

TPD ZONE – TERMS OF USE

THIS LICENSE AGREEMENT (THE “AGREEMENT”) IS MADE BETWEEN TOTAL PERFORMANCE DATA LIMITED, A COMPANY INCORPORATED AND REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 08380432 (THE “PROVIDER”), AND YOU (THE “CUSTOMER”). EACH A “PARTY” AND TOGETHER THE “PARTIES”.

BY PROCEEDING TO USE THE SERVICES YOU ARE ACCEPTING THIS AGREEMENT AND UNDERTAKING TO ABIDE BY THE FOLLOWING TERMS AND CONDITIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT PROCEED AND MAY NOT USE THE SERVICE.

1. Definitions and construction

1.1. In this Agreement the following expressions shall apply (save where the context otherwise requires):

- “Affiliate”** means each and any Subsidiary or Holding Company of a party and each and any Subsidiary of a Holding Company of a party.
- “Commencement Date”** means the date on which the Customer accepts this Agreement by subscribing to access the Services.
- “Conduct Legislation”** means the Modern Slavery Act 2015 and the Bribery Act 2010 and all replacement and modifying legislation and regulations pertaining thereto.
- “Connection”** means the connection of a unique user account allocated to an individual User, which enables that User to commence a Session and to access the Services. Connections may be offered with various functionality, such as by designating certain Connections as having ‘Administrator’ privileges and others as having ‘Regular’ privileges, and certain Tiers may grant access to varying quantities of particular types of Connections.
- “Customer Equipment”** means such hardware and software as may be specified on the Website which the Customer is required to have in use in order to use and enable the Services to be provided in accordance with this Agreement.
- “Data Controller”** shall have the meaning of ‘data controller’ set out in Article 4(7) of the GDPR.

“Data Processor”	shall have the meaning of ‘data processor’ set out in Article 4(8) of the GDPR.
“Data Protection Legislation”	means, for such time as they are in force in England and Wales, the DPA, the GDPR and all related legislation which may supplement, amend, implement or replace them and which relates to the protection of individual's rights in their personal data and the protection of their privacy.
“DPA”	means the Data Protection Act 2018.
“Downtime”	means a period during Support Hours during which there is total loss of the Services.
“Extension Period”	means a period of one month commencing at the end of the Initial Period or at the end of the previous Extension Period.
“Fee”	means the fee payable in respect of a particular Tier of Service, as specified in the pricing table set out on the Website and as it may be amended from time to time.
“Gambling Regulations”	means all legislation and binding regulations which govern the conduct and advertising of betting, gambling and gaming activity in User’s jurisdiction and any other jurisdiction in which the User intends to make use of the outputs of the Services (including, for the avoidance of doubt, the Gambling Act 2005 in the United Kingdom).
“GDPR”	means the UK GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.
“Initial Period”	means a period of one month commencing on the Commencement Date.
“Intellectual Property Rights”	means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
“Live Data”	means the stream of racing data made available via the Software, to which the Users may purchase access by way of a Subscription;
“Month”	means a calendar month and “monthly” shall be construed accordingly.
“Outage”	means an instance of Downtime.

“Personal Data”	has the meaning set out in Article 4(1) of the GDPR, and for the purposes of this Agreement means Personal Data provided by one party to this Agreement to the other.
“Processing” and “Process”	have the meaning set out in Article 4(2) of the GDPR.
“Session”	means an individual live session commenced using a specified IP address, during which an individual User accesses the Service using the unique access credentials specific to their allocated Connection.
“Service Interruption”	means a period during Support Hours during which there is partial loss of the Services.
“Service Levels”	means, where applicable, the levels of performance to which the Services are to be provided to the Customer by Provider; which where applicable shall be identified and described on the Website.
“Services”	means the services provided by the Provider to the Customer under the terms of this Agreement, including the provision of the Live Data via the Software, as determined by reference to a particular Tier of service selected and paid for by the Customer.
“Software”	means the software used by Provider to provide the Services which is either Provider’s proprietary software or third party software licensed to Provider.
“Subscription”	means an order placed for the Services by the Customer via the Website and accepted by the Supplier.
“Support Hours”	means the hours during which technical support for the Services is available, which unless otherwise specified in an applicable Service Level shall be 09:00 – 17:00 GMT. References to "hour(s)" and "minute(s)" in this Agreement will, unless otherwise indicated, be taken only to refer to the elapse of time during Support Hours.
“System Management Regulations”	means regulations introduced by Provider from time to time for the better management of the Services and which may include (but are not limited to): <ul style="list-style-type: none"> i. ensure that data provided via the Services is not misused, or used in excess of the licence conditions under which it is provided; ii. defining minimum specifications for equipment used by the Customer to interface with the Services (including, but not limited to, routers, firewalls and PCs); iii. regulations to ensure that the network through which the Services are provided is not overloaded and that the security and integrity of the network is maintained and including

