

## TORQATA SUBSCRIPTION AGREEMENT

PLEASE READ THIS SUBSCRIPTION AGREEMENT (“AGREEMENT”) CAREFULLY AND IN ITS ENTIRETY AS YOUR RIGHTS ARE LIMITED HEREBY.

THIS AGREEMENT IS A BINDING, CONTRACTUAL AGREEMENT BETWEEN YOU, FOR THE BENEFIT OF ITSELF AND ITS AFFILIATES (“SUBSCRIBER”) AND TORQATA DATA AND ANALYTICS LLC (“TORQATA”) WITH A PLACE OF BUSINESS AT 12200 Herbert Wayne Ct., Huntersville, NC 28078. THE TERMS AND CONDITIONS OF THIS AGREEMENT APPLY SOLELY TO SUBSCRIBER’S ACCESS TO AND USE OF THE SOFTWARE, SERVICES, AND SITE (EACH AS DEFINED BELOW). “AFFILIATE” MEANS, AS TO EITHER PARTY, ANY PERSON OR ORGANIZATION THAT DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH.

BY CLICKING THE “I ACCEPT” BUTTON BELOW, SUBSCRIBER IS INDICATING ACCEPTANCE AND AGREEING TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS MAY BE REVISED FROM TIME TO TIME AS SET FORTH IN SECTION 9.13 BELOW.

Torqata and Subscriber may each be referred to herein as a “Party” and collectively constitute the “Parties”.

### 1. APPLICABILITY OF THESE STANDARD TERMS AND CONDITIONS

1.1 This Agreement governs and is the complete agreement regarding Subscriber’s access to and use of the services provided by Torqata pursuant to this Agreement (“Services”). For the Term (as defined below), Subscriber will have remote access to the applicable software components of the Services (the “Software”) via the internet on a subscription service basis. Subject to the terms hereof, Torqata will provide Subscriber the Software, as detailed in the [Services Description](#) (attached as **Exhibit A**) and incorporated herein by reference, in material conformance with prevailing industry standards. In the event of a conflict between the terms of this Agreement and the Services Description, the terms of this Agreement shall control and prevail.

### 2. RIGHTS, RESTRICTIONS AND RESPONSIBILITIES

2.1 **Rights of Use.** For the duration of the Term and subject to the restrictions set forth herein, Torqata grants Subscriber a non-exclusive, non-transferable, United States, limited, license to access and use the Software on a secure remote-access basis via the internet.

2.2 **Subscriber Acknowledgement and Grant of Access to Subscriber Network.** Subscriber acknowledges and agrees that Torqata employees, may, as required to provide the Services and upon notice to Subscriber, remote into Subscriber’s network for the purpose of downloading required software (the “**Downloaded Software**”). Subscriber hereby grants to Torqata a non-exclusive, worldwide, royalty-free right and license to access the Subscriber network for the purpose of downloading software that is required to perform the Services.

2.3 **Authorized Users.** Subscriber may only grant access to the Software to the number of employees of Subscriber provided in the attached Services Description (“Authorized Users”). Subscriber shall maintain and ensure that all Authorized Users maintain the confidentiality of all account information that is provided to the Subscriber to enable access to and use of the Software and shall be responsible for any unauthorized disclosure or use of such account information. Subscriber represents, covenants, and warrants that Subscriber and all Authorized Users will use the Software only in compliance with the Acceptable Use Policy (“AUP”) set forth in Section 2.3 below, and all applicable laws and regulations. Subscriber is responsible and liable for all uses of the Software resulting from access provided by Subscriber, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Although Torqata has no obligation to monitor Subscriber’s use of the Software, Torqata may do so and may prohibit any portion of the Software it believes may be in violation of this Agreement.

2.4 **Acceptable Use Policy.** The Software may only be used in support of the internal business operations of Subscriber and is subject to the additional restrictions set forth herein. Subscriber shall not, and shall cause the Authorized Users to not, misuse the Software. Without limitation, Subscriber and the Authorized Users are prohibited from, directly or indirectly: (i) attempting to use or gain unauthorized access to Torqata’s or to any of its suppliers’ networks or equipment; (ii) permitting other individuals or entities to copy the Software; (iii) providing unauthorized access to or use of any user IDs, software license keys or passwords to activate or access the Software; (iv) attempting to probe, scan or test the vulnerability of the Software or of any associated system, account or network; (v) interfering or attempting to interfere with Software used by any user, host or network; (vi) engaging in fraudulent, offensive or illegal activity of any nature; (vii) providing access, communicating, or otherwise disclose Platform Data and/or Proprietary Information to any

