

# Website Services and Licence Terms and Conditions

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VAT Reg no. GB 665 825011

These are the standard terms and conditions of NetXtra Limited (“we”, “us” or “our”) upon which we will provide you the customer (“you” or “your”) with website services and associated software licences.

## 01. Definitions and Interpretation

1.1 In these terms and conditions the following words and phrases shall have the following meanings unless the context requires otherwise:-

“Acceptance Test”	the acceptance tests using test data to be carried out by you in accordance with the procedures set out in Clause 4.6 below;
“Agreement”	the agreement between you and us for the provision of the Services as set out in the Contract Documentation;
“Business Day”	A day (other than a Saturday or Sunday) on which the clearing banks are open for business in the City of London;
“Change Control Procedure”	the procedure set out in Clause 15;
“Commencement Date”	the date of this Agreement;
“Completion”	the completion of the provision of the Services in accordance with the Contract Documentation;
“Confidential Information”	as defined in clause 6.4;
“Content”	the information, text, media content, materials, features, products, services, advertisements and promotions to be provided by you and to be incorporated into the Website;
“Contract Documentation”	these terms and conditions, the Specification and any documents referred to in the Specification as comprising part of the Contract Documentation;

“Contract Note”	the NetXtra confirmation of contract note signed by you in relation to this Agreement;
“Deliverables”	the products described in the Specification, the Documentation, computer programs software licences, network protocols and all other works to be provided by us in accordance with the Contract Documentation;
“Documentation”	any documents to be provided by us to you in accordance with the Specification;
“Fees”	The fees payable to us for the provision of the Services as varied by us pursuant to these Conditions together with any fees we may collect pursuant to these Conditions;
“GPL”	software which is freely available to the public under the GNU General Public Licence;
“Implementation Plan”	the implementation plan for the development of the Website as set out in the Specification, as it may be varied by agreement from time to time by the parties as a Variation pursuant to the Change Control Procedure;
“Input Material”	the material to be provided by you referred to in clause 3.1 below;
“Internet”	the global computer network comprising interconnected networks using standard sets of rules that regulate the way data is transmitted between computers;
“IPR Claim”	as defined in clause 13.1 below;
“Key Milestone”	any event and associated date identified as a “Key Milestone” in the Specification;
“Limitation of Liability”	as defined in clause 8.3 below;
“Output Material”	the material referred to in clause 6.1.2 below;
“Services”	the design, build, support, licence and consultancy services to be provided by us to you in accordance with the Contract Documentation and such other professional or consultancy services as you may from time to time request from us and which we agree in writing to provide;
“Specification”	the specification to be agreed in writing pursuant to clause 4.4 below;
“Variation”	any change to the Contract Documentation following agreement reached between the parties in accordance with the Change Control Procedure;
“Website”	A site at which text, graphics, data, files and information are stored electronically on web pages and Server and access to which is made available to third parties via the Internet;

- 1.2 To the extent there is any conflict between these terms and conditions and the Specification, the provisions of the terms and conditions shall prevail.
- 1.3 Headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions.

## 02. The Services

- 2.1 In consideration of you paying to us the Fees in accordance with the provisions of these Conditions we will provide you with the Services.

## 03. Your Obligations

- 3.1 Unless otherwise agreed in writing you shall at your own expense supply us with all necessary documents including your detailed brief/proposal document specifying your requirements together with all programs or other materials, and all necessary data or other information relating to the Services (“Input Material”), within sufficient time to enable us to provide the Services in accordance with these terms and conditions. You shall be responsible for the accuracy of such Input Material.
- 3.2 You will;
  - 3.2.1 afford us such access to your information records and other material as we may reasonably require to provide the Services;
  - 3.2.2 make available to us appropriate personnel to liaise with us to enable us to properly perform our obligations under the terms of this Agreement;
  - 3.2.3 at your own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. We will not be liable in the event of loss or damage to the Input Material howsoever such loss or damage may have been caused.
- 3.3 You will comply with such of your obligations as are set out in these terms and conditions

