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# Treeconomics Ltd

## Terms and conditions

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### 1. DEFINITIONS AND INTERPRETATION

1.1. In these Conditions the following definitions apply:

<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England.
<b>Change Order</b>	shall have the meaning given to it at clause 6.1.
<b>Commencement Date</b>	shall have the meaning given to it at clause 2.2.
<b>Conditions</b>	means Treeconomics' terms and conditions of supply as set out in this document.
<b>Confidential Information</b>	means any confidential information concerning the business, affairs, customers, clients or suppliers of the relevant party (including any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets) which is identified as being confidential or is of a proprietary nature or reasonably considered as confidential.
<b>Content</b>	means any data and other content and documentation or support materials and updates (including Third Party Content) included in and/or supplied by or through the Services or in Reports or in any other way by Treeconomics.
<b>Contract</b>	means the agreement between Treeconomics and the Customer for the supply and purchase of Services incorporating these Conditions and the Order.
<b>Control</b>	has the meaning given to it in section 1124 of the Corporation Tax Act 2010.
<b>Customer</b>	means the person who purchases the Services from Treeconomics and whose details are set out in the Order.
<b>Customer Materials</b>	all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Treeconomics in connection with the Services, including the items provided pursuant to clause 5.1.3.

<b>Customer Personal Data</b>	any personal data which Treeconomics processes in connection with this Contract, in the capacity of a processor on behalf of the Customer.
<b>Data Protection Laws</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Force Majeure Event</b>	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, pandemic or epidemic, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving Treeconomics' or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay.
<b>Intellectual Property Rights</b>	<p>means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case:</p> <ul style="list-style-type: none"> <li>a) whether registered or not;</li> <li>b) including any applications to protect or register such rights;</li> <li>c) including all renewals and extensions of such rights or applications;</li> <li>d) whether vested, contingent or future;</li> <li>e) to which the relevant party is or may be entitled; and</li> <li>f) in whichever part of the world existing.</li> </ul>
<b>Licensed Use</b>	has the meaning given in clause 4.1.

<b>Location</b>	means the location or area described in the Quotation for performance of the Services or such other location for performance of all (or any part) of the Services as the Customer and Treeconomics may agree in writing from time to time.
<b>Order</b>	means the Customer's request for the supply of Services from Treeconomics, as set out in the Customer's purchase order form or the Customer's written acceptance of Treeconomics' written Quotation, as the case may be.
<b>Personal Data</b>	shall have the meaning set out in the Data Protection Laws.
<b>Price</b>	has the meaning set out in clause 7.1.
<b>Processing</b>	shall have the meaning set out in the Data Protection Laws.
<b>Quotation</b>	any written quotation issued by Treeconomics to the Customer in respect of the Services.
<b>Report</b>	means any Content that Treeconomics provides to the Customer in the form of a model or report in respect of any Location.
<b>Services</b>	means the Services set out in the Order and to be performed by Treeconomics for the Customer, including the Report.
<b>Specification</b>	means the description or specification of the Services set out or referred to in the Order.
<b>Supplier Personnel</b>	means all employees, officers, staff, other workers, agents and consultants of Treeconomics who are engaged in the performance of the Services from time to time.
<b>Third Party Content</b>	means any software, data, information and other content provided by third party suppliers and contained in the Content.
<b>Treeconomics</b>	means Treeconomics Ltd, Exeter Science Park, 6 Babbage Way, Exeter, EX5 2FN with registered number 07497755 with VAT number 304 3201 66
<b>UK Data Protection Legislation</b>	means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>VAT</b>	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

- 1.2. In these Conditions, unless the context requires otherwise:
- 1.2.1. a reference to a **party** includes that party's personal representatives, successors and permitted assigns;
  - 1.2.2. a **person** includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality);
  - 1.2.3. any words that follow **include, includes, including, in particular** or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
  - 1.2.4. a reference to **writing** or **written** includes email;
  - 1.2.5. a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time; and
  - 1.2.6. a reference to legislation includes all subordinate legislation made as amended from time to time under that legislation.

