

# SALES IMPACT ACADEMY

## TERMS AND CONDITIONS

Revised March, 2024

SIA will provide the Subscription Services, and you may access and use the Subscription Services, in accordance with these terms and conditions. If you order the Subscription Services through an order form, online registration page, or other form of written agreement with SIA including email (each an “Order Form”), the Order Form may contain additional terms and conditions and information regarding the Subscription Services you are ordering.

BY PURCHASING, USING, OR OTHERWISE ACCESSING ANY OF THE SUBSCRIPTION SERVICES YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND ALL ORDER FORMS AND POLICIES INCORPORATED HEREIN BY REFERENCE (THE “AGREEMENT”).

If you are an entity, organization, or company, the individual accepting this Agreement on your behalf represents and warrants that they have authority to bind you to this Agreement and you agree to be bound by the terms of this Agreement.

### 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of more than 50% of the voting equity shares or other equivalent voting interests of an entity.

“Users” means those individuals authorized by Customer to access or use the Subscription Services pursuant to this Agreement.

“Confidential Information” means (without limitation) all confidential information disclosed by a party (“Disclosing Party”) to the other Party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Notwithstanding the foregoing, Confidential Information will not include any information to the extent that it can be established by written documentation by the Receiving Party that such information: (a) is or becomes generally known to the public without breach of any obligation of confidentiality by the Receiving Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party and who has a legal right to disclose such information; or (d) was independently developed by the Receiving Party without the use of the Disclosing Party’s Confidential Information.

“Credits” means credits purchased by Customer as more particularly described in the Order Form which may be used to purchase Subscription Services.

“Customer”, “you” or “your” means the person or entity using the Subscription Services and identified in the applicable account record, billing statement, online subscription process, or Order Form as the customer.

"Customer Data" means all information submitted or collected by Customer via the Subscription Services. Customer Data does not include SIA Content.

"Customer Materials" means all materials provided or posted, uploaded, inputted or submitted for public display through the Subscription Services by Customer.

“Data Processing Addendum” means the data processing addendum located at [www.salesimpact.io/dpa/](http://www.salesimpact.io/dpa/) as it may be updated by SIA from time to time which is incorporated into this Agreement by reference.

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time including the General Data Protection Regulation ((EU) 2016/679) which apply to the processing of personal data pursuant to this Agreement as further detailed in the Data Processing Addendum.

“Derived Data” means any data which is derived from Customer’s or User’s use of the Subscription Services or the processing of User Data, which shall include: (a) any data which is processed and stored as mathematical constructs; (b) statistical or aggregated data; and (c) any other analytical and marketing data such as number and duration of user sessions and page visits, and technical reports on the performance of the Subscription Services. Derived Data shall not include personal data, except where such personal data has been anonymized.

“Documentation” means those printed or online learning support materials provided by SIA for use as part of the Subscription Services, or any printed or online instructions, manuals or otherwise provided by SIA from time to time that pertain to the SIA Platform or the use of the Subscription Services.

“Effective Date” means the effective date of this Agreement as set out in the Order Form.

“Fees” means the fees set out in the Order Form payable by Customer to SIA for use of the Subscription Services.

“Free Services” means the Subscription Services or other products or features made available by SIA to Customers on an unpaid trial or otherwise free basis.

“Intellectual Property Rights” means without limitation, the content, layout, functions, design, appearance, patents, rights to inventions, copyright and neighboring and related rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Privacy Policy” means the Privacy Policy located at [www.salesimpact.io/privacy-policy/](http://www.salesimpact.io/privacy-policy/), as it may be updated by SIA from time to time.

"SIA" means Sales Impact Academy, Inc.

"SIA Content" means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags that incorporated into the Documentation and the Subscription Services.

“SIA Platform” means the SIA web-based learning platform that is developed, operated, and maintained by SIA, accessible via <http://salesimpact.io> or another designated URL, and any ancillary products and services, that SIA provides to Customer for its use in accordance with the terms of this Agreement

“Subscription Services” means access to the SIA Platform, live coaching sessions, and any other services (business, technical, or other), provided to Customer by SIA.