## 04. Our Rights and Obligations

- 4.1 We may at any time make any changes to the Services that are necessary to comply with any applicable safety, security or other statutory or regulatory requirements.
- 4.2 We shall be entitled in our absolute discretion to decide the number of and which of our employees shall provide the Services on our behalf who shall all be sufficiently skilled to carry out our obligations.
- 4.3 Both parties expressly acknowledge and agree that in performance of the Services, we are an independent contractor and not an employee, partner, joint author or joint venture with or of you. Save for Input Material, Content, or third party IPR and as otherwise agreed in writing we shall be deemed the sole author and owner of all associated computer codes, and supporting systems and their attendant intellectual property rights whether or not

incorporated into the Website designed in accordance with these terms and conditions.

- 4.4 We will following the Commencement Date scope and write the Specification in conjunction with you. The final form Specification will be agreed in writing with you. In the event that we fail to agree a Specification and either party has given to the other not less than 5 Business Days' written notice of its intention to do so that party may terminate this Agreement at any time thereafter by serving written notice on the other party. All Fees incurred prior to termination will be due and payable in full.
- 4.5 Once the Specification has been agreed pursuant to clause 4.4 we will:
  - 4.5.1 use our reasonable endeavours to provide the Services in a timely and efficient manner in accordance with the Implementation Plan;
  - 4.5.2 design, create and, edit the Website in accordance with the Specification; and
  - 4.5.3 provide security for the Website in accordance with any specific security provisions detailed in the Specification.
- 4.6 Upon completion of the Deliverables and the Implementation Plan, we shall submit the Deliverables to you so that you can test them to ensure that we have completed the project as set out in the Specification ("Acceptance Tests"). The Deliverables shall be deemed to have passed your Acceptance Tests if you have not notified us in writing of any failure to do so within 90 days of us notifying you in writing that the Deliverables are available for testing. In the event of any material failure to pass the Acceptance Tests we shall, subject to the provisions of clause 16, use our reasonable endeavours to rectify any defects notified by you to us in writing with reasonable detail and re-submit the Deliverables to you as soon as is reasonably possible.
- 4.7 We shall use our reasonable endeavours to ensure that each Key Milestone shall be achieved by the dates set out in the relevant section of the Implementation Plan or as otherwise agreed to as a Variation during the course of implementation of the Services.
- 4.8 We shall comply with such of our obligations as are set out in these terms and conditions.

## 05. Financial Provisions

- 5.1 Subject to the provisions of these terms and conditions we shall be entitled to invoice the Fees to you for the relevant Services according to the payment timetable specified in the Contract Note. We will be entitled to charge such reasonable additional fees incurred by us as a result of your instructions or lack of instructions, any Variation and the inaccuracy of any material provided

by you or on your behalf or any other cause attributable to you. You shall pay the Fees and any additional sums without any set off or other deduction.

- 5.2 All invoices are payable net 30 days from receipt of the appropriate invoice.
- 5.3 All of our Fees and charges are exclusive of any Value Added Tax or other sales tax, for which you shall be additionally liable at the applicable rate from time to time.
- 5.4 If payment is not made on the due date, we shall be entitled, without limiting any other rights we may have, to charge interest on the outstanding amount both before and after any judgment at an annual rate of 4 per cent above the base rate of Barclays Bank Plc from time to time or such other clearing bank nominated by us and such interest will be calculated on a daily basis and will accrue from the due date until the outstanding amount is paid in full. If payment is not made on the due date, we shall be entitled, without limiting any other rights we may have, to charge interest on the outstanding amount both before and after any judgement at an annual rate of 4 per cent above the base rate of Lloyds Bank plc from time to time or such other clearing bank nominated by us and such interest will be calculated on a daily basis and will accrue from the due date until the outstanding amount is paid in full.

## 06. Confidentiality and Proprietary Rights

- 6.1 Save as otherwise provided, the property and any copyright or other intellectual property rights in:-
  - 6.1.1 any Input Material supplied by you to us will belong to you;
  - 6.1.2 any of our software, specifications, material, procedures, data or intellectual property rights used in the preparation of or which are embedded within the material produced by us ("Output Material") shall remain our property;
  - 6.1.3 any software or components, such as a CMS, incorporated into a solution which is licenced under the GPL shall remain under and subject to the GPL licence when used.
- 6.2 In consideration of you paying to us the Fees and any additional charges that are due to us pursuant to clause 5.1 above we hereby grant to you a world-wide non-exclusive licence to use all and any of our specified software (if any), material, procedures or data that comprise part of the Output Material for the purposes of using or maintaining the Website detailed in the Specification and for you to permit third parties to carry out such functions for the duration of this agreement.
- 6.3 You warrant that any material supplied by you and its use by us for the purpose of providing the Services will not infringe the copyright or other rights of any third party, and you will indemnify us (on a full indemnity basis) against

any loss, damages, costs, expenses or other claims arising from any such infringement.

- 6.4 The parties to this Agreement acknowledge that during the term of this Agreement each may have access to material and information which is proprietary, confidential and/or a trade secret of the other including, without limitation, information relating to web design, the Website detailed in the Specification or to the other's operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs ("Confidential Information").
- 6.5 The parties to this Agreement will:
- 6.5.1 not use, copy, reproduce or otherwise deal with such Confidential Information received from the other party for a purpose other than the performance of its obligations under this Agreement;
- 6.5.2 not disclose Confidential Information received from the other party to a person except with the prior written consent of the other, except information which:
- (a) is required to be disclosed by law, by a court of competent jurisdiction or by a regulatory body with authority over its business;
  - (b) is at the Commencement Date or at any time after the Commencement Date comes into the public domain other than through breach of this Agreement by the party gaining the information;
  - (c) can be shown by the party gaining the information to have been known by that party before disclosure to it; or
  - (d) subsequently comes lawfully into the possession of that party from a third party;
- 6.5.3 return any documents or other physical or electronic items embodying any Confidential Information received from the other party to the other, or destroy such documents on termination of this Agreement; and
- 6.5.4 not make any press announcements concerning or publicise this Agreement or its contents in any way or use the other party's name or brand in any promotion or marketing or announcement of orders without your written consent of the other party which shall not be unreasonably withheld or delayed.
- 6.6 Each party may disclose Confidential Information to its employees or agents to the extent reasonably necessary for the purposes of this Agreement.
- 6.7 The parties to this Agreement shall ensure that each person who receives Confidential Information is made aware of and complies with the obligations of confidentiality under this Agreement as if that person were a party to this Agreement.

## 07. Non Solicitation

You hereby undertake to us that during the currency of this Agreement and for a period of six months following its termination for whatever reason you will not directly or by your agent or otherwise and whether for yourself or for the benefit of any other person employ or engage any of our contractors, officers or employees or induce or endeavour to induce any of our officers or employees to leave his or her employment.

## 08. Warranties and Liability

- 8.1 We warrant to you that the Services will be provided using reasonable care and skill as would be expected from a leading company within our relevant industry or business sector and that they will be of satisfactory quality.
- 8.2 We will have no liability to you for any loss, damage, costs, expenses or other claims for compensation arising from (a) any Input Material or (b) any instructions supplied by you which are incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or arising from their late arrival or non-arrival, or any other fault of you.
- 8.3 Except as expressly provided, we will not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of any contract, for any loss of profit or any indirect, special or indirect loss, damage, costs, expenses, loss of anticipated profits or expected future business, damage to reputation or goodwill, loss of any order or contract, loss of data, business, interruption or damages or costs payable by you to any third party or other claims (whether caused by our negligence or that of our servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by you, and our entire liability under or in connection with this Agreement pursuant to the terms of this Agreement shall not exceed 150% (one hundred and fifty percent) of the price payable by you to us for the Services in the 12 months immediately preceding the date on which the event giving rise to the claim arose ("Limitation of Liability"). The restrictions in this Agreement shall not apply to any claim relating to personal injury caused by our negligence or the negligence of those for whom we are, in law, responsible for nor shall they apply to the extent that any such restriction is prohibited by law.
- 8.4 Notwithstanding the above, nothing shall prevent you from recovering damages for direct loss up to the Limitation of Liability.
- 8.5 We shall effect and maintain (for so long as the same continues to be available generally in the market at commercially reasonable rates) with a reputable insurance company (which is properly authorised under all appropriate United Kingdom statutes or statutory provisions to provide insurance services) professional indemnity insurance for a minimum of

£1,000,000 on any one claim and shall maintain such insurance during the carrying out of the Services and for a period of 1 year from completion.

- 8.6 As and when reasonably requested to do so by you we shall produce for inspection documentary evidence that the insurance policy is being maintained.

## 09. Termination

- 9.1 These terms and conditions shall come into force upon the Commencement Date.
- 9.2 Either party shall be entitled to terminate this Agreement immediately by written notice to the other party if:
- 9.2.1 the other party commits a material breach of any material provision of this Agreement and fails (in the case of any such breach which is capable of being remedied) to remedy the same within 30 days from receipt of a written notice specifying the nature of such breach and requiring the other party to remedy the same;
  - 9.2.2 an encumbrancer takes possession or a receiver is appointed over any of the property or the assets of the other party;
  - 9.2.3 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - 9.2.4 the other party goes into liquidation or if any steps are taken to liquidate the other party (except for the purpose of an amalgamation or a reconstruction and in such a manner that the entity resulting there from effectively agrees to be bound by the terms and conditions of this Agreement);
  - 9.2.5 the other party ceases or threatens to cease to carry on business; or
  - 9.2.6 the other party suffers any similar or analogous action to those set out in Conditions 9.2.1 to 9.2.4 above.
- 9.3 Any termination of this Agreement will be without prejudice to any other rights or remedies a party may be entitled to thereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 9.4 Upon termination of this Agreement for whatever reason other than by you in accordance with condition 9.2.2 to 9.2.5 all outstanding fees and expenses owed by you to us for the work done prior to termination whether under the

terms of this Agreement or under any other agreement shall forthwith become due and payable.

- 9.5 Subject as otherwise provided herein to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement upon its termination.
- 9.6 On termination of this Agreement you shall at your own expense immediately return to us, or as we may alternatively instruct, dispose of, all copies of all documents, papers, specifications, handbooks, instructions and computer programs whatsoever and all other property of ours in your possession or under your control and not intended under the terms of this Agreement to remain in your possession, and you shall certify in writing to us that the same has been done.
- 9.7 In the event that any Fees or other sums due to us in accordance with terms of this Agreement are not paid by you when payable under the terms of this Agreement the licence granted to you under clause 6.2 shall forthwith be suspended until payment is made in full. remain in your possession, and you shall certify in writing to us that the same has been done.

## **010. Risk and Title**

- 10.1 Title in any software storage medium, document, paper or materials on which any part of the Deliverables supplied to you under the terms of this Agreement is created, developed, written or prepared and which prior to supply is our property shall pass to you immediately on the later of the payment of all Fees, costs charges and expenses due to us under this Agreement and the passing the relevant Acceptance Tests in respect of the relevant part of the Website for which such item is supplied.
- 10.2 Risk in the items referred to in clause 10.1 shall pass to you on supply to you of such part.

## **011. Further Obligations and Undertakings**

- 11.1 Upon request, you shall ensure the prompt delivery of the Content and all other information relating to the production of the Deliverables and the use for which it is intended.
- 11.2 By signing this agreement you grant us for the duration of this agreement a non-exclusive, licence to use and copy any intellectual property rights owned by you solely for the purposes of and only in so far as is necessary for the provision of the Deliverables and Services under the terms of this Agreement.

## 012. Intellectual Property Claim

- 12.1 If any IPR Claim is made against you in relation to the Output Material we shall promptly and at our own expense either:
- 12.1.1 procure for you the right to continue using and possessing the Output Material; or
  - 12.1.2 modify or replace the infringing part of the Output Material so as to avoid the infringement or alleged infringement.

## 013. Indemnity

- 13.1 We will defend you from and against any claim or action that the use or possession (in each case in accordance with the terms of the Contract Documentation) of the Output Material or any part of it infringes the intellectual property rights of a third party ("IPR Claim") and provided you comply with the terms of this Agreement shall fully indemnify you from and against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against you as a result of or in connection with such IPR Claim. The foregoing indemnity shall remain in full force notwithstanding any termination of this Agreement.
- 13.2 You will notify us of any IPR Claim forthwith upon you becoming aware of the claim and grant us the right to exclusive control on the defence of and further negotiations related to such claim(s). You will not settle, compromise or pay any claim made against you for which you are seeking our indemnification without our prior written consent. You will also provide us with all reasonable assistance for defending such claim(s) and we will reimburse you for all your reasonable and proper costs incurred by you in doing so.

## 014. Security

- 14.1 You shall ensure that any password or other security information relating to the Website or any equipment of ours is kept secure and confidential and is not disclosed to any third party.

## 015. Change Control Procedure

- 15.1 You may at any time request, or we may at any time recommend any Variation to the Services. Any Variation may only be implemented in accordance with the Change Control Procedure.
- 15.2 Neither of us shall unreasonably withhold consent to any Variation. Until a Variation is effected in accordance with the Change Control Procedure, we

will continue to supply the Services as if such request or recommendation had not been made.

- 15.3 Discussions between us concerning a possible Variation shall result in any one of the following:
- 15.3.1 a request for a Variation from you;
  - 15.3.2 a recommendation for a Variation from us;
  - 15.3.3 no further action being taken.
- 15.4 When either you request or we recommend a Variation, the relevant party discussions shall as appropriate address reasons for the Variation, the price of effecting the Variation, the timetable for effecting the Variation and details of the impact of such a Variation on our provision of the Services.
- 15.5 If both parties agree on the Variation, it shall be made in writing and be signed by both parties and include details of those matters referred to in clause 15.4 above where such issues have been applicable to the proposed Variation

## 016. Input Material

- 16.1 You acknowledge that our ability to provide the Services is dependent upon your full and timely co-operation and the full and timely co-operation and provision of Input Material sources by you from Third Parties. We are not responsible for the effective performance of all or any Input Material nor its ability to work on the website or other platforms created by us in accordance with the Specification in the performance of the Services. You acknowledge and agree that you are responsible for:
- i. the accuracy and completeness of the Input Materials;
  - ii. procuring that all Input Materials effectively link with and work with the website or other platforms created by us in accordance with the Specification; and
  - iii. ensuring that Input Material can process data obtained from the website that is produced in accordance with the Specification.
- 16.2 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of you or one of your other suppliers or contractors or agents for whom we have no responsibility (“a Non-Supplier Defect”), the Deliverables shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect.

## 017. Who are “you”

Our services are provided to the person(s) specified in the Contract Documentation. For the purposes of this agreement “you” will include:

- i. the end user of our Services; and
- ii. where applicable both the third party who has contracted us to provide the Services as their subcontractor for the end user and that end user.
- iii. The terms and conditions apply to all person who fall within the definition of “you”