regulations which arise from the need to comply with regulations of any data centre facility engaged by Provider in connection with the Services; and

- iv. regulations to ensure that any database or other applications which form part of the Services are used to the best effect and within their capacities.

“Tier” means a package of services and access to the Live Data selected by the Customer at the outset of a Subscription, which will determine the recurring Fee to be paid for that Subscription and the quantity and type of Services which the Customer is entitled to receive during it. Amongst other matters a Tier may specify a particular number and/or type of Connections or Sessions to which the Customer is entitled, as well as the quantity of Live Data a Customer is entitled to receive each month.

“Term” means the effective term of this Agreement (which shall include the Initial Period and all subsequent Extension Periods).

“User” means an individual user which accesses the Services with a unique log in name and password.

“Website” means the Provider’s website www.tpd.zone.

1.2. The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.3. Unless the context otherwise so requires:

1.3.1. references to Provider and the Customer include their permitted successors and assigns;

1.3.2. references to statutory provisions include those statutory provisions as amended or re-enacted;

1.3.3. references to any gender include all genders;

1.3.4. words in the singular include the plural and in the plural include the singular.

1.4. In the event of any conflict between the terms and conditions of this Agreement and any provision of any schedule, the terms and conditions of this Agreement shall prevail.

1.5. **Holding company** shall be construed in accordance with section 1159 of the Companies Act 2006.

1.6. **Subsidiary** shall be construed in accordance with section 1159 of the Companies Act 2006.

2. Provision of Services and Licences

- 2.1. Provider agrees with effect from the Commencement Date, in consideration of the continued timely payment of the Fee by the Customer, to supply the Services and licence the Software on a non-exclusive basis pursuant to the terms and conditions of this Agreement.
- 2.2. Receipt of the Services will require the use by the Customer of the Software on a SaaS basis, accordingly the Customer's licence to use the Software is subject to the following conditions:
 - 2.2.1. **Non-Exclusivity:** the licence is non-exclusive and the Provider shall remain entitled to grant similar or identical licences to use the Software to third parties without restriction;
 - 2.2.2. **Transferability:** the licence is non-transferable or sub-licensable, and the Customer shall not permit or purport to transfer the licence to any third party (nor offer the Software on a bureau basis) without first obtaining explicit written permission from the Provider to do so;
 - 2.2.3. **Purpose:** the Software may only be used by the Customer in order to conduct analysis of its own processes and operations, save where a subscription Tier specifically permits the use of the Software for the purpose of providing such services to third parties;
 - 2.2.4. **Duration:** the licence shall endure for the full Term of this Agreement, after which the Customer's right to use or have access to the Software shall end.
- 2.3. The Customer's use of the Software will entitle the Customer to receive Live Data subject to the restrictions of their selected Tier. The Customer acknowledges that its licence to receive and use the Live Data is subject to the following restrictions:
 - 2.3.1. **No redistribution:** the Live Data may not be sub-licensed to any other party without the express written permission of the Provider, Customer will not provide or grant access to the Live Data to any third party.
 - 2.3.2. **Usage:** the Live Data may only be used (i) by the Customer to create data products which inform the placing of bets by the Customer or others; (ii) by the Customer to create data products which visualise race performance, and (iii) by the Customer to generate historical analysis and comparisons of races.
- 2.4. The Customer acknowledges that Provider may at any time, and without notice, incorporate licence management software into the Software for the purposes of ensuring that licence rights are not exceeded.
- 2.5. The Customer accepts that it shall in no circumstances be permitted to:
 - 2.5.1. reproduce, edit, create derivative works of, sell or in any way commercially exploit any part or aspect of the Software;
 - 2.5.2. outsource the Services or Software provided under this Agreement to third parties;

- 2.5.3. attempt to decompile (as defined in section 50B of the Copyright, Designs and Patents Act 1988) the Software (including any underlying software or any part of it) that is used to provide the Services, except and only to the extent that such restriction is prohibited pursuant to section 50B of the Copyright, Designs and Patents Act 1988; and
- 2.5.4. to observe, study or test the functioning of the Software (including any underlying software or any part of it) that is used to provide the Services, except and only to the extent that such restriction is prohibited pursuant to section 50BA of the Copyright, Designs and Patents Act 1988.

3. Duration

- 3.1. This Agreement shall commence on the Commencement Date and shall continue for the Initial Period and thereafter for any Extension Periods invoked pursuant to Clause 3.2 unless and until terminated by either party in accordance with Clause 13 below.
- 3.2. This Agreement shall automatically be extended for an Extension Period at the conclusion of the Initial Period and at the conclusion of each subsequent Extension Period thereafter until terminated in accordance with Clause 13.
- 3.3. Access to the Services may not commence on the Commencement Date, and Provider shall be entitled to suspend such access until it is satisfied that it has received the payable Fee in full and that it has adequately verified the identity of the Customer.

4. Fee

- 4.1. The Customer undertakes to pay the applicable Fee for the Services, which (unless otherwise expressly stated on the Website) shall be payable in advance. Payment shall be made by the Customer using direct debit or a similar method, and may be scheduled to be taken from the Customer automatically at regular intervals.
- 4.2. The Fee payable by the Customer will be determined by reference to the Tier of service to which the Customer has Subscribed, plus the cost of any additional Connections and/or Sessions which may be purchased by the Customer.
- 4.3. The Customer may, at any time, upgrade its current service Tier, or purchase Subscriptions to additional Tiers of service.
- 4.4. Where the Customer wishes to purchase additional Connections or Sessions not included in its current Tier it will be required to either (a) upgrade its subscription by purchasing a higher Tier of service, or (b) pay an additional fee, as specified on the Website, in order to gain access to additional Connections or Sessions at its current service Tier. Where the Customer elects to pay a fee for additional Connections or Sessions that fee shall be payable again at each interval at which payment of the Fee for the Customer's chosen service Tier becomes due.

- 4.5. Provider shall be entitled to charge the Customer interest in respect of the late payment of any sums due under this Agreement (as well after as before judgement) on a daily basis at the rate of 8 per cent per annum above the base rate from time to time of Barclays Bank plc or at the maximum rate permitted by statute from the due date therefor until payment.
- 4.6. Where this Agreement would be extended by virtue of Clause 3.2 then the Customer shall be obliged to make payment of the Fee prior to any such extension commencing.
- 4.7. Provider shall be entitled to increase the Fee from time to time by posting details of the updated Fee on the relevant part of the Website. Such increases shall take effect immediately and shall be payable by the Customer at the commencement of the first Extension Period which commences after the relevant increase.
- 4.8. All sums due under this Agreement are expressed inclusive of VAT.
- 4.9. From time to time, the Provider may offer a subscription Tier which is accessible without payment of a fee (each such Tier a “**Free Service Tier**”). Customers using the Service by way of a Free Service Tier will not be eligible to receive any customer support or technical support pursuant to the terms of this Agreement.
- 4.10. Provider may withdraw or modify each Free Service Tier at any time without prior notice and without liability, to the extent permitted under applicable law.
- 4.11. Provider reserves the right to suspend or terminate a Customer’s use of a Free Service Tier at any time without notice and without liability.
- 4.12. Where the Provider provides any other services to the Customer which are not covered by the Fee paid by the Customer, it shall be entitled to invoice the Customer in arrears with such charges to be based on Provider's then current charging rates, or if agreed otherwise the Provider’s quote at the time of the Customer’s enquiry in relation to those services.

