

## GENERAL TERMS

**This Agreement** is made on the Effective Date between **Aquis** and the **Client** (each a “**party**” and together the “**parties**”), as such terms are defined in the Order Form into which this Agreement is incorporated.

### Background:

- (A) Aquis develops exchange trading technology which it makes available to subscribers.
- (B) The Client wishes to use Aquis’s technology in its business operations and also requires services from Aquis to support the implementation of this technology.
- (C) Aquis has agreed to provide, and the Client has agreed to take and pay for Aquis’s technology and services, subject to the terms and conditions of this Agreement.

It is agreed as follows:

### 1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement and in any other documents into which this Agreement is incorporated.

“**Additional Services**” means the services described on the Order Form under the heading “Additional Services”.

“**Applicable Law**” means all laws, rules, regulations or other requirements of regulatory authorities, as amended from time to time, that are applicable to one or both parties.

“**Aquis**” means the Aquis Exchange Plc, incorporated and registered in England and Wales with company number 07909192 whose registered office is 63 Queen Victoria Street, London, England, EC4N 4UA.

“**Authorised Users**” means those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services and the Documentation.

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

“**Charges**” means the fees payable for the various Services as set out on the Order Form.

“**Client**” means an individual, organisation, or business entity that intends to utilise Aquis’s technology in its operational framework and is subject to the terms and conditions of this Agreement.

“**Client Data**” means the data inputted by the Client, Authorised Users, or Aquis on the Client’s behalf for the purpose of using the Services or facilitating the Client’s use of the Services.

“**Confidential Information**” means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 15.1.

“**Control**” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and the expression change of Control shall be construed accordingly.

“**Consultancy Services**” means the services described on the Order Form under the heading “Consultancy Services”, as set out from time to time in one or more Statements of Work.

“**Data Processing Agreement**” means the data processing agreement specified in the Order Form and available at the URL mentioned therein.

“**Deliverables**” means the tangible and intangible items or services, including but not limited to technology products, software, hardware solutions and services, that Aquis shall provide to the Client under the terms of this Agreement.

“**Documentation**” means the documents made available to the Client by Aquis from time to time which sets out a description of the Licensed Software and the user instructions for the Licensed Software.

“**Effective Date**” means the date of the Order Form that incorporates this Agreement.

“**Force Majeure Event**” means an event as described at clause 19 of this Agreement.

“**General Terms**” means this document.

“**Heightened Cybersecurity Requirements**” means any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Client or an Authorised User (but not Aquis) relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

“**Hosting Services**” means the hosting services described in a Statement of Work entered into between the Client and Aquis executing in substantially the format set out at [insert URL], setting out the agreed Charges and scope.

“**Initial Term**” means the initial term of this Agreement as set out in the Order Form.

“**Licence Fees**” means the fees payable by the Client to Aquis in relation to the Licensed Software, as identified on the Order Form under the heading “Licensed Software”.

“**Licensed Software**” means the software applications described on the Order Form under the heading “Licensed Software”.

“**Live Services**” means the services described on the Order Form under the heading “Live Services”.

“**New Version**” means a version of the Licensed Software that is more recent than the version being used by the Client.

“**Order Form**” means the data order form supplied to them by Aquis, which is mutually agreed upon in writing between Aquis and the Client as amended from time to time in connection with this Agreement.

**“Pre-Launch Services”** means the services described on the Order Form under the heading “Pre-Launch Services”.

**“Renewal Period”** means the period by which the term of this Agreement can be extended at a time, as set out in the Order Form.

**“Representatives”** means, in relation to a party, its employees, agents, officers, contractors, subcontractors, representatives and advisers.

**“Service Level Agreement”** means the service level agreement available at the URL specified in the Order Form.

**“Services”** means (a) the provision of the Licensed Software; (b) the provision of all other services specified in the Order Form; and (c) all other obligations of Aquis under this Agreement.

**“Statement of Work”** means a statement of work in relation to any Services.

**“Term”** means the period of time from the Effective Date until the date of expiry or termination of this Agreement.

**“Virus”** means any object or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**“Vulnerability”** means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **“person”** includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors or permitted assigns.
- 1.4 The words **“including”**, **“includes”**, **“in particular”**, **“for example”** and words of a similar effect shall mean without limitation and shall not limit the general effect of the words which precede them; and
- 1.5 A reference to a **“company”** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.10 A reference to an agreement or document includes that agreement or document as properly varied, supplemented, substituted, novated or assigned.

1.11 A reference to **“writing”** or **“written”** includes email.

1.12 References to **“this Agreement”** mean the Order Form and all documents incorporated into it, including the General Terms, the Service Level Agreement and the Data Processing Agreement as well as any other documents specified in the Order Form as being incorporated into it.

1.13 In case of a conflict between any of the provisions of this Agreement, the documents that make up this Agreement shall be interpreted in accordance with the following order of precedence:

- 1.13.1 the General Terms and the Data Processing Agreement;
- 1.13.2 the Order Form;
- 1.13.3 the Service Level Agreement; and
- 1.13.4 any Statement of Work.

1.14 References in the General Terms to clauses and schedules are to the clauses and schedules of the General Terms. References to paragraphs in any document are to paragraphs of the document in which they are referred to.

## 2 Grant of Licence

2.1 Subject to payment of the Licence Fees, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, Aquis hereby grants to the Client a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Licensed Software and the Documentation during the Term solely for the Client’s internal business operations. The Client shall be liable for any acts or omissions of the Authorised Users as if they were the Client’s own acts or omissions.

2.2 The Client shall, and shall ensure that Authorised Users, take all reasonable measures to ensure the security of the Licensed Software, including:

- 2.2.1 keeping passwords confidential;
- 2.2.2 ensuring access is blocked for any person who is not an Authorised User; and
- 2.2.3 taking reasonable precautions, in line with best industry practice, to prevent the introduction of any Virus or Vulnerability into Aquis’s network and information systems.

2.3 The Client shall not, and shall ensure that the Authorised Users shall not:

- 2.3.1 except as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Licensed Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Licensed Software; or

- 2.3.2 access all or any part of the Licensed Software and Documentation in order to build a product or service which competes with the Licensed Software and/or the Documentation; or
- 2.3.3 subject to clause 27.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Licensed Software and/or Documentation available to any third party except the Authorised Users, or
- 2.3.4 attempt to obtain, or assist third parties in obtaining, access to the Licensed Software and/or Documentation, other than as provided under this clause 2; or
- 2.3.5 knowingly introduce or permit the introduction of any Virus or Vulnerability into Aquis's network and information systems.

- 2.4 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Licensed Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Aquis.
- 2.5 The rights provided under this clause 2 are granted to the Client only and shall not be considered granted to any subsidiary or holding company of the Client.

**3 Additional environments**

- 3.1 The Client may, from time to time during any Term, request additional environments for the Licensed Software beyond the number set out in the Order Form. Any such request shall be made in writing to Aquis, Aquis shall evaluate such request for additional environments and respond to the Client with approval or rejection of the request (such approval not to be unreasonably withheld).
- 3.2 Where Aquis approves the request, Aquis shall notify the Client of any additional fees payable for the additional environments. If Aquis approves the Client's request for additional environments, Aquis shall notify the Client of the additional fees payable in relation to the additional environments.
- 3.3 The provision of one or more additional environments shall be treated as an Additional Service and such provision will be dependent on execution of a Statement of Work in substantially the format set out at [insert URL], setting out the agreed fees and scope.

**4 New Versions**

- 4.1 Aquis may, at no addition cost to the Client, provide the Client with New Versions of the Licensed Software.
- 4.2 The Client may choose to accept or decline a New Version, but Aquis will not be liable for any breach of this Agreement that would not have happened had the Client accepted a New Version that was offered to it by Aquis.
- 4.3 Aquis reserves the right to recommend that any issue arising out of a version of the Licensed Software that is not the most recent version and has been available to the market for over two years (**End-of-life Version**) is resolved by the implementation of a New Version and Aquis shall be under no obligation to modify or provide a patch, bug fix or other update to an End-of-life Version.

**5 Services**

- 5.1 Aquis shall, during the Term, provide the Services and to the Client on and subject to the terms of this Agreement.

- 5.2 Aquis shall use commercially reasonable endeavours to make the Licensed Software available in line with the Service Level Agreement and provide the Client with the support services as specified in the Service Level Agreement.

- 5.3 If the Order Form specifies that any Pre-Launch Services are included, then these will be provided subject to the Client and Aquis executing a Statement of Work in substantially the format set out at [insert URL], setting out the agreed Charges and scope.

- 5.4 The Client and Aquis may agree that further Additional Services shall be provided under this Agreement provided that the Client and Aquis execute a Statement of Work in substantially the format set out at [insert URL], setting out the agreed Charges and scope.

**6 Hosting Services**

- 6.1 The terms of this clause 6 shall only apply if the Order Form specifies that Hosting Services (as Additional Services) are provided under this Agreement.

- 6.2 Aquis shall use reasonable endeavours to maintain the availability of the Hosting Services in accordance with the Service Level Agreement. Downtime caused directly or indirectly by any of the following shall not be counted as a lack of availability nor will it be considered a breach of this Agreement:

- 6.2.1 a Force Majeure Event;
- 6.2.2 a fault or failure of the internet or any public telecommunications network;
- 6.2.3 a fault or failure of the Client's computer systems or networks;
- 6.2.4 any breach by the Client of this Agreement; or
- 6.2.5 scheduled maintenance carried out in accordance with this Agreement.

- 6.3 Where Aquis is providing Hosting Services, Aquis will be responsible for:

- 6.3.1 maintaining the integrity of the platform, providing management Information and reporting on key system resource performance indicators; and
- 6.3.2 performing daily infrastructure health checks, including:
  - (a) system monitoring;
  - (b) start-of-day and end-of-day platform health checks; and
  - (c) capacity and performance monitoring.

**7 Consultancy Services**

- 7.1 The terms of this clause 7 shall only apply if the Order Form specifies that Consultancy Services (as Additional Services) are provided under this Agreement.

- 7.2 The Client acknowledges that (save to the extent that Aquis has expressly agreed in a Statement Work to advise the Client thereon as part of the Consultancy Services) it is the Client's responsibility for obtaining advice in respect of any other specialist areas including (but not limited to) law, accounting, tax and public relations. The Client acknowledges that Aquis shall not incur any liability to the Client in respect of any services or advice provided to the Client by persons other than Aquis.

- 7.3 Aquis is authorised by the Client to do anything which is reasonably necessary either to carry out the Consultancy Services (including but not limited to acting

as the Client's agent in negotiations and giving instructions to other persons on the Client's behalf and other dealings with third parties) or to comply with any applicable regulations as may reasonably be appropriate. The Client agrees to ratify and confirm everything done by Aquis in the exercise of any such power or discretion.

- 7.4 Where the Consultancy Services involve the giving of advice, Aquis shall use reasonable endeavours to ensure that such advice or information is accurate, but the Client acknowledges that such advice will often be based on information provided to Aquis which is incomplete and unverified.
- 7.5 Aquis shall be under no duty to disclose to the Client any information which comes to its notice in the ordinary course of its business other than in the course of the proper performance of its duties to the Client. Where information is disclosed, it shall only be disclosed to the extent that it does not entail the breach of any duty of confidence which may be owed by Aquis to any other person.
- 7.6 Aquis is entitled to assume that any instructions, notices, authorisations, commitments or requests (whether in writing or not and however communicated to Aquis) have been properly authorised by the Client if they are given or purport to be given by an individual or person who is or purports to be and is reasonably believed by Aquis to be authorised by the Client to give such instructions, notices, authorisations, commitments or requests.
- 7.7 The Client undertakes that it will promptly provide or procure the provision to Aquis of all the information concerning its business and affairs which is relevant for the proper provision of the Consultancy Services and all such further information as Aquis reasonably request and that the Client will promptly correct any information so provided to Aquis if it subsequently appears that any such information was or has become inaccurate or misleading in any respect.
- 7.8 The Client confirms that it has the right to supply such information to Aquis and that the supply of such information by the Client and its receipt and use by Aquis for the purposes of the Consultancy Services, will not infringe any rights held by any third party, involve the unauthorised use of confidential information belonging to a third party or result in a breach by the Client or Aquis of any applicable regulations, intellectual property rights, or other legal duty owed to any third party.
- 7.9 Where the Client supplies documentation or other information to Aquis, if it is for publication to third parties or for use by Aquis in verifying matters for publication to third parties or is or may be material in the context of any regulatory application or matter connected with the Consultancy Services, the Client undertakes that such information or documentation when taken as a whole and each statement of fact in it will be true, fair and accurate in all material respects and not misleading, that every statement of opinion, intention or expectation in it will be honestly held and fairly based, and that there will be no facts not disclosed in such information or documentation which by their omission make any statement in it misleading.
- 7.10 The Client undertakes that, if anything comes to its attention after passing such documentation or other information to Aquis which renders any statement in it untrue, unfair or misleading, the Client will promptly notify Aquis and so far, as possible take the steps Aquis may require to correct such statement. Should the Client not promptly take such steps, Aquis shall be entitled to take such action as it considers reasonable, necessary or appropriate, including the publication of any correcting statement in circumstances in which Aquis would or might otherwise infringe any applicable regulation or incur any liability or penalty.

## 8 Data protection

- 8.1 The Client and Aquis will comply with the terms of the Data Processing Agreement, as well as ensure general data protection compliance.

## 9 Third-party providers

- 9.1 The Client acknowledges that the Services may enable or assist it to access content from databases, websites, third-party systems and/or software applications maintained by third parties and that it does so solely at its own risk. Aquis makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, third-party systems, software applications or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into, and any transaction completed via any third-party website, third-party systems and/or software applications is between the Client and the relevant third party, and not Aquis. Aquis recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Aquis does not endorse or approve any third-party website, third-party systems and/or software applications nor the content of any of the third-party website, system or software application made available via the Services.

## 10 Aquis's obligations

- 10.1 Aquis undertakes that the Services will be performed with reasonable skill and care and that the Licensed Software will perform substantially in accordance with the Documentation.
- 10.2 The undertaking at clause 10.1 shall not apply to the extent of any non-conformance which is caused by use of the Services or Licensed Software contrary to Aquis's instructions, failure by the Client to implement a New Version of the Licensed Software, or modification or alteration of the Licensed Software by any party other than Aquis or Aquis's duly authorised contractors or agents. If the Services or Licensed Software do not conform with the foregoing undertaking, Aquis will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 10.1.
- 10.3 Aquis does not warrant that:
  - 10.3.1 the Client's use of the Services will be uninterrupted or error-free;
  - 10.3.2 the Licensed Software or the Services will be free from Vulnerabilities or viruses; or
  - 10.3.3 the Licensed Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.
- 10.4 Aquis is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.5 In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against Aquis shall be for Aquis to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data that may be maintained by Aquis. Aquis shall not be responsible for any loss,

destruction, alteration or disclosure of Client Data caused by any third party.

- 10.6 Aquis warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 10.7 This Agreement shall not prevent Aquis from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

## 11 Client's obligations

11.1 The Client shall:

11.1.1 provide Aquis with:

- (a) all necessary co-operation in relation to this Agreement; and
- (b) all necessary access to such information as may be required by Aquis;

in order to provide the Services, including but not limited to Client Data, security access information and configuration services;

11.1.2 without affecting its other obligations under this Agreement, comply with all Applicable Law with respect to its activities under this Agreement;

11.1.3 carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, Aquis may adjust any agreed timetable or delivery schedule as reasonably necessary;

11.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

11.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Aquis, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

11.1.6 ensure that its network and systems comply with the relevant specifications provided by Aquis from time to time; and

11.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems (and the systems of its clients) to Aquis's data centres where such links are required in order to provide the Live Services or Hosting Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

11.2 The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.

## 12 Charges and payment

12.1 The Client shall pay the Licence Fees to Aquis for the Licensed Software in accordance with this clause 12.

12.2 The Client shall on the Effective Date provide to Aquis approved purchase order information acceptable to Aquis and any other relevant valid, up-to-date and complete contact and billing details. Aquis shall be entitled to invoice the Client for each category of Charges in accordance with the frequency specified against that category of Charges on the Order Form.

12.3 The Client shall pay each invoice within thirty (30) days after the date of such invoice.

12.4 If Aquis has not received payment of any undisputed invoice within sixty (60) days after the due date, and without prejudice to any other rights and remedies of Aquis, suspend the Client's access to the Licensed Software and/or suspend performance of any other part of the Services, and Aquis shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

12.5 Aquis may increase any or all of the Charges applicable to a Renewal Period at any time by giving notice to the Client at least six months before the commencement of that Renewal Period. All amounts and fees stated or referred to in this Agreement:

12.5.1 shall be payable in the currency specified on the Order Form;

12.5.2 are, subject to clause 17.3.2, non-cancellable and non-refundable;

12.5.3 are exclusive of value added tax, which shall be added to Aquis's invoice(s) at the appropriate rate.

## 13 Proprietary rights

13.1 The Client acknowledges and agrees that Aquis and/or its licensors own all intellectual property rights in the Licensed Software, the Documentation and, unless expressly agreed otherwise in writing, any deliverables created as part of the Services. Except as expressly stated herein, this Agreement does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Licensed Software, the Documentation or the Services.

13.2 Aquis confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

## 14 Escrow

14.1 Aquis shall create and maintain in a secure environment, a copy of the source code of the latest release of the Licensed Software.

14.2 In the event that this Agreement is terminated as a result of Aquis experiencing the circumstance contemplated in clauses 18.3.5 to 18.3.7, or as a result of a Force Majeure Event (as defined at clause 14.3), then a copy of the source code of the Software shall be released to the Client by Aquis for the Client's own use in accordance with the license granted hereunder.

14.3 For the purpose of this clause 14, a Force Majeure Event is an event beyond the reasonable control of Aquis having exercised reasonable endeavours to mitigate the effects of the same but not including (i) any event caused by the negligence of Aquis, (ii) any cause or occurrence which Aquis could reasonably circumvent or otherwise mitigate, or (iii) delays, stoppages, or any other interference with the performance of the Services caused by the circumstance contemplated in clause 18.3.

## 15 Confidentiality

- 15.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with any part of the Services (including the Licensed Software), including:
- 15.1.1 the terms of this Agreement;
  - 15.1.2 any information that would be regarded as confidential by a reasonable businessperson relating to:
    - (a) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
    - (b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
  - 15.1.3 any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
    - (a) details of the Licensed Software, and the results of any performance tests of the Licensed Software, shall constitute Aquis Confidential Information; and
    - (b) Client Data shall constitute Client Confidential Information.
- 15.2 The provisions of this clause shall not apply to any Confidential Information that:
- 15.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
  - 15.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 15.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - 15.2.4 the parties agree in writing is not confidential or may be disclosed; or
  - 15.2.5 is developed by or for the receiving party independently of, and without using or referring to any knowhow obtained from, the information disclosed by the disclosing party.
- 15.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- 15.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
  - 15.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 15.
- 15.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 15.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 15.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 15.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 15.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 15.6 A party may, if it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.
- 15.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.
- 15.8 On termination or expiry of this Agreement, each party shall:
- 15.8.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
  - 15.8.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
  - 15.8.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 18.
- 15.9 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction, save that Aquis may publish such information in anonymised form that does not reveal the identity of the Client for marketing purposes.
- 15.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 15.11 The above provisions of this clause 14 shall continue to apply after termination or expiry of this Agreement.
- 16 Indemnity**
- 16.1 The Client shall defend, indemnify and hold harmless Aquis against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising

out of or in connection with the Client's use of the Services and/or Documentation, provided that:

- 16.1.1 the Client is given prompt notice of any such claim;
  - 16.1.2 Aquis provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - 16.1.3 the Client is given sole authority to defend or settle the claim.
- 16.2 Aquis shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- 16.2.1 Aquis is given prompt notice of any such claim;
  - 16.2.2 the Client does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Aquis in the defence and settlement of such claim, at Aquis's expense; and
  - 16.2.3 Aquis is given sole authority to defend or settle the claim.
- 16.3 In the defence or settlement of any claim, Aquis may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 16.4 In no event shall Aquis, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 16.4.1 a modification of the Services or Documentation by anyone other than Aquis;
  - 16.4.2 the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by Aquis;
  - 16.4.3 the Client failing to implement a New Version of the Licensed Software; or
  - 16.4.4 the Client's use of the Services or Documentation after notice of the alleged or actual infringement from Aquis or any appropriate authority.
- 16.5 The foregoing states the Client's sole and exclusive rights and remedies, and Aquis's (including Aquis's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

## 17 Limitation of liability

- 17.1 Except as expressly and specifically provided in this Agreement:
- 17.1.1 the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. Aquis shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Aquis by the Client in connection with the Services, or any actions taken by Aquis at the Client's direction;

17.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Agreement; and

17.1.3 the Services and the Documentation are provided to the Client on an "as is" basis.

17.2 Nothing in this Agreement excludes the liability of Aquis:

17.2.1 for death or personal injury caused by Aquis's negligence;

17.2.2 for fraud or fraudulent misrepresentation; or

17.2.3 for any other liability that cannot legally be excluded or limited.

