

Hortor Limited Terms and Conditions

BUSINESS TERMS

The following is a statement of the terms of business under which the project referred to in the accompanying arrangement letter or proposal will be conducted.

The company with whom you are contracting is **Hortor Limited**, a company registered in England and Wales with registered number 09062811, whose registered office is Sanderson House, Station Road Leeds LS185NT United Kingdom and for ease of expression is referred to as "Hortor" in the following, the arrangement letter or proposal document (including its attachments) is referred to as "the arrangement letter", the recipient of the arrangement letter is referred to as "the Client" and the services and deliverables detailed in the arrangement letter to be provided to the Client are referred to as "the Project".

1 Project Overview

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- . 1.1 Hortor and the Client acknowledge that the success of the Project is the joint responsibility of both parties.
- . 1.2 Hortor and the Client recognize they must both use reasonable endeavours to meet agreed target dates.
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2 Payment and Taxes

- . 2.1 50% of fees will be charged on commencement of the project and the remaining 50% on acceptance of the Deliverables. Invoices are payable within 15 days of the date of receipt of Hortor's invoice. Where invoices are submitted in advance by Hortor, the invoice will contain an estimate of the fees due in the forthcoming month (the "Estimated Amount") and any difference between the amounts billed and the person-days worked will be reconciled by credit to or additional payment from the Client, in the following month's invoice or, if there is no further invoice payable then on termination of the applicable Arrangement Letter.
- . 2.2 Any invoice which remains outstanding for more than 15 days from receipt will bear interest on a daily basis from the original due date until paid in full. This interest will be calculated at a daily compound rate of 3% above the base rate then prevailing at Barclays Bank plc. In the event of any good faith dispute with regard to a portion of an invoice, the undisputed portion shall be paid as set out above. Upon resolution of the disputed portion, any amounts owed to Hortor shall be paid with interest at the rate set forth above accruing from the date such amounts were originally due, or where the disputed amount relates to an Estimated Amount which is then reconciled in a later invoice, such interest will accrue on that amount from the date of such subsequent invoice.
- . 2.3 Expenses shall be invoiced at the end of the month in which they are incurred and are payable within fifteen (15) days from the date of receipt by the Client of invoices submitted by Hortor.
- . 2.4 The Client shall pay for all taxes in connection with this

arrangement letter including, but not limited to, sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties. Should any payment for service, product or technology provided by Hortor be subject to withholding tax by any government, the Client shall reimburse Hortor for such withholding tax.

- . 2.5 If the Client requests that Hortor personnel perform services outside the city, state, province, or country in which such Personnel are based, the Client shall reimburse Hortor for increased tax costs incurred by such Hortor personnel and/or Hortor as a result of providing such services. These costs include, but are not limited to, (i) additional income taxes, (ii) social taxes, (iii) employment taxes, (iv) housing, (v) cost of living adjustments, (vi) other assignment related costs, and (vii) professional fees incurred for additional home country income tax compliance and foreign tax return preparation.
- . 2.6 The Client agrees to reimburse and hold Hortor harmless from any deficiency (including penalties and interest) relating to taxes that are the responsibility of the Client under Clauses 2.4 and 2.5. Each party shall be responsible for taxes based on its own net income, employment taxes of its own employees, and for taxes on any property it owns or leases. For the purposes of these business terms, taxes shall include taxes incurred on transactions between and between Hortor and its Affiliates.

3 Confidentiality

- . 3.1 The arrangement letter, including its attachments, is the confidential property of Hortor. The Client agrees that no part of them shall be disclosed to any third party without the prior written consent of Hortor or used for purposes other than the Project. The client further agrees that it has no rights to the arrangement letter other than as expressly granted to it by Hortor.
- . 3.2 The Client and Hortor each agree to keep confidential and not to disclose to any third party any information (excluding information which is or becomes public knowledge other than as a result of the default of the recipient) relating to the business or trade secrets of the other (“Confidential Information”), or to make use of any such Confidential Information for any purpose other than in connection with the Project or as required by law.

4 Remedies and Liabilities

- . 4.1 The Client agrees to give Hortor a reasonable opportunity to remedy any failure or shortcoming in the provision by Hortor of the services or deliverables comprised in the Project to the Client, including, without limitation, any failure to achieve specified service levels. Hortor undertakes, at its expense, to use all reasonable efforts to implement such remedy as soon as reasonably practicable after any such failure or shortcoming is identified and reported to it by the Client in writing.
- . 4.2 Hortor will not be liable (whether in contract, tort (including

negligence) or otherwise) for any loss of production, loss of or corruption to software or data, loss of profits or of contracts, loss of business or of revenues, loss of operation time, loss of goodwill or reputation, whether caused directly or indirectly, or to give an account of profits to the other party, or for any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever.