“Term” means the term of this Agreement as specified in the Order Form and if not specified shall commence on the Effective Date and continue for an initial term of 12 months (“Initial Term”) unless terminated earlier in accordance with this Agreement. Unless otherwise stated in the applicable Order Form, the Initial Term shall automatically renew for successive periods of 12 months (each a “Renewal Term”), unless either party provides written notice of non-renewal to the other party at least thirty (30) days before the end of the Initial Term or the then current Renewal Term (as applicable). The Initial Term and the Renewal Term(s) together constitute the Term. For Free Services, the Term will be the period during which Customer has an account to access the Free Services.

“Terms of Use” means the Terms of Use policy located at [www.salesimpact.io/terms-of-use/](http://www.salesimpact.io/terms-of-use/) as may be updated by SIA from time to time.

“User Data” means information collected during a User’s interactions with the SIA Platform and the Subscription Services in accordance with the terms of this Agreement (including all privacy commitments), and for its internal business purposes. User Data does not include any Derived Data.

“Virus” means any thing or device (including any software, code, file, or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 In this Agreement: (a) clause, schedule and paragraph headings shall not affect the interpretation of this Agreement; (b) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular; (c) a reference to writing or written includes e-mail; (d) any words following the terms including, include, in particular for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms

## **2. LICENSE AND RESTRICTIONS**

- 2.1** Subject to Customer paying the Fees in accordance with this Agreement, SIA hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right for Customer and Users to access and use the Subscription Services set forth in the Order Form during the Term in accordance with this Agreement and solely for the benefit of Customer's internal business operations. SIA may provide Users access to use the Free Services at any time by activating them in Customer's account.
- 2.2** Users. Each authorized User will be provided a unique username and password. Such usernames and passwords may not be shared and may not under any circumstances be used by anyone who is not an User. In the event Customer exceeds the contractual User limit set out in the Order Form, Customer and SIA will promptly execute a new Order Form for the additional Users. Customer is responsible for any and all actions taken by Users or by anyone using Customer's accounts and passwords. Customer acknowledges and agrees that Users must provide SIA with certain identifying information, including their name and a business email address, and that Users shall be required to agree to the Terms of Use to access the Subscription Services.
- 2.3** Qualification of Users. Customer shall not designate any person as a User unless such person is: (a) a natural person and (b) an employee of Customer. Customer may designate a non-employee (i.e., an independent contractor) as a User only with SIA's prior permission and provided Customer takes reasonable steps to ensure such non-employee uses the Subscription Services only as permitted under this Agreement. If the employment of any User that was in effect as of the date such person was designated as a User terminates, Customer shall promptly notify SIA and take all reasonable steps to ensure that such person ceases accessing the Subscription Services. Where applicable, Customer may be permitted to reassign User designations in good faith, subject to the foregoing qualification requirements and SIA approval, in which case the prior User shall no longer have any right to access or use the Subscription Service.
- 2.4** Customer shall not use the Subscription Services in a manner that violates any applicable laws (being any statute, regulation, rule, ordinance or ruling by a foreign, federal, state or local government including, but not limited to data transfer, intellectual property rights and privacy laws) and further agrees that it shall not:
- 2.4.1** attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Subscription Services or Documentation in any form or media or by any means other than as may be allowed by any applicable law which is incapable of exclusion by agreement and except to the extent expressly permitted under this Agreement;
  - 2.4.2** use any aspect of the Subscription Services in order to create, market or distribute a product or service which competes with the Subscription Services;
  - 2.4.3** use the Subscription Services to provide services to third parties;
  - 2.4.4** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services available to any third party except the Users;
  - 2.4.5** attempt to obtain, or assist third parties in obtaining, access to the Subscription Services except as set out in the Agreement;
  - 2.4.6** access or attempt to access any of SIA's systems, programs or data that are not made available for public use, or attempt to bypass any of the security and traffic management devices of the Subscription Services;
  - 2.4.7** decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code, object code or underlying ideas, structure, know-how, algorithms, file formats or programming or interoperability interfaces relevant to the Subscription Service or any software, documentation or data related to the Subscription Services by any means whatsoever; or

**2.4.8** knowingly introduce, or permit the introduction of, any Virus into SIA's network and information systems.

**2.5** It is Customer's responsibility to ensure it has appropriate hardware, browser, and internet connection for Users to access to the Subscription Services. Technical requirements and advice on accessibility issues are available on request to SIA. SIA does not warrant that Customer's or Users' use of the Subscription Services will be uninterrupted or error-free and SIA is not responsible for any delays or delivery failures resulting from the transfer of data over the internet.

**2.6** Customer shall procure that each User complies with the Terms of Use and shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Subscription Services and, in the event of any such unauthorized access or use, promptly notify SIA. Customer shall and shall procure that each User keep secure all usernames and passwords for use of the Subscription Services and each User shall keep all such Customer account credentials confidential. Customer shall be solely responsible for all activities that occur whilst Customer account details are being used. If Customer becomes aware of, or believe there has been, any breach of security, such as the theft or unauthorized use of such Customer account credentials, Customer will notify SIA immediately.

**2.7** Unless specified otherwise in the Order Form, the rights provided under this clause 2 are granted to Customer only and shall not be considered granted to any Affiliate. If Customer is permitted to make the Subscription Services available to its Affiliates in the relevant Order Form, Customer shall: (a) be responsible for the Fees and all acts and omissions of its Affiliates (and their users); (b) be liable for ensuring that its Affiliates (and their users) comply with the terms of this Agreement; and (c) ensure that any rights or remedies arising in connection with this Agreement will be actionable against SIA solely by Customer and not by any Affiliate except that Customer will be entitled to treat losses of its Affiliates as if they are losses of Customer. Any limitations or exclusions of liability contained herein shall be deemed to apply to Customer and its Affiliates in aggregate.

### **3 CREDITS**

**3.1** General. Customer shall purchase the Credits stated in the Order Form. Credits shall be used solely to book Subscription Services during the Term. Customers may choose how to use Credits across the Subscription Services, subject to availability of the relevant Subscription Service and a sufficient number of Credits on Customer's account.

**3.2** Expiry. Credits are non-transferable and are only valid during the Term in which they were purchased. Any unused Credits expire at the end of the then-current Term or after termination of the Agreement in accordance with clause 9. Credits have no monetary value, and cannot be transferred, bought, sold in any way, except as stated in these Terms.

**3.3** Additional Credits. Customer may purchase additional Credits during the Term by executing a new Order Form for the additional Credits. Any additional Credits must be used in the Term in which they were purchased and any unused additional Credits will expire at the end of the then-current Term. If Customer exceeds the Credits purchased, Customer and SIA will promptly execute a new Order Form for the additional Credits.

**3.4** Cancellation. In the event SIA cancels a scheduled coaching session at any time, or a User withdraws from a coaching session more than five (5) days before such session was due to take place, the Credit for that session shall be refunded to Customer's account. Unless otherwise agreed in advance by SIA, if a User cancels a coaching session in which they were enrolled less than five (5) days before the date on which the coaching session was due to take place, the Credits attributable to such session will not be refunded.

### **4 FREE SERVICES**

**4.1** If Customer registers for a free trial of the Subscription Services, SIA will make the applicable Subscription Services available to Customer and its Users on a trial basis free of charge until the earlier of (a) the end of

the applicable free trial period, (b) the start date of Customer's paid subscription, or (c) any termination of the free trial by SIA.

- 4.2 The Free Services are provided "as is" for limited evaluation and testing purposes only. SIA disclaims all warranties, express or implied, including the implied warranties of merchantability, noninfringement, title, quality, accuracy and fitness for a particular purpose. SIA reserves the right to make changes to the Free Services that materially reduce the services provided to you during the applicable Term.
- 4.3 Unless Customer purchases a subscription to the applicable Subscription Services before the end of the free trial, all of Customer's data in the Subscription Services may be permanently deleted at the end of the trial.

## 5 SERVICE LEVEL

SIA will use commercially reasonable efforts to ensure a satisfactory availability of the Subscription Services and to maintain the Subscription Services in a manner which minimizes errors and interruptions in the Subscription Services. The Subscription Services may be temporarily unavailable for scheduled maintenance or for unscheduled maintenance performed either by SIA or third-party providers, or because of other causes beyond SIA's reasonable control, provided that SIA shall use commercially reasonable efforts to schedule any planned maintenance outside of normal business hours and to give Customer at least 24 hours' advance notice of any scheduled service disruption. SIA is not responsible for issues resulting from misuse, non-SIA systems or equipment, third-party tools, general internet problems, or force majeure events.

