

## Terms of Business

We look forward to working with you.

Please read these Terms of Business carefully and contact us if you are unsure of anything before using any of our sites or Services. YOUR ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 12: 'Limitation of liability'

Last updated on 18 August 2022. Available here: <https://pointscienceanalytics.com/terms>.

### 1. Interpretation

#### 1.1 Definitions:

**Agreement:** the contract between you and us for the supply of the Services which comprises the Proposal and these Terms of Business.

**Amendments:** changes that we may permit you to make to the Services or Deliverables.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable by you for the supply of the Services by us, as set out in the Proposal.

**Consumer:** you are a consumer if you are an individual and you use our Services wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer:** the person(s) set out in the Proposal, and construed as follows: if you are a business Customer, '**you**' means the legal person(s) named in the Proposal, and if you are a Consumer, then '**you**' means you in your personal capacity. And '**your**' and '**yours**' shall be interpreted accordingly. You and us are each a 'party', and together, the 'parties'. You are a consumer if you are an individual and you use any of our sites or Services or purchase any services (whether from us or other persons via us) wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).

**Customer Materials:** all materials, equipment and tools, drawings, specifications and data supplied you to us, including but not limited to those set out in the Proposal.

**Deliverables:** all documents, products and materials developed by us or our agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) and the Key Deliverables set out in the Proposal.

**Estimated Completion Date:** the date by which the Services are estimated by us to be completed, which may be specified in the Proposal, and may differ from the Completion Date.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Milestones:** a date by which a part of the Services are estimated to be completed, as set out in the Proposal.

**Project:** the project specified in the Proposal.

**Proposal:** a quotation for our Services setting out the key terms and particulars for your project.

**Services:** the services, including without limitation any Deliverables, to be provided by us pursuant to the Agreement, as described in the Proposal.

**Services Start Date:** the day on which we are to start provision of the Services, as set out in the Proposal, which may be different to the Commencement Date when the Contract comes into existence in accordance with clause 2.2.

**Supplier:** Point Science Analytics Ltd, a limited company registered in England & Wales, company number 14202093, registered office Unit 13 Freeland Park Wareham Road, Lytchett Matravers, Poole, BH16 6FA, United Kingdom ('we', 'our' and 'us'). We operate the Website.

**Supplier IPRs:** all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them.

**Terms:** these Terms of Business

**Terms of Business:** these terms and conditions set out in clause 1 (Interpretation) to clause 30 (Jurisdiction) (inclusive).

**Updated Proposal:** an updated version of the Proposal to reflect changes (including additional services requested by you) made to the Proposal in accordance with clause 4; and for all intents and purposes, in the event of any such changes and to the extent that the context permits, shall be read as Proposal in these Terms.

**Website:** <https://pointscienceanalytics.com/>.

## 1.2 Further interpretation:

- (a) Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-enacted from time to time; and
  - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

## 2. Our Agreement with you.

**2.1 Placing your order.** After you request a Proposal from us, we'll send you a Proposal by email, along with these Terms. Your acceptance of any Proposal in writing (including any Updated Proposal) or any counter-proposal that you send us by email is an offer by you to enter into this Agreement with us on the basis of that Proposal (or counter-proposal, as the case may be) AND these Terms (**Order**). We will let you know if we are unable to send you a Proposal or process your Order, for whatever reason.

**2.2 Commencement.** The Agreement shall commence and become binding on the parties from the following date (**Commencement Date**): the date and point at which we send you an email to accept your Order (**Order Confirmation**).

**2.3 Deemed acceptance.** If you request us to supply Services set out in the Proposal, you are deemed to accept the Proposal and these Terms and you agree to pay us the Charges in return for us to supply you with the Services. If you do not agree to our Proposal and Terms, you must not request that we provide any Services.

**2.4 Term.** The Agreement shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other notice in writing in accordance with clause 2.5 (**Agreement Term**).

