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**ORSATECH LTD**  
**SUBSCRIPTION SERVICE TERMS AND CONDITIONS**

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**1. Definitions and Interpretation**

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means:  (a) the acceptance online by eSignature, in writing or in email or facsimile communication of any Quotation incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) by any employee of the Client; or  (b) a written service agreement entered into by the Service Provider and the Client which shall govern provision of the Services; or  (c) the request of any employee of the Client, after the submission of a Quotation, for advice or assistance without having accepted or signed the Quotation or having accepted or signed any written service agreement at any time after the date of the Quotation;
<b>“Business Day”</b>	means, any day (other than Saturday, Sunday or UK bank holiday) on which ordinary banks are open for their full range of normal business in London, UK;
<b>“Client”</b>	means the party who has received the Quotation, or the party procuring the Services from the Service Provider in any written service agreement entered into by the Service Provider for the Services quoted in the Quotation;
<b>“Commencement Date”</b>	means the date on which provision of the Services will commence which shall be the earlier of:  (a) the date of acceptance online by eSignature, in writing or in email or facsimile communication of any Quotation;  (b) the date of execution of a separate service agreement; or  (c) the date of any request of any employee of the Client, after the submission of a Quotation, for advice or assistance without having accepted or signed the Quotation or having accepted or signed any written service agreement; or  (d) the date of any performance of the Services.
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the supply (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>“Subscription Fee”</b>	means the weekly subscription fee due from the Client to the Service Provider in consideration for Services rendered by the Service Provider as defined in the Quotation or subsequent agreement together with any value added tax excise, sales or taxes or levies of a similar nature, withholding taxes, or other taxes;
<b>“Other Fees”</b>	means any and all sums due from the Client, except Subscription Fees, to the Service Provider including any hourly fee, daily fee, fixed fee, milestone payment, expenses, late payment fees, interest, or commission in consideration for Services rendered by the Service Provider as defined in the Quotation or subsequent agreement together with any value added tax excise, sales or taxes or levies of a similar nature, withholding taxes, or other taxes;

<b>“Intellectual Property Rights”</b>	<p>means (a) any and all rights in any patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions;</p> <p>(b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);</p> <p>(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and</p> <p>(d) the right to sue for past infringements of any of the foregoing rights;</p>
<b>“Products”</b>	<p>means any electronic or physical documentation produced by the Service Provider during the Term, including Microsoft PowerPoint™ presentations, Microsoft Word™ documents and Microsoft Excel™ spreadsheets.</p>
<b>“Quotation”</b>	<p>means a written statement online, sent in writing or in email or facsimile communication by the Service Provider setting out the Subscription Fee and Other Fees for a particular Services;</p>
<b>“Services”</b>	<p>means the services to be provided by the Service Provider to the Client as defined in the Quotation, or any subsequent agreement; and</p>
<b>“Term”</b>	<p>means the duration of the supply as stated in the Quotation, or any subsequent agreement. If no Term is specified in the Quotation, or any subsequent agreement, it shall be nine (9) months.</p>

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 **“writing”**, and any cognate expression, shall mean any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 **“these Terms and Conditions”** is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
  - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
  - 1.2.5 a **“Party”** or the **“Parties”** refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## 2. Application and Entire Agreement

- 2.1 These Terms and Conditions apply to the provision of the Services detailed in the Quotation by Orsatech Ltd, a private limited company registered in England and Wales with company number 08089852 whose registered office at 20-22 Wenlock Road, London, N1 7GU, UK (the “Service Provider”), to the Client.
- 2.2 The Client is deemed to have accepted these Terms and Conditions on the Commencement Date and these Terms and Conditions and our Quotation (the **“Contract”**) are the entire agreement between us unless otherwise agreed in writing in a separate agreement which specifically refers to, and replaces these Terms and Conditions.
- 2.3 You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Terms and Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practise or course of dealing.

## 3. Quotation

- 3.1 Any Quotation is valid only for 14 calendar days.
- 3.2 The Quotation must be accepted by the Client in its entirety.

#### 4. **Provision of the Services**

- 4.1 With effect from the Commencement Date, the Service Provider warrants that it shall, throughout the Term, use reasonable care and skill in our performance of the Services which will comply with Quotation, including any specification in all material requests. The Service Provider can make any changes to the Services which are necessary to comply with any applicable law or safety requirement, and the Service Provider will notify the Client if this is necessary.
- 4.2 The Service Provider shall provide support, if required, by phone or by email during normal working hours which are 09:00 to 17:00 GMT Monday through to Friday. The Service Provider will endeavour to respond to the Client by the end of the next business day.
- 4.3 Clients cancelling an appointment not more than 24 hours before the time and date of the agreed appointment will be charged 25% of the fee of the Service to have been provided by the Service Provider.
- 4.4 Services shall be performed by one or more employees, or sub-contractors, of the Service Provider as the Service Provider may consider appropriate and the Service Provider may consider are suitably qualified and skilled (the "**Staff**").
- 4.5 The Service Provider may provide the Services at such times, and on such days, as the Service Provider shall decide but shall ensure that the Services are provide on such days, and at such times, as necessary for the proper performance of the Services.
- 4.6 Notwithstanding the provisions of sub-Clause 4.6, the Service Provider will be able to suspend the provision of the Services on up to twenty (20) days per annum per each Staff subject to giving the Client two (2) weeks' notice of such days.
- 4.7 The Service Provider has the right, at its own expense and at any time, to enlist additional or substitute Staff in the performance of the Services, provided that the Service Provider provides details, wherever practicable, of the proposed substitute ahead of the planned substitution.
- 4.8 If any member of Staff is unable to provide the Services due to illness or injury, the Service Provider shall advise the Client of that fact as reasonably practicable.
- 4.9 The Service Provider may provide the Services from such locations as are appropriate in the Service Provider's judgement.
- 4.10 The Service Provider shall provide at its own cost, subject to any agreement to the contrary, all such necessary equipment as is reasonable for the satisfactory performance of the Staff.
- 4.11 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services as agreed in writing.
- 4.12 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 4.13 The Service Provider may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall be agreed between the Parties in writing as they arise from time to time.
- 4.14 The Service Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.
- 4.15 All of these Terms and Conditions apply to the supply of any Products as well as any Services unless we specify otherwise.

#### 5. **Intellectual Property Rights**

- 5.1 The Service Provider shall retain the ownership of any and all Intellectual Property Rights that may subsist in anything produced by the Service Provider in the course of providing the Services. Throughout the Term of the Agreement, the Service Provider shall be deemed to automatically grant a royalty-free, non-exclusive licence of any and all such rights to the Client to use the same in accordance with the terms of the Agreement, the Services and any detailed license terms that may be incorporated in anything produced by the Service Provider.
- 5.2 In complying with the provisions of sub-Clause 5.1, the Service Provider shall undertake to execute any such agreements and perform any such actions that may be necessary to put such licences into effect and shall exclusively bear any costs associated therewith.
- 5.3 The Service Provider shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.

#### 6. **Access to the Products**

- 6.1 With effect from the Commencement Date and receipt by the Service Provide of the initial Subscription Fee, the Service Provider shall, throughout the Term, provide the Services to the Client and shall allow access to the Products to the Client by online web portal with browser interface, password access, data encryption and storage (the "**Client Portal**").
- 6.2 Usage Restrictions: The Products, including but not limited to the organisation, structure and sequence of assumptions, data, formulas and sheets, the macro commands and the visual look and feel but excluding the data (all such contents collectively referred to as "**Content**") are protected under United Kingdom and

international copyright laws and are the property of the Service Provider. Except as expressly permitted herein copying, distributing, transmitting, displaying, modifying or otherwise using any Content in any form by any means without the express written permission of the Service Provider is prohibited and may violate the copyright laws of England and Wales and/or other countries. The Client is granted a non-sub licensable, non-transferable, non-exclusive, license to view, copy, print, store, reproduce, modify and disclose the Products subject to the following conditions: (a) the Products are only used for the purpose of business planning and fundraising for the Client; (b) the Client may disclose the Products and information obtained from the Service Provider to its directors, officers, employees, its financial and professional advisors, and potential equity providers or other providers of finance to the Client (all such persons collectively referred to as “**Authorised Users**”) solely for the purpose of such persons carrying out any work they are doing or are intending to do for the Client on a confidential basis; (c) any portion of the Products, in electronic or printed form, and any information obtained from the Service Provider may not be reproduced, distributed, licensed, sub-licensed, sold, resold, broadcast, circulated, published, transferred, assigned or otherwise commercially exploited to any other person or third party without the express written consent of the Service Provider; (d) the Client will not create any derivative Products, except that the Client may incorporate Content into Client’s work products and share such; (e) the Client will not allow any third party other than Authorised Users to gain access to the Products and Services, or use the Services as a service bureau or resell access to the Products or Services; (f) the Client will not create internet “links” to the Client Portal or “frame” or “mirror” any Products; and (g) any copy of the Products, or portion thereof, must include the following copyright notice: Copyright © 2016 Orsatech Ltd. All Rights Reserved.

- 6.3 **Username and Passwords:** To gain access to the Products, Client may be required to create a log-in ID and passcode that will enable the Client to get access to the Client Portal. Client will ensure that each username and password issued to an Authorised User will be used only by that Authorised User. Client is responsible for maintaining the confidentiality of all Authorised Users’ usernames and passwords, and is solely responsible for all activities that occur under these usernames. Client will notify Service Provider promptly of any actual or suspected unauthorized use of Client’s account, usernames or passwords, or any other breach or suspected breach of this Agreement and shall use reasonable efforts to stop immediately any copying or distribution of Products that is known or suspected by the Client. Service Provider reserves the right to terminate any username and password which Service Provider reasonably determines may have been used by an unauthorised third party or for an unlawful purpose.
- 6.4 **Client Portal Use:** You may use the web portal only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.
- 6.5 **Client Portal Content:** Service Provider does not own any data, information or material that you submit to the Client Portal, or submit to the Service Provider by email or other means, in the course of using the Service. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client data, and Service Provider shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client data. In the event the Contract is terminated (other than by reason of Client breach), Service Provider will make available to you a file of the Customer Data within thirty (30) days of termination if you so request at the time of termination. Service Provider reserves the right to withhold, remove and/or discard Client data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Client Portal immediately ceases, and Service Provider shall have no obligation to maintain or forward any Client data.
- 6.6 **Client Portal Availability:** The Client Portal may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Service Provider is not responsible for any delays, delivery, failures, or other damage resulting from such problems.
- 6.7 **Third-Party Content:** Over time, content from third parties may be made available to Authorised Users through the Services. Because the Service Provider does not control such content, Service Provider does not make any guarantees about the accuracy, currency, suitability, or quality of the information in such content.

## 7. **Client’s Obligations**

- 7.1 The Client shall pay the Service Provider the Subscription Fees and Other Fees in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable.
- 7.2 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider’s provision of the Services.
- 7.3 The Client will advise the Service Provider of any health and safety information or advise which may affect the Service Provider’s Staff during the performance of the Services.
- 7.4 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider’s provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 7.5 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

- 7.6 If any consents, licences or other permissions are needed from any third parties such as Client's customers, Client's suppliers, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 7.7 If the nature of the Services requires that the Service Provider has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 7.8 The Client shall immediately inform the Service Provider in writing if any objectives defined in the Quotation or subsequent agreement are met, whether or not they are attributable to the Service Provider and shall continue to do this for 9 (nine) months after the date of termination of the Agreement.
- 7.9 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 7 shall not be the responsibility or fault of the Service Provider.
- 7.10 If the Client is rejecting any Products or Services provided by the Service Provider, then the Client may only do this by Notice to the Service Provider within five (5) business days of the receipt of the Products or Services.

## 8. Subscription Fees and Payment

- 8.1 The Client shall pay the Fees to the Service Provider in accordance with this clause 8.
  - 8.1.1 on acceptance of the Agreement the Client shall pay the initial Subscription Fee by the method detailed in the Quotation. Subscription Fees must be paid by one of our supported subscription payment methods which are PayPal, Stripe or GoCardless and the first subscription payment must be paid within 12 hours of accepting the Agreement. On acceptance the Service Provider will send to the Client an Invoice and confirmation of the setup of the Recurring Transaction ("RT") agreement within two (2) business days and will send details of the payment amounts and payment dates.
  - 8.1.2 the third party payment system will store a protected copy of the payment details and the Client expressly consents the Service Provider to automatically charge the weekly Subscription Fee payment as an RT every week, commencing seven (7) days from the initial Subscription Fee payment, using the same payment method and account until the end of Term, or termination. RT payments will show "ORSATECH LTD" as the name on any statement.
  - 8.1.3 the Service Provider shall raise invoices for Other Fees as and when they occur. Invoices are to be paid by the Client with 5 working days by bank transfer or PayPal.
  - 8.1.4 if any Other Fees are due during the Term, or any Subscription Fees or Other Fees are due on termination then Client expressly consents the Service Provider the right to immediately charge any Subscription Fees or Other Fees due according to the Contract using the same payment method and account as used in the RT five (5) days after an invoice for the said fees is raise by the Service Provider if the invoice is not otherwise paid by the Client.
  - 8.1.5 at the election of the Client within 14 calendar days of the Commencement Date, Service Provider shall invoice the Client in respect of the subscription Fees for the whole Term and the Client shall pay such Fees in accordance with the invoice terms by bank transfer, or PayPal within five (5) days of receipt thereof.
- 8.2 Client agrees to provide Service Provider with complete and accurate billing and contact information. This information includes the Clients legal company name, address, email address, and name and telephone number of an authorised billing contact. Clients agrees to update this information within thirty (30) days of any changes to it. If the contact information you have provided is false or fraudulent, Service Provider reserves the right to terminate your access to the Service in addition to any other legal remedies.
- 8.3 Subject to clause 8.1, Service Provider shall invoice the Client at least thirty (30) working days prior to each anniversary of the Term for the Fees payable in respect of the next renewal period.
- 8.4 If Service Provider has not received any RT or invoice payment in full within five (5) days after the due date, and without prejudice to any other rights and remedies of Service Provide it may, without any liability to the Client, disable the Client's and each Authorised User's password, account and access to all or part of the Services and Service Provider shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid;
- 8.5 Any Fees quoted, unless otherwise stated, are exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature, withholding taxes, or other taxes which are imposed or charged by any competent fiscal authority in respect of the Services, which the Customer shall be additionally liable to pay to the Supplier.
- 8.6 Any Fees quoted, unless otherwise stated, shall be exclusive of reasonably incurred expenses which shall be charged in addition at cost plus ten percent (10%).
- 8.7 Any hourly, or daily rate shall be that specified in the Quotation, or any subsequent agreement. Normal working hours are 09:00 to 17:00 GMT. Travel time shall be charged at 50% of hourly rate. Any work on a Saturday, Sunday or public holiday in London, UK, or work required to be completed outside normal working hours shall be charged at 200% of hourly rate. Minimum period of work shall be one quarter of an hour, any part hour work shall be rounded up to the next quarter hour for the purposes of invoicing, all invoicing shall be completed in quarter of an hour increments.

- 8.8 All payments required to be made shall be made in the currency of the invoice in GBP or USD. All payments are required to be made without any set-off, withholding or deduction except such amount (if any) of tax as the Client is required to deduct or withhold by law in which case the total amount to be paid shall be increased by the appropriate amount to ensure that the same net amount is received by the Service Provider.
- 8.9 Bank transfers are required to be made to such bank in London, UK as the Service Provider may from time to time nominate. Alternatively, payments can be made in GBP or USD by Visa, Mastercard, American Express, Discover, Maestro, Switch, Delta or VisaElectron credit cards using PayPal online payment facilities using the link, or email address as the Service Provider may from time to time nominate. Any payments processed by PayPal are completed online directly between PayPal and the Client.
- 8.10 Where an escrow service is used, the Client shall pay into the escrow service the full amount of the Fees in the Quotation or subsequent agreement. The Service Provider will allocate milestone payments as defined in the Quotation or subsequent agreement. Upon completion of the milestone by the Service Provider, the Service Provider will request release of the corresponding milestone payment. The Client shall release the milestone payment within five (5) Business Days of receipt by the Client of the release request.
- 8.11 Where any payment is required to be made on a day that is not a Business Day, it shall be made on the previous Business Day.
- 8.12 The time of payment shall be of the essence of these terms and conditions. If the Client fails to make any payment on the due date on any sum due under these terms and conditions then the Service Provider shall, without prejudice to any right which the Service Provider may have pursuant to any statutory provision in force from time to time, have the right (a) to suspend or terminate the Agreement and the Service; and (b) to charge the Client statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998 on a daily basis at an annual rate equal to eight (8) per cent plus the Bank of England base rate on any sum due and not paid on the due date, such interest shall be calculated on a daily basis and shall run from day to day and accrue after as well as before any judgement; and (c) to charge the client a fixed sum for compensation arising from late payment under section 5A of the Late Payment of Commercial Debts (Interest) Act 1998 at a rate of £40 for debts up to £999.99, £70 for debts from £1,000 to £9,999.99 and £100 for debts of £10,000 or more; and (c) charge the Client reasonable third party costs in recovering the debt including HM Courts & Tribunals Service fees, and the Service Provider shall have the right to commence court proceedings to recover the debt.

## 9. **Liability, Indemnity and Insurance**

- 9.1 The Service Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 9.2 In the event that the Service Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 9.3 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sums paid by the Client for the Services during the last 12 months.
- 9.4 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider.
- 9.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 9.6 Subject to sub-Clause 9.3 the Service Provider shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Service Provider's breach of the Agreement.
- 9.7 The Client shall indemnify the Service Provider against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.
- 9.8 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

## 10. **Confidentiality**

- 10.1 Each Party shall undertake that, except as provided by sub-Clause 10.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for three years after its termination:
- 10.1.1 keep confidential all Confidential Information;
  - 10.1.2 not disclose any Confidential Information to any other party;
  - 10.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
  - 10.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

- 10.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 10.1.1 to 10.1.4 of the Agreement.
- 10.2 Either Party may:
  - 10.2.1 disclose any Confidential Information to:
    - 10.2.1.1 any sub-contractor or supplier of that Party;
    - 10.2.1.2 any governmental or other authority or regulatory body; or
    - 10.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 10.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 10 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
  - 10.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.
- 10.3 The provisions of Clause 10 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## 11. Force Majeure

- 11.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, or any other event that is beyond the control of the Party in question.
- 11.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of three months, the other Party may at its discretion terminate by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into by the Parties.

## 12. Term and Termination

- 12.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of Clause 12.
- 12.2 The Client has the right by giving written notice to the other to immediately terminate the Contract within 14 days of the Commencement Date.
- 12.3 After 14 days of the Commencement Date, the Client shall have the right exercisable by giving not less than 2 months' written notice to the other at any time prior to the expiry of the Term to terminate. If the Client serves notice to terminate the agreement prior to the expiry of the Term, the Service Provider may issue an invoice immediately upon receipt of the notice for any Other Fees not invoiced up to the date of receiving the notice, and a sum equal to the Subscription Fees less 25% that would have been due for the balance of the Services purchased by the Client in the Agreement up to the expiry of the Term. The Service Provider shall be also entitled to issue invoices for any commission as defined in the Quotation or subsequent agreement for any objectives achieved by the Service Provider or attributable to the Service Provider within 9 (nine) months following the date of receipt of the notice to terminate. The Client shall pay any such invoices issued under this sub-Clause 12.3 within five (5) Business Days of receipt of the invoice.
- 12.4 The Service Provider shall have the right exercisable by giving not less than ten (10) Business Days written notice to the other at any time prior to the expiry of the Term to terminate the Agreement. If the Service Provider cancels the Agreement the Services will terminate on the date of termination and no further Subscription Fees shall be due after the date of termination. The Service Provider will invoice for any Other Fees due, and the Client shall pay that invoice within five (5) Business Days.
- 12.5 Subscription services, over a Term of at least two months, shall automatically renew for the same Term unless otherwise terminated by either Party at least 30 Business Days prior to the end of the initial Term. The agreement will keep renewing for subsequent periods for the same Term until terminated by either Party. Renewal rates are subject to change and will be notified to the Client by the Service Provider.
- 12.6 Either Party may immediately terminate the Agreement and the Service Provider may suspend all services by giving written notice to the other Party if:
  - 12.6.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid on the due date for payment;

- 12.6.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within ten (10) Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 12.6.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 12.6.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 12.6.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or reconstruction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 12.6.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 12.6.7 the other Party ceases, or threatens to cease, to carry on business; or
  - 12.6.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 12.7 For the purposes of sub-Clause 12.6.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 12.8 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 12.9 If the Client terminates the Agreement, the Service Provider shall not be obliged to refund any part of the Fees already paid by the Subscriber.

**13. Effects of Termination**

- 13.1 Upon the termination of the Agreement by the Client within 14 calendar days of Commence Date, the Service Provider will refund any Subscription Fee or Other Fees paid by the Client less the cost to provide services up to the date of termination.