third-party; (viii) engaging in any activity that infringes the intellectual property rights or privacy rights of Torqata or any third-party; (ix) intentionally distributing worms, Trojan horses, viruses, corrupted files or any similar items; (x) restricting, interfering with or otherwise disrupting or causing a performance degradation to any of Torqata's or its suppliers' facilities used in the provision of Services; (xi) permitting any third-party to copy all or any portion of the Software; (xii) modifying, reverse engineering, decompiling, disassembling, distributing or otherwise attempting to discover the source code, object code, or underlying structure, ideas, know-how or algorithms relevant to the Software, documentation or data related to the Software; (xiii) modifying, translating, or creating derivative works based on any Software; (xiv) copying or otherwise exploiting the Software, in whole or part; (xv) selling, sublicensing, renting, leasing, or otherwise transferring rights to all or any portion of the Software; (xvi) using any Software in any manner which supports the business or operations of a third-party; (xvii) removing any proprietary notices or labels; and/or (xviii) uploading or otherwise providing the following information: (a) personal identification numbers, such as, social security number (SSN), passport number, driver's license number, taxpayer identification number, patient identification number, financial account number or credit card number; (b) personal characteristics, such as, photographic images (particularly of face or other identifying characteristics), fingerprints, or handwriting; (c) biometric data, such as, retina scans, voice signatures, or facial geometry; and (d) asset information, such as, Internet Protocol (IP) or Media Access Control (MAC) addresses that consistently link to a particular person ((xviii)(a)-(d) collectively referred to as the "**Prohibited Data**").

**2.5 Rights Reserved; Intellectual Property Rights; Liability.** Any rights that are not expressly granted to Subscriber by Torqata in this Agreement are expressly reserved by Torqata. Except for the license expressly granted herein, Torqata shall retain all right, title and interest in and to the Software, in the associated documentation and materials, and in all related intellectual property and derivative works including, without limitation, results using the various analytical tools provided by the Software, including, without limitation, Anonymized Data and Results (each as defined below). Except for POS Data (as defined below) all rights, title, and interest in the intellectual property embodied in the Services, including the know-how and methods by which the Services are provided and the processes that make up the Services, as well as all related technology and documentation and all content, will belong solely and exclusively to Torqata. Similarly, any intellectual property developed by Torqata during the performance of any Services will belong solely and exclusively to Torqata. Subscriber shall be jointly and severally liable for its Affiliates use of the Services or its breach of this Agreement.

**2.6 Platform Data.** There are a number of categories of data used in connection with the Software and in the provision of Services which include the following:

i) **Subscriber point of sale system data ("POS Data")** – This is data from the Subscriber's point of sale system (also known as a dealer management system), which such data, in its original form, is the property of the Subscriber and is hereby licensed to Torqata (i) for use in performing services, including the Services (which may be expanded upon by mutual agreement of the Parties or pursuant to Section 9.13 (Revisions; Continued Use) of this Agreement, to include, without limitation, store performance recommendation services, auto-replenishment services, lead generation services and related services) for the Subscriber; and (ii) to permit Torqata to create Anonymized Data. Upon the Effective Date (or such other date agreed to by the Parties), Subscriber shall provide Torqata all available POS Data from and after such date which is thirty-six (36) months prior to the Effective Date, which such obligation shall continue for the Term. POS Data provided by Subscriber during the Term, shall be provided to Torqata on a daily basis **no later than the cut-off time prescribed by Torqata**<sup>1</sup>. Subscriber agrees that it shall not provide to Torqata any POS Data from outside the United States. Subscriber further agrees that the license granted in this Section shall extend to all such POS Data and that such license shall survive termination or expiration hereof in perpetuity. Without limitation, the license granted in this Section is subject to Section 9.1.

ii) **De-identified and anonymized data ("Anonymized Data")** – Consists of data which may originate with a Subscriber or other source, including, without limitation, POS Data and personally identified information provided by Subscriber (the "**Subscriber PII**"), which has been anonymized or de-identified by Torqata. The Parties agree that the Anonymized Data is the sole property of Torqata and may be used by Torqata in Torqata's sole discretion, as further described herein. Use by Subscriber of Anonymized Data, is subject to this Agreement, including, without limitation, the various provisions of Section 2. No use by Subscriber of the Anonymized Date shall impact any rights of use of Torqata in the Anonymized Data, which such rights shall not be construed as limited in any way by any use thereof by Subscriber or, subject to Section 9.1, this Agreement. Without limitation, and subject to Section 9.1, Torqata may aggregate, use, sell, license, share and publicize all Anonymized Data in its sole discretion from the Subscriber or the Subscriber's Affiliates. Torqata may use, sell, license, share or publicize such Anonymized Data without any additional consent from Subscriber.

iii) **Results from the Services and Software ("Results")** – Consists of outputs from the Services and Software based on analytics performed by the Software, including without limitation, click-stream results, using all of the above data types and other data available to Torqata, including, without limitation, market data within and outside of the Software. The Parties agree that the Results are the sole property of Torqata. Use by Subscriber of the Results is subject to this Agreement, including, without limitation, the various provisions

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<sup>1</sup> Cadence of the prospective data feeds to be discussed.

of Section 2. No use by Subscriber of the Results shall impact any rights of use of Torqata in the Results, which such rights shall not be construed as limited in any way by any use thereof by Subscriber or, subject to Section 9.1, this Agreement. Without limitation, and subject to Section 9.1, Torqata may aggregate, use, sell, license, share and publicize all Results (to the extent anonymized) in its sole discretion.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") has disclosed or may disclose Proprietary Information, as hereinafter defines. "Proprietary Information" shall mean the confidential and proprietary information or data furnished directly or indirectly by the Disclosing Party to the Receiving Party before or after the date hereof, which, in the case of written, recorded, graphical or electronically communicated or stored information, or any other information in tangible form, that is identified as Proprietary Information hereunder or that the Receiving Party should reasonably understand to be considered Proprietary Information by the Disclosing Party because of legends and/or other written markings, or, in the case of oral information, the Receiving Party should reasonably understand to be considered Proprietary Information by the Disclosing Party because of a written communication from the Disclosing Party to the Receiving Party that is delivered within five (5) days of the initial oral communication. Notwithstanding the foregoing, and even if such information does not bear legends or markings indicating it is proprietary or confidential, Proprietary Information shall include all information disclosed by Parties to each other regarding pricing or terms quoted by the Torqata. Notwithstanding anything contained herein to the contrary, the term "Proprietary Information" does not include information which: (a) has been published or is otherwise in the public domain, through no fault of the Receiving Party, at the time of the disclosure; (b) prior to disclosure hereunder is within the legitimate possession of the Receiving Party, as reasonably evidenced by a contemporaneous writing; (c) becomes known to the Receiving Party from sources other than the Disclosing Party under circumstances not involving any violation of law or breach of any confidentiality obligation owed by such source to the Disclosing Party, which violation or breach was known or should reasonably have been known to the Receiving Party; or (d) is independently developed by the Receiving Party through third-parties who have not had, either directly or indirectly, access to or knowledge of such Proprietary Information, as reasonably evidenced by a contemporaneous writing. For the sake of clarity, Anonymized Data shall be considered Torqata's Proprietary Information.

3.2 The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information; and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third-party any such Proprietary Information. Receiving Party shall cause any party to whom it discloses Proprietary Information to comply with confidentiality and privacy obligations set for the under this Agreement.

3.3 Notwithstanding anything to the contrary, Torqata shall have the right to collect and analyze data and other information relating to the provision, use and performance of the Services (including, without limitation, POS Data and data derived therefrom), and Torqata will be free to: (i) use any such data and other information to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services; and (ii) collect and compile any such data and other information and transform the same into Anonymized Data. This Section 3 shall not in any way limit Torqata's ownership or rights of use in Anonymized Data.

### 4. TERM AND TERMINATION

4.1 **Initial Term and Renewals.** Subject to earlier termination as provided below, the Initial Term of the Agreement will continue for three (3) years ("Initial Term") and will automatically renew for a twelve (12) month period and continue to renew for twelve (12) month periods thereafter ("Renewed Term" and collectively with the Initial Term, "Term"), unless either Party requests termination at least sixty (60) days prior to the end of the Initial Term or the respective Renewed Term.

4.2 **Termination.** In addition to any other remedies it may have, either Party may terminate this Agreement upon written notice if the other Party breaches any material provision of this Agreement and fails, within thirty (30) days after receipt of written notice of such breach, to correct the breach.

4.3 **Suspension.** In addition to any other remedies it may have, Torqata may suspend use of or deny access to the Software (as to any or all Authorized Users) and otherwise suspend the provision of the Services, if: (i) Subscriber is delinquent in any of its obligations hereunder beyond the applicable cure period set forth herein; (ii) there is any violation or suspected violation of the AUP or any other misuse of the Software, in the reasonable discretion of Torqata; (iii) the Software is otherwise being used in a manner that Torqata reasonably believes will give rise to liability, will degrade the performance of services, or poses a security risk to Torqata; or (iv) required to suspend the provision of Services by applicable law. Torqata will have no liability for any damage, liabilities, losses, or any other consequences of any kind whatsoever that Subscriber or any Authorized User may incur as a result of suspension in accordance with this Section 4.3.

4.4 **Termination For Convenience.** Either Party may terminate this Agreement upon sixty (60) days prior written notice to the other Party.

4.5 **Effect of Termination.** Upon termination, all rights and obligations under this Agreement will automatically terminate except for rights of action accruing prior to termination and any obligations that expressly survive termination. In addition, each Party will return any of the other Party's proprietary materials, information and documents in its possession or control and immediately cease all access to, and use of, the Software. All provisions of this Agreement which by their nature should survive termination, or are expressed to survive termination, will survive termination, including without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## 5. PAYMENT AND PAYMENT TERMS

5.1 **Fees.** Subscriber will pay Torqata the then applicable fees described in the Services Description (the "Fees") in accordance with the terms herein. The Fees shall be invoiced in advance of each annual subscription period and shall be due upon receipt of the invoice, unless otherwise specified in the Services Description. Torqata shall provide at least sixty (60) days prior notice to Subscriber (which may be sent by email) of any increases in SaaS fees upon renewal. The adjustment will be effective on the first day of the month following the end of the Initial Term and the Renewed Terms when applicable. All amounts paid by Subscriber hereunder are non-refundable. If Subscriber in good faith disputes any invoice, Subscriber must give notice of such dispute to Torqata no later than thirty (30) days after the date of such invoice. All disputes not raised within such period shall be deemed waived and the entirety of the respective invoice shall be deemed accepted by Subscriber.