- . 4.3 Hortor will not be liable for any loss, damage, cost or expense whatsoever and howsoever caused arising from any fraudulent or unauthorised act or statement, misrepresentation or default on the part of the Client, its directors, employees, agents and other contractors.
- . 4.4 The express obligations and warranties made by Hortor in the arrangement letter and these Business Terms are in place of and to the exclusion (to the fullest extent permitted by law) of any other warranty, condition, term or undertaking of any kind, express or implied, statutory or otherwise, including (without limitation) as to the condition, performance, fitness for purpose or satisfactory quality of the Project or any part thereof.
- . 4.5 Any action by either party against the other relating to or arising out of the Project must be brought within two (2) years after the aggrieved party became aware of (or should reasonably have become aware of) the cause of action, failing which the alleged wrongdoer will be discharged of any liability with respect to such claim.
- . 4.6 The allocations of liability in these Business Terms represent the agreed and negotiated understanding of the parties and Hortor's charges for services reflect such allocations.
- . 4.7 This paragraph 4 survives the termination of the Project for any reason.

5 Indemnities

- . 5.1 Hortor will defend, at its expense, any third party claim that any deliverable provided as part of the Project infringes a UK copyright provided that the Client (a) allows Hortor conduct of the defense of such claim, including any settlement, (b) makes no prejudicial admission or statement, (c) notifies Hortor promptly of any claim and (d) actively co-operates and assists Hortor, at its expense, in the defense of the claim. In the event that any damages are finally awarded against the Client in respect of such a claim or agreed by Hortor in final settlement, Hortor will pay these. This indemnity will not apply if the infringement is the result of (a) the Client modifying or misusing the relevant deliverable or providing such deliverable to a third party, or (b) the failure of the Client to use enhancements or modifications offered by Hortor to avoid infringement, or (c) the use of information, documents, facilities or items supplied by the Client for the purposes of the Project. This indemnity constitutes the Client's sole and exclusive remedy and Hortor's entire liability with respect to any part of the Project infringing any third party rights of any kind.
- . 5.2 Save as set out in paragraph 5.1, the Client shall defend, indemnify and hold harmless Hortor and its partners and employees and associated companies and partnerships from and against any and all claims made by third parties for damages, losses, expenses or costs (including legal fees and expenses) arising out of or in connection directly or indirectly with any materials supplied to Hortor by or on behalf of the Client, provided that Hortor (a) allows the Client conduct of the defense of such claim, including any settlement, (b) makes no prejudicial admission or statement, (c) notifies the Client promptly of any claim and (d) actively co-operates and

assists the Client, at its expense, in the defense of the claim.

6 Intellectual Property Rights

- . 6.1 The copyright and all other proprietary rights existing now or in the future in all computer programs, documentation and other materials as well as in any idea, method, invention, discovery, design, concept or other work (“the Works”) arising from Hortor’s performance of the Project (whether conceived or developed individually or jointly with the Client and others) shall belong to and be the absolute property of Hortor. At the request and expense of Hortor, the Client will do all such things and sign all documents reasonably necessary to enable Hortor to obtain all such rights in the Works.
- . 6.2 Subject to the payment of all fees and expenses due to Hortor for the Project, Hortor will grant to the Client a non-transferable, non-exclusive license for a period of 25 years to use and reproduce for its own internal use only any deliverable provided under the Project.
- . 6.3 The Client acknowledges that in the course of its performance of the Project Hortor may use products, materials or methodologies proprietary to Hortor or a third party or Hortor may produce proprietary materials or methodologies that are not part of the deliverables. The Client agrees that it will not have nor obtain rights in such proprietary products, materials and methodologies except pursuant to a separate written agreement on terms to be agreed and the Client agrees to maintain the confidentiality of such items.

7 Responsibilities

- . 7.1 The Client agrees to provide Hortor promptly with accurate and complete information concerning its activities, decisions and approvals relevant to the Project. If any of Hortor's personnel work on the Client's premises, the Client will provide such personnel with suitable office accommodation and services, and full and free access to any required computing facilities. The Client is responsible for the provision of suitable environmental conditions, including electrical supplies, at its premises. The Client will ensure that all computing and ancillary facilities provided to Hortor's personnel for use in connection with the Project and the working environment at the Client's premises will comply with all applicable health and safety regulations including the Health and Safety (Display Screen Equipment) Regulations 1992.
- . 7.2 The Client acknowledges that European Monetary Union preparation or compliance, either generally or in relation to particular systems and processes, is a matter, which remains solely the Client's business responsibility. Hortor cannot and does not take any responsibility in respect of such preparation or compliance in providing services to the Client as part of the Project.

8 Force Majeure

- . Neither Hortor nor the Client will be liable for any delay in performing or failure to perform their obligations if such failure or delay is as a result of causes outside the reasonable

control of the responsible party.

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. **9 Quality Assurance**

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- . The Client agrees, if so requested by Hortor, to allow representatives of the British Standards Institution access to the Client's premises, and to co-operate, so far as is reasonable, with such representatives.

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. **10 Recruitment of Personnel**

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- . Neither party will for the duration of the Project and for a period of 6 months after its termination (for whatever reason), directly or indirectly solicit for employment, nor offer employment to, nor enter into any contract for services with any person who, at the time of such action or during a period of 6 months immediately preceding such action, carried out work in connection with the Project.

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. **11 Third Party Rights**

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- . Nothing in these business terms or the attached arrangement letter is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce a term of these Business Terms or the attached arrangement letter.

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. **12 Entire Agreement**

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- . The arrangement letter and these Business Terms constitute the entire agreement between the Client and Hortor relating to the Project and supersede all previous communications, representations and arrangements, written or oral, except in respect of any fraudulent misrepresentation made by either party. The Client acknowledges that no reliance is placed on any representation made but not embodied in the arrangement letter and these Business Terms. The printed terms of any purchase order and other communications issued by the Client in connection with the Project will not apply unless accepted in writing by Hortor. No variation will be effective unless in writing and signed by authorised representatives of both parties. In the event of any conflict between the terms of the arrangement letter and these Business Terms, the terms of the arrangement letter shall prevail.
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. **13 Assignment**

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13.1 Hortor's rights, benefits and/or obligations under the arrangement letter and these Business Terms may be assigned or novated (as appropriate) to Hortor Limited, its successors or assigns, or to any Hortor Affiliate. For the purposes of the arrangement letter and these Business Terms, "Hortor Group" means: Hortor Limited and Hortor Affiliates. "Hortor Affiliate" means any entity, whether incorporated or not, that is controlled by or under common control with Hortor Limited., and "control" (or variants of it) shall mean the ability whether directly or indirectly to direct the affairs of another by means of ownership, contract or

otherwise.

13.2 Client undertakes that should Hortor or any member of the Hortor Group need to execute a novation rather than an assignment, to an entity contemplated in Clause 13.1 above, Client shall execute a deed of novation to effect such novation.

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14 Data Privacy
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. Both parties will comply with all relevant data privacy legislation. If Hortor receives personal data, in connection with the arrangement letter and these Business Terms, in relation to Client and Client's employees, directors and other officers, Hortor may use and disclose this data for purposes connected with the arrangement letter and these Business Terms and the provision of services to Client. Client acknowledges and agrees Hortor may for these purposes transfer this data to any country in which any member of the Hortor Group does business.
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. **15 Relationship Between the Parties**
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. In connection with the arrangement letter and these Business Terms, each party is an independent contractor and, as such will not have any authority to bind or commit the other party. Nothing in the arrangement letter or in these Business Terms will be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose. In performing the works under the arrangement letter and these Business Terms, Hortor staff does so as

employees of Hortor (or its Hortor Affiliates) and do not act as partners of any partnerships.

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. **16 Disclosure of Existence of Alliance Arrangements**

- . Hortor has alliance relationships with third party product and services vendors. As part of many such relationships, Hortor is able to resell certain products and services and/or may receive compensation from vendors in the form of fees or other benefits in connection with the marketing, technical and other assistance provided by Hortor. Client acknowledges that such relationships may be beneficial to Hortor and assist in its performance of the Project.

. **17 Severability**

- . If any term or provision of the arrangement letter or these Business Terms is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions or the whole of the arrangement letter and these Business Terms, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties set forth in the arrangement letter and these Business Terms.

18 Applicable Law

The arrangement letter and these Business Terms will be governed by and construed in accordance with the laws of England and will be subject to the non-exclusive jurisdiction of the English Courts.