## 2. APPLICATION OF THESE CONDITIONS

- 2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions. The Customer shall ensure that all details provided in relation to an Order are complete, accurate and correct in all respects. Treeconomics shall not be liable for errors or omissions in information provided by or on behalf of the Customer or from the Customer's failure to check that the Service relates to the correct Location.
- 2.2. The Order shall only be deemed to be accepted when either (the earlier of):
  - 2.2.1. Treeconomics issues written acknowledgment of the Order; or
  - 2.2.2. Treeconomics commences performance of the Services or notifies the Customer that they are ready to be performed (as the case may be),  
  
at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. If Treeconomics is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.
- 2.4. These Conditions 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. Where these Conditions are not expressly accepted by the Customer, they will be deemed to have been accepted by the Customer, and the Customer agrees to be bound by these Conditions, when it submits any Order or pays for any Services provided to it by Treeconomics.
- 2.5. Any Quotation given by Treeconomics shall not constitute an offer, and is only valid for a period of one calendar month from its date of issue, unless otherwise specifically set out by Treeconomics within the Quotation. Any delivery or performance dates outlined within a Quotation are provisional only.
- 2.6. No variation of these Conditions or to an Order or to the Contract shall be binding unless varied in accordance with these Conditions.

- 2.7. Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

### **3. SUPPLY OF SERVICES**

- 3.1. Treeconomics will use reasonable endeavours to supply the Services in accordance with any timeframe specified in the Order, the Quotation or otherwise agreed in writing between the parties. The Customer acknowledges and agrees that time shall not be of the essence in providing the Services and any timeframes or performance dates set out in the Order, Quotation or otherwise agreed in writing between the parties are estimates only.
- 3.2. Treeconomics warrants that the Services will:
- 3.2.1. be provided using reasonable care and skill; and
  - 3.2.2. conform in all material respects to their description and the Specification.
- 3.3. Where it is necessary for the purposes of performing the Services for Treeconomics to attend the Location, the parties shall agree a suitable time and date for such attendance.
- 3.4. Treeconomics shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Location and that have been communicated to it under clause 5.1.4 provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 3.5. Performance of the Services shall be deemed to be completed when all parts of the Services (as described in the Order) are completed and all Reports (as agreed in the Order) have been delivered to the Customer.
- 3.6. Treeconomics shall not be liable for any delay in or failure of performance caused by:
- 3.6.1. the Customer's failure to: (i) make the Location available, (ii) prepare the Location in accordance with Treeconomics' instructions or as required for performance of the Services or (iii) provide Treeconomics with adequate instructions for performance or otherwise relating to the Services; or
  - 3.6.2. a Force Majeure Event.

### **4. LICENSED USE**

- 4.1. Subject to clause 4.2, Treeconomics grants the Customer a non-exclusive, perpetual, non-transferable licence to use Treeconomics' Content (including Reports) in printed or electronic format for the Customer's business use but without any right to copy, modify, extract or re-utilise any information or data within the Content other than as expressly set out in this clause 4 ("**Licensed Use**").
- 4.2. Subject always to these Conditions, the Customer may make copies of the Content available to third parties for their internal business use solely in connection with their dealings with the Customer and the Location, save that no third party shall be entitled to rely on the Content. The Customer acknowledges and agrees that any party, other than the Customer, who relies on the Content does so entirely at its own risk. Treeconomics accepts no responsibility and shall not be liable to any such party for any loss caused as a result of any such reliance upon the Content.
- 4.3. The Customer shall ensure that all acknowledgements of copyright and database

right ownership are included in a conspicuous position in all copies of the Content. The Customer may not delete any of Treeconomics' or its licensors' intellectual property protection notices (including without limitation copyright notices or trade marks) from the Content. No recipient of the Content may assert proprietary rights to the Content nor represent it to anyone as their own work.

- 4.4. The Customer shall not reverse engineer, separate or otherwise tamper with the Content so that Content can be extracted and used for any purpose outside the scope of these Conditions.
- 4.5. If the Customer wishes to use the Content in any manner which is not expressly authorised by these Conditions, then the Customer must contact Treeconomics to seek the necessary consents or licences, for which there may be additional charges.
- 4.6. The Customer agrees that it will not use the Services or the Content in any way that may lead to the encouragement, procurement or carrying out of any criminal or unlawful activity.