**2.5 Notice Period and Minimum Term.** Unless the notice period for cancellation (**Notice Period**) and minimum Agreement term (**Minimum Term**) are specified in the Proposal, we require:

- (a) not less than 2 months' written notice to terminate the Agreement (**Standard Notice Period**),
- (b) expiring on or after the expiry of the standard minimum term which is 12 months from the Services Start Date (**Standard Minimum Term**).

**2.6 14-day cooling off period for Consumers.** As a Consumer, you have the right to change your mind and cancel the Agreement and receive a refund for any Charges paid except for any Services received up until cancellation. To cancel, you need to let us know by email ([info@pointscienceanalytics.com](mailto:info@pointscienceanalytics.com)) or post (Unit 13 Freeland Park Wareham Road, Lytchett Matravers, Poole, BH16 6FA, United Kingdom) no later than 14 days after:

- (a) the day we confirm we have accepted your Order, if it is for a Service.
- (b) the day we confirm we have accepted your order, if it is for digital content for download or streaming, although you can't change your mind about digital content once we have started providing it.
- (c) the day we deliver your product, if it is goods. If the goods are for regular delivery (for example, a subscription), you can only change your mind after the first delivery. If the goods are split into several deliveries over different days, the period runs from the day after the last delivery.

**2.7** You cannot cancel the Agreement once we have completed the Services, even if any cooling off period is still running.

**2.8** To cancel the Agreement, you must email us at [info@pointscienceanalytics.com](mailto:info@pointscienceanalytics.com) or by post to Unit 13 Freeland Park Wareham Road, Lytchett Matravers, Poole, BH16 6FA, United Kingdom. If you are emailing us or writing to us, please include details of your order to help us to identify it. If you send us your cancellation notice by email or by post, then your cancellation is effective from the date you send us the email or post the letter to us. For example, you will have given us notice in time as long as you get your letter into the last post on the last day of the cancellation period or email us before midnight on that day.

**2.9** Subject to clause 2.10, if you cancel the Agreement, we will refund you in full for the price you paid for the Services, by the method you used for payment, however we may deduct from any refund an amount for the supply of the Services provided for the period up to the time when you gave notice of cancellation. The amount we deduct will:

- (a) reflect the amount that has been supplied as a proportion of the entirety of the Agreement.
- (b) be based on our hourly and daily fee rates, as set out on our Website at the time you submit your Order.

**2.10** If you are a business Customer, in any event the amount we deduct shall be no less than the upfront payment paid or payable to us in accordance with clause 7.3.

### **3. Supply of services**

**3.1** We shall supply the Services to the Customer from the Services Start Date or as soon as reasonably practicable after said date in accordance with the Agreement.

**3.2** If the Services Start Date is omitted from the Proposal for any reason, the Services Start date shall be decided by us entirely at our sole discretion and notified to you accordingly in writing on or after the Commencement Date.

**3.3** **Amendments.** You shall be entitled to the Amendments as specified in the Proposal, and if no Amendments are so specified in the Proposal, none shall be permitted, unless otherwise agreed in writing.

**3.4** In supplying the Services, we shall:

- (a) perform the Services with reasonable care and skill;
- (b) use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this Agreement in all material respects.
- (c) use reasonable endeavours to meet any performance dates such as the Estimated Completion Date or the Milestones (if any) specified in the Proposal but any such dates shall be estimates only and time for performance by us shall not be of the essence of this Agreement.
- (d) (if you are a consumer) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
- (e) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to us, provided that we shall not be liable under the Agreement if, as a result of such observation, we are in breach of any of our obligations under the Agreement; and
- (f) take reasonable care of all Customer Materials in our possession and make them available for collection by the Customer on reasonable notice and request, always provided that we may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Agreement.

**3.5** **Descriptions and illustrations.** Any descriptions or illustrations on our Website are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Agreement or have any contractual force.

- 3.6 Compliance with specification.** Subject to our right to amend the specification (see clause 3.7) we will supply the Services to you in accordance with the specification for the Services described in the Proposal, or if no specification is so described, appearing on our Website, at the date of your Order in all material respects.
- 3.7 Changes to specification.** We reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services, and we will notify you entirely at our sole discretion in advance of any such amendment.
- 3.8 The Deliverables.** The Deliverables are correct at the time of creation by us only. Whilst the Deliverables have been obtained from sources believed by us to be reliable, we do not make any representation or warranty or guarantee as to the completeness, accuracy, timeliness or suitability of any part of the information provided or that it is free from error.
- 3.9 Onboarding.** At any time you may be required to complete certain onboarding procedures, which may include but are not limited to: an application, Anti-Money Laundering (AML) and now your customer (KYC) checks, other compliance or onboarding procedures and checks ('**Onboarding**'). You agree to cooperate with us or relevant third-party providers of Onboarding services so that it can be completed promptly. We may require you to complete Onboarding before we start providing any Services.
- 3.10** We do not provide any consultancy or advisory services.

#### **4. Changes**

- 4.1** Either party may propose changes (including additional services requested by you) to the scope or execution of the Services, but no such proposed changes shall come into effect until an **Updated Proposal** has been agreed and signed by both parties, including by email.
- 4.2** An Updated Proposal shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services;
  - (b) the Charges;
  - (c) the timetable of the Services; and
  - (d) any of the terms of this Agreement.
- 4.3** If we wish to make a change to the Services we shall provide a draft Updated Proposal to the Customer.
- 4.4** If the Customer wishes to make a change to the Services:
- (a) it shall notify us and provide as much detail as we reasonably requires of the proposed changes, including the timing of the proposed changes (**Change Request**); and
  - (b) we may, as soon as reasonably practicable after receiving the Change Request at clause 4.4 (a), and entirely at our sole discretion, provide a draft Updated Proposal to the Customer.
- 4.5** If the parties:
- (a) agree to an Updated Proposal, they shall sign it (including by email) and that Updated Proposal shall amend this Agreement; or
  - (b) are unable to agree an Updated Proposal either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26\_(Multi-tiered dispute resolution procedure).
- 4.6** We may charge for the time that we spends on preparing and negotiating Updated Proposals which implement changes proposed by the Customer on a time and materials basis at our Charges specified in the Proposal, or if not so specified in the Proposal, on our Website (or available upon request).
- #### **5. Completion.**
- 5.1** When we have completed the Services we shall notify you writing, on which date (**Completion Date**) we shall be deemed to have completed the Services in accordance with the Agreement (**Completion**), and we shall send you our final invoice(s) on or around the Completion Date.

- 5.2** If you believe that any Services are outstanding, you must provide us by email within 3 days of the Completion Date a checklist of items that in your opinion are not complete, along with as much detail as we reasonably require of those items (**Completion Checklist**).
- 5.3** If you do not provide the Completion Checklist within 3 days of the Completion Date, you will be deemed to have accepted that Completion occurred on the Completion Date.
- 5.4** If applicable, as soon as reasonably practicable after receiving the Completion Checklist from you, we shall provide a response in writing and set out any items that we believe are a Change Request.
- 5.5** We shall complete the items in the Completion Checklist that are agreed in writing between you and us as being outstanding Services (**Remaining Services**) as soon as reasonably practicable after said written agreement is reached and we are provided with as much detail (including but not limited to further Customer Materials) as we reasonably require in connection with the Remaining Services, including but not limited to Customer Materials.
- 5.6** If you and us cannot agree the Remaining Services either party require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26 (Multi-tiered dispute resolution procedure).
- 5.7** We may charge for the time that we spend to negotiate the items in the Completion Checklist to the extent that said items are in effect a Change Request.
- 5.8** For the avoidance of doubt, the provisions of this clause 5 are without prejudice to our rights and remedies under this Agreement, such as those set out in clause 7 ('Charges and payment').

## **6. Customer's obligations**

- 6.1** You shall:
- (a) co-operate with us in all matters relating to the Services;
  - (b) provide, for us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as required by us;
  - (c) provide, in a timely manner, such information as we may require from time to time, and ensure that it is accurate and complete in all material respects, including but not limited to the Customer Materials;
  - (d) inform us of all health and safety and security requirements that apply at any of your premises. If you wish to make a change to those requirements which will materially affect provision of the Services, you can only do so via the change control procedure set out in clause 4 (Changes); and
  - (e) carry out your own due diligence on any goods, products, services or suppliers proposed or introduced by us (**Recommendations**). Our Recommendations are not a substitute for your own due diligence, and you agree to accept full responsibility for their quality, suitability, qualifications and competence for your particular requirements before giving us your instructions.
- 6.2** If our performance of our obligations under the Agreement is prevented or delayed by any act or omission of yours, your agents, subcontractors, consultants or employees, we shall:
- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
  - (b) be entitled to payment of the Charges despite any such prevention or delay;
  - (c) be entitled to recover any additional costs, charges or losses we sustain or incur that arise directly or indirectly from such prevention or delay; and
  - (d) be entitled to charge additional Charges during the period of prevention or delay.

## **7. Charges and payment**

- 7.1** In consideration for the provision of the Services, you shall pay us the Charges in accordance with this clause 7.
- 7.2** Charges are the prices quoted in the Proposal at the time you submit your Order. Prices in any Proposal take precedence over those on our Website.
- 7.3** Charges shall include an amount payable upfront before we provide any Services, and the balance payable on Completion, as set out in the Proposal or notified to you.
- 7.4** We reserve the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month

period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

**7.5** It is always possible that, despite our reasonable efforts, some of the Services on our Website may be incorrectly priced. Where the correct price for the Services is less than the price stated on our site, we will charge the lower amount and if the correct price for the Services is higher than the price stated on our site, we will contact you in writing as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Services at the correct price or cancelling your Order. We will not process your Order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. However, if we mistakenly accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may cancel supply of the Services and refund you any sums you have paid.

**7.6** All amounts payable by you exclude amounts in respect of value added tax (**VAT**), which you shall additionally be liable to pay to us at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

**7.7** We shall invoice you for the Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Proposal, and on or around the Completion Date. If no intervals are so specified we shall invoice you at the end of each month for Services performed during that month, unless otherwise agreed in writing.

**7.8** You shall pay each invoice due and submitted to you by us, within 7 days of receipt, to a bank account nominated in writing by us from time to time.

**7.9** If you fail to make any payment due to us under the Agreement by the due date for payment, then, without limiting our remedies under clause 13\_(Termination):

- (a) you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) we may suspend all Services until payment has been made in full.

**7.10** All amounts due under the Agreement from you to us shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8. Warranties**

**8.1** You warrant and undertake that:

- (a) you are fully entitled and have the authority to enter into the Agreement, either on your own behalf or for and on behalf an organisation, and have the legal capacity to do so freely;
- (b) **Customer Materials** will to the best of your knowledge and belief be accurate, up to date, genuine and truthful and will not breach any contract, duty of confidence, Applicable Data Protection Laws, the Official Secrets Acts 1911-1989, other legislation relating to national security, constitute a contempt of court, or be obscene, defamatory or blasphemous;
- (c) you shall keep confidential and shall not disclose to any third party any photographs or other material containing or relating to our personnel or affairs.

## **9. Indemnity**

**9.1** To the fullest extent permitted by law, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the us arising out of or in connection with:

- (a) any breach by you of the warranties contained in these Terms; and
- (b) the enforcement of the Agreement.

**9.2** At the request of us and at your own expense, you shall provide all reasonable assistance to enable us to resist any claim, action or proceedings brought against us as a consequence of that breach.