17.3 Subject to clause 17.1 and clause 17.2:

17.3.1 Aquis shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for

(a) any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or

(b) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

17.3.2 Aquis' total aggregate liability in contract (including in respect of the indemnity at clause 16.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to a sum equal to the total Charges payable during the calendar month in which the first claim arose.

17.4 Nothing in this Agreement excludes the liability of the Client for any breach, infringement or misappropriation of Aquis's Intellectual Property Rights.

## 18 Term and termination

18.1 This Agreement shall, unless otherwise terminated as provided in this clause 18, commence on the Effective Date and shall terminate upon expiry of the Initial Term, unless:

18.1.1 the parties agree to extend the term by a Renewal Period; or

18.1.2 otherwise terminated in accordance with the provisions of this Agreement.

18.2 Aquis may terminate this Agreement in whole or in part at any time by giving not less than four weeks' notice in writing to the Client if the Client undergoes or has announced or it is realistically anticipated to undergo a change of Control within three months.

18.3 If the Statement of Work for any Services indicates that such Services have a different term from the Term, then the Statement of Work shall prevail in relation to those Services only and the term of such Services will be as stated in the Statement of Work.

18.4 Without affecting any other right or remedy available to it, either party may terminate this Agreement in full or in part with immediate effect by giving written notice to the other party if:

18.4.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 60

- days after being notified in writing to make such payment;
- 18.4.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of sixty days after being notified in writing to do so;
- 18.4.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 18.4.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 18.4.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 18.4.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 18.4.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 18.4.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 18.4.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 18.4.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 18.4.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.3.3 to clause 18.3.10(inclusive);
- 18.4.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 18.4.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 18.5 On termination of this Agreement for any reason:
- 18.5.1 all licences granted under this Agreement shall immediately terminate and the Client shall immediately cease all use of the Services and/or the Documentation;
- 18.5.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 18.5.3 Aquis may destroy or otherwise dispose of any of the Client Data in its possession unless Aquis receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. Aquis shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by Aquis in returning or disposing of Client Data;
- 18.5.4 notwithstanding anything in clause 18.4.2 or 18.4.3, where Hosting Services are being provided, Aquis shall retain a copy of all data in its possession for a period of seven years unless otherwise instructed by the Client; and
- 18.5.5 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 19 Force majeure**
- 19.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, including interruption or failure of utility service including to electric power, gas, water, internet, cloud services or telephone service. The time allocated for the performance of these obligations shall be extended proportionately to accommodate the duration of delay or non-performance. If the period of delay or non-performance continues for three months, the party not affected may terminate this Agreement by giving thirty (30) days' written notice to the affected party.
- 20 Anti-bribery**
- 20.1 Aquis shall, during the term of this Agreement, comply with all Applicable Law relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (**Anti-Bribery Laws**), and notify the Client in writing if it becomes aware of any breach of Anti-Bribery Laws.
- 21 Conflict**
- 21.1 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.
- 22 Variation**



22.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22.2 If there are any changes to Applicable Law that have a direct impact on any provision of this Agreement, Aquis reserves the right to review this Agreement and negotiate any required variations to this Agreement to ensure compliance and enforceability. The Client shall not unreasonably refuse consent to any such variation and shall provide all reasonable cooperation in ensuring the agreement and execution of such variation.

### **23 Waiver**

23.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

23.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

### **24 Rights and remedies**

24.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **25 Severance**

25.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

25.2 If any provision or part-provision of this Agreement is deemed deleted under clause 25.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **26 Entire agreement**

26.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

26.2 Each party acknowledges that in entering into this 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 this Agreement.

26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **27 Assignment**

27.1 Neither party shall, without the prior written consent of the other party, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

### **28 No partnership or agency**

28.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **29 Third party rights**

29.1 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **30 Counterparts**

30.1 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.

30.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement.

30.3 No counterpart shall be effective until each party has provided to the others at least one executed counterpart.

### **31 Notices**

31.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

31.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

31.1.2 sent by email to the addresses specified in the Order Form (or an address substituted in writing by the party to be served).

31.2 Any notice shall be deemed to have been received:

31.2.1 if delivered by hand, at the time the notice is left at the proper address;

31.2.2 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

31.2.3 if sent by email, at the time of transmission, or, if the time of transmission is not on a Business Day or falls outside the hours of 9:00 am to 6:00 pm in the place of receipt, at 9:00 am on the next Business Day.

31.3 This clause 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.

### **32 Governing law**

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

### **33 Jurisdiction**

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