## **5. CUSTOMER'S OBLIGATIONS**

- 5.1. The Customer shall:
  - 5.1.1. co-operate with Treeconomics in all matters relating to the Services;
  - 5.1.2. provide, for Treeconomics, its agents, subcontractors, consultants and Supplier Personnel, in a timely manner and at no charge, access to the Location, data and other facilities as reasonably required by Treeconomics including any such access as is specified in the Order;
  - 5.1.3. provide to Treeconomics in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) specified in the Order or otherwise reasonably required by Treeconomics in connection with the Services and ensure that they are accurate and complete in all material respects;
  - 5.1.4. inform Treeconomics of all health and safety and security requirements that apply at the Location (such notification to take place not less than 5 Business Days before Treeconomics is scheduled to visit the Location);
  - 5.1.5. at Treeconomics request, prepare the Location in accordance with Treeconomics' instructions prior to Treeconomics attendance at the Location; and
  - 5.1.6. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Treeconomics to provide the Services, including in relation to the use of all Customer Materials and access to the Location (where applicable), insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start.
- 5.2. Treeconomics' shall not be liable to the Customer if performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Treeconomics shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.
- 5.3. The Customer warrants that it has provided Treeconomics with all relevant, full and

accurate information as to the Customer's business and needs.

## **6. CHANGE CONTROL**

- 6.1. Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
  - 6.1.1. the Services;
  - 6.1.2. the Price;
  - 6.1.3. any estimated timetable or delivery dates of the Services; and
  - 6.1.4. any of the terms of this Contract.
- 6.2. If Treeconomics wishes to make a change to the Services it shall provide a draft Change Order to the Customer.
- 6.3. If the Customer wishes to make a change to the Services:
  - 6.3.1. it shall notify Treeconomics and provide as much detail as Treeconomics reasonably requires of the proposed changes, including the timing of the proposed changes; and
  - 6.3.2. Treeconomics shall, as soon as reasonably practicable after receiving the information at clause 6.3.1, provide a draft Change Order to the Customer.
- 6.4. If the parties:
  - 6.4.1. agree to a Change Order, they shall sign it and that Change Order shall amend this Contract; or
  - 6.4.2. are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 14.

## **7. PRICE AND PAYMENT**

- 7.1. The price for the Services shall be the Price set out in the Order (**Price**).
- 7.2. All amounts payable by the Customer under these Conditions are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**), unless otherwise stated. The Customer shall, on receipt of a valid VAT invoice from Treeconomics, pay to Treeconomics such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.3. Treeconomics reserves the right to increase the Price of the Services, by giving notice to the Customer, to reflect any increase in the cost to Treeconomics that is due to:
  - 7.3.1. any factor beyond the control of Treeconomics (including increases in taxes and duties);
  - 7.3.2. a Change Order agreed between the parties in accordance with

clause 6.4.1;

- 7.3.3. any delay caused by any instructions of the Customer in respect of the Services or failure of the Customer to give Treeconomics adequate or accurate information or instructions in respect of the Services.
- 7.4. Unless otherwise agreed between the parties in writing, Treeconomics shall invoice the Customer for the Price at the following intervals:
  - 7.4.1. where the Price is less than £10,000, Treeconomics shall invoice the Customer the Price of the Services in full at any time after performance of the Services is completed by Treeconomics; or
  - 7.4.2. where the Price is £10,000 or more Treeconomics shall invoice the Customer for:
    - 7.4.2.1. 25% of the Price and costs for 3rd party data (eg: Bluesky NTM) prior to commencing provision of the Services; and
    - 7.4.2.2. 75% of the Price at any time after performance of the Services is completed by Treeconomics.

Treeconomics shall not commence provision of the Services until it has received payment in full of such amounts due in accordance with clause 7.4.2.1.
- 7.5. Time for payment shall be of the essence of the Contract and Treeconomics reserves the right to refuse to accept an Order and/or withhold supply of Services pursuant to an Order until any overdue amounts in respect of the Order in question or any previous orders and/or other payments are paid to Treeconomics in full.
- 7.6. The Customer shall pay all invoices:
  - 7.6.1. in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice; and
  - 7.6.2. to the bank account nominated by Treeconomics.
- 7.7. If the Customer fails to make a payment due to Treeconomics under the Contract by the due date, then, without limiting Treeconomics' remedies under clause 12 (Termination), 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 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time.
- 7.8. Treeconomics may at any time set off any of its liability to the Customer against any liability of the Customer's to Treeconomics, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by Treeconomics of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 7.9. All amounts due under the Contract by the Customer to Treeconomics 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).
- 8. LIMITATION OF LIABILITY**
- 8.1. The extent of the parties' liability under or in connection with the Contract (regardless



of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 8.

8.2. Except as expressly and specifically provided in these Conditions:

8.2.1. the Customer assumes sole responsibility for results obtained from the use of the Services and any conclusions drawn from such use. Treeconomics shall have no liability for any damage caused by errors or omissions in any information, provided to it by the Customer in connection with the Services or for any use of the Services other than in accordance with these Conditions; and

8.2.2. