



Terms and Conditions

Version 1.0

TERMS & CONDITIONS

1 Interpretation

- 1.1. For the purposes of the Contract, the following words and phrases shall have the meanings set opposite (unless stated otherwise):

"Appetite for Business"	means Appetite for Business Limited, a company incorporated under the Companies Acts (Registered Company Number SC530648) and having its registered office at Davidson House, Innovation Park, Campus 1, Aberdeen, AB22 8GT
"Appetite for Business Equipment"	means any equipment, including (but not limited to) hardware, tools, systems, or facilities provided by Appetite for Business or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the Parties under which title passes to the Client;
"Appetite for Business Materials"	means all Documents, information and materials provided by Appetite for Business relating to the Services which existed prior to the date on which the Contract came into effect including [computer programs, data, reports; specifications; training materials including video];
"Background IPR"	means any and all Intellectual Property Rights existing prior to the Commencement Date or subsequently generated outside the Services belonging to a Party that are provided by that Party to the other for use in the Services, but specifically excluding Foreground IPR and Generic IPR;
"CEA"	means the commercial engagement document issued by Appetite for Business to the Client which contains details of the Services to be undertaken by Appetite for Business on behalf of the Client;
"Change Process"	means the process by which the Parties will assess and consider a Change Request as detailed in the CEA;
"Change Request"	means a request by either Party for a change to be made to the Specification;
"Charges"	means the rates and prices (exclusive of VAT), whether on a fixed price or time and materials basis, to be paid by the Client to Appetite for Business for the Services as detailed in the Compensation Schedule;
"Client Equipment"	means any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services;
"Client Material"	means all Documents, information and materials provided by the Client relating to the Services including (but not limited to), computer programs, source code, object code, data, reports and specifications, together with any other materials as specified in the CEA;

"Client"	means the Party (being a natural or legal entity) who purchases Services from Appetite for Business, as detailed in the CEA;
"Commencement Date"	means the date specified in the CEA;
"Compensation Schedule"	means the schedule within the CEA which details the Charges for performance of the Services by Appetite for Business;
"Contract"	means these Conditions together with the CEA and/or support agreement and/or hosting agreement, the Scope of Services and the Compensation Schedule;
"Conditions"	means these terms and conditions (as varied in accordance with these Conditions);
"Confidential Information"	means information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to either Party, its business affairs or activities which (i) either Party has marked as confidential or proprietary, or (ii) either Party, orally or in writing, has advised the other Party is of a confidential nature, or (iii) due its character or nature, a reasonable person in a like position and under the circumstances would treat such information as confidential;
"Consultancy Services"	means the consultancy services provided by Appetite for Business to the client as detailed in the CEA;
"DPA"	means the Data Protection Act 1998 (as amended);
"Deliverables"	means all Documents, products and materials developed by Appetite for Business in relation to the Services in any form and which are required under the Contract to be delivered to the Client, including the deliverables specified in the CEA;
"Documents"	means any and all documents, including, but not limited to, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
"Foreground IPR"	means any Intellectual Property Rights generated by either Party during the provision of the Services;
"Generic IPR"	means any and all Intellectual Property Rights used by Appetite for Business in providing the Services, but which are also used or capable of being used in other areas of Appetite for Business's business;
"Hosting Services"	means the hosting services to be provided by Appetite for Business to the Client to host the Client's website or websites as set out in the CEA;
"Intellectual Property Rights"	means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names, domain names, rights to goodwill, rights in designs, rights in computer software (including source code and object code), database rights, rights in confidential information (including know-how and trade

secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;

"Joint Project Finalisation"	means the process whereby Appetite for Business and Client will work together to complete the Deliverables and finalise sign off of the Solution Services as detailed in Clause 5.0 of these Conditions;
"Milestone"	means the milestones for the performance and/or delivery of the Services and/or delivery of the Deliverables as set out in the CEA;
"Party/ies"	means Appetite for Business Limited and/or Client as the context so demands;
"Product Enhancements"	means any changes whether after Joint Project Finalisation or outwith the scope of the Specification to the software delivered as part of the Solution Services including but not limited to any change to functionality of or enhancements to the software;
"Project Manager"	means the person appointed by the Client who will assume overall responsibility for liaising with Appetite for Business during delivery of the Services in accordance with Clause 7.1 (e);
"Project Start Date"	means the date upon which Appetite for Business will commence delivery of the Services to the Client as set out in the CEA;
"Services"	means the Consultancy Services, Hosting Services, Solution Services and Support Services;
"Solution Services"	means the service under which Appetite for Business will provide a software or other solution to the Client as part of the Deliverables, as detailed in the CEA together with any Product Enhancements;
"Specification"	means the specification document created as part of the Consultancy Services which sets out the scope of what is proposed to be delivered in the Solution Service as agreed between the Parties, or in the circumstance where Appetite for Business has not delivered Consultancy Services, the specification for the delivery of Solution Services as developed by the Client and provided to Appetite for Business;
"Specification Sign-Off"	means the sign-off by Appetite for Business and the Client of the Specification;
"Support Services"	means the ongoing maintenance and support services provided by Appetite for Business to the Client;
"Term"	means the term of the Contract as set out in the CEA;
"Third Party Software"	means any and all software belonging to a third party and as licensed to Appetite for Business and/or the Client for use in providing the Services to the Client.

- 1.2. In these Conditions, unless the context otherwise requires words denoting the singular shall include the plural and vice versa and references to the masculine shall include the feminine; words denoting persons shall include corporations, partnerships and unincorporated associations; and headings are included for convenience only and shall not be used in the interpretation of any provision of the Contract.
- 1.3. "Days" shall mean "consecutive calendar days".
- 1.4. If the terms of the Conditions are inconsistent with the terms of the CEA, the terms of the CEA shall prevail.

2 Commencement Date and Duration

The Contract shall commence on the Commencement Date and shall continue in force to the later of:

- (a) the Term; or
- (b) Specification Sign-Off; or
- (c) the completion of the Solution Services as determined by Joint Project Finalisation (or as set out in the support agreement or hosting agreement referred to in Clause 3.3)

unless otherwise terminated in accordance with the Contract.

3 The Services

3.1 Consultancy Services

The following conditions shall apply if Appetite for Business has agreed to provide Consultancy Services to the Client.

- (a) Appetite for Business shall provide the Consultancy Services to the Client in accordance with the CEA.
- (b) Appetite for Business shall commence providing the Consultancy Services on the Project Start Date and shall continue providing the Consultancy Services to either the later of (i) the Term; or (ii) completion of Specification Sign-Off, unless terminated earlier in accordance with Clause 13.0 of these Conditions.
- (c) In carrying out the Consultancy Services, Appetite for Business shall comply with all lawful and (in so far as they relate to the scope of work as agreed between the Parties as detailed in the CEA) reasonable directions given by the Client.
- (d) Appetite for Business warrants and represents to the Client that its relationship to the Client will be that of independent contractor. Nothing in the Contract shall create the relationship of agency or partnership or employer and employee between the Client and Appetite for Business.
- (e) Nothing in the Contract will prevent Appetite for Business from supplying similar Consultancy Services to any third party during the duration of the Contract, in all cases that such third party supply shall not or be likely to:
 - (i) lead to the breach of Appetite for Business's confidentiality obligations to the Client as set out in Clause 10.0 of these Conditions; or
 - (ii) interfere in any way with the reasonable performance by Appetite for Business of its obligations to the Client in respect of the Consultancy Services.

