

## Gray Quarter Hosted Services Terms

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Please read these Hosted Services Terms (these “**Terms**”) carefully. These Terms, policies referenced in these Terms, and all Orders (as defined below) issued in hereunder (collectively, the “**Agreement**”) is between Gray Quarter Inc. (“**Gray Quarter**”) and the entity identified in an Order (“**Customer**”). The Agreement is effective as of the effective date listed in the first Order and governs Customer’s use of Gray Quarter’s Hosted Services (as defined below).

**CHANGES TO TERMS.** Gray Quarter may make modifications, deletions, and additions to these Terms or any policy referenced in these Terms (“**Changes**”) from time to time. Changes will be posted here or at the applicable policy site. Customer should regularly check for the most recent version of these Terms and its policies and save the most up-to-date version of these Terms and its policies in Customer’s files. When Changes are made, Gray Quarter will indicate the effective date of such changes at the top of these Terms or the applicable policy site. If Customer continues to use the Services after the effective date of any Changes, then Customer agrees to the revised terms and conditions. In some instances, Gray Quarter may notify Customer of a Change, and may request express confirmation of Customer’s consent to a Change. If a Change requires a specific notice pursuant to applicable law, Gray Quarter will provide Customer with such notice in the manner prescribed by applicable law. It is Customer’s responsibility to regularly review these Terms.

No terms contained in any purchase order or ordering document or other written communication from Customer or its agent will in any way modify the Agreement, any such terms being expressly disclaimed by Gray Quarter.

### 1. Definitions.

- 1.1. “**Content**” means, in whole or part, the information, documents, software, products and services, including copies, modifications and derivatives of the foregoing, and all related Intellectual Property Rights of the foregoing.
- 1.2. “**Customer Data**” means any Data provided by Customer to the Hosted Services.
- 1.3. “**Data**” means any data, information or material as provided or made available by Gray Quarter or Customer in connection with the Agreement.
- 1.4. “**Gray Quarter Technology**” means all Gray Quarter proprietary technology made available to Customer in providing the Hosted Services, including the software components provided for install on Customer infrastructure, if any.
- 1.5. “**Hosted Services**” means Gray Quarter’s software services being granted access to under the Agreement for the benefit of Customer. Gray Quarter may perform certain aspects of the Hosted Services, such as service administration and application management support, as well as other services from locations and through use of subcontractors worldwide.
- 1.6. “**Intellectual Property Rights**” means patent rights, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and trade secret rights, and all other intellectual property rights and derivatives, as well as other forms of protection of a similar nature.
- 1.7. “**Personally Identifiable Information**” means any data, information, or material provided by Customer’s consumers, patrons, and clients, whether or not they use Hosted Services (collectively, “**Customer’s Customers**”) to Customer that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.
- 1.8. “**Quote**” or “**Order**” means that Gray Quarter-issued document that specifies the Gray Quarter Technology ordered by Customer and includes information related to pricing and duration of access to the Hosted Services.

1.9. **“Support Level Agreement”** means Gray Quarter's standard policy for providing Hosted Services that may be found on Gray Quarter's website at [www.grayquarter.com](http://www.grayquarter.com). Any updated Service Level Agreement as posted may be amended from time to time in Gray Quarter's sole discretion in accordance with the change of terms provision listed above.

## 2. License Grant and Restrictions.

2.1. Gray Quarter grants Customer a non-exclusive, non-transferable, worldwide right to access and use the Hosted Services and related Gray Quarter Technology, solely for its own internal business purposes, subject to the terms and conditions of the Agreement in addition to the extent of authorizations acquired by Customer as specified in the Quote.

2.2. Customer agrees not to: (a) license, sublicense, sell, resell, lease, rent, transfer, assign, distribute or otherwise make available to any third party the Hosted Services or any Gray Quarter Technology; (b) copy, distribute, modify, or make derivative works based upon the Hosted Services or any Gray Quarter Technology; (c) reverse engineer, decompile, or attempt to obtain the source code or algorithms of any of the Hosted Services or any Gray Quarter Technology; (d) knowingly send or store infringing, obscene, libelous or otherwise unlawful or tortious material to the Hosted Services or Gray Quarter Technology; (e) knowingly send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, or programs to or from the Hosted Services or Gray Quarter Technology; (f) interfere with or disrupt the integrity or performance of the Hosted Services or Gray Quarter Technology; (g) attempt to gain unauthorized access to the Gray Quarter Technology or Hosted Services or its systems or networks; (h) make any attempt to circumvent the technological measures that control access to or use of the Hosted Services or Gray Quarter Technology; or (i) use the Hosted Services or Gray Quarter Technology in violation of applicable law.