5. Service Levels

Where a Tier entitles the Customer to receive the Service subject to a specified Service Level the Provider will use its reasonable endeavours to deliver the relevant Services to the levels of performance specified in the applicable Service Level; subject always to Clauses 11.5 and 14 and save where otherwise expressly provided for by this Agreement.

6. Outages, Service Interruptions and Changes to Services

- 6.1. Outages or Service Interruptions may be made by Provider when in its reasonable opinion they are necessary to facilitate improvements to, or maintenance of the Services. Provider will use reasonable endeavours to minimise the duration of such Outages or Service Interruptions that it deems necessary.
- 6.2. If Outages or Service Interruptions are required pursuant to Clause 6.1, Provider will endeavour to schedule them so as to minimise impact on the Services and to notify the Customer as far in advance as is practicable of the

anticipated commencement time and estimated duration of the relevant Outage or Service Interruption.

- 6.3. Customer requested interruptions (including, but not limited to, request for an application server to be re-booted) will be fulfilled at Provider's discretion but will not be considered a break in service, and will not be a factor when considering the Service Levels for any purpose or give rise to any liability on the part of Provider.
- 6.4. Save for where an applicable Service Level specifically provides otherwise the occurrence of Outages or Service Interruptions shall not constitute breaches of this Agreement.

7. Provider Warranties

- 7.1. Provider warrants to and undertakes with the Customer that:
 - 7.1.1. it will use its reasonable efforts to provide the Services and to exercise reasonable care and skill and in accordance with the terms of this Agreement;
 - 7.1.2. it has full right power and authority to provide the Services to the Customer in accordance with the terms of this Agreement;
 - 7.1.3. it has all requisite registrations under Data Protection Legislation and will maintain such registrations throughout the Term; and
 - 7.1.4. it will at all times comply with the Gambling Regulations, Data Protection Legislation and with the Conduct Legislation.
- 7.2. For the avoidance of doubt, Provider makes no warranty that use of the Service will guarantee or enable compliance with any particular laws, regulations or codes of conduct. The Client's compliance with any legal requirements to which it may be subject is entirely its own responsibility and Provider shall have no liability or responsibility in respect of the same.
- 7.3. Provider makes no representation or warranty that any information provided by or contained within the Services or Software shall be accurate, complete or up-to-date and the Customer shall be responsible for verifying any such information on which it may choose to rely.
- 7.4. Except for the express warranties set forth in this Clause 7, the Services are provided on an "as is" basis, and the Customer's use of the Services is at its own risk. Provider does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice. Provider does not warrant that the Services will be uninterrupted, error-free, or completely secure.
- 7.5. Provider does not and cannot control the flow of data to or from its network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the Internet (or portions thereof). Although Provider will use

commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Provider cannot guarantee that such events will not occur. Accordingly, Provider disclaims any and all liability resulting from or related to such events.

8. Customer Obligations and Warranties

- 8.1. The Customer is required at all times during the term to adhere to the usage conditions set out in clause 2 and to ensure that all third parties to which it may grant access to products generated using the data do nothing that would constitute a breach of those conditions were they a party to them.
- 8.2. In the event that the Customer is in breach of any of its obligations (including, for the avoidance of doubt, timely payment of the Fee) under this Agreement, then:-
 - 8.2.1. Provider cannot be held responsible should the Services fail to perform and comply with any applicable Service Levels as a result (directly or indirectly) of such Customer breach;
 - 8.2.2. Provider shall be entitled to charge the Customer for staff time engaged on rectifying any resulting problems at Provider's then current standard charging rates; and
 - 8.2.3. Provider may without any liability terminate or suspend the Services (including, for the avoidance of doubt, by way of restricting or blocking the Customer's access to the Software) without prejudice to any other pre-existing rights and obligations of either party.
- 8.3. The Customer represents, warrants and undertakes that:
 - 8.3.1. it will use the Services only for lawful purposes and in accordance with this Agreement;
 - 8.3.2. it will at all times comply with Data Protection Legislation;
 - 8.3.3. any Personal Data will only be provided to Provider in accordance with Data Protection Legislation;
 - 8.3.4. it will be solely responsible for the accuracy and submission of Customer Data when using the Services and the Provider will not be liable for failing to ensure the accuracy of any Customer Data; and
 - 8.3.5. any software, data, equipment or other materials provided by the Customer to Provider or employed by the Customer in its use of or receipt of the Services shall not infringe any Intellectual Property Rights, privacy or Personal Data interests of any third party and shall not be obscene or defamatory of any person and shall not violate the laws or regulations of any state which may have jurisdiction over such activity.
- 8.4. In the event of any breach of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Provider will have the right to suspend immediately any related Services if deemed reasonably necessary by Provider to protect the proper interests of