3.2 Solution Services

The following conditions shall apply if Appetite for Business has agreed to provide Solution Services to the Client. Appetite for Business's Obligations in providing the Solution Services

- (a) Appetite for Business shall use reasonable endeavours to provide Solution Services, and to deliver the Deliverables to the Client in accordance with the CEA and/or agreed Specification.
- (b) Either Party may request a deviation from or change to the Specification by submitting a Change Request to the other Party. Such Change Requests shall be processed by the Parties in accordance with the Change Process. Change Requests may result in a change in the overall cost and timescales.
- (c) Appetite for Business shall use reasonable endeavours to meet the Milestones specified in the CEA, but any such Milestones shall be estimates only and time shall not be of the essence for performance of the Solution Services.
- (d) If, due to the fault of either Party:
 - (i) there is a delay in the delivery of a Deliverable by a Milestone; or
 - (ii) there is a delay in Project Finalisation,the Parties agree that any Milestones and/or Joint Project Finalisation will be extended by a period equivalent to the period of delay directly arising from the fault of that Party. Appetite for Business shall use reasonable endeavours to achieve any revised dates for Milestones and/or Project Finalisation.
- (e) Appetite for Business shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements which apply at any of the Client's premises and which have been communicated to it by the Client, provided however that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

3.3 Hosting Services and Support Services

If Appetite for Business has agreed to provide Hosting Services and/or Support Services to the Client, the Parties will enter into a separate hosting agreement or support agreement (as the case may be), on the terms of the Contract, which will detail and govern the delivery of such Services.

4 Acceptance of the Services

4.1 The Scope of Services shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

4.2. The following shall apply to Acceptance Testing:

- (a) The Client shall have a reasonable period of time, up to seven (7) days unless otherwise specified in the Scope of Services, from delivery by Appetite for Business of each Deliverable under the relevant Scope of Services (the "Acceptance Periods") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "Acceptance Criteria"). If Client determines that a Deliverable does not conform to the Acceptance Criteria, Client shall by the last day of the Acceptance Period provide to Appetite for Business a written list of the non-conformities to the Acceptance Criteria (the "Issues List");
- (b) The Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance

Tests and shall notify Appetite for Business within the Acceptance Period (as defined in paragraph (a) above) if any of the Deliverables do not conform to the Acceptance Criteria. If the Client has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Conditions such Deliverable, shall be deemed accepted as if Client had issued a written acceptance thereof. Once the Deliverable has been accepted by Client and payment has been settled in accordance with Clause 9.0 of these Conditions, the Deliverable shall become the property of Client. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to Appetite for Business during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in paragraph (c) below.

- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Client or Appetite for Business during the Acceptance Period and whereby the Deliverable has not been accepted by Client for this reason and such non-conformity is a directly attributable act or omission on the part of Appetite for Business (and not subject to a Change Request (as defined in Clause 6.1 of these Conditions or attributable to Client's acts or omissions including inadequate Acceptance Testing) Appetite for Business shall (without prejudice to Client's other rights and remedies) perform all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (d) If any non-conformity cannot be remedied by Appetite for Business due to an error, defect or fault which Appetite for Business is able to demonstrate to the reasonable satisfaction of Client to be outside control of Appetite for Business and which has prevented Appetite for Business from remedying such non-conformity, then Appetite for Business reserves the right to terminate work on that specific Deliverable. Appetite for Business agrees not to charge Client for any non-conforming Deliverable which cannot be remedied.

5 Joint Project Finalisation

- 5.1. The Parties agree that, following all successful acceptance testing, they must work together in a Joint Project Finalisation exercise to verify the completeness and robustness of the Deliverables, to sign-off the Solution Services as completed and thereby achieve finalisation and closure of the project. The Client agrees to participate in such exercise within seven (7) days of being so invited by Appetite for Business.
- 5.3. Joint Project Finalisation shall include:
 - (a) working through any perceived issues of variance from the Specification, which may include, but is not limited to, matters of interpretation of the Specification and the resolution of some bugs and/or faults; and
 - (b) working through with a view to agreeing how to address such issues and then addressing the issues;
 - (c) a sign-off, indicating acceptance by both Parties that the Deliverables are complete and robust and ready for implementation and use.
- 5.4. Once the Client accepts any or all of the Deliverables, any bugs or faults in the Deliverables shall be repaired or amended in accordance with the Support Services or shall be deemed to be a product enhancement, in which case the Client shall compensate Appetite for Business in accordance with the Compensation Schedule..

6 Changes to the Services

- 6.1. Either Party may request changes to any Scope of Services (in each case, a “Change Request”). Any Change Request shall be made in writing and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
- 6.2. When a Change Request is submitted, Appetite for Business shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of the Contract. Within seven (7) days of its receipt of the written estimate, Client shall notify Appetite for Business whether it wishes to accept the estimate (and proceed with a Change Order, as defined in Clause 6.3) or reasonably reject it.
- 6.3. A Change Request shall become a “Change Order” when the requirements of Clause 6.2 have been satisfied and the Change Request is signed by the duly authorised representatives of both Parties to signify their approval to the change. Until such time the Parties shall continue to perform their respective obligations under the Scope of Services without taking into account the Change Request. Once duly signed, Change Orders shall be deemed incorporated into the Contract and Appetite for Business shall commence performance of the Change Order accordingly.
- 6.4. Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 6.5. Unless otherwise agreed in writing, Client shall compensate Appetite for Business for investigating, reporting on and, if appropriate, implementing any Change Request requested by Client, such compensation being in accordance with the relevant Charges.

7 Client's Obligations

- 7.1 The Client shall:
 - (a) sign and date (i) the CEA; (ii) Specification Sign-Off; (iii) Joint Project Finalisation sign-off; (iv) any hosting agreements and/or support agreement; (v) any other documentation as reasonably required by Appetite for Business to provide the Services;
 - (b) provide Appetite for Business with a purchase order for the Services, in accordance with the Contract;
 - (c) work in collaboration with Appetite for Business in all matters relating to the Services;
 - (d) provide Appetite for Business, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, applicable personnel (including but not limited to the Project Manager as set out in paragraph (e) below), data and other facilities or attend Appetite for Business's premises as reasonably required by Appetite for Business to enable it to perform the Services and in particular during Joint Project Finalisation;
 - (e) provide Appetite for Business with details of the Project Manager, who shall be:
 - (i) named in the CEA;
 - (ii) available for the duration of the Services; and

- (iii) authorised to act on behalf of the Client, including taking decisions on behalf of the Client if necessary; and
 - (iv) responsible for co-ordinating the timely provision of all Client input (including that of the Client's subcontractors, agents, consultants or third party representatives as the case may be) into the Services and at Joint Project Finalisation;
 - (f) provide to Appetite for Business, in a timely manner, such Client Material, Background IPR and other information as Appetite for Business may reasonably require to enable Appetite for Business to provide the Services and ensure that such information provided is accurate in all material respects;
 - (g) if Appetite for Business is required to work at the Client's premises, be responsible (at its own cost) for preparing and maintaining the relevant premises for the performance of the Services;
 - (h) inform Appetite for Business of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises
 - (i) ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Solution Services and conforms to all relevant United Kingdom standards or requirements;
 - (j) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of Client Material, use of any Third Party Software and the use of the Client's Equipment in relation to the Services (insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment), in all cases before the Project Start Date;
 - (k) if Appetite for Business has provided Appetite for Business Equipment, keep, maintain [and insure] Appetite for Business's Equipment [in good condition OR in accordance with Appetite for Business's instructions as notified in writing from time to time], and shall not dispose of or use Appetite for Business's Equipment other than in accordance with Appetite for Business's written instructions or authorisation;
 - (l) pay all invoices in accordance with Clause 9.0 of these Conditions; and
 - (m) reimburse all reasonable expenses properly and necessarily incurred by Appetite for Business in the course of performing the Services (including but not limited to travel and accommodation), subject to the submission by Appetite for Business of an invoice accompanied by receipts or other appropriate evidence of payment.
- 7.2 If delay to the provision of the Services is due to the fault of the Client failing to abide by its obligations set out in Clause 7.1, the Parties agree that the duration of the Services may be extended by a period equivalent to the period of delay directly arising from the fault of the Client.
- 7.3 Any costs, expenses or charges reasonably incurred as a result of a delay under Clause 7.2 shall be the responsibility of the Client.

8 Warranties

8.1 Client

The Client warrants that:

- (a) it is free to enter into the Contract and is not under any obligations to any third party which would or might conflict or interfere with the full and proper render of its obligations under the Contract; and

- (b) any and all Intellectual Property Rights in any and all Client Materials and Background IPR supplied by the Client to Appetite for Business, for use by Appetite for Business to provide the Services is the exclusive property of the Client or that the Client has the express permission of the beneficial owner of the Intellectual Property Rights in such materials to use same (including, but not limited to any licence required to use Third Party Software) and that use of the Client Materials and/or Background IPR will not infringe the Intellectual Property Rights or other rights of any third party; and
- (c) if the Client or Appetite for Business uses or is required to use Third Party Software in the provision of the Services, the Client has obtained a written licence (or sub-licence) from the relevant third party licensor or licensors on such terms as will entitle the Client or Appetite for Business to use the Third Party Software in the Services.

8.2 Appetite for Business

8.2.1 Appetite for Business warrants that:

- (a) it shall provide the Services with reasonable care, skill and diligence and in accordance with the terms of the Contract;
- (b) any and all Intellectual Property Rights used by Appetite for Business in providing the Services are the exclusive property of Appetite for Business or that Appetite for Business has the express permission of the beneficial owner of the Intellectual Property Rights to use such Intellectual Property Rights (including, but not limited to any licence required to use Third Party Software).

8.2.2 Appetite for Business undertakes that it will use all reasonable efforts to comply with all legal requirements and regulations relating to the provision of the Services.

8.2.3 Notwithstanding the foregoing, Appetite for Business does not warrant that:

- (a) the Services shall be uninterrupted or error free; or
- (b) Third Party Software will be error, virus or bug free.

8.2.4 These Conditions set out the full extent of Appetite for Business's obligations and liabilities in respect of the provision of Services. All conditions, warranties or other terms concerning the Services which might otherwise be inferred from the Contract, to the fullest extent of the law, are hereby expressly excluded.

9 Compensation and Payment

9.1 In consideration of the performance of the Services by Appetite for Business, the Client shall pay to Appetite for Business the Charges as set out in the Compensation Schedule and in accordance with this Clause 9.0.

9.2 All Charges quoted to the Client shall be exclusive of VAT, which the Appetite for Business shall add to its invoices at the appropriate rate.

9.3 All invoices rendered by Appetite for Business to the Client are payable within thirty (30) days of the date of such invoice unless stated otherwise in the Compensation. Time shall be of the essence in relation to payment.

9.5 If any amount payable under the Contract remains outstanding, Appetite for Business shall be entitled to:

- (a) either suspend the availability of the Services to the Client or terminate the Contract in accordance with Clause 13.0 of these Conditions; and
- (b) charge interest on the overdue amount from the due date for payment up to the date of receipt of cleared funds at a rate of [eight percent (8%)] per annum above

the base rate from time to time being of the Royal Bank of Scotland Plc until the date of payment.

- 9.6 Once any part of the Services has been completed in accordance with the Contract, the Client shall have no right to withhold or retain any payments or charges which relate to that part of the Services.

10 Confidentiality, Data Protection and Publicity

10.1 Confidentiality

- 10.1.1 Subject to Clause 10.1.2 below, each Party undertakes at all times to keep confidential and not to disclose to any third party without the other Party's prior written consent any Confidential Information belonging to the other. Each Party shall procure that its officers, employees, agents and contractors who have access to Confidential Information of the other Party help keep such Confidential Information confidential at all times and shall be made aware of the fact that such Confidential Information or other information is held subject to these obligations.
- 10.1.2 Nothing in this Clause 10.1 shall prevent either Party from disclosing any information which:
- (a) is properly a matter of public knowledge at the time of disclosure;
 - (b) becomes a matter of public knowledge through no fault of the receiving Party after disclosure;
 - (c) was rightfully in the receiving Party's possession before disclosure;
 - (d) is rightfully received from a third party by the receiving Party without a duty of confidentiality after disclosure; and
 - (e) is required to be disclosed by law.
- 10.1.3 If Appetite for Business has contracted with a Client who is a Public Authority for the purposes of the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002 ("FOI"), and if the Client receives an information request under FOI relating to the Contract or in any way relating to Appetite for Business ("FOI Request"), the Client acknowledges that all or part of the requested information may, at any time when the FOI Request is received, constitute a trade secret and/or Confidential Information belonging to Appetite for Business and/or may be detrimental to the commercial interests of Appetite for Business if disclosed.
- 10.1.4 If the Client receives a FOI Request it shall be obliged to:
- (a) consult with Appetite for Business in advance of making a disclosure pursuant to the FOI Request;
 - (b) consider, when deciding upon its response to any FOI Request, any representations that are made by Appetite for Business to the Client; and
 - (c) if possible and appropriate, apply exemptions under FOI to prevent disclosure of the information referred to in the FOI Request.
- 10.1.5 On receipt of notice from the Client of an FOI Request to the Client, Appetite for Business shall provide the Client with its full cooperation to ensure that the Client can meet its obligations under the provisions of the FOI. In particular Appetite for Business shall ensure that the Client is able to respond to the FOI request in a timely manner and provide the Client with its input, views and comments within [7] days of notification of the FOI Request.
- 10.1.6 If the Client and Appetite for Business are unable to agree on the disclosure arising from an FOI Request to the Client, or any aspect thereof, the Client (acting reasonably)

shall have the final decision on how to deal with the FOI Request, such being without prejudice to any right or remedy Appetite for Business may have against the Client, including, without prejudice to the foregoing generality for breach of confidentiality.

10.2 Data Protection

10.2.1 Appetite for Business undertakes that it will use reasonable efforts to at all times comply with the provisions of all data protection legislation and relevant jurisdictions, including DPA and any subordinate legislation enacted under such legislation. This shall include, without limitation:

- (a) maintaining a valid and up to date registration or (if applicable) notification under such legislation as required for the purposes of carrying out the Services; and
- (b) only undertaking processing of Personal Data (as defined in DPA) as is reasonably required for the performance of the Services and in accordance with the written instructions of the Client.

10.2.2 Appetite for Business shall not disclose any Personal Data to any third Parties other than:

- (a) to employees and subcontractors to whom such a disclosure is reasonably necessary in order for Appetite for Business to perform the Services; or
- (b) to the extent required under a court order.

10.3 Publicity and Promotion

10.3.1 The Client acknowledges that Appetite for Business is a Microsoft Partner and that as such, Appetite for Business has specific obligations to ensure that its partnership status is retained, which may require Client input and approval. The Client shall use its reasonable endeavours to provide such input and approval as reasonably requested by Appetite for Business.

10.3.2 With reference to 25.1, the Client agrees, to participate in:

- (a) quarterly customer satisfaction surveys issued by Appetite for Business; and/or
- (b) customer references, as reasonably requested by Appetite for Business.

10.3.3 It is acknowledged that Appetite for Business may wish to include details of the Services provided to the Client within Appetite for Business's promotional, demonstration and marketing material. The Client agrees and consents to the inclusion of its name and details of the Services provided to the Client being included within such promotional, demonstration and marketing materials.

11 Intellectual Property

11.1 All Background IPR used in connection with the Services will remain the property of the Party introducing such Background IPR.

11.2 Each Party grants the other a royalty-free, non-exclusive licence to use its Background IPR for the purposes of carrying out the Services and for no other purpose.