2.3. Unless otherwise agreed by Gray Quarter, Customer agrees to utilize the Hosted Services and Gray Quarter Technology only for its internal business purposes and will not act as a contracted service bureau or type of commercial application service provider that allows for third party access to the Hosted Services in exchange for a fee or profit or even on an unpaid basis.

**3. Customer Responsibilities.** Customer is responsible for all activity occurring under Customer's use of Hosted Services and will abide by all applicable laws, treaties, and regulations in connection with its use of the Hosted Services. Customer agrees to: (a) be responsible for the use of the Hosted Services in compliance with the Agreement by all to whom Customer has given access; (b) promptly notify Gray Quarter of any known or suspected unauthorized use of Hosted Services or any other breach of security of the Hosted Services; and (c) cooperate with Gray Quarter's investigation of outages, technical issues, security problems, unauthorized use of the Hosted Services, or any suspected breach of the Agreement, or any applicable law, court order, rule or regulation, (d) provide sufficient access to the applicable portions of the Accela System used by Customer so that interfacing can occur.

**4. Gray Quarter Responsibilities.** Gray Quarter agrees to provide Customer access to its Hosted Services and Gray Quarter Technology during the term and per the terms and conditions of the Agreement. In its sole discretion, Gray Quarter may make changes to or update the Hosted Services and/or Gray Quarter Technology, such as infrastructure, security, technical configurations, application features, and the like, to reflect changes in, among other things laws, regulations, rules, technology, industry practices, patterns of system use and availability, and security. Gray Quarter will make its best efforts to not materially reduce the level of performance, functionality, security, or availability of the Hosted Services during the applicable term under the Agreement. Gray Quarter will take commercially reasonable steps, or cause such commercially reasonable steps to be taken, designed to prevent security breaches of the Hosted Services.

**5. Availability and Support.** Service administration and technical support for the Hosted Services will be set forth in Gray Quarter's Support Level Agreement.

**6. Use of the Internet.** Customer acknowledges and agrees that the internet, and communications over it, may not be absolutely secure and connecting to the internet provides the opportunity for unauthorized access to computer

systems, networks, and all data stored therein. Data transmitted through the internet or stored on any equipment through which data is transmitted may not remain confidential and Gray Quarter does not make any representation or warranty regarding the privacy, security, authenticity, or non-corruption or destruction of any such Data. Use of the internet is at Customer's own risk.

## **7. Privacy Policy, Customer Data, and Personally Identifiable Information.**

- 7.1. Gray Quarter is concerned with the security of the data it will collect while providing Hosted Services to Customer and will utilize commercially reasonable protocols to prevent unauthorized access to that information. Such protocols include policies, procedures, employee training, physical access and technical essentials relating to data access controls. In addition, Gray Quarter uses standard security protocols to facilitate the exchange and the transmission of data. Gray Quarter does not process data in a way that is incompatible with the purposes for which it has been collected or subsequently authorized.
- 7.2. If Customer Data is, or is reasonably believed to have been, acquired by unauthorized person(s), Gray Quarter will use its best efforts and commercially reasonable procedures to determine the scope of the breach and to ensure or restore the integrity of the Hosted Services. In the event of a breach, if applicable law requires notification, Gray Quarter will promptly notify Customer of the breach. Gray Quarter may delay notification if Gray Quarter or a law enforcement agency determines that the notification will impede a criminal investigation. In such a case, notification will not be provided unless and until Gray Quarter or the law enforcement agency determines that notification will not compromise the investigation.
- 7.3. Gray Quarter does not own any Customer Data or Personally Identifiable Information. Customer Data is Customer's proprietary and confidential information and will not be accessed, used, or disclosed by Gray Quarter except for the limited purpose of: (a) supporting Customer's use of the Hosted Services; (b) improve or enhance the Hosted Services and Gray Quarter Technology; (c) monitor Customer's use of the Hosted Services; (d) enforcement of the Agreement; and (e) share with any of Gray Quarter's affiliates, third party service providers and subcontractors who need to know such information in order to provide the Hosted Services to Customer. Customer has sole responsibility for the accuracy, legality, reliability, and intellectual property ownership to use the Customer Data. Gray Quarter makes no other warranty or representation regarding the security of Customer Data. Furthermore, except as to Gray Quarter's express obligations set forth in the Agreement, Customer is solely responsible for any damage or losses caused by unauthorized destruction, loss, interception, or alteration of Customer Data by unauthorized persons.
- 7.4. Personally Identifiable Information is Customer's proprietary and confidential information. Although Gray Quarter is capable of accommodating the secure access, use, and processing of Personally Identifiable Information, no Personally Identifiable Information will be accessed, used, processed, or disclosed by Gray Quarter in supporting Customer's use of the Hosted Services. Customer has the sole responsibility for the accuracy, legality, reliability, and protection and fortification and safety of Personally Identifiable Information of Customer's clients. Gray Quarter makes no other warranty or representation regarding the security of Personally Identifiable Information. Furthermore, except as to Gray Quarter's express obligations set forth in the Agreement, Customer is solely responsible for any damage or losses caused by unauthorized destruction, loss, interception, or alteration of Personally Identifiable Information by unauthorized persons.
- 7.5. Gray Quarter reserves the right in its unfettered discretion to modify or change its Privacy Policy to adhere to standards and custom within the industry and as may be required by law. Any posting of an updated Privacy Policy may be found on Gray Quarter's website ("**Privacy Policy**"). Any updated Service Level Agreement as posted may be amended from time to time in Gray Quarter's sole discretion without notice to Customer.