Upon the termination of the Agreement for any reason:

- 13.2 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 13.3 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 13.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 13.5 subject as provided in Clause 13 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other;
- 13.6 the Service Provider will immediately cease the Service;
- 13.7 each Party shall (except to the extent referred to in Clause 10 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information; and
- 13.8 the Intellectual Property Rights licence granted under sub-Clause 5.1 of the Agreement shall terminate and the Client shall forthwith cease to use, either directly or indirectly, any such Intellectual Property Rights, and shall forthwith return to the Service Provider any such material in its possession or control.

**14. No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**15. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

**16. Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

17. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

18. **Assignment and Sub-Contracting**

The Client may not assign or delegate any of its/his right, duties, powers or responsibilities thereunder without prior consent of the other party, given in writing.

The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of providing the Services, be deemed to be an act or omission of the Service Provider.

19. **Time**

19.1 The Service Provider will use reasonable endeavours to complete the performance of the Services within the time agreed or as set out in the Quotations; however, time shall not be the essence in the performance of the obligations.

19.2 Dates given for the delivery of the Services are estimates only and not guaranteed. The Service Provider shall not be held liable for any loss, damages, charges or expenses caused directly or indirectly by and delay in the delivery.

20. **Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, employment or other fiduciary relationship between the Parties other than the independent contractual relationship expressly provided for in the Agreement.

21. **Non-Solicitation**

21.1 Neither Party shall, for the Term and for twelve months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement.

21.2 Neither Party shall, for the Term of the Agreement and for twelve months after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party.

22. **Third Party Rights**

22.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

22.2 Subject to Clause 19 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

23. **Disputes**

23.1 The parties will attempt in good faith to resolve any dispute or claim (other than one based on non-payment) arising out of or relating to the Agreement promptly within 14 calendar days by negotiations between senior executives of the parties who have authority to settle the dispute. If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute through an ADR Procedure. If the parties need advice in appointing a suitable neutral to assist in the settlement and/or in formulating the appropriate procedure they will seek assistance from the Centre for Dispute Resolution (CEDR), 100 Fetter Lane, London, EC4A 1DD, UK. Unless extended by agreement of the parties if the matter has not been resolved by an ADR Procedure within 28 days of the initiation of such procedure, or if either party will not participate in an ADR Procedure, the parties shall litigate or arbitrate the dispute under Clause 23.2 or 23.3.

23.2 If the Client is domiciled in the UK or one of the member states of the European Community, then any dispute within the last sentence of Clause 23.1 and any claim based on nonpayment shall be litigated and for the Service Provider's exclusive benefit the Client irrevocably submits to the jurisdiction of the English courts and agrees (without limiting the Service Provider's rights to bring proceedings in any other courts of competent jurisdiction, whether concurrently or not) that the English courts shall have jurisdiction to settle the dispute or claim and that their judgements will be binding, conclusive and enforceable by the courts of other jurisdictions.

23.3 If the Buyer is not domicile in the UK or one of the member States of the European Community, then any dispute within the last sentence of Clause 23.1 and any claim based on non-payment shall be arbitrated and shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("ICC") by a single arbitrator, appointed by the ICC, in accordance with those Rules. Either party may apply for arbitration, each party shall pay their own costs, the arbitration proceeding shall be conducted in the English language and the venue of the arbitration shall be London, UK. The Parties hereto shall abide by all awards rendered in arbitration proceedings, and all such awards may be enforced and executed in any court having jurisdiction over the Party against whom enforcement of such award is sought.

24. **Notices**

- 24.1 All notices under the Agreement shall be made by email, registered mail or by courier and shall be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 24.2 Notices shall be deemed to have been duly given when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient.
- 24.3 In each case notices shall be addressed to the most recent email or address notified to the other Party.

25. **Entire Agreement**

- 25.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and supersedes any other agreement whether oral or in writing and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 25.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

26. **Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

27. **Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

28. **Law and Jurisdiction**

Terms, negotiations and all disputes and claims arising out of or in connection with them or their formation between the parties (including non-contractual claims and disputes), shall be governed by, and construed in accordance with the laws of England. Neither the Uniform law on International Sales nor the Convention on Contracts for the International Sale of Goods shall apply to any Contract.