## 6 FEES AND PAYMENT TERMS

- 6.1 Except as otherwise specified herein or in an Order Form, (a) Fees are based on access rights and Credits acquired and not actual usage, (b) except for the limited rights herein, payment obligations are non-cancellable and non-refundable, and (c) access rights and Credits purchased cannot be decreased during the relevant Term.
- 6.2 Fees due hereunder will be invoiced to Customer. All Fees due hereunder (except fees subject to good faith dispute submitted in writing to SIA within fifteen (15) days of receipt) will be due and payable within thirty (30) days of the invoice date, or as set out in the applicable Order Form. Customer will provide SIA with complete and accurate billing and contact information including a valid email address. SIA reserves the right to charge interest on any late payments. Interest on any late payments will accrue at the rate of 1% above the current U.S. Federal Reserve interest rate per month, or the highest rate permitted by law, whichever is lower, from the date such amount is due until the date such amount is finally paid in full provided that SIA will not exercise its right to charge interest if the applicable charges are under reasonable and good faith dispute and Customer is cooperating diligently to resolve the issue. SIA may suspend performance for Customer's breach of its payment obligations upon ten (10) days' prior written notice.
- 6.3 Taxes. Fees are payable in the currency detailed in the Order Form and are stated exclusive of value added tax or relevant sales tax, which shall be added to SIA's invoice(s) at the appropriate rate. All amounts due under this Agreement shall be paid by Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by applicable law).
- 6.4 SIA shall be entitled to increase the Fees at the start of each Renewal Term upon forty-five (45) days' prior written notice to Customer.

## 7 OWNERSHIP

- 7.1 Customer acknowledges and agrees that, as between Customer and SIA, all Intellectual Property Rights in and to the SIA Content, the SIA Platform, the Subscription Services, the Derived Data, and the Documentation shall belong to and remain vested in SIA, or where applicable any relevant licensor, at all times. No rights are granted to Customer hereunder other than as expressly set forth herein. Customer shall retain all right, title and interest to its pre-existing Intellectual Property Rights. All other trademarks,

registered trademarks, product names, and company names or logos mentioned in or on the SIA Platform and SIA Content are the property of their respective owners. SIA reserves all rights to the Subscription Services not expressly granted in the Contract

- 7.2** Without prejudice to clause 7.1 or to the provisions of clause 2 above, SIA shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Subscription Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Subscription Services provided such information does not include any Customer Confidential Information.

## **8 CONFIDENTIAL INFORMATION**

- 8.1** The Parties agree that, during the Term, and for three (3) years thereafter, the Receiving Party will keep confidential and will not publish or otherwise disclose or use for any purpose other than as provided for in this Agreement the Confidential Information of the Disclosing Party. all confidential information (however recorded or preserved) disclosed by one party or its employees, officers, representatives or advisers (together "Representatives") to the other party and the other party's Representatives, including the terms and conditions of this Agreement, the business, affairs, customers, suppliers, plans, intentions, market opportunities, operations, processes, product information, services, know-how, technical information or trade secrets of the disclosing party.
- 8.2** The Receiving Party will use the same degree of care that it uses to handle, treat, store, access (or limit access), and otherwise protect (including with encryption, as applicable) the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care). The Receiving Party: (a) will not use any Confidential Information of the Disclosing Party for any purpose outside the scope of, or as permitted by, this Agreement, and (c) except as otherwise authorized by the Disclosing Party in writing, will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by obligations to the Receiving Party consistent with this Agreement. The Receiving Party will be liable for any unauthorized disclosure of the other party's Confidential Information by itself or its Representatives, contractors and agents.
- 8.3** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or regulatory process to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted and practicable (e.g., there is sufficient time to provide such notice) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure or seek a protective order. In addition, the Receiving Party shall disclose only that portion of Disclosing Party's Confidential Information that is legally required.
- 8.4** Upon written request, the Receiving Party will return to the Disclosing Party or destroy all Confidential Information received from the Disclosing Party during the Term of this Agreement except digital backup copies created through automated system processes provided that such backup copies are protected as Confidential Information by the Receiving Party for as long as the information is retained.
- 8.5** The Receiving Party acknowledges that, except as otherwise provided herein, (a) the Disclosing Party is the exclusive owner of and has all rights to its Confidential Information, including all Intellectual Property Rights therein; and (b) no right, title, interest or license to the Receiving Party is either granted or implied under any Intellectual Property Rights by the disclosure of Confidential Information hereunder.