Provider or its other customers. If practicable and depending on the nature of the breach, Provider may (in its absolute discretion) give the Customer an opportunity to cure such breach. In such case once the Customer has cured the breach, Provider will promptly restore the Services.

9. Data Protection

- 9.1. The parties to this Agreement do not foresee any transfer of Personal Data between them pursuant to its terms, and neither anticipates that the other will become a Data Processor on its behalf.
- 9.2. Nevertheless, in order to ensure that the rights and freedoms of data subjects is respected, In the event that a party to this Agreement becomes a Data Processor pursuant to it, it warrants that in relation to the Personal Data in respect of which it is a Data Processor that:
 - 9.2.1. having regard to the reasonably available state of the art of technological development, the nature of the Processing in question, the cost of implementation, and the material risk to the rights of affected Data Subjects, the Data Processor will take appropriate technical and organisational measures to secure relevant Personal Data against the unauthorised or unlawful Processing and against accidental loss or destruction;
 - 9.2.2. it will not transfer Personal Data outside the EEA without ensuring that appropriate safeguards are in place and that any transfer is lawful under all applicable Data Protection Legislation;
 - 9.2.3. it will assist the Data Controller, insofar as reasonably possible, in responding to any requests made by any relevant Data Subject which concern the exercise of that Data Subject's rights under the GDPR, subject to the Data Controller reimbursing it for the cost of the same;
 - 9.2.4. it will notify the Data Controller, insofar as reasonably possible, of any relevant requests for the disclosure of Personal Data which may be made to it and which it considers that it is legally obliged to respond to, subject to the Data Controller reimbursing it for the cost of the same;
 - 9.2.5. it shall report to the Data Controller any suspected data breach concerning the Personal Data which comes to its attention and shall provide reasonable assistance to the Data Controller in informing the relevant regulator and/or affected Data Subjects, subject to the Data Controller reimbursing it for the cost of the same;
 - 9.2.6. it shall, on request, take reasonable steps to demonstrate to the Data Controller, to the extent that is reasonable given the nature of the Processing in question, that it complies with Data Protection Legislation; and
 - 9.2.7. at the written instruction of the Data Controller securely delete or return Personal Data and copies thereof to the Data Controller on

termination of this Agreement unless Union or Member State law requires storage of the Personal Data.

10. Security

- 10.1. Each party recognises that it is impossible to maintain flawless security but (where relevant) Provider shall take all reasonable steps to prevent security breaches in its servers' interaction with the Customer and security breaches in any interaction with resources or users outside of any firewall that may be built into Provider's servers.
- 10.2. The Customer is responsible for maintaining the confidentiality of any passwords which are required to access the Software and the Services and is solely responsible for any damage caused by any such unauthorised access which arises from its failure to do so.

