

**TERMS AND CONDITIONS FOR THE SUPPLY OF SOFTWARE AS A SERVICE (SAAS) BY
CYTIDEL (“CYTIDEL”)**

EMAIL ADDRESS: INFO@CYTIDEL.COM

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).

1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

1.1 Definitions:

Authorised User: means the user(s) permitted to use the SaaS Services and the content, including Data, generated by, or the output of, the SaaS Services as a part of the Customer's services to its customers.

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

Business Hours: means 9am to 5pm on a Business Day.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7 (Charges and payment).

Claim: any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise.

Commencement Date: has the meaning set out in clause 2.5.

Conditions: these terms and conditions as amended from time to time in accordance with clause **Error! Reference source not found.**

Confidential Information: all information provided by the disclosing Party to the receiving Party concerning the disclosing Party or its Affiliates' business, products or services that is not generally known to the public, including information relating to customers, vendors, trade secrets, prices, products, services, computer programs and other intellectual property and any other information which a Party should reasonably understand to be considered Confidential Information whether or not such information is marked "Confidential" or contains such similar legend by the disclosing Party at the time of disclosure.

Contract: the contract between Cytidel and the Customer for the supply of Services in accordance with these Conditions and the Specification.

Control: shall be as defined Sections 7 and 8 of the Companies Act, 2014, and the expression change of Control shall be construed accordingly.

Customer: the person or firm who utilises Services from Cytidel.

Customer Data: means all data and/or content uploaded to the SaaS Products by Customer (including where applicable Authorised Users), and in all data derived from it. For the avoidance of doubt, Customer Data does not include Usage Data.

Customer Systems: all software and systems used by or on behalf of the Customer, the Customer's Affiliates, any of its or their direct or indirect sub-contractors, or any Authorised User in connection with their provision or receipt of any of the Services or that the Services otherwise, link, inter-operate or interface with or utilize (in each case whether directly or indirectly)

Customer Default: has the meaning set out in clause 6.7.

Data Protection Loss: means any loss, expense, compensation, fine, penalty, liability, damage or costs arising from or in connection to a Data Breach or any other breach of obligation relating to the processing of personal data under this Agreement by the Customer.

Deliverables: the deliverables set out in the Order produced by Cytidel for the Customer.

Free or Trial Services: any Subscribed Services identified as being provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis).

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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.

Notice: any notice or other communication required or permitted under this Agreement.

Order: means Cytadel's quote accepted by Customer via Customer's purchase order or other ordering document received by Cytadel to order Cytadel's SaaS Products, which reference the SaaS Products, pricing, payment terms, quantities, expiration dates and other applicable terms set forth in an applicable Cytadel Specification/Quotation or ordering document.

Permitted Downtime: means scheduled maintenance which Cytidel shall use reasonable endeavours to undertake from [x am] to [x pm] (Irish time),

emergency maintenance or downtime caused in whole or in part by Force Majeure.

Personnel: means in relation to a Customer, any employee, contractor, officer and agent of the Customer

SaaS products: the software-as-a-service products specified in the Order as further described in the Agreement (including any updates and upgrades to the SaaS Products provided by Cytidel in its sole discretion and any software, subsystem and locally installed software agents and connectors that interact with the SaaS Products may be provided by Cytidel in connection with the SaaS Products).

Services: means the SaaS Services and Support Services, to be provided or licence by the SaaS provider to the Customer on the terms and condition set out in the Specification.

Specification/Quotation: the description or specification of the Services provided in writing by Cytidel to the Customer to include the cost of the Services to the Customer and such other commercial terms as Cytidel deems necessary to include.

Subscription Term: the period during which the Customer is subscribed to the SaaS Products, as specified in an Order and which shall begin the commencement date.

Subscribed Services: each cloud service to which the Customer has subscribed as set out in the Order Form (and Subscriber Service shall refer to each respective service separately)

Support Services: the maintenance and technical support services for the SaaS Products provided by Cytidel to its Customers as part of an active SaaS Products subscription.

Third Party Materials: Materials provided, controlled or owned by or on behalf of a third party the use of which is subject to a separate agreement or licence between the relevant third party and the Customer or Cytidel (as applicable) (including such Third Party Materials which may be linked to, interact with or used by the Services) and all other Materials expressly identified as Third-Party Materials.

Trial Abuse Fraud: means when a customer utilising trial services creates fake and/or multiple accounts to take advantage of free trial offers or introductory pricing.

Usage Data: data generated in connection with Customer's access, use and configuration of the SaaS Products and data derived from it.

Virus: anything 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 rearranging, 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: 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 construed accordingly.

Working Days: means any day on which Cytidel are engaged to provide Services to the Customer being any day from Monday to Sunday including bank holidays and public holidays.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3 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.
- 1.4 A reference to **writing** or **written** includes emails.
- 1.5 Any reference to "Contract" or "Agreement" Shall be this contract unless the context provides otherwise.

2. BASIS OF CONTRACT

- 2.1 These Terms and Conditions, and any other terms and policies referred to in the Terms and Conditions, for the agreement between Cytidel (referred to as "SaaS Provider" or "Cytidel") and the user (referred to as "Customer"), collectively referred to as the Parties or each a Party.
- 2.2 The SaaS provider owns or holds the relevant rights to the Cytidel Software and will license the use of the Software as a service to the Customer.
- 2.3 This Agreement sets out the terms upon which the SaaS Provider has agreed to grant a license to the Customer to use the SaaS Services. This Agreement is binding on any use of the Services and applies to the Customer from the time that the SaaS Provider provides the Customer with an account (**Customer's account**) on foot of the Customer Order to access and use the Services (**Commencement Date**).

- 2.4 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.5 The Order shall only be deemed to be accepted when Cytidel issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.6 Any descriptive matter or advertising issued by Cytidel, and any descriptions or illustrations contained in Cytidel's catalogues, brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions and the Specification apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, by dealing with Cytidel and placing an Order, the Customer unequivocally and absolutely submits solely to Cytidel's Conditions and undertakes that they/it shall not dispute the applicability of Cytidel's Conditions which shall always prevail.
- 2.8 Any Quotation given by Cytidel shall not constitute an offer and is only valid as per the date that appears on the Quotation.
- 2.9 A Quotation given by Cytidel to a Customer shall include the whole of an item/task/Service and Cytidel is not obliged to, and shall not, provide an itemised list of components, parts, products or prices etc. included in the Quotation.
- 2.10 Cytidel reserves the right to modify, vary, update or replace any part of these terms and conditions without prior notice. While Cytidel endeavours to provide notice prior to any major amendments to these terms and conditions to the Customer, it is the Customers responsibility to check Cytidel's website periodically for any changes to these terms and conditions. The Customer's continued use of Cytidel Services following any modification to these terms and conditions constitutes the Customer's acceptance of such changes.
- 3. LOGIN ACCESS TO THE SAAS PRODUCTS.**
Customer is solely responsible for ensuring:
- i. that only appropriate Authorised Users have access to the SaaS Products,
 - ii. that such Authorised Users have been trained in proper use of the SaaS Products; and
 - iii. proper usage of passwords, tokens and access procedures with respect to logging into the SaaS Products. For the avoidance of doubt, Customers are

prohibited from sharing Customer Account login and password details or allow use of the Customer's account to those who are not the Customer's Personnel or Authorised User.

- iv. Cytidel reserves the right to refuse registration of, or to cancel, login IDs that it reasonably believes to violate the terms and conditions set forth in this Agreement, in which case Cytidel will promptly inform Customer in writing of such refusal or cancellation. In addition to the rights set forth in this Agreement, Cytidel may suspend Customer's access and use of the SaaS Products if there is an unauthorised use of Services by a third party, unusual and material spike or increase in Customer's use of the SaaS Products and Cytidel reasonably suspects or knows that such traffic or use is unauthorised, fraudulent or materially and negatively impacting the operating capability of the SaaS Products. Cytidel will provide notice prior to such suspension if permitted by applicable law or unless Cytidel reasonably believes that providing such notice poses a risk to the security of the SaaS Products. Cytidel will promptly reinstate Customer's access and use once the issue has been resolved.

4. TRIAL SERVICES.

- 4.1 If Customer is using a free trial, a proof of concept version of the SaaS Products, a beta version of the SaaS Products, or using the SaaS Products on any other free-of-charge basis as specified in an Order including any related support services to the extent provided by Cytidel in its sole discretion (collectively, "**Trial Services**"), Cytidel makes such Trial Services available to Customer until the earlier of:
 - i. the end of the free trial or proof of concept period or beta testing period as communicated by Cytidel or specified in an Order;
 - ii. the start date of any purchased version of such SaaS Products; or
 - iii. written notice of termination from Cytidel ("**Trial Services Period**").
- 4.2 Cytidel reserves the right to cease free or beta services at any point or convert same to a paid subscription service at its sole discretion. Cytidel grants Customer, during the Trial Services Period, a non-exclusive, non-transferable right to access and use the Trial Services for Customer's internal evaluation purposes in accordance with the Services and subject to the access and use restrictions set forth in this Agreement. Customer is authorised to use Trial Services only for evaluation and not for any business or productive purposes, unless otherwise authorised by Cytidel in writing. Any data Customer enters into the Trial Services and any configurations made to the Trial Services by or for Customer during the term of such Trial Services will be permanently lost unless Customer: (a) has purchased a subscription to the same SaaS Products

as covered by the Trial Services; or (b) exports such data or configurations before the end of such free period. There is no guarantee that features or functions of the Trial Services will be available, or if available will be the same, in the general release version of the SaaS Products, and Customer should review the SaaS Products features and functions before making a purchase. Cytidel will be under no obligation to provide Customer any support services with respect to the Trial Services. Notwithstanding anything to the contrary, Cytidel provides the Trial Services “as is” and “as available” without any warranties or representations of any kind. To the extent permitted by law, Cytidel disclaims all implied warranties and representations, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose and non-infringement. Customer assumes all risks and all costs associated with its use of the Trial Services. Customer’s sole and exclusive remedy in case of any dissatisfaction or Cytidel’s breach of the Agreement with respect to such Trial Services is termination of the Trial Services. Any obligations on behalf of Cytidel to indemnify, defend, or hold harmless under this Agreement are not applicable to Customers using Trial Services.

- 4.3 Cytidel reserves the right to terminate or suspend Customer accounts, refuse registration of, or to cancel, login IDs, that it reasonably believes to be engaging in Trial Abuse Fraud or any other form of fraudulent activity in which case Cytidel will promptly inform Customer in writing of such refusal or cancellation.

5. SUPPLY OF SERVICES

- 5.1 Cytidel shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 5.2 Cytidel shall use all reasonable endeavours to meet any performance dates specified by Cytidel, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 5.3 Cytidel reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Cytidel shall notify the Customer in advance in any such event.
- 5.4 Cytidel warrants to the Customer that the Services will be provided using reasonable care and skill.
- 5.5 Cytidel shall provide maintenance in respect of the Services as part of an active SaaS Products subscription.

- 5.6 Cytidel shall use reasonable endeavours to notify the Customer in advance of scheduled maintenance and the Customer acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance (“**Permitted Downtime**”). The Services may also be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent, and that Cytidel shall have no liability for any such delays, interruptions, errors or other problems.
- 5.7 Cytidel, utilises and/or incorporates, and the Customer understands and accepts that Cytidel sources, utilises and/or incorporates, certain products and materials from third parties and other separate entities (**Third Party Materials**) in the completion of its Services and/or fulfilment of Customer Orders. Cytidel does not, will not and shall not, and the Customer understands and accepts that Cytidel does not, will not and shall not, under any circumstance, provide any warranties, guarantees or any other such assurance as to the quality, durability, merchantability, fitness for purpose or otherwise of such Third-Party Materials. For the avoidance of doubt, Cytidel shall have no liability, and expressly excludes any liability, in contract, tort or otherwise, for the Third-Party Materials.

6. CUSTOMER’S OBLIGATIONS

- 6.1 By accepting using the Services, the Customer represents and warrants that:
- i. the Customer is eligible to register and use the Services and have the authority to execute and perform the obligations required by this Agreement;
 - ii. that any information the Customer provides Cytidel about its’ business, products, or services is accurate and complete; and
 - iii. that Customer employees, contractors and agents will at all times act consistently with the terms of this Agreement. The rights provided under this Agreement are granted to the Customer only and shall not be considered granted to any of your subsidiary or holding companies.
- 6.2 The Customer also agrees to:
- i. provide Cytidel with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by Cytidel, in order to provide the Services, including but not limited to data, security access information and configuration services;
 - ii. comply with all applicable laws and regulations with respect to your activities under this Agreement;

- iii. ensure that any person who uses the Services under or in relation to the Customer account does so in accordance with the terms and conditions of this Agreement and the Customer shall be responsible for any breach of this Agreement by any such user;
- iv. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays of the Customer's provision of such assistance as agreed by the parties, Cytidel may adjust any agreed timetable or delivery schedule as reasonably necessary;
- v. ensure that the Authorised Users use the Services in accordance with the terms and conditions of this Agreement and the Customer shall be responsible for any user's breach of this Agreement;
- vi. obtain and shall maintain all necessary licences, consents, and permissions necessary for Cytidel, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- vii. ensure that your network and systems comply with the relevant specifications provided by Cytidel from time to time;
- viii. use all reasonable endeavours to prevent any unauthorised access to, or use of the Services, and in the event of any such unauthorised access or use, promptly notify Cytidel; and
- ix. 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 to Cytidel's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.3 The Customer must not access or use the SaaS Services except as permitted by this Agreement and may not or authorise the commission of any act that would or might invalidate or be inconsistent with the Cytidel's Intellectual Property Rights in the SaaS Products and SaaS Services. Without limiting the foregoing provisions, the Customer agrees and acknowledges that it must not and will not permit any person to:

- i. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of means the online software applications provided by Cytidel as part of the SaaS products and Services in any form or media or by any means; or
- ii. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the SaaS Products or Services; or
- iii. access all or any part of the Services in order to build a product or service which competes with the Services; or

- iv. use the Services to provide services to third parties, e.g. on a service bureau basis or otherwise;
- v. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the SaaS Products or Services available to any third party; or
- vi. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause; or
- vii. introduce or permit the introduction of, any Virus or Vulnerability into Cytidel's network and information systems.

6.4 The Customer represents and warrant to Cytidel that the Customer will not use the Services:

- i. for an unauthorised, fraudulent or illegal purpose;
- ii. to attempt to circumvent applicable law or a third party's lawful rights;
- iii. in any manner that interferes with the normal operation of the Services;
- iv. to incorporate any material to which the Customer does not possess all necessary rights or which infringes or misappropriates any intellectual property or proprietary right of any party, including, without limitation, any patent, copyright, trademark, trade secret or moral right or any right of publicity or privacy;
- v. to access, store, distribute or transmit any Viruses;
- vi. to access, store, distribute or transmit any material which is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or is otherwise illegal or causes damage or injury to any person or property;
- vii. to send any unsolicited or unauthorised advertising, promotional materials, 'junk mail', 'spam', 'chain letters', 'pyramid schemes', or any other form of such solicitation; or
- viii. to exploit children or minors.

6.5 Cytidel reserves the right, without liability or prejudice to its other rights, to refuse, condition, or suspend (with notice to the Customer where practicable) access to the Services that we believe:

- i. may violate this Agreement or other agreements the Customer may have with Cytidel; or
- ii. expose the Customer, Cytidel, or other third parties to material risks which in Cytidel's opinion, are unacceptable. If Cytidel suspect or know that the Customer is using or has used the Services for fraudulent or illegal purposes, we may share any information related to such activity with the appropriate financial institution, regulatory authority, or law enforcement agency consistent with our legal obligations. This

information may include information about the Customer, the Customer Account, the Customer's clients, and transactions made through the Customer's use of the Services.

- 6.6 Cytidel is not responsible for the products or services the Customer publicises or sells. The Customer affirms that the Customer is solely responsible for the nature and quality of the products or services the Customer provides, and for delivery, support, refunds, returns, and for any other ancillary services the Customer provides to its clients and/or customers. The Customer is responsible for knowing whether a transaction initiated by its clients and/or customers is erroneous or suspicious. The Customer is solely responsible for any losses the Customer incurs due to erroneous or fraudulent transactions in connection with its use of the Services. The Customer is solely responsible for providing support to its clients and/or customers regarding transaction receipts, product or service delivery, support, returns, refunds, and any other issues related to your products and services and business activities. Cytidel are not responsible for providing support for the Services to any Customer's customers unless we agree to do so in a separate agreement with the Customer or one of a Customer's customer.
- 6.7 If Cytidel's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- i. without limiting or affecting any other right or remedy available to Cytidel, Cytidel shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Cytidel's performance of any of its obligations;
 - ii. Cytidel shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Cytidel's failure or delay to perform any of its obligations as set out in this clause 6.7; and
 - iii. the Customer shall reimburse Cytidel on written demand for any costs or losses sustained or incurred by Cytidel arising directly or indirectly from the Customer Default.

7. CHARGES AND PAYMENT

- 7.1 In consideration of Cytidel providing the Customer with SaaS Products, Services, materials and information the Customer agrees to pay the amount specified in the order confirmation on the times and dates specified therein. For hardware and software purchase, unless otherwise specified in the order

confirmation or invoice all payments must be made upfront either by direct debit or by credit card.

- 7.2 Cytidel shall be entitled to increase the Fees for any and all Services at any time by notice to the Customer provided that Cytidel shall not be entitled to increase the Fees on less than [six weeks] prior notice or more than once every [12] months.
- 7.3 If a payment is not successfully settled due to expiration of a credit card, insufficient funds, or otherwise, the Customer remains responsible for any amounts not remitted to Cytidel and Cytidel may, in its sole discretion, either;
- i. Invoice the Customer directly for the deficient amount;
 - ii. Continue billing the credit card once it has been updated by the Customer (if applicable); or
 - iii. Terminate this agreement.
- 7.3 If the Customer fails to make a payment due to Cytidel under the Contract by the due date, then, without limiting Cytidel's remedies under Clause 11, the Customer 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 7.3 will accrue each day at 10% a year.
- 7.4 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.5 Cytidel provides a limited warranty (**Warranty**) in respect of products/materials only as follows:
- a) Cytidel shall provide the products and materials for the completion of the Services free from damage.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer or any third party) shall be owned by Cytidel.
- 8.2 On receipt of all amounts payable, Cytidel grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to use the Deliverables (excluding materials

provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

- 8.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 8.2.
- 8.4 Cytidel Reserve the right to terminate a Customer's access to and use of the Services if Cytidel in its sole discretion determines that the Customer or its Authorised Users infringe upon the Intellectual Property Rights of Cytidel or third parties.
- 8.5 The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for Cytidel (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the Services or to exercise or perform Cytidel's rights, remedies and obligations under the Agreement.

9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 Cytidel shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for;
 - i. loss of profit;
 - ii. loss of sales or business;
 - iii. loss of agreements or contracts or commercial opportunity;
 - iv. loss of savings, discount or rebate (whether actual or anticipated);
 - v. loss of production;
 - vi. loss or damage to equipment;
 - vii. loss of use;
 - viii. destruction, loss of use or corruption of software, systems, data or information;
 - ix. harm to reputation or loss of goodwill;
 - x. any indirect, consequential or special loss;
 - xi. any claim made against Cytidel by a third party for death, personal injury or damage to property arising out of, or in connection with, the supply of Services of the supply of Services by its employees, agents or subcontractors.
 - xii. loss as a result of a breach of any third party's Intellectual Property Rights; and

- xiii. Wasted expenditure.
- 9.2 Subject to clause 9.1, Cytidel's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 1% of the total Charges paid under the Contract.
- 9.3 The terms implied by the Sale of Goods and Supply of Services Act 1980 (as amended) are, to the fullest extent permitted by law, excluded from the Contract and in any event, shall not apply to a Customer who is not a consumer within the meaning of the Sale of Goods and Supply of Services Act 1980 (as amended).
- 9.4 This clause 9 shall survive termination of the Contract.

10. DEFENCE AGAINST INFRINGEMENT CLAIMS

- 10.1 Subject to clauses 10.2 and 10.5, Cytidel shall:
 - i. defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Services infringes any copyright, database right or registered trademark, registered design right or registered patent in Ireland (an **IP Claim**); and
 - ii. pay, subject to clause 10.3, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.
- 10.2 The provisions of clause 10.1 shall not apply unless the Customer:
 - i. promptly [(and in any event within [10] Business Days)] notifies Cytidel upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
 - ii. makes no comment or admission and takes no action that may adversely affect Cytidel's ability to defend or settle the IP Claim;
 - iii. provides all assistance reasonably required by Cytidel subject to Cytidel paying the Customer's reasonable costs; and
 - iv. gives Cytidel sole authority to defend or settle the IP Claim as Cytidel considers appropriate.
- 10.3 The provisions of clause 9 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 10.1.
- 10.4 In the event of any IP Claim Cytidel may elect to terminate the Agreement immediately by written notice and promptly refund to the Customer on a pro-

rata basis for any unused proportion of Fees paid in advance. This clause 10.4 is without prejudice to the Customer's rights and remedies under clauses 10.1.

10.5 Cytidel shall have no liability or obligation under this clause 10 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:

- i. any modification of the Services (or any part) without the Cytidel's express written approval;
- ii. any Third-Party Materials;
- iii. any Customer Data;
- iv. [any Free or Trial Services (or any Support Services provided in connection with them);]
- v. any Open Source Software;
- vi. any breach of the Agreement by the Customer;
- vii. installation or use of the Services (or any part) otherwise than in accordance with the Agreement [and the User Manual]; or
- viii. installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by the Cytidel.

10.6 Subject to clause 9, the provisions of this clause 10 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

11. TERMINATION

11.1 This Agreement commences upon the date Customer first access or use the Services ("**Commencement Date**") and continues until terminated by the Customer or Cytidel. The Customer may terminate this Agreement by closing the Customer's Cytidel Account at any time and ceasing to use the Services. If the Customer uses the Services again or registers for another Cytidel Account, the Customer is consenting to and will be subject to the terms of this Agreement.

11.2 Termination does not immediately relieve the Customer of its obligations under this Agreement. In addition, upon termination the Customer understands and agrees that:

- i. all licences granted to the Customer by Cytidel under this Agreement will end; Cytidel reserves the right (but have no obligation except in relation to Personal Data) to delete and destroy all of the Customer information and account data stored on Cytidel servers;

- ii. we will not be liable to the Customer for compensation, reimbursement, or damages related to the Customer's use of the Services, or any termination or suspension of the Services or deletion of the Customer's information or account data;
 - iii. the Customer shall desist from accessing the Services; and
 - iv. the Customer are still liable to Cytidel for any Fees or fines, or other financial obligation incurred by the Customer or through the Customer's use of the Services prior to termination. Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to be reimbursed for all Services offered up to the date of termination and claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 11.3 Cytidel may terminate this Agreement or close the Customer Cytidel Account at any time for any reason by providing the Customer with reasonable advance notice (or such period of notice as required by applicable law).
- 11.4 Without affecting any other right or remedy available to it, Cytidel may terminate the Contract with immediate effect by giving written notice to the other party if:
- i. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so. The meaning of "material breach" to be determined by Cytidel acting in its sole discretion;
 - ii. the Customer takes any step or action in connection with its entering administration, examinership, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the Cytidel, unless for the purpose of a solvent restructuring), bankruptcy or having a receiver appointed to any of its assets or ceasing to carry on business;
 - iii. the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - iv. the Customer's financial position deteriorates to such an extent that in Cytidel's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
 - v. any law requires Cytidel to do so; or
 - vi. Cytidel are otherwise entitled to do so under this Agreement.

- 11.5 Without affecting any other right or remedy available to it, Cytidel may (at its discretion) terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment or there is a change of Control of the Customer.
- 11.6 Without affecting any other right or remedy available to it, Cytidel may suspend the supply of Services under the Contract or any other contract between the Customer and Cytidel if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.5 or Cytidel reasonably believes that the Customer is about to become subject to any of them.

12. CONSEQUENCES OF TERMINATION

- 12.1 On termination of the Contract:
- i. the Customer shall immediately pay to Cytidel all of Cytidel's outstanding unpaid Fees and interest and, in respect of Services supplied;
 - ii. the Customer shall return all of the Cytidel Materials and any Deliverables which have not been fully paid for. Until the Cytidel Materials have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.2 Termination or expiry of the Contract shall not affect any 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 Contract which existed at or before the date of termination or expiry.
- 12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13. CUSTOMER SYSTEMS AND CUSTOMER DATA

- 13.1 Customer Data shall at all times remain the property of the Customer or its licensors.
- 13.2 Except to the extent Cytidel has direct obligations under data protection laws, the Customer acknowledges that Cytidel has no control over any Customer Data hosted as part of the provision of the Services and may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection

with the Service) complies with all applicable laws and Intellectual Property Rights.

- 13.3 If Cytidel becomes aware of any allegation that any Customer Data may not comply with the terms of this Agreement the Supplier shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the Services and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful Cytidel shall notify the Customer before taking such action.
- 13.4 Except as otherwise expressly agreed in our Agreement, Cytidel shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any data whether during or after the Service Period. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's and Authorised Affiliates' businesses. The Customer shall, without limitation, ensure that it backs up (or procures the back up of) all Customer Data regularly (in accordance with its, its Authorised Affiliates and its Authorised User's needs) and extracts it from each Subscribed Service prior to the termination or expiry of our Agreement or the cessation or suspension of any of the Services.
- 13.5 Cytidel routinely undertakes regular backups of the Subscribed Services (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make Cytidel responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, Cytidel shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.
- 13.6 Unless otherwise set out in the Order Form or subsequently agreed by the parties in writing, the Customer hereby instructs that Cytidel shall within [60] days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws of Ireland requires Cytidel to store such Customer Data. The Supplier shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with this Agreement.

14. INDEMNITY

- 14.1 The Customer shall indemnify, keep indemnified and hold harmless Cytidel (on the Cytidel's own behalf on behalf of each of the Cytidel's Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) as a result of the Customer's breach of this Agreement.
- 14.2 This clause 14 shall survive termination or expiry of the Agreement.

15. GENERAL

- 15.1 **Force majeure.** Force Majeure shall mean any governmental regulations, fire, flood, pandemic (including COVID-19), war or any disaster affecting or delaying the performance by a party of its obligations. The Customer acknowledges the particular issues and difficulties attributed to any epidemic or pandemic, including governmental measures designed to, inter alia, reduce or prohibit gatherings or congregations of any number of individuals (the "Pandemic Measures"), whether in a work space or otherwise, and further acknowledges that in order for Cytidel to complete an Order or provide the Services, it is necessary for Cytidel and/or its employees, agents or other such persons to physically enter a Customer's premises to complete same. The Customer accepts that, upon the introduction by the Government or governmental bodies, of any Pandemic Measures or similar measures (to include any policies or measures introduced in respect of (reduced, rationed, curfewed or otherwise) use of gas, electricity, water or otherwise) (the "Governmental Measures"), Cytidel is required to adhere to the requisite advice and measures and therefore reserves the right, without penalty, to rearrange, amend, alter or otherwise postpone the Services or an Order until such time as it is no longer unduly affected by the Governmental Measures, to be confirmed in Cytidel's sole discretion. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the party seeking to rely on it, or of that party's agents or employees. Cytidel shall not in any circumstances be liable to the other party for any loss of any kind whatsoever directly or indirectly incurred by the other party by reason of any failure or delay in the performance of Cytidel's obligations which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event. If the Customer shall become aware of, or allege, circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify Cytidel by the most expeditious method then available and shall inform Cytidel of the period which it is estimated that such failure or delay shall continue, and it shall be for Cytidel in its sole discretion to determine whether Force Majeure has occurred.

15.2 **Assignment and other dealings.**

- i. Cytidel may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- ii. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Cytidel.

15.3 **Confidentiality**

- i. Each party undertakes that it shall not at any time disclose to any person information concerning the disclosing Party or its Affiliates' business, products or services that is not generally known to the public, including information relating to customers, vendors, trade secrets, prices, products, services, computer programs and other intellectual property and any other information which a Party should reasonably understand to be considered Confidential Information whether or not such information is marked "Confidential" or contains such similar legend by the disclosing Party at the time of disclosure (**Confidential Information**), except as permitted by clause 15.3ii.
- ii. Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15.3; and
 - (ii) as may be required by law, a Cytidel of competent jurisdiction or any governmental or regulatory authority.
- iii. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

This clause 15 will survive the termination or expiry of this Agreement.

15.4 **Advertising and Publicity.**

Neither Party shall make or permit to be made any public announcement concerning the existence, subject matter or terms of this Agreement or relationship between the Parties without the prior written consent of the other Party except as expressly permitted in this section. Customer grants Cytidel and its Affiliates during the term of the Agreement the right to use Customer's trade names, logos, and symbols ("Customer Marks") in its public promotional

materials and communications for the sole purpose of identifying Customer as a Cytidel customer. Cytidel shall not modify the Customer Marks, or display the Customer Marks any larger or more prominent on its promotional materials than the names, logos, or symbols of other Cytidel customers. The foregoing promotional materials and communications may be created, displayed, and reproduced without Customer's review, provided that they are in compliance with this section and any Customer Marks usage guidelines provided by Customer to Cytidel in writing.

15.5 **Usage Data and Suggestions.**

Cytidel shall be permitted to collect and use the Usage Data for its reasonable business purposes and for Customer's benefit. In the event Cytidel wishes to disclose the Usage Data or any part thereof to third parties (either during the Subscription Term or thereafter), such data shall be deidentified and/or presented in the aggregate so that it will not identify Customer or its Authorised Users. The foregoing shall not limit in any way Cytidel's confidentiality obligations. To the extent that Customer provides Cytidel with Suggestions, such Suggestions shall be free from any confidentiality restrictions that might otherwise be imposed upon Cytidel pursuant to this Agreement, and may be implemented by Cytidel in its sole discretion. Customer acknowledges that any Cytidel products or materials incorporating any such Suggestions shall be the sole and exclusive property of Cytidel.

- (i) Cytidel will take all reasonable steps to notify the Customer in writing if it becomes aware of any actual, threatened or suspected breach of Data where such breach involves personal information.
- (ii) The Customer warrants that it has obtained each of its Personnel's informed consent for Cytidel to use, store, manipulate or otherwise deal with the personal information contained in the Data.
- (iii) The Customer must ensure that any collection, processing, use, disclosure and transfer by the Customer and its Personnel of personal information in connection with the performance of its obligations under this Agreement complies with European Union General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**) and all applicable privacy law and the privacy policy of the Customer.
- (iv) The Customer must take all necessary steps to ensure that the personal information held or accessed by it in connection with this Agreement is protected against misuse, interference and loss, and from unauthorised access, modification and disclosure (Data Breach). The Customer will promptly give written notice to Cytidel of any actual or suspected Data Breach and will provide information, assistance and other cooperation as requested by Cytidel in respect of the Data Breach

- (v) Cytidel will retain Customer's information for as long as Customer account is active or as needed to provide Customer services. Cytidel will retain and use information as necessary to comply with legal obligations, resolve disputes, and enforce agreements.

15.6 Entire agreement.

This 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.

Each party acknowledges that in entering into the Contract 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 Contract.

Nothing in this clause shall limit or exclude any liability for fraud.

15.7 Waiver

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract 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 Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.8 Severance

If any provision or part-provision of the Contract 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 shall not affect the validity and enforceability of the rest of the Contract.

15.9 Notices.

Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by

fax to its main fax number or sent by email to the address specified in the Contract.

Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 11.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, 1 hour after dispatch.

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

15.10 Governing law

The Contract, 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 Ireland

15.11 Jurisdiction

Without prejudice to Cytidel's entitlement to pursue the Customer in any jurisdiction, each party irrevocably agrees that the courts of Ireland shall have jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.