## **9 TERM, TERMINATION AND EFFECTS OF TERMINATION**

- 9.1** Term. This Agreement shall commence as of the Effective Date and, unless terminated sooner as provided herein, shall continue for the Term. The Agreement is not cancellable and shall remain in effect until it expires or is earlier terminated according to its terms or the provisions of this Agreement.
- 9.2** Termination. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- 9.2.1** the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) Business Days after being notified in writing to make such payment;
  - 9.2.2** if the other party commits a material breach of any term of this Agreement, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days after being notified in writing to do so; or
  - 9.2.3** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction, or it ceases or threatens to cease to carry on business.
- 9.3** Termination by SIA. If this Agreement is terminated by SIA under clause 9.2 above, all Fees payable to SIA for the remainder of the then-current Term shall be immediately due and payable to SIA, and Customer shall promptly remit all such amounts to SIA. No refunds shall be made to Customer.
- 9.4** Termination by Customer. If this Agreement is terminated by Customer under clause 9.2 above, SIA shall promptly refund the pro-rata amount of any pre-paid Fees for the remainder of the then-current Term.
- 9.5** Termination of Free Services. SIA may suspend, limit, or terminate the Free Services for any reason at any time with immediate effect.
- 9.6** Effect of Termination. Expiration or Termination for any Reason. Upon expiration or termination of this Agreement for any reason, (a) all licenses granted under this Agreement shall immediately terminate; each party shall return or destroy and make no further use of any Confidential Information, equipment, property and other items (and all copies of them) belonging to the other party; and (b) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced. Notwithstanding any terms to the contrary in this Agreement, sections 7, 8, 9.2, 11, 12, 13, 14 and 15 and, if applicable, the entirety of the DPA survive any termination or expiration of this Agreement.

## **10 REPRESENTATIONS AND WARRANTIES.**

- 10.1** Each party represents and warrants that (a) the person signing this Agreement on its behalf has been duly authorized and empowered to enter into this Agreement, (b) this Agreement is valid, binding and enforceable against it in accordance with its terms, and (c) it will fulfil its obligations under this Agreement in accordance with all applicable laws.
- 10.2** Customer represents and warrants, and covenants that it will not, in connection with this Agreement, including its use of or access to the Subscription Services, engage in, encourage, or permit conduct that violates or would violate any applicable law, rule, or regulation or any right of any third party.
- 10.3** SIA represents and warrants that it possesses all necessary authority and permissions to provision Customer with access to the Subscription Services and the SIA Platform, and that it will provide the Subscription Services in accordance with all applicable laws, rules, and regulations, and best industry standards.

## **11 INDEMNIFICATION.**

- 11.1** SIA will indemnify, defend, and hold harmless Customer and its officers, directors, employees, and Affiliates against any and all third-party claims, actions or proceedings arising out of or in connection with, and to the extent caused by, any infringement by the Subscription Services against any Intellectual Property Right or the misappropriation of any trade secret. If the Subscription Services become, or, in SIA's



opinion, is likely to become, the subject of any claim of infringement, SIA may, at its sole option: (a) obtain for Customer the right to continue using the Subscription Services, (b) replace or modify the affected Subscription Services so that it becomes non-infringing while providing substantially equivalent functionality, or (c) if such remedies are not available on commercially reasonable terms as determined by SIA, terminate the license to use the affected portion of the Subscription Services, and promptly issue a prorated refund any pre-paid Fees for the affected portion of the Subscription Services. Notwithstanding any terms contained in this clause 11.1, SIA will have no liability for infringement claims to the extent that the alleged infringement is based on or arises from (i) the combination or use of the Subscription Services with software or other materials not provided or approved for use by SIA, (ii) the modification of the Subscription Services by anyone other than SIA, or at SIA's direction, (iii) the use of the Subscription Services not in accordance with any provided documentation or the Agreement, or (iv) Customer's negligence or willful misconduct. The remedies provided in this clause 11.1 will be Customer's exclusive remedy with respect to claims for infringement.