11. Limitation of Liability

- 11.1. Except as expressly stated in Clause 11.2:
 - 11.1.1. Provider shall not be liable for any indirect or consequential loss or damage suffered by the Customer, irrespective of how such loss or damage may arise and no matter which theory of liability gives rise to any cause of action by Customer.
 - 11.1.2. Provider shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - 11.1.2.1. special damage, even though Provider was aware of the circumstances in which such special damage could arise;
 - 11.1.2.2. loss of profits;
 - 11.1.2.3. loss of anticipated savings;
 - 11.1.2.4. loss of business opportunity;
 - 11.1.2.5. loss of goodwill; or
 - 11.1.2.6. loss of or damage to data.
 - 11.1.3. to the extent that not excluded by Clauses 11.1.2, 11.3, 11.4, 11.5 or otherwise, the total aggregate liability of Provider, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Fee actually paid by the Customer during the Initial Period or, where the Initial Period has elapsed, during the 12 month period immediately prior to the first event which gave rise to the Customer's right to bring a claim against Provider.

- 11.1.4. the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Provider shall have no liability otherwise than pursuant to the express terms of this Agreement;
- 11.2. The exclusions in Clause 11.1 shall apply to the fullest extent permissible at law but Provider does not exclude liability for:
 - 11.2.1. death or personal injury caused by the negligence of Provider, its officers, employees, contractors or agents;
 - 11.2.2. fraud or fraudulent misrepresentation; or
 - 11.2.3. any other liability which cannot be excluded by law.
- 11.3. Provider shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Customer or arising from any cause beyond Provider's reasonable control.
- 11.4. The Customer accepts that Provider is in no way liable for any virus or other contaminants which enter the Customer's email system or computer network via email or for any loss, damage, interruption to the Services or Outages caused by the failure of the Customer Equipment.
- 11.5. Provider shall not be liable for any interruptions to the Services or Outages arising directly or indirectly from:-
 - 11.5.1. interruptions to the flow of data to or from the Internet;
 - 11.5.2. changes, updates or repairs to the network or the Software subject to Provider striving to minimise the interruptions / Outages that may be caused by such change;
 - 11.5.3. the effects of the failure or interruption of services provided by third parties;
 - 11.5.4. any of the factors set out in Clause 14;
 - 11.5.5. any actions or omissions of the Customer (including, without limitation, breach of the Customer's obligations set out in this Agreement) or any third parties;
 - 11.5.6. problems with the Customer Equipment, any other equipment owned by the Customer and/or any third party equipment;
 - 11.5.7. interruptions to the Services requested by the Customer.
- 11.6. The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Fee has been calculated on the basis of the limitations and exclusions in this Clause

11 and that the Customer will effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 11.

- 11.7. Notwithstanding the foregoing and except as expressly stated in Clause 11.2, in no event shall the Provider be liable to the Customer for any claims or costs sustained by the Customer in relation to the Free Service Tier, for consequential, special, direct or indirect losses or damages sustained by it or any third parties, irrespective of whether under contract, tort or otherwise (including, without limitation, loss of profits, loss of revenues, loss of customers or damage to reputation or goodwill).

12. Intellectual Property Rights

- 12.1. Without prejudice to the Customer's rights in its own materials, the parties hereby agree that the Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the Software, documentation and other materials used by Provider in connection with or related to the provision of the Services hereunder.
- 12.2. The Provider reserves all rights inherent in the Live Data. The Customer acknowledges that it shall not be entitled to sub-licence the Live Data, nor shall it acquire any rights in any database which it may compile which comprises Live Data. Provider shall retain ownership of all data products created or compiled using Live Data.
- 12.3. Provider warrants that it has all necessary right, title and interest to enable the Customer to benefit from the Services in accordance with this Agreement.

13. Termination

- 13.1. For the purposes of this Clause 13, the following events shall be deemed "**acts of default**":
- 13.1.1. if the Customer fails to pay any moneys due pursuant hereto within 7 days of the due date therefor;
- 13.1.2. if a party commits any material breach of any term of this Agreement (other than one falling under Clause 13.1.1 above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 30 days of a written request by the other party to remedy the same;
- 13.1.3. if a party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 13.2. If the Customer commits an act of default then Provider may forthwith suspend the provision of the Services hereunder (or any of them or any part

of them) and no such suspension shall be deemed a breach of any term or provision of this Agreement.