**9.3** This indemnity shall apply whether or not we have been negligent or at fault.

## 10. Data protection

10.1 For the purposes of this clause 10, the following definitions apply.

Applicable Data Protection Laws: means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which we are subject, which relates to the protection of personal data.

**Customer Personal Data:** any personal data which we process in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

**EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Supplier Personal Data:** any personal data which we process in connection with this Agreement, in the capacity of a controller.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

10.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws.

10.3 The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by us in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of our privacy policy available at <https://pointscienceanalytics.com/privacy> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.

10.4 Without prejudice to clause 17.2, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to us and lawful collection of the same by us for the duration and purposes of this Agreement.

## 11. Intellectual property

11.1 We and our licensors shall retain ownership of all Supplier IPRs. You and your licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials, unless otherwise agreed in writing.

11.2 Subject to clause 11.5, we grant you, or shall procure the direct grant to you of, a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable, revocable licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in your business during the term of the Agreement (**License**).

11.3 You grant us a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Agreement for the purpose of providing the Services to you in accordance with the Agreement.

11.4 You shall indemnify us in full against any sums awarded by a court against us arising of or in connection with any claim brought against us for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by us.

11.5 The License only applies to Supplier IPRs to the Project specified in the Proposal. For the avoidance of doubt, you do not have the right to use the Supplier IPRs in connection with any other Project, unless otherwise agreed in writing.

11.6 You:

- (a) warrant that the receipt and use of the Customer Materials in the performance of this Agreement by us, our agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify us in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim brought against us, our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out

of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.

## **12. Limitation of liability**

### **Businesses**

- 12.1** We are not insured for providing the Services. We intend to purchase insurance at a later date.
- 12.2** References to liability in this clause 12 include every kind of liability arising under or in connection with the Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 12.4** Nothing in this clause 12 shall limit the Customer's payment obligations under the Agreement.
- 12.5** Nothing in the Agreement shall limit the Customer's liability under clause 11.4 of the Agreement.
- 12.6** Nothing in the Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.7** Subject to clause 12.3 (no limitation in respect of deliberate default), clause 12.4 (no limitation on customer's payment obligations), clause 12.5 (liability under identified clauses) and clause 12.6 (liabilities which cannot legally be limited), this clause 12.7 sets out the types of loss that are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 12.8** Subject to clause 12.6, our total liability to you arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to 100% of the total Charges paid under the Agreement.
- 12.9** We have given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 12.10** Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

### **Consumers**

- 12.11** **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking the Agreement or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Agreement was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 12.12** **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the products, and for defective products under the Consumer Protection Act 1987



- 12.13 When we are liable for damage to your property.** If we are providing services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the services.
- 12.14 When we are liable for damage caused by defective digital content.** If defective digital content which we have supplied damages a device or digital content belonging to you and this is caused by our failure to use reasonable care and skill we will either repair the damage or pay you compensation. However, we will not be liable for damage which you could have avoided by following our advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.
- 12.15** If you are a Consumer we only supply the Services and Deliverables for to you for domestic and private use. If you use the Services or Deliverables for any commercial, business or re-sale purpose our liability to you will be limited as set out in clauses 12.1 to 12.10 (inclusive).
- 12.16** Notwithstanding clauses 12.11 to 12.14 (inclusive), clauses 12.1 to 12.10 (inclusive) apply to you to the fullest extent permitted by law.

### **13. Termination**

- 13.1** Without affecting any other right or remedy available to it, either party to the Agreement may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 13.2** Without affecting any other right or remedy available to it, we may terminate the Agreement with immediate effect by giving written notice to you if:
- (a) you fail to pay any amount due under the Agreement on the due date for payment; or
  - (b) there is a change of control of the Customer.
- 13.3 Survival.** On or after termination or expiry of the Agreement for whatever reason:
- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
  - (b) the following clauses shall continue in force and effect: clause 1 (Interpretation), clause 14 (Non-solicitation), clause 11 (Intellectual property), clause 17 (Confidentiality), clause 12 (Limitation of liability), clause 13.3 (Consequences of termination), clause 20 (Waiver), clause 21 (Severance), clause 27 (Conflict), clause 26 (Multi-tiered dispute resolution procedure), clause 29 (Governing law), clause 30 (Jurisdiction) and any other provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement.
  - (c) Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to

claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

**14. Non-solicitation**

**14.1** You shall not, without our prior written consent, at any time from the date of this Agreement to the expiry of 12 months after the termination or expiry of this Agreement, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ours in the provision of the Services.

**14.2** Any consent given by us in accordance with clause 14.1 shall be subject to you paying to us a sum equivalent to 20% of the then current annual remuneration of our employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by you to that employee, consultant or subcontractor.

**15. Force majeure.**

**15.1** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

**16. Assignment and other dealings.**

**16.1** You shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement without our prior written consent.

**16.2** We may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Agreement.

**17. Confidentiality.**

**17.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 17. For the purposes of this clause 17, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

**17.2** Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 17; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**17.3** Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.

**18. Entire agreement.**

**18.1** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**18.2** Each party acknowledges that in entering into the Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

**18.3** This clause 18 applies in full to business Customers and to the fullest extent permitted by law in respect of Consumers.

**19. Variation.**

**19.1** Subject to clause 19.2, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**19.2** We reserve the right to modify these Terms from time to time without notifying you. Modified Terms will be posted on our Website and we recommend that you view them regularly to ensure you are aware of any changes. Changes to the Terms will be deemed to have been accepted by you if you continue to use our Services after they are published to our Website.

**20. Waiver.**

**20.1** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

**20.2** A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**21. Severance.**

**21.1** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 21 shall not affect the validity and enforceability of the rest of the Agreement.

**22. Notices.**

**22.1** Any notice or other communication given by one of us to the other under or in connection with the Agreement must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service; or email to the email address specified in the Proposal, or if no email is so specified, the email address specified on our Website 'Contact Us' page (<https://pointscienceanalytics.com/contact-us>).

**22.2** Any notice or communication shall be deemed to have been received:

- (a) if delivered personally, on signature of a delivery receipt, or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 22.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

**22.3** In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.

**22.4** This clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**23. Third party rights.**

**23.1** Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

**23.2** The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

**24. Counterparts.**

**24.1** This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

- 24.2** Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the Agreement thus made, each party shall on request provide the other with the "wet-ink" hard copy original of their counterpart.
- 24.3** No counterpart shall be effective until each party has executed and delivered at least one counterpart.
- 25. No partnership.**
- 25.1** Nothing in any Agreement between you and us is intended to, or shall be deemed to, establish any partnership or joint venture between you and us, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of any other party. For the avoidance of doubt, reference to the terms 'partner' or 'partnership' howsoever written on our sites and in any content or materials published by us are simply terms used for marketing purposes and have no legal effect under the Partnership Act 1890 or otherwise.
- 26. Multi-tiered dispute resolution procedure.**
- 26.1** If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the manager of the Customer and manager of the Supplier shall attempt in good faith to resolve the Dispute;
  - (b) if the manager of the Customer and manager of the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the director of the Customer and director of the Supplier who shall attempt in good faith to resolve it; and
  - (c) if the director of the Customer and director of the Supplier are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 21 days after the date of the ADR notice.
- 26.2** The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 30 (Jurisdiction) which clause shall apply at all times.
- 26.3** If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 30 (Jurisdiction).
- 27. Conflict.**
- 28.** If there is any conflict or ambiguity between any of the provisions of these Terms and the provisions of the Proposal, the provisions of the Proposal shall prevail.
- 29. Governing law.**
- 29.1** The 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.
- 30. Jurisdiction.**
- 30.1** 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 the Agreement or its subject matter or formation.