11.3 Appetite for Business hereby grants to the Client a non-exclusive, royalty-free, irrevocable, non-transferable, worldwide licence to use the Generic IPR.

11.4 Appetite for Business shall be entitled, on a non-exclusive, royalty-free, irrevocable, non-transferable basis, to re-use any Foreground IPR which is generated during the provision of the Services.

12 Indemnities and Liabilities

- 12.1 The Client agrees to indemnify and hold Appetite for Business each of its directors, employees, officers, agents and contractors harmless from and against any and all loss, claims, proceedings, damages, costs and expenses, including legal costs arising out of or in connection with:
- (a) any negligent act or omission of the Client, including any information provided by the Client which is material to the Services; or
 - (b) breach by the Client of the Contract, including any breach of warranty; or
 - (c) if any third party makes a claim which if substantiated would constitute a breach of the Contract, including, but not limited to, any claim by a third party for breach of Intellectual Property Rights and breach of Data Protection.
- 12.2 Neither Party shall be liable to the other for any loss of profit, loss or corruption of data, loss of income, loss of goodwill, loss of business or loss of anticipatory savings or for any indirect or consequential loss howsoever arising.
- 12.3 Neither Party excludes its liability to the other Party for death or personal injury arising from its own negligence.
- 12.4 Appetite for Business's entire aggregate liability to the Client, whether arising under the Contract or otherwise (including under the laws of negligence) shall not exceed 50 [fifty] per cent of the Charges paid by the Client to Appetite for Business under the terms of the Contract

13 Termination

- 13.1 Either Party may terminate the Contract forthwith (without prejudice to any other right or remedy available):
- (a) on giving written notice to either Party if the other Party is in breach of any of its obligations hereunder (the "Defaulting Party") and, in the case of a breach capable of remedy, such breach shall not have been remedied by the Defaulting Party within [twenty eight (28)] days of written notice specifying the breach and requiring its remedy by the non-defaulting Party; or
 - (b) on giving written notice to either Party if the other Party becomes apparently insolvent, bankrupt, has a receiver or administrator or similar officer appointed over the whole or any part of its assets, enters into any compound with its creditors, or has an order made or resolution passed for it to be wound up (otherwise than for the purpose of solvent amalgamation or reconstruction).
- 13.2 Upon termination of the Contract, any and all sums, including the Charges due to Appetite for Business hereunder shall become immediately payable.

14 Force Majeure

- 14.1 Neither Party shall be in breach of the Contract, nor liable for any failure or delay in performance of its obligations (other than the obligation to make payment) under the Contract arising from or attributable to acts, events, omissions or circumstances beyond its control, including but not limited to, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority including acts of local government and parliamentary authority; breakdown of equipment; epidemic; telecommunications failures; war; terrorism; extreme adverse weather conditions; and labour disputes of whatever nature and for whatever cause arising including, without prejudice to the generality of the foregoing, work to rule, overtime, strikes and lockouts ("Force Majeure").

- 14.2 If either Party is prevented or delayed in the performance of any of its obligations under the Contract by reason of Force Majeure, then the defaulting Party shall be excused the performance or the punctual performance as the case may be from the date of such notice for so long as such cause of prevention or delay shall continue.

15 Assignment and Subcontracting

- 15.1 Neither Party shall be entitled to assign, novate or transfer any of its rights or obligations under the Contract to any third party without the prior written consent of the other Party.
- 15.2 Neither Party shall be entitled to subcontract any or all of its obligations under the Contract without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Each Party shall be liable and shall remain liable for all acts and omissions of its subcontractors and those employed or engaged by the subcontractors.

16 Miscellaneous Provisions

16.1 Entire Agreement

- 16.1.1 The Contract constitutes the entire agreement and understanding between the Parties and supersedes any previous agreements, arrangements or understandings, between the Parties relating to the subject matter of the Contract and may only be amended by the written agreement of both Parties.

- 16.1.2 Both Parties acknowledge and agree that in entering into the Contract, they shall not rely on, and shall have no remedy in respect of, any statement, representation, or understanding whether negligently or innocently made prior to entering into the Contract. Nothing in this Clause 16.1, however, shall operate to limit or exclude any liability for fraud.

16.2 Variation

No variation or amendment of the Contract shall be effective unless it is in writing and executed by authorised representatives of both Parties.

16.3 Waiver

A waiver of a breach of any of the terms of the Contract or of a default under the Contract does not constitute a waiver of any other breach or default and shall not affect the other terms of the Contract, nor will it prevent a Party from subsequently requiring compliance with the waived obligation.

16.4 Severability

If any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions, which shall continue to be valid to the fullest extent permitted by law.

16.5 Non-Solicitation

The Client shall not, without the prior written consent of Appetite for Business, at any time from the date on which the Contract came into effect until the expiry of six (6) months after the last date of supply of the Services or termination of the Contract, solicit or entice away from Appetite for Business or employ (or attempt to employ) any person who is, or has been, engaged in any capacity Appetite for Business in the provision of the Services or any other activities similar to the Services.

If the Client causes that person to cease working for Appetite for Business, it shall, at the sole discretion of Appetite for Business, be liable to pay to Appetite for Business

an amount equal to 50% of the annual rate of remuneration due by Appetite to that person while working for Appetite for Business. The Parties agree that such amount represents a reasonable valuation of the disruption to the business of and costs incurred by Appetite for Business as a result of that person's departure. Such payment shall be made by the Client within thirty (30) days of the date of receipt of receipt of an invoice from Appetite for Business for same.

16.6 Status of the Parties

16.6.1 Nothing in the Contract is intended to or shall operate to create a partnership (or joint venture of any kind) between the Parties. Neither Party is the agent of the other and neither Party shall give any undertaking on behalf of the other or otherwise bind the other in any way.

16.6.2 Appetite for Business represents to the Client that its relationship to the Client will be that of independent contractor. Nothing in the Contract shall create the relationship of agency or partnership or employer and employee between the Client and Appetite for Business.

16.7 Notices

16.7.1 Any notice given under the Contract requires to be sent by registered delivery mail to:

(a) Appetite for Business Ltd, Davison House, Innovation Park, Campus 1, Aberdeen, AB22 8GT (attention: S. Newman): or

by e-mail to: snewman@appetiteforbusiness.com

(b) Client

<<Client Address>>

<<Client email address>>

16.7.2 Notices sent by registered mail will be deemed served on receipt of a signature for acceptance and notices sent by email will be deemed to be served on transmission subject to evidence of a valid email transmission receipt.

16.8 Provisions Surviving the Contract

Termination of the Contract and/or Client's acceptance of the Services or any parts thereof shall not release the Parties from obligations which expressly or by their nature survive the Contract or extend beyond the Contract termination and any acceptance of the Services.

16.9 Governing Law and Jurisdiction

In the event of a dispute arising between the Parties, the Parties hereby agree that the Contract shall be governed by and construed in accordance with Scots law and hereby submit to the exclusive jurisdiction of the Scottish courts.

16.10 IR35 Provisions

Notwithstanding anything in the Contract to the contrary, the following provisions shall apply in respect of IR35 legislation:

(a) Both Parties shall comply with their IR35 legislation obligations.

(b) In the event that an "inside IR35" Status Determination Statement is made by HMRC in respect of any person assigned to the Services by Appetite for

Business, the Charges relating to that person shall be subject to change to take account of and cover all relevant employment taxes, statutory payroll deductions, Employer's NI and the like.

- (c) If a Party receives any IR35-related notification from HMRC in respect of the person allocated by Appetite for Business to the Services, it shall immediately inform the other Party of such notification.
- (d) The Client shall defend and indemnify Appetite for Business from all actual or alleged liabilities, judgements, costs, claims, damages, and expenses incurred by Appetite for Business as a result of the Client's acts or omissions in respect of its IR35 obligations.