## **8. Intellectual Property Ownership.**

- 8.1. Gray Quarter, its licensors or third-party service provider, as applicable, owns all right, title, and interest, in and to the Gray Quarter Technology, Content, and the Hosted Services, including all Intellectual Property Rights in the foregoing, and all will remain the exclusive property of Gray Quarter or its licensors or third-party service providers.

8.2. This Agreement is not a sale and does not convey any rights of ownership in the Gray Quarter Technology, Content, or Hosted Services. Customer acknowledges and agrees that any enhancements or modifications to the Hosted Services based upon Customer's requests, recommendations, or other feedback, are and will remain the exclusive property of Gray Quarter and/or its licensors or third-part service providers. This ownership is protected not only by the laws of the State of California but also by the laws United States and applicable international laws, treaties, and conventions regarding intellectual property or proprietary rights, inclusive of trade secrets. From the date of the Agreement, Customer agrees to use reasonable means to protect the Gray Quarter Technology, Content, and the Hosted Services from unauthorized use, reproduction, distribution, or publication. Gray Quarter reserves all rights not specifically granted in the Agreement. Gray Quarter reserves the right to improve or make changes in its offerings of the Gray Quarter Technology, Content, and the Hosted Services at any time.

## 9. Fees, Billing, and Payment.

9.1. **Fees and Payment.** Customer will pay Gray Quarter all fess specified in the Quote. All fees are payable and due as designated in the Quote; however, if the Quote is silent on the timing of payments, Customer agrees to pay all fees within thirty (30) days from the date of the invoice sent by Gray Quarter. Unless otherwise stated in the Quote and to the extent permitted by applicable law, once due, all fees are non-cancellable and non-refundable. Customer will pay all fees and reasonable reimbursable expenses in full, without any setoff, recoupment, counterclaim, deduction, or withholding for any reason.

9.2. **Taxes.** Fees on the Quote may not include sales, use, value added or other excise tax. Customer will pay or reimburse Gray Quarter (the latter if paid by Gray Quarter for the benefit of Customer) for all such taxes based upon the Agreement or fees payable under the Agreement (except for taxes based upon Gray Quarter's gross revenues or net income), together with any interest on such taxes that is not due to Gray Quarter's delay.

9.3. **Late Charges.** In addition to any other remedy available to Gray Quarter for late payments, Customer will be obligated to pay Gray Quarter interest for fees and charges not paid within forty five (45) days after the invoice date at the compounded rate of one percent (1%) per month or the maximum allowed by law, whichever is less for each month (or partial month), calculated from the date such payment was due until the date paid. If Customer elects to discontinue the Services and does not pay the outstanding fees and charges in full within ninety (90) days of such election, Customer will continue to be charged interest until the balance is paid in full. Customer will be responsible for any costs, including attorney's fees, incurred by Gray Quarter in collecting any past due amounts.

9.4. **Disputed Charges.** Customer may not withhold payment of any invoice based on any dispute other than based on clear error on the face of the invoice, such as a calculation error. Payment by Customer will not preclude Customer from questioning any charges that Customer believes are improper or incorrect, within twenty (20) days after the invoice date. If Customer disputes any charge on a given invoice, Customer will pay all non-disputed charges and document the disputed charges in writing to Gray Quarter. Customer will notify Gray Quarter in writing, no later than twenty (2) days after the invoice date, of any questions or issues relating to items billed on an invoice or all fees and charges will stand.

## 10. Term and Termination.

10.1. **Term.** Gray Quarter's obligations to provide the Gray Quarter Technology and Hosted Services to Customer under the Agreement will commence on the date the Hosted Services are made available for access to Customer and will continue for the period specified in the Quote unless earlier suspended or terminated in accordance with these Terms.

10.2. **Renewal.** Customer's access to the Hosted Services and Gray Quarter Technology will automatically renew at the end of the then-current term for additional one-year periods (12 months in each period) unless either party notifies the other party in writing at least thirty (30) days prior to the renewal date of its intention not to renew. The pricing during any Renewal Term will be the same as that during the prior Term unless Gray Quarter has given Customer written notice of a pricing increase at least thirty (30) days before the end of such prior Term, in

which case the pricing increase will be effective upon Renewal Term. Any such pricing increase will not exceed seven percent (7 percent) of the pricing for the relevant Hosted Services in the immediately prior Term unless the pricing in such prior Term was designated in the relevant Quote as promotional or one-time.

- 10.3. **Termination.** Customer may terminate the Agreement by notifying Gray Quarter in writing at least ninety (30) days prior to the expiration of the then-current term which will act to terminate the automatic renewal as noted above. Gray Quarter reserves the right to terminate the Agreement without cause, effective as of the end of the then-current Term by thirty (30) days advance written notice. Any breach of Customer's payment obligations or unauthorized use of the Hosted Services will be deemed a material breach of the Agreement. Gray Quarter may terminate the Agreement, Customer account, or Customer's use of the Hosted Services if Customer commits a material breach of the Agreement or otherwise fails to comply with the Agreement, and such breach has not been cured within thirty (30) days after written notice of such breach.
- 10.4. **Effect of Termination.** Upon any termination or expiration of the Agreement, Customer will remove all Gray Quarter Technology that is enable within Customer infrastructure, if any.

## 11. Representations and Warranties.

- 11.1. **By Gray Quarter.** Gray Quarter represents and warrants that: (a) it will provide the Hosted Services in a manner consistent with general industry standards and as noted in the Support Level Agreement; (b) the Hosted Services will perform substantially in accordance with the provided documentation to Customer, if any; (c) it will use all commercially reasonable efforts to detect software viruses and other undesirable components and will promptly take all reasonable steps to remove or neutralize any such components; (d) it will use leading commercial encryption technology designed to encrypt Customer Data in its possession; and (e) to the best of Gray Quarter's knowledge, information, and belief, provision by Gray Quarter and use by Customer of the Hosted Services provided under the Agreement does not infringe upon any intellectual property right of any third party.
- 11.2. **By Customer.** Customer represents and warrants that: (a) it will be solely responsible with regard to the quality or completeness of any Customer Data; (b) it, at its own expense, will be solely responsible for establishing, operating and maintaining Customer's connection to the internet in order to interface with the Hosted Services, including but not limited to, procuring, configuring, operating and maintaining all computer hardware and software, including communications equipment, databases, electronic systems, networks, and web browsers, and modems and access lines, including Accela Systems, necessary for such connection and interface; and (c) it will use reasonable best efforts to ensure compliance with the above restrictions, noted in paragraph 2, and all other paragraphs of the Agreement.

## 12. Indemnification.

- 12.1. Customer will indemnify, defend and hold Gray Quarter, and each of Gray Quarter's affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses, including attorneys' fees, arising out of or in connection with: (a) a claim by a third party alleging that access to or use of the Customer Data infringes the Intellectual Property Rights or violates any rights of confidentiality of a third party; provided that, in any such case, Gray Quarter: (i) promptly gives Customer written notice of the claim; (ii) gives Customer sole control of the defense and settlement of the claim; and (iii) provides Customer all available information and assistance; and (b) a breach of security or unauthorized use of the Hosted Services which may or may not result in unauthorized third party access to Customer Data or Personally Identifiable Information.
- 12.2. Gray Quarter will indemnify, defend and hold Customer and Customer affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses, including attorneys' fees, arising out of or in connection with: (a) a claim by a third party alleging that the Hosted Services or any Gray Quarter Technology directly infringes an Intellectual Property Right of a third party; provided that Customer: (i) promptly give written notice of the claim to Gray Quarter; (ii) give Gray Quarter sole control of the defense and settlement of the claim; and (iii) provide Gray Quarter all available information and assistance.

**13. Disclaimer.** THE REPRESENTATIONS AND WARRANTIES PROVIDED IN THE AGREEMENT ARE GRAY QUARTER'S COMPLETE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES. TO THE FULLEST EXTENT PERMITTED BY LAW, GRAY QUARTER DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND GUARANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OF THE SUBSCRIPTION SERVICES OR GRAY QUARTER TECHNOLOGY, AND ANY WARRANTY WITH RESPECT TO THE SECURITY OF THE SUBSCRIPTION SERVICES OR THAT CUSTOMER DATA OR PERSONALLY IDENTIFIABLE INFORMATION WILL NOT BE DESTROYED, LOST, INTERCEPTED, OR ALTERED BY UNAUTHORIZED PERSONS. GRAY QUARTER DOES NOT WARRANT THAT THE OPERATION OR OTHER USE OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR WILL NOT CAUSE DAMAGE OR DISRUPTION TO CUSTOMER DATA.

**14. Limitations of Liability.**

14.1. GRAY QUARTER'S AGGREGATE LIABILITY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THE APPLICABLE ORDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. GRAY QUARTER WILL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND ARISING FROM CUSTOMER'S USE OF THE SUBSCRIPTION SERVICES. THIS LIMITATION OF LIABILITY INCLUDES CUSTOMER'S AFFILIATES AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS.

14.2. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, GRAY QUARTER WILL NOT BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL DAMAGES AND GRAY QUARTER WILL HAVE NO LIABILITY WHATSOEVER RESULTING FROM ANY LEGAL CLAIMS AGAINST CUSTOMER. IN NO EVENT SHALL GRAY QUARTER BE LIABLE TO CUSTOMER OR ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR LOSS OR DAMAGE ARISING OUT OF THE AGREEMENT, LOST PROFITS, OR SIMILAR ECONOMIC LOSS OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR PUNATIVE DAMAGES, REGARDLESS OF THE FORM OF ACTION INCLUDING BUT NOT LIMITED TO, ACTIONS FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, AND BREACH OF WARRANTY WHETHER IN CONTRACT, TORT OR OTHERWISE, IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF, OR ANY FAILURE OR DELAY IN PROVIDING THE SERVICES, HOWEVER CAUSED, EVEN IF GRAY QUARTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**15. General.**

15.1. **Governing Law, Jurisdiction and Venue.** The Agreement and any related actions will be governed by laws of the state of California, without regard to the choice or conflicts of law provisions of any jurisdiction. All disputes, claims, or actions (whether in contract, tort, or other legal theory) arising under, out of, or in any way connected with the Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in the Northern District of California and Customer waives any objection to jurisdiction and venue in such courts. Customer consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether based on the doctrine of forum non conveniens or otherwise.

15.2. **Assignment.** Customer may not assign its rights or obligations under the Agreement without the prior written consent of Gray Quarter; however, the Agreement may be assigned without Gray Quarter's consent to Customer's (a) parent or subsidiary; (b) acquirer of its assets or equity or (c) successor by merger. Any purported assignment in violation of this section will be void.

15.3. **Force Majeure.** If Gray Quarter fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes, except financial, beyond Gray Quarter's reasonable control, then Gray Quarter's performance will be excused for a period equal to the period of the cause for failure to perform as long as Gray Quarter gives Customer notice within thirty (30) calendar

days after the event causing the failure. the Agreement

- 15.4.**Severability.** If any provision of the Agreement is declared or found to be prohibited, unenforceable or void, Gray Quarter will either issue a substitute provision that is valid, binding, and enforceable that is as nearly as possible consistent with the intentions underlying the original provision or strike the original provision. If the remainder of the Agreement is not materially affected by such declaration or finding and is capable of substantial performance, then the remainder will be enforced to the extent permitted by law.
- 15.5.**Entire Agreement.** The Agreement comprises the entire agreement between Customer and Gray Quarter and supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, regarding the subject matter hereof.
- 15.6.**Notice.** Gray Quarter may give notice by means of publishing Changes as described above or by sending an electronic mail to Customer's e-mail address on record. It is Customer's responsibility to keep its email address up to date for any notices that Gray Quarter may send to time to time. Any notice to be given by Customer will be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, postage prepaid and addressed to Gray Quarter, Inc., 8575 Morro Rd, Atascadero, CA 93422.
- 15.7.**Relationship of Parties.** No joint venture, partnership, employment, or agency relationship exists between Customer and Gray Quarter because of the Agreement.
- 15.8.**Waiver.** No delay or failure by Gray Quarter to exercise any right or power under the Agreement will constitute a waiver of that right. A waiver by Gray Quarter or breach of any of the covenants, conditions, or agreements to be performed by Customer will not be construed to be a waiver of any succeeding breach or of any other covenant, condition, or agreement. No change, waiver, or discharge will be valid unless in writing and signed by Gray Quarter.