5.2 **Taxes.** Subscriber is responsible for paying all taxes (except for taxes based on Torqata's net income or capital stock) relating to this Agreement and the Fees. Applicable taxes are not included in the Fees.

5.3 **Billing.** Full payment for invoices issued in any given month must be received by Torqata thirty (30) days after the date of the respective invoice. Unpaid amounts are subject to a finance charge of the lesser of (i) 1.5% per month or (ii) the maximum finance charge allowed by law, on any outstanding balance plus all expenses of collection, including, without limitation, reasonable attorney fees and costs, and may result in immediate suspension or termination of the Agreement.

5.4 **Reimbursements.** If Subscriber requests for Torqata to travel to Subscriber's premises, Subscriber shall reimburse Torqata for all reasonable travel expenses (including, without limitation, transportation, lodging and meals).

## 6. WARRANTY AND DISCLAIMER

6.1 Conditioned on use of the Software in compliance with this Agreement, Torqata warrants, for the Term, that the Software will perform in all material respects in accordance with the applicable user documentation provided to Subscriber by Torqata in writing along with the Software. Torqata shall use reasonable efforts consistent with prevailing industry standards to maintain the Software in a manner that minimizes errors and interruptions and further warrants that all Services shall be performed in a professional and workmanlike manner and in accordance with any applicable requirements specified in the Agreement. In the event that Torqata breaches any warranties under this Section 6.1, then Torqata will use commercially reasonable efforts to correct or implement a workaround for the deficiency. The Services may be temporarily unavailable for scheduled maintenance, either by Torqata or by third-party providers, or because of other causes beyond Torqata's reasonable control, but Torqata shall use commercially reasonable efforts to provide advance notice in writing or by email of any scheduled disruption in the Services. The data appearing in or produced by the Software, including, without limitation, the Anonymized Data or Results, could include technical, typographical, or photographic errors. Torqata does not warrant that any of the data, including, without limitation, Anonymized Data or Results is without error or is complete or is current. Notwithstanding anything to the contrary herein, the warranties set forth in Section 6.1 shall only apply to the use of the Software and Services in the United States, and Torqata explicitly disclaims any and all warranties for the Software and/or Services outside the United States. Without limiting the generality of the foregoing and notwithstanding anything to the contrary herein, Torqata does not represent or warrant that the Software and/or Services will comply with any laws or regulations that may apply outside of the United States.

6.2 **EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1, TORQATA MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR SOFTWARE AND EXPLICITLY DISCLAIMS ALL SUCH OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND OF FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY THAT THE SERVICES OR SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION.**

6.3 **TORQATA HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY, DAMAGES AND/OR LOSSES, RELATING TO, ARISING OUT OF, OR OTHERWISE RESULTING FROM, TORQATA'S REMOTE ACCESS TO SUBSCRIBER'S NETWORK, INCLUDING WITHOUT LIMITATION, WHERE TORQATA EMPLOYEES REMOTELY ACCESS SUBSCRIBER'S SYSTEMS TO DOWNLOAD SOFTWARE, THIRD PARTY SOFTWARE AND ANY OTHER DATA OR INFORMATION, AS APPLICABLE. TORQATA SHALL NOT BE LIABLE FOR THE INTRODUCTION OF ANY VIRUS, MALWARE, TROJAN HORSE**

OR OTHER HARMFUL CODE, LOSS OF OR DESTRUCTION TO DATA, LOST PROFITS, DAMAGE OR CORRUPTION TO THE SUBSCRIBER NETWORK AND/OR ANY OTHER LOSS OR DAMAGE RESULTING FROM, RELATING TO OR OTHERWISE ARISING OUT OF TORQATA'S REMOTE ACCESS TO SUBSCRIBER'S NETWORK. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBSCRIBER HEREBY IRREVOCABLY WAIVES ANY CLAIMS AGAINST, AND FOREVER RELEASES, TORQATA FROM, ANY AND ALL LIABILITY RELATING TO, ARISING OUT OF, OR OTHERWISE RESULTING FROM, TORQATA'S ACCESS TO, AND DOWNLOADS FROM, SUBSCRIBER'S NETWORK.

6.4 Subscriber warrants, for the Term, that Subscriber will reasonably cooperate with Torqata in the provision of its POS Data to Torqata, including, without limitation, permitting Torqata to connect to Subscriber's POS system.

6.5 Each Party warrants that it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder without the consent of any third-party and without breach of any agreements with or obligations to any third-party.

## **7. LIMITATION OF LIABILITY:**

7.1 EXCEPT AS PROHIBITED BY APPLICABLE LAW, TORQATA AND ITS, PARENTS, SUBSIDIARIES, AFFILIATES, REPRESENTATIVES, AND ALL OF THEIR RESPECTIVE OFFICERS, EMPLOYEES AND CONTRACTORS (COLLECTIVELY, "TORQATA PARTIES") SHALL NOT BE RESPONSIBLE OR LIABLE TO SUBSCRIBER UNDER CONTRACT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, FOR: (A) ANY ERROR OR INTERRUPTION OF USE OR ANY LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (B) ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS; (C) ANY VIRUS, MALWARE, HARMFUL CODE, LOSS OF DATA AND/OR LOST PROFITS, CAUSED BY, RESULTING FROM OR OTHERWISE ARISING OUT OF, TORQATA'S REMOTE ACCESS TO SUBSCRIBER'S NETWORK AND ANY DOWNLOADS THEREFROM; AND/OR (D) FOR ANY MATTER BEYOND TORQATA'S REASONABLE CONTROL, IN ANY CASE, WHETHER OR NOT TORQATA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 EXCEPT AS PROHIBITED BY APPLICABLE LAW, TORQATA'S ENTIRE LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM WILL NOT EXCEED THE AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY SUBSCRIBER TO TORQATA FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

## **8. INDEMNITY**

8.1 Torqata will defend Subscriber against any third-party claim that the Service or Software, used in compliance with this Agreement, infringes upon the intellectual property rights of any third-party, within the United States, and shall pay such amounts finally awarded by a court against Subscriber or included in a settlement approved by Torqata, provided that Subscriber promptly: i) notifies Torqata in writing of the claim; ii) supplies all information requested by Torqata; and iii) allows Torqata to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. Torqata has no responsibility for claims or violations of applicable law where based on use in combination with goods or services not provided by Torqata or use of a non-current version or release of the Services or Software where such claim or violation would have been avoided but for such combination or through use of the current version or release of the Services or Software.

8.2 Subscriber shall indemnify and hold the Torqata Parties harmless, against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorney's fees) resulting from any third-party claim (i) that the POS Data infringes or misappropriates such third-party's intellectual property rights; (ii) arising out the negligence or willful misconduct of Subscriber or any Authorized User; or (iii) with respect to use of the Services or Software in violation of the terms of this Agreement, including, without limitation, the restrictions set forth in Section 2.2 and the AUP and expressly and without limitation, including where Subscriber provides Prohibited Data, provided that Subscriber may not settle any such third-party claim against Torqata without Torqata's prior written consent to such settlement, and further provided that Torqata will have the right, at its option, to defend itself against any such claims or to participate in the defense thereof by counsel of its own choice in whatever capacity.

## **9. MISCELLANEOUS**

9.1 **PII.** In the course of the provision of the Services, Torqata may have access to certain personally identifiable information of Subscriber, the Authorized Users or the customers of Subscriber that is regulated by state and/or federal laws and regulations Subscriber PII. In accordance with the requirements imposed by applicable laws, Torqata shall, for so long as Torqata retains such Subscriber PII:

(i) limit access to Subscriber PII to Torqata's employees, agents and subcontractors who need access to Subscriber PII; and (ii) implement commercially reasonable administrative, technical and physical safeguards in accordance with SOC2 standards to help protect against unauthorized access to or disclosure of such Subscriber PII. Subscriber represents and warrants that none of the Subscriber PII is GDPR data or otherwise controlled or processed in the European Union. Until Torqata and Subscriber complete an assessment of each Party's obligations under the California Consumer Privacy Act, Subscriber agrees to not share personal data for natural persons that are California residents ("California Residents") as part of the POS Data transfer. In that regard, Torqata will use reasonable efforts to filter its data feeds to block information on California Residents until an assessment and decision on California PII is made by the Parties. Subscriber represents and warrants that it will not provide Torqata with, or otherwise upload or input into the Services, any Prohibited Data.

9.2 **Privacy.** At Subscriber's request, Torqata will provide Subscriber with a written copy of its then-current Privacy Policy. In the event of a conflict between the terms of this Agreement and Torqata's Privacy Policy, the terms of this Agreement shall control and prevail. Torqata may, in its sole discretion, update the Privacy Policy from time to time, and such updates shall be effective upon the publication thereof.

9.3 **Independent Contractor Relationship; No Third-Party Beneficiaries.** The Parties are independent contractors. No provision of this Agreement creates an association, trust, partnership, agency or joint venture between the Parties. Neither Party will have any rights, power or authority to act or create an obligation on behalf of the other Party except as specified in this Agreement. This Agreement does not and is not intended to confer any rights or remedies, express or implied, upon any person other than the Parties.

9.4 **Assignment.** Neither Party shall assign this Agreement, or any right or interest in this Agreement, without the prior written consent of the other Party hereto; provided, however, that either Party may assign, without any consent of the other, its rights and obligations under this Agreement to any other individual or entity pursuant to a merger, consolidation or reorganization or sale of substantially all of the assets or stock of such Party.

9.5 **Force Majeure.** Neither Party will be liable to the other for any failure to perform any of its obligations under this Agreement during any period in which performance is delayed by circumstances not within such Party's reasonable control.

9.6 **Compliance with Laws.** Without limiting any other provision hereof, each Party shall abide by all applicable laws in the performance of its obligations and exercise of its rights under this Agreement.

9.7 **Entire Agreement; Severability.** This Agreement (together with any exhibits hereto and any revisions in accordance with the terms hereof) is the complete and exclusive statement of the mutual understandings of the Parties and supersedes all prior oral and written understandings, communications or agreements between the Parties regarding that subject matter. Except as set forth in Section 9.13 below, no amendment to or modification of this Agreement, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both Parties. If any provision of this Agreement should be found to be void or unenforceable, the provision will be stricken or modified, but only to the extent necessary to comply with the law, and the remainder of this Agreement will remain in full force and will not be terminated. In the event any terms contained in any documentation or other materials provided by Torqata to Subscriber conflicts with the terms of this Agreement, then the terms of this Agreement will prevail and control.

9.8 **Governing Law, Forum and Venue.** The Agreement and all rights and duties under the Agreement are governed by, and construed in accordance with, the laws of the State of North Carolina. The Uniform Computer Information Transactions Act do not apply to this Agreement or the transactions contemplated hereunder. Subject to the arbitration provisions of Section 9.9, the Parties hereby agree that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, the Agreement will lie in the United States District Court for the Western District of North Carolina or the corresponding state courts governing Mecklenburg County, North Carolina, as applicable, and each Party specifically waives any and all objections to such jurisdiction and venue.

**9.9 WAIVER OF JURY TRIAL; ARBITRATION.** HAVING FULLY CONSIDERED THE IMPLICATIONS OF THE SAME, EACH PARTY IRREVOCABLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. ALL DISPUTES ARISING UNDER OR IN CONNECTION WITH ANY AGREEMENT SHALL BE FINALLY SETTLED BY ARBITRATION IN CHARLOTTE, NORTH CAROLINA, BEFORE A SINGLE ARBITRATOR APPOINTED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") WHICH ARBITRATION SHALL BE CONDUCTED UNDER AAA'S COMMERCIAL ARBITRATION RULES THEN IN EFFECT AT THE TIME OF THE AGREEMENT PROVIDED, HOWEVER, THAT DISCOVERY SHALL BE PERMITTED IN ACCORDANCE WITH THE UNITED STATES FEDERAL RULES OF CIVIL PROCEDURE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING UPON SUBSCRIBER AND TORQATA, SHALL NOT BE APPEALABLE, AND JUDGMENT ON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION.

EACH PARTY WILL BEAR EQUALLY THE COSTS AND EXPENSES OF AAA AND OF THE ARBITRATOR. THE FAILURE BY ONE PARTY TO PAY ITS SHARE OF ARBITRATION FEES CONSTITUTES A WAIVER OF SUCH PARTY'S CLAIM OR DEFENSE IN THE ARBITRATION. ALL ARBITRATION PROCEEDINGS SHALL BE CONFIDENTIAL, EXCEPT TO THE EXTENT THAT DISCLOSURE IS NECESSARY TO ENFORCE AN ARBITRATION AWARD IN COURT OF COMPETENT JURISDICTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EITHER PARTY SHALL HAVE THE RIGHT, WITHOUT WAIVING ANY REMEDY UNDER ANY AGREEMENT, TO SEEK FROM ANY COURT OF COMPETENT JURISDICTION (A) EQUITABLE RELIEF AND (B) ANY INTERIM OR PROVISIONAL RELIEF THAT IS NECESSARY TO PROTECT THE RIGHTS OR PROPERTY OF SUCH PARTY. IN ANY ACTION OR PROCEEDING TO ENFORCE RIGHTS UNDER THIS AGREEMENT, THE PREVAILING PARTY WILL BE ENTITLED TO RECOVER COSTS AND ATTORNEY'S FEES IF THE PRESIDING AUTHORITY DEEMS APPROPRIATE.

9.10 **Waiver.** The failure by either Party to enforce any provision of this Agreement will not constitute a present or future waiver of such provision nor limit the Party's right to enforce such provision at a later time. All waivers must be in writing to be effective.

9.11 **Contract for Services.** The Parties intend this Agreement to be a contract for the provision of the services and not a contract for the sale of goods. To the fullest extent permitted by law, the Uniform Computer Information Transaction Act (UCITA) or any substantially similar legislation as may be enacted, shall not apply to this Agreement. The Parties also agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the Parties.

9.12 **Notices.** All notices must be in writing and shall be sent by first class U.S. mail or a nationally known express or overnight courier (such as FedEx, UPS or the U.S. Postal Service). Notices shall be sent to the contact set forth below, which such contacts may be changed upon prior written notice to the other Party. Without limitation, notices shall be deemed received on the date shown on the return receipt (for any mail delivered on a return-receipt basis) or on the courier's confirmation of delivery. Notices to TORQATA shall be sent to TORQATA's main address as listed above and, for each notice, a copy shall also be sent to TORQATA's President with a copy to their Legal Department. Notice to Subscriber may be sent to Subscriber's address set forth in the Agreement.