## 018. Miscellaneous

- 18.1 The Contract Documentation constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, understandings or arrangements between them relating to the provision of the relevant Services. Any variation to this Agreement is valid only if in writing and signed by or on behalf of each party.
- 18.2 Nothing in the Contract Documentation shall create or be deemed to create a partnership or the relationship of employer and employee or principal and agent between the parties.
- 18.3 If any provision of the Contract Documentation shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of the Contract Documentation which shall remain in full force and effect.
- 18.4 You are not entitled to assign delegate transfer or otherwise dispose of your rights and obligations hereunder without our prior written consent.
- 18.5 A waiver by either party of a breach or default of any of the provisions of the Contract Documentation by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by that party.
- 18.6 A failure to exercise or delay in exercising a right or remedy provided by this agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 18.7 Nothing in this agreement shall create any third party rights. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not

affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 019. Notice

- 19.1 All communications between the parties with respect to these Conditions shall be delivered by hand or sent by first class prepaid post (or if the recipient is in another country by prepaid airmail) to the relevant address(es) stated in these Conditions or to such other address as the addressee may from time to time have notified for the purpose of, in accordance with and making specific reference to this Condition, or sent by facsimile transmission or electronic mail.
- 19.2 Communications shall be deemed to have been received:-
- 19.2.1 if sent by first-class post: two Business Days after posting (or seven business days if sent by prepaid mail) exclusive of the day of posting;
- 19.2.2 if delivered by hand: on the day of delivery; and
- 19.2.3 if sent by facsimile transmission or electronic mail at the time of transmission.
- 19.3 In proving service:-
- 19.3.1 by delivery by hand: it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee;
- 19.3.2 by electronic mail or facsimile transmission: it shall be necessary only to prove receipt by the sender of a transmission note or transmission message confirming that the mail message or transmission was duly sent to the correct address/fax number of the recipient; and
- 19.3.3 by first class post: it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this Condition.

## 020. Data Protection

- 20.1 Terms defined in the Data Protection Act 1998 have the same meanings when used in this Condition 20.
- 20.2 Each party to this agreement shall:
- 20.2.1 in connection with this Agreement comply in all respects with the Data Protection Act 1998 (as modified or re-enacted or both from time to time) and

any subordinate legislation made under with the Data Protection Act 1998 from time to time (the “Data Protection Legislation”); and,

20.2.2 not, by any act or omission, place the other in breach of the Data Protection Legislation.

20.3 Where either party acts as a data processor in relation to personal data in relation to which the other is the data controller, the data processor shall:

20.3.1 process those personal data only on the instructions of the other party;

20.3.2 take appropriate technical and organisational measures against unauthorised or unlawful processing of those personal data and against accidental loss or destruction of, or damage to, those personal data; and

20.3.3 take such steps and actions as the data controller may require to enable the data controller to comply with its obligations under the Data Protection Legislation.

20.4 The data controller instructs the data processor in relation to personal data to take such steps in the processing of those personal data as:

20.4.1 the data controller reasonably considers necessary or desirable for the performance of the data processor’s obligations under this Agreement; and

20.4.2 are consistent with the performance of that party’s obligations under this Agreement and the Data Protection Legislation.

## 021. Law

The laws of England shall govern this Agreement. The parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.

## 022. Arbitration

All disputes, differences or questions at any time arising between the parties as to the interpretation of these Conditions or as to any matter or thing arising out of or in connection with these Conditions (which cannot be settled by mutual agreement) shall be referred to a single arbitrator in England who shall be agreed between the parties or, failing such agreement, who shall be appointed at the request of either party by the President for the time being of The Law Society of England and Wales. The arbitration shall be in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.

## 023. Force Majeure

- 23.1 If either party is prevented or delayed in the performance of any of its obligations under the Agreement by any cause preventing it from performing any or all of its obligations which arises from or is attributable to acts events omissions or accidents beyond the reasonable control of the party so prevented (“Force Majeure”) that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure and shall subject to service of such notice have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events.
- 23.2 If either party is prevented from performance of its obligations by reason of Force Majeure for a continuous period in excess of three months the other party may terminate the Agreement forthwith on service of written notice upon the party so prevented in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 23.3 The party claiming to be prevented or delayed in the performance of any of its obligations under the Agreement by reason of Force Majeure shall use its reasonable endeavours to urgently bring the Force Majeure event to a close or to urgently find a solution by which the Agreement may be performed despite the continuance of the Force Majeure event.