- 13.3. If either party commits an act of default, the other party may terminate this Agreement by notice in writing forthwith.
- 13.4. Provider shall be entitled to terminate this Agreement by giving 30 days' written notice.
- 13.5. Customer shall be entitled to terminate this Agreement by giving 30 days' written notice.
- 13.6. Provider shall have the right, without prejudice to its other rights or remedies, to terminate this Agreement immediately by notice to the Customer:
 - 13.6.1. if the Customer undergoes a change of control which does not result in control passing to a company that, immediately prior to the change in question, was an Affiliate of the Customer;
 - 13.6.2. if the Customer sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity;
 - 13.6.3. if the Provider ceases to offer the Services (in a particular market, sector, or generally); or
 - 13.6.4. if the Customer disputes the ownership or validity of Provider's Intellectual Property Rights.
- 13.7. Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.8. In the event of termination of this Agreement:-
 - 13.8.1. the Customer agrees promptly to pay to Provider all outstanding payments;
 - 13.8.2. Provider's entitlement to use the Customer's trademarks ceases immediately except as necessary for the provision of any post-termination services;
 - 13.8.3. Provider may in its sole discretion agree to provide any assistance reasonably requested by the Customer in connection with the hand-over to a third party of any services provided by Provider hereunder, and the Customer shall pay Provider in accordance with Provider's then current standard rates for any such assistance;
 - 13.8.4. the Customer's right to receive the Services shall cease automatically.
- 13.9. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement

which is expressly, or by implication, intended to come into force or continue in force on or after that termination. For the avoidance of doubt, termination of this Agreement shall not in any circumstances entitle the Customer to any form of rebate or refund.

14. Force majeure

- 14.1. Neither party hereto shall be liable for any breach of its obligations hereunder, except in respect of payment, resulting from causes beyond the reasonable control of the party in default (or its sub-contractors) including but not limited to acts of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute (except involving a party's own employees), illness, flood, fire or tempest (an "**Event of Force Majeure**"). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.
- 14.2. Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 14.3. If a default due to an Event of Force Majeure shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre-existing rights or obligations of either party.

15. Waiver

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16. Notices

- 16.1. To Provider: any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class recorded post to the Provider's registered office address or email (such email notice to be confirmed by delivery or read receipt).
- 16.2. To Customer: any notice, request, instruction or other document to be given hereunder shall be delivered or sent by email (such email notice to be confirmed by delivery or read receipt) to the Customer's email address used as login to the subscribed services.

17. Publicity

- 17.1. The Provider is permitted to make announcements or information concerning this Agreement available in any advertising publicity promotional or other marketing activities without the prior written consent of the Customer. For the avoidance of doubt, the Provider is permitted to use the Customer's name, logo and any feedback it provides to the Company. The Customer shall, on

request, assist the Provider in preparing a case study which sets out the benefits that the Customer has derived from receipt of the Services.

- 17.2. The Customer shall not make an announcement or information concerning this Agreement or any ancillary matter shall be made or released or authorised to be made or released in any advertising publicity promotional or other marketing activities without the prior written consent of the Provider.

18. Costs

Except for the payments specifically agreed in this Agreement, each party is responsible for its legal and other costs in relation to the preparation and performance of this Agreement.

19. Invalidity and severability

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

20. Entire agreement

- 20.1. Subject to Clause 20.2, this written Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof. Nothing in this Clause 20.1 or Clause 11.1.4 shall relieve either party of liability for fraudulent misrepresentations.

- 20.2. No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

21. Relationship

The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

22. Successors

This Agreement shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

23. Assignment

- 23.1. The Customer shall not be entitled to assign this Agreement nor all or any of its rights and obligations hereunder without the Provider's prior written consent, such consent not to be unreasonably withheld.

- 23.2. The Provider shall be entitled to assign this Agreement or all or any of its rights and obligations hereunder.

24. Sub-contracting

Provider shall be entitled to sub-contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Services itself.

25. Governing Law & Jurisdiction

25.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

25.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

25.3. The parties irrevocably agree that the courts of England and Wales are the most appropriate and convenient courts to settle any dispute or claim, and accordingly, no party will argue to the contrary.

26. Third Party Rights

No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement.