hereof, facsimile counterpart signatures are acceptable.
- 23) **Notices.** All notices to be given under an Agreement must be in writing, addressed to the receiving party's designated representative at the address for the receiving party specified in the applicable Statement of Work or if none appears in the Statement of Work then at the address for the main office or headquarters address for such party listed on its corporate website if addressed to the "Chief Executive Officer". Notices are validly given upon the earlier of confirmed receipt by the receiving party or three (3) days after dispatch by courier or certified mail, postage prepaid, properly addressed to the receiving party. Notices may also be delivered by telefax and will be considered validly given upon written confirmation of receipt. Either party may change its address for purposes of notice by giving notice to the other party in accordance with these provisions.

EXHIBIT A

TO GENERAL TERMS AND CONDITIONS - NORTH AMERICA

DISPUTE RESOLUTION PROCESS

The following procedures shall be used to resolve any disputes, claims or controversies (“disputes”) between us as provided herein. If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

1. *Discussions Between Management.* The parties shall first employ the full resources of the Executive Committee to resolve all disputes expeditiously and informally. The Executive Committee shall be composed of Hackett’s Office of Risk Management and Client’s Chief Operating Officer or another designated person with comparable authority who shall act in good faith to resolve the controversy or dispute. In the event that such dispute cannot be resolved by the Executive Committee, the parties shall each involve an independent executive officer of the respective parties, each of whom shall review and discuss the dispute between them and attempt to resolve it by agreement. If such dispute cannot be resolved by the foregoing method within a reasonable period of time, the parties shall resort to the mediation procedure set forth below.
2. *Mediation*
 - 2.1. If the process outlined in Clause 1 above fails to produce a solution acceptable to all parties, either party may request to submit a dispute to mediation by providing written notice to the other party. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who shall attempt to facilitate negotiations. The mediator shall be selected by agreement of the parties. If the parties cannot otherwise agree on a mediator, a mediator shall be designated by a mutually agreeable mediation association at the request of a party. Any mediator so designated must be acceptable to all parties.
 - 2.2. The mediation shall be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
 - 2.3. The mediation shall be treated as a settlement discussion and therefore shall be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
 - 2.4. Each party shall bear its own costs in the mediation. The fees and expenses of the mediator shall be shared equally by the parties.
3. *Arbitration.*
 - 3.1. If a dispute has not been resolved within 30 days after the written notice beginning the mediation process (or a longer period, if the parties may agree to extend the mediation), the mediation shall terminate, and the parties agreed that the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the procedures of the American Arbitration Association. In the event of a conflict, the provisions of this Exhibit A shall control.
 - 3.2. The arbitration shall be conducted before a single arbitrator in Miami-Dade County, Florida, regardless of the size of the dispute, to be selected as provided in the arbitration rules agreed to by the parties. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the arbitration rules and resolved by the arbitrator. No potential arbitrator may serve unless he or she has agreed in writing to abide and be bound by these procedures. To the extent permitted by the arbitration rules and the arbitrator, the parties may appear telephonically.
 - 3.3. Unless provided otherwise herein, the arbitrator may not award non-monetary or equitable relief of any sort. They shall have no power to award (a) damages inconsistent with an Agreement or (b) punitive damages or any other damages not measured by the prevailing party’s actual damages. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrator have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.
 - 3.4. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery.

APPENDIX A

TO GENERAL TERMS AND CONDITIONS - NORTH AMERICA

ADDITIONAL TERMS & CONDITIONS APPLICABLE TO HACKETT PROGRAMS

This Appendix A shall apply to all Hackett proprietary benchmark and “Quantum Leap” programs (each a “Benchmark Program”), subscription-based membership advisory programs (each an “Advisory Program”). The Benchmark Programs and Advisory Programs are referred to collectively as the “Hackett Programs”.

With respect to the Benchmark Programs, including Quantum Leap, the following terms shall apply:

- 1) **Hackett Quantum Leap/Benchmark Program Ownership.** The Hackett Programs, including the Hackett Process Taxonomy (as defined below), if applicable, including but not limited to the Hackett analytic tools, Hackett research, the Quantum Leap Software and the Hackett data collection tools and question sets shall not constitute work product and are confidential and proprietary information of Hackett. Certain other portions of the Benchmark Programs, including but not limited to, the benchmark database, compiled benchmark data, calculated metrics and formulae are trade secrets of Hackett. Hackett shall remain the exclusive owner of all right, title and interest in and to this confidential and proprietary information and the Hackett Programs in their entirety, and each of their component parts, now in existence or hereafter developed, including all copyrights thereto, in whatever medium in which they are embodied and Hackett may seek an injunction and/or damages against Client for any unauthorized use.
- 2) **Hackett Benchmarking Reports.** Client shall have a perpetual, non-exclusive license to utilize the reports prepared by Hackett in connection with Client’s participation in the Hackett Programs for Client’s internal use in the conduct of Client’s business. Hackett agrees that Client may disclose reports provided by Hackett to third party consultants engaged by Client in connection with services being rendered to Client by such consultants but not otherwise, and provided that such third-party consultant acknowledge in writing the ownership and rights related to the Hackett.
- 3) **Quantum Leap Software Reporting and Analysis.** Client shall have a limited license to utilize the analysis and reporting created by the product for Client’s internal use only in the conduct of Client’s business during the term of Client’s subscription.
- 4) **Hackett Program Data Gathering and Future Use.** To the extent Client participates in any Hackett Program including the use of Quantum Leap, and to the extent information provided by Client to Hackett relates to such participation (“Client Information”), then Hackett shall be permitted to use and publish Client Information in its Hackett Programs as now or in the future conducted, which may include the aggregated results of the data analysis and research, and the reports generated in connection with the Hackett Programs for its own business, provided Hackett shall not publish Client Information in the Hackett Programs or related publications in a way that identifies Client.
- 5) **Hackett Process Taxonomy.** The Hackett Process Taxonomy is defined as Hackett process definitions, which include the classification of activities into processes and/or process groups based on functional similarities. Hackett will supply Client with a copy of the Hackett Process Taxonomy and data collection tools to be utilized by Client only to organize and provide to Hackett information for inclusion in the applicable Hackett Program(s). Client will use the Hackett Process Taxonomy to define information to be collected for the applicable Hackett Program(s), and the data collection tools will be used to collect and report data for inclusion in the applicable Hackett Program(s). Client agrees that the Hackett Process Taxonomy and data collection tools are Hackett’s Confidential Information subject to the provisions of this Agreement and Hackett may seek an injunction and damages against Client for any unauthorized use.
- 6) **Application Provided with Quantum Leap Benchmarking.** The following terms apply, subject to clause 8, to the product and its component parts, (the “Application”) that Hackett provides to Client in connection with Client’s use of the product and any user materials (“Materials”) that may accompany the Application: (i) The Application, its source code, the Materials and all copyright, patent, trademark, trade secret and other rights in them are and will remain the exclusive property of Hackett or its licensors. (ii) The Application shall be accessed by no more than ten users. (iii) Client may not (1) sell, assign, transfer, license, sublicense or publish the Application or Materials (including any permitted copies), (2) disclose, display, or otherwise make available the Application or Materials (including any permitted copies) to third parties, or (3) copy, or allow anyone else to copy, the Application or Materials, without Hackett’s prior written approval. (iv) Hackett grants Client a non-exclusive, revocable, non-transferable limited license for the use of the Application and any related Materials during the term of Client’s subscription. This license is granted solely for use in object code form only. Client may use the Application only in accordance with the applicable user documentation provided. (v) Client may not alter, repair, modify or adapt any Application or Materials, including, but not limited to, translating, reverse engineering, decompiling, disassembling or creating derivative works from it. Client may not access the Application or Materials in order to build, or in order to allow a third party to build, a competitive product or service. (vi) This license to the Application and Materials will terminate automatically upon the expiration or earlier

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termination of this Agreement.

- 7) **Benchmark Scheduling.** With respect to Benchmark Programs, data gathering must be scheduled to begin within the first three (3) months of each applicable Benchmark Program start date and such benchmark(s) must be completed within twelve (12) months of each applicable Benchmark Program start date. Client understands and agrees that Hackett is under no obligation to refund or reimburse any fees paid or to extend the period of time available for Client to complete any benchmark(s) which have not been completed prior to the applicable expiration date through no fault of Hackett.
- 8) **Termination for Convenience.** The Benchmark Programs may not be cancelled for convenience.

APPENDIX B

TO GENERAL TERMS AND CONDITIONS - NORTH AMERICA

ADDITIONAL TERMS & CONDITIONS APPLICABLE TO ADVISORY PROGRAMS

- 1) **Advisory Program Access Rights.** All information published on The Hackett Group, Inc. website or accessed through the client portal (the "Site") , including, but not limited to, statistics, metrics, information relating to best practices, research, question sets, taxonomy, templates, text, photographs, illustrations, audio clips, video clips, artwork, graphic material, or other copyrightable elements, the selection and arrangements thereof, and trademarks, service marks, trade names and any other intellectual property related to Hackett, or one of its affiliated companies (collectively the "Content") are the property of Hackett and are protected, without limitation, pursuant to U.S. and foreign copyright and trademark laws. Use of the trademarks displayed on the Site is strictly prohibited. Client may download material displayed on the Site to any single computer for Client's internal use only during the applicable advisory subscription period, provided that Client does not remove any trademarks, copyright or any other notice contained in such Content. No Content from the Site may be copied, publicly displayed, reproduced, uploaded, downloaded, transmitted or otherwise used other than as set forth in this Appendix. Client shall not archive or retain any Content in any form without written permission from Hackett. At the expiration or termination of any Advisory Program membership period Client must destroy all copies of the Content in its possession. Client may be asked to certify such destruction in writing. Client may not distribute (including via e-mail or the Internet), or otherwise make available, copies to third parties, whether or not for payment or other consideration, without the written permission from Hackett. Any unauthorized or prohibited use may subject the offender to civil liability and criminal prosecution under applicable law.

- 2) **No Cancellation.** The Hackett Advisory Programs may not be cancelled. If Client decides to terminate an Advisory Program for mere convenience, it understands and agrees that Hackett is under no obligation to refund or reimburse any fees paid and Client will remain liable for any unpaid program fees associated with the current or future subscription periods contracted for by Client.

APPENDIX C

TO GENERAL TERMS AND CONDITIONS - NORTH AMERICA

ADDITIONAL TERMS & CONDITIONS APPLICABLE TO ROLE STAFFING SERVICES

This Appendix C is applicable to any arrangement where Hackett Employees (as defined below) are staffed in roles at a Client to perform services under the guidance, supervision control and responsibility of the Client.

DEFINITIONS:

“**Hackett Employee(s)**” means any person employed by Hackett who shall be staffed in a role at the Client pursuant to the Agreement.

“**Loaned Staff**” means Hackett Employees being loaned temporarily to the Client to work under the Client’s guidance, supervision, control and responsibility.

“**Loaned Staff Member**” means a specific person who is part of Loaned Staff.

“**Secondment**” means the (duration of) performance of work by Loaned Staff.

- 1) **Nature of Services.** Under a Loaned Staff arrangement, Hackett will introduce one or more Hackett Employees it believes is suitable to deliver the requirements set out by the Client. If the Client accepts any of these Employees, the Loaned Staff Member(s) shall be working for the Client under the Client’s guidance, supervision, control and responsibility for the term and the applicable hourly rates set out in the Statement of Work and all decisions in connection with the work performed by Loaned Staff, including any advice recommendations that may be provided in relation thereto, the implementation (if any) thereof or the achievement of any particular goal shall be the Client’s responsibility exclusively.
- 2) **Parties Responsibilities.**
 - a) Responsibilities of the Client.
 - i) The Client shall do everything reasonably possible and refrain from any action that may jeopardize the fulfillment of Hackett’s legal duties as employers of Loaned Staff. The Client shall not make representations with regard to the employment of any Loaned Staff Member by Hackett or the suspension or termination thereof.
 - ii) The Client shall instruct the Loaned Staff properly with regard to Client’s internal regulations concerning proper conduct on the premises of the Client including, without limitation: access and security, integrity, use of (computers and other) equipment, safety precautions and safety measures, environmental policy and any applicable codes of conduct.
 - b) Responsibilities of Hackett.
 - i) Hackett shall provide the Client, upon request, a statement in writing that all wages, taxes and social security contributions due and payable in relation to its employees involved in an engagement have been paid.
 - ii) Hackett shall not induce or support its Employees in any way to make a claim against the Client based on an alleged labor relationship between the Client and Loaned Staff Members.
- 3) **Monitoring and Replacement**
 - a) The Client shall monitor the Loaned Staff’s performance. In the event that any Loaned Staff Member does not perform the duties assigned to him or her within a reasonable time frame and in accordance with reasonable standards, the Client shall take all reasonable action necessary to correct such non-performance. Client shall provide written notice to Hackett upon the occurrence of any nonperformance. The notice must contain an explanation in sufficient detail to allow Hackett the nature and extent of the non-performance. If, after repeated attempts, the Client is unable to correct such non-performance, without prejudice to Clause 13 of the General Terms, the Client shall notify Hackett in writing that it has failed to correct the non-performance. Hackett shall then replace the Loaned Staff Member within two (2) weeks from the date that Hackett receives the notice. In the event of grossly improper behavior by any Loaned Staff Member, the Client is entitled to remove such person with immediate effect subject to a written confirmation – including a detailed description of the behavior – to Hackett as soon as reasonably possible. Without prejudice to Clause 13 of the General Terms, Hackett shall co-operate with such removal and shall – as the case may be – immediately replace such person to the extent reasonably possible.
 - b) In the event that Hackett is unable to find a suitable replacement within a mutually agreeable time frame, both parties shall have the right to cancel the remainder of the Agreement with respect to such Loaned Staff Member.

Contracting Terms

- c) No fees shall be due to Hackett in connection with vacancies pending the replacement of Loaned Staff Members pursuant to justified requests as mentioned in the preceding paragraphs.
- 4) **Intellectual Property Rights.** Unless agreed otherwise explicitly, all work product provided by Loaned Staff under an Agreement shall be for internal use of the Client (and its Affiliates) only.
- 5) **Limitation of Liability.**
- a) Without prejudice to Clause 13 of the General Terms, the Client agrees that Hackett shall not be liable to the Client for any Losses attributable to the Loaned Staff's performance, actions or behavior during the term of their Secondment in excess of amount of the total fees paid under the relevant Agreement in relation to the Loaned Staff Member subject to a maximum of six months fees for any Secondment exceeding six months. The Client shall hold Hackett harmless from and indemnify Hackett for any Losses, including, without limitation, third party claims, exceeding this limit.
 - b) Hackett shall indemnify the Client and hold the Client harmless from and against all claims, damages, costs and expenses related to any failure on Hackett's part to pay any wages, remunerations, taxes or contributions due in connection with any Loaned Staff Member
 - c) The Client agrees that Hackett shall not be obliged, responsible or liable for discontinuation of employment of any Loaned Staff Member or any obligation, responsibility or liability to continue employing any Loaned Staff Member. If employment of a Loaned Staff Member is discontinued, Hackett shall inform the Client as soon as is reasonably possible.

APPENDIX D

TO GENERAL TERMS AND CONDITIONS - NORTH AMERICA

ADDITIONAL TERMS & CONDITIONS APPLICABLE TO SERVICES PROVIDED IN CANADA

Notwithstanding any other provision set forth in these General Terms, with respect to Services provided in Canada, the following terms shall apply:

- 1) **"Hackett"** as used throughout these General Terms shall mean The Hackett Group Canada, Inc., a New Brunswick corporation and wholly-owned subsidiary of The Hackett Group, Inc.
- 2) **Currency**. Amounts billed will be in Canadian Dollars unless specified otherwise.
- 3) **Applicable Law and Exclusive Venue**. Any Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and the federal laws of Canada applicable therein, without regard to the conflict of laws provisions thereof. Each of the parties hereby submits to the non-exclusive jurisdiction of the courts of the Province of New Brunswick and all courts competent to hear appeals from them for purposes of all legal proceedings arising out of or relating to this Agreement and the transactions contemplated hereby.

APPENDIX E

TO GENERAL TERMS AND CONDITIONS - NORTH AMERICA

HOSTING SERVICES ADDENDUM

Notice Regarding Hosting Services. Where the Services call for hosting Client applications or data, Client acknowledges that, except for the Benchmark, Advisory and Quantum Leap, the hosting service may be contracted by Hackett from a third party vendor on behalf of Client as a pass through Service. Hackett assumes no liability for such hosted services in excess of the limitation of liability given by the third party provider of these services under its standard terms. All service levels and service level credits, if any with respect to such hosting vendor will be defined and set forth in the applicable SOW or hosting services agreement. Any fees and early termination charges or cancellation provisions will likewise be specified in the appropriate SOW or hosting services agreement.

Change. Hackett reserves the right to change third party hosting providers in its reasonable judgment where appropriate. If Hackett elects to change hosting providers during the term of an agreement then in effect, it shall do so on reasonable advance written notice to client and at its own cost and exercise reasonable efforts to minimize disruption to Client's use of the Services.