- 11.2** Customer will indemnify, defend, and hold harmless SIA and its officers, directors, employees, and Affiliates against any and all third-party claims, actions or proceedings arising out of or in connection with (a) Customer's or Users' access or use of the Subscription Services in violation of any law, this Agreement or the Data Processing Addendum, or (b) any infringement by the Customer Data or the Customer Materials against any patent, copyright, or trademark, or the misappropriation of any trade secret.
- 11.3** Any party entitled to indemnification under this clause 11 (the "Indemnified Party") will comply with the following conditions in order to enjoy the benefit of indemnification under either clauses 11.1 or 11.2: (a) the Indemnified Party will give prompt written notice to the indemnifying party (the "Indemnifying Party") of any matters giving rise to a claim for indemnification, provided, that the failure of any party entitled to indemnification hereunder to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this clause 11 except to the extent that the Indemnifying Party is actually prejudiced by such failure to give notice; (b) the Indemnified Party will cede sole control over the defense of any such claim to the Indemnifying Party, provided the Indemnifying Party will retain counsel reasonably satisfactory to the Indemnified Party; and (c) the Indemnified Party shall cooperate fully with the Indemnifying Party in connection with any negotiation or defense of any such action or claim by the Indemnifying Party and shall furnish to the Indemnifying Party all information reasonably available to the Indemnified Party which relates to such action or claim.
- 11.4** The Indemnifying Party shall keep the Indemnified Party fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. The Indemnifying Party will not settle any such claim without the Indemnified Party's consent, not to be unreasonably withheld, unless such settlement does not impose any obligations, admissions or liabilities upon the Indemnified Party.

## **12 DISCLAIMER**

EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT; AND THE SIA PLATFORM, THE SUBSCRIPTION SERVICES AND ANY INFORMATION PROVIDED BY OR ON BEHALF OF SIA ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS. CUSTOMER AGREES AND ACKNOWLEDGES THAT IT HAS NOT RELIED ON THE FUTURE AVAILABILITY OF ANY FEATURE, FUNCTIONALITY, OR PRODUCT. SIA WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF SIA.

## **13 LIMITATION OF LIABILITY**

- 13.1** Nothing in this Agreement excludes either party's liability for death or personal injury caused by its negligence, fraud or fraudulent misrepresentation or for any liabilities that cannot be excluded under applicable law.

- 13.2** Customer's sole and exclusive remedy for any uncured breach by SIA of its obligations under this Agreement is termination by written notice to SIA, and refund of a prorated portion of the Fees that Customer has paid.
- 13.3** To the maximum extent permitted by law, (a) neither party will be liable to the other for any incidental, indirect, consequential, special or punitive damages, including, without limitation lost profits, related to or arising out of this Agreement, regardless of the form of action or whether the other party has been advised of the possibility of such loss or damage; and (b) in no event will each party's total cumulative liability for damages under this agreement exceed an amount equal to the Fees payable by Customer to SIA under this Agreement during the twelve months prior to the event(s) first giving rise to the claim. This limitation of liability does not apply to Customer's liability for payment of Fees, or claims arising out of: (i) a party's willful misconduct or gross negligence; (ii) either party's indemnification obligations; (iii) misappropriation of the other party's intellectual property; or (iv) breaches of confidentiality. Notwithstanding the foregoing, the maximum total liability for SIA for any claim under clause 11.1, shall be limited to the greater of: (A) three times (3x) the Fees paid by Customer to SIA during the twelve (12) months immediately preceding the date on which the claim arose; or (B) five hundred thousand dollars (\$500,000).