9.13 **REVISIONS; CONTINUED USE.** TORQATA RESERVES THE RIGHT TO CHANGE ANY OF THE TERMS OF THIS AGREEMENT, INCLUDING THE TERMS OF ITS PRIVACY POLICY AND ANY OTHER TERMS INCORPORATED HEREIN, AT ANY TIME AND IN ITS SOLE DISCRETION. ANY CHANGES WILL BE EFFECTIVE UPON THE EARLIER TO OCCUR OF: (A) NOTICE OF SUCH CHANGES PROVIDED TO SUBSCRIBER; OR (B) POSTING THE REVISED TERMS WITHIN THE SOFTWARE, SERVICES OR ON THE WEBSITE THROUGH WHICH THE SOFTWARE OR SERVICES ARE ACCESSED BY SUBSCRIBER (THE "SITE"). SUBSCRIBER IS RESPONSIBLE FOR REVIEWING ANY REVISED TERMS, AND ANY NOTICES OF REVISIONS PRIOR TO CONTINUING USE OF THE SOFTWARE, SERVICES OR SITE. SUBSCRIBER'S CONTINUED USE OF THE SOFTWARE, SERVICES OR SITE FOLLOWING NOTICE OR POSTING OF ANY REVISED TERMS, OR ANY NOTICE OF ANY SUCH REVISIONS, WILL CONSTITUTE SUBSCRIBER'S ACCEPTANCE OF THE REVISIONS. IF SUBSCRIBER DOES NOT AGREE TO ANY CHANGES TO THIS AGREEMENT, PRIVACY POLICY OR OTHER TERMS, SUBSCRIBER MUST IMMEDIATELY STOP USING THE SOFTWARE, SERVICES AND SITE, AND GIVE TORQATA PROMPT WRITTEN NOTICE.

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BY CLICKING THE "I ACCEPT" BUTTON BELOW, SUBSCRIBER IS INDICATING ACCEPTANCE AND AGREEING TO ALL OF THE TERMS AND CONDITIONS OF THIS, AS MAY BE UPDATED OR REVISED FROM TIME TO TIME AS SET FORTH IN SECTION 9.13 ABOVE.

**[ I ACCEPT [ ] ]**

## Exhibit A – Services Description

1. **Description of Services:**

- a. **Inventory Optimization.** Designed to assist subscribers in improving product assortment and speeding up assortment decisions in existing and prospective stores by assisting subscribers in catering to target market and capitalize on existing opportunity.
- b. **Pricing & Program Profitability.** Assists subscribers in managing the various manufacturer incentive programs by taking advantage of the backward looking bonus structures and optimizing returns given a variety of subscriber specified constraints and conditions.
- c. **Market Pricing.** This tool collects and presents aggregated consumer price statistics at the Product SKU level and other publicly available information saving the Subscriber time in researching and assembling the aggregated and publicly available information. It is also designed to help improve a subscriber’s ability to understand market prices and their customers.
- d. **Single-Supplier Auto-Replenishment with ATD.** Auto Replenishment eliminates the manual process around product ordering, ensuring that subscribers always stay in stock with relevant SKUs. It enables Subscribers with integrated systemic based ordering intelligence triggered by in-store purchases or pre-set inventory min/max volumes at the SKU level. Torqata ingests data from subscriber’s desktop applications through APIs, flat files, or direct integration based on preference as places the order with a supporting distributor.
- e. **Customer Support.** Available through phone or email, on our website, or through scheduled in person or virtual engagements. The service includes training for subscriber, consultation on market pricing, inventory, and data hygiene best practices as well as resolution of any issues subscriber may encounter.
- f. **Data Cleaning.** Designed to ingest daily data once connected to subscriber’s system automatically formatting, cleaning, normalizing, and identifying relevant data. This service ensures other services provide the subscriber better results in other services and tools.
- g. **Other Services:** Eligibility to future services or pilots upon provider’s discretion.

**Acknowledgement:** Subscriber acknowledges and agrees that all Services are dependent on Subscriber and your data provider performing its obligations and providing the accurate, timely and complete POS Data as required by Torqata to perform such Services.

2. **Monthly Fees:** All of the Services listed in Exhibit A are part of the provider’s “Basic” level offering at \$0 to the retailer who have a signed agreement prior to July 31, 2023

Additional “Pro” and “Premium” level Services will be offered in the future for additional fees.

3. **Implementation Fee (one-time):** Waived for all retailer locations with a signed agreement by July 31, 2023

4. **Initial Service Term:** Three (1) years. Account activation is tied to finalization of the POS Data feed.

5. **POS Data Frequency:** All data listed in this exhibit will be sent **daily**. The daily data will be sent **before 9PM local time** for each location.



6. **Data Types:**

The data sets **need to come in the three feeds** listed under type. In some cases, the row may be duplicative because it is needed in the distinct feed.

a. **Required.** This table represents minimum elements necessary to deliver the basic services.

Type	Column	Permitted Values	Description
Transaction	date	Date	date of transaction
Transaction	time	Time	time of transaction
Transaction	transaction_no	Text	unique transaction number
Transaction	line_no	Text	unique line number associated with transaction
Transaction	store_id	Text	unique store id
Transaction	sale_type	text	tires, parts, labor, fee and etc.
Transaction	vin	Text	vehicle vin number
Transaction	sku	Text	unique product id at client database
Transaction	mfg_name	Text	manufacturer name
Transaction	mfg_part_no	Text	manufacturer's part number
Transaction	modelname	Text	product model/style name
Transaction	product_desc	Text	full description of the product
Transaction	units_sold	Integer	number of items sold
Transaction	ext_cost	Numeric	Total item acquisition cost (dollars)
Transaction	ext_retail	Numeric	Total retail price (dollars)
Transaction	customer_zipcode	Text	customer's address zipcode
Inventory	date*	Date (MM/DD/YYYY)	Date of the inventory snapshot (UTC)
Inventory	time*	Time (HH:SS)	Time of the inventory snapshot (UTC)
Inventory	store_id	Text	unique store identifier
Inventory	mfg_name	Text	manufacturer name (tire brand name)
Inventory	mfg_part_no	Text	manufacturer's part number
Inventory	qoh	Integer	quantity of on-hand inventory
Pricing	date	Date	date of transaction
Pricing	time	Time	time of transaction
Pricing	store_id	Text	unique store id
Pricing	sku	Text	unique product id
Pricing	mfg_name	Text	manufacturer name
Pricing	mfg_part_no	Text	manufacturer's part number
Pricing	price	float	retail price