#### **14 DATA PRIVACY AND SECURITY**

- 14.1** Customer acknowledges and agrees that SIA will operate in accordance with the Data Processing Addendum which is incorporated herein by reference. The terms of the Data Processing Addendum will apply to the extent any Customer Data includes Personal Data (as defined in the Data Processing Addendum). The Data Processing Addendum sets out how SIA will process Personal Data on Customer's behalf in connection with the Subscription Services provided to Customer under this Agreement. SIA will maintain commercially appropriate administrative, physical, and technical safeguards to protect Personal Data as described in the Data Processing Addendum, including the Security Measures in Appendix A of the Data Processing Addendum.
- 14.2** SIA may track and analyze Customer's and any User's use of the Subscription Services for the purposes of security and to help SIA improve the Subscription Services and the SIA Platform.
- 14.3** SIA may use the User Data to provide the Subscription Services and to improve the performance and functionality of the SIA Platform, including for developing improvements, updates, upgrades, modifications, and derivative works thereof. SIA shall own all rights, title and interest in and to all of the Derived Data. Any personal data contained in any User Data or generated by the SIA Platform shall be processed by SIA in accordance with the Data Processing Addendum, which is in addition to, and does not relieve, remove, or replace, each of the parties' obligations or rights under the Data Protection Legislation.
- 14.4** SIA will use all reasonable endeavors to implement appropriate technical and organizational security measures to secure Customer's User Data against any accidental loss, theft, or unauthorized access or disclosure, including encryption and regular backups as further detailed in the Data Processing Addendum.
- 14.5** Customer agrees to comply with all applicable privacy, data protection, and consumer protection laws and regulations in connection with Customer's access to and use of the Subscription Services, including without limitation, as applicable, requirements of proper notice and consent or legal basis of processing to send Personal Information to SIA and compliance with Data Protection Legislation.

#### **15 GENERAL**

- 15.1 Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the substantive laws of the State of Delaware without regard to conflict of laws and all disputes arising under or relating to this Agreement shall be brought and resolved solely and exclusively in the State Court located in Delaware.
- 15.2 Publicity.** Customer consents to SIA's use of Customer's name identifying Customer as a Customer of SIA.

- 15.3 Excusable Delays/Non-Performance.** Any delay or failure in performance will be excused to the extent caused by an extraordinary event or occurrence beyond the reasonable control of the non-performing party, including without limitation, fires, floods, windstorms, explosions, strikes, walk outs, riots, natural disasters, mechanical breakdowns, power outages, interruptions in telecommunications, material shortages, acts of terrorism, wars and changes in law, policy or inflationary pressure that render performance of Subscription Services commercially impracticable. The affected party will give the other party prompt notice of the delay or failure and the reason thereof and will exert commercially reasonable efforts to remove the causes or circumstances of non-performance with reasonable dispatch. In the event of a delay or failure in performance, nothing in this clause 15.3 will relieve Customer of its obligations under clause 6.
- 15.4 Assignment.** Neither this Agreement nor any right or duty under this Agreement may be transferred, assigned or delegated, by operation of law or otherwise, without the prior written consent of the non-assigning party, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Notwithstanding the above, either party may freely transfer, assign or delegate this Agreement or its rights and duties under this Agreement without the consent of the non-assigning party to an Affiliate, as part of a change of control, or to a successor in interest to all or substantially all of its business or assets. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns.
- 15.5 Independent Contractor; Benefit.** The relationship between the parties is solely that of independent contractors. This Agreement is for the benefit of the parties. There are no intended third-party beneficiaries to this Agreement.
- 15.6 Notices.** Customer shall provide an email address for notices under this Agreement. All notices or other communications permitted or required to be given hereunder shall be sent by electronic mail to the email address provided by the other party for such purpose and shall be deemed given when sent. Notices to SIA shall be sent to [legal@salesimpact.io](mailto:legal@salesimpact.io).
- 15.7 Entire Agreement.** This Agreement (including each Order Form) along with the Data Processing Addendum is the entire agreement between SIA and Customer for the Subscription Services and supersedes all other proposals and agreements, whether electronic, oral or written, between the parties. SIA objects to and rejects any additional or different terms proposed by Customer, including those contained in any purchase order, or acceptance of website.
- 15.8 Waiver and Severability.** A party's delay or failure to exercise a right or remedy will not result in a waiver of that right or remedy. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable under the governing law, the remaining provisions will remain in full force and effect, and will be construed so as to most nearly reflect the parties' intent with respect to such provision
- 15.9 Variation.** SIA may modify these Terms at any time in its sole discretion. Changes to the Terms will be notified to Customer at least sixty (60) days in advance and/or published on SIA's website, thereby giving Customer the opportunity to object to any such change to the Terms. Such proposed amendments shall be deemed accepted and become part of the Agreement thirty (30) days after the date such notice is given unless Customer informs SIA that it does not accept such amendments. In the event Customer informs SIA that it does not accept the proposed amendments, the proposed amendments will not take effect and the existing Terms will continue in full force and effect.

Prior terms can be found at [www.salesimpact.io/terms-archive/](http://www.salesimpact.io/terms-archive/).