- b. **Not Required.** This table represents elements only for the basic services that can improve the calculations or integrity of the outcomes.

Type	Column	Permitted Values	Description
Transaction	unit_cost	Numeric	individual item acquisition cost (dollars)
Transaction	unit_labor	Numeric	individual item related labor cost (dollars)
Transaction	ext_labor	Numeric	Total labor cost (dollars)
Transaction	unit_retail	Numeric	Individual item retail price (dollars)
Transaction	FET	Numeric	FET fee
Transaction	discount	Numeric	Discount applied (dollars)
Transaction	net_discount_sales	Numeric	Final price after discount; ext_retail + ext_labor - discount
Transaction	vehicle_type	Text	passenger, light truck, mid- truck, etc.
Transaction	tire_size	Text	tire size, such as, 225/45R18
Transaction	width_in_inch	Text	tire width
Transaction	width_in_mm	Text	tire width
Transaction	aspect_ratio	Text	aspect ratio
Transaction	rim_diameter	Text	wheel rim diameter
Transaction	load_index	Text	load index(single and dual load)
Transaction	speed_index	Text	speed index
Transaction	seasonality	Text	all season, summer, winter
Transaction	run_flat	Text	run flat or not
Transaction	m+s_symbol	Text	Mud + Snow
Transaction	original_equipment	Text	is it OE tires?
Transaction	tireply	Text	tire ply
Transaction	sidewall	Text	sidewall
Transaction	TPMS	Text	TPMS rating
Transaction	mileage_in	Numeric	Odometer reading at the time of drop off (in miles)
Transaction	mileage_out	Numeric	Odometer reading at the time of completion (in miles)
Transaction	vehicle_year	Numeric	Model year of the
Transaction	vehicle_make	Text	Manufacture name of the vehicle (Ford, Buick, BMW, etc)
Transaction	vehicle_model	Text	Model name of the vehicle
Transaction	vehicle_trim	Text	Trim of the vehicle (sport, sle, le, etc)
Inventory	sku	Text	unique product identifier
Inventory	tire_size	Text	Tire size (e.g. 255/45R18)
Inventory	stock_level	Integer	
Inventory	stock_max	Integer	the minimum stocking level for units
Inventory	width_in_inch	Text	tire width
Inventory	width_in_mm	Text	tire width
Inventory	aspect_ratio	Text	aspect ratio
Inventory	rim_diameter	Text	wheel rim diameter

Inventory	load_index	Text	load index(single and dual load)
Inventory	speed_index	Text	speed index
Inventory	seasonality	Text	all season, summer, winter
Inventory	run_flat	Text	run flat or not
Inventory	m+s_symbol	Text	Mud + Snow
Inventory	tireply	Text	tire ply
Inventory	sidewall	Text	sidewall
Inventory	TPMS	Text	TPMS rating
Pricing	product_desc	Text	product description, including tire size, style, speed rating, load rating, sidewall, etc.
Pricing	cost	float	cost
Pricing	tire_size	Text	Tire size (e.g. 255/45R18)
Pricing	width_in_inch	Text	tire width
Pricing	width_in_mm	Text	tire width
Pricing	aspect_ratio	Text	aspect ratio
Pricing	rim_diameter	Text	wheel rim diameter
Pricing	load_index	Text	load index(single and dual load)
Pricing	speed_index	Text	speed index
Pricing	seasonality	Text	all season, summer, winter
Pricing	run_flat	Text	run flat or not
Pricing	m+s_symbol	Text	Mud + Snow
Pricing	tireply	Text	tire ply
Pricing	sidewall	Text	sidewall
Pricing	TPMS	Text	TPMS rating

c. **Other Services.** This table represents additional elements required for market demand and campaign management tools

Type	Column	Permitted Values	Description
Transaction	customer_id	Numeric	system id for customer
Transaction	customer_first_name	Text	customer_first_name
Transaction	customer_middle_name	Text	customer_middle_name
Transaction	customer_last_name	Text	customer_last_name
Transaction	address_line1	Text	customer's address line 1
Transaction	address_line2	Text	customer's address line 2
Transaction	address_line3	Text	customer's address line 3
Transaction	customer_city	Text	customer's address city
Transaction	customer_state	Text	customer's address state
Transaction	customer_phone	Text	customer's phone
Transaction	customer_email	Text	customer's email
Transaction	customer_market_optout	Text	a flag to indicate if customers choose to opt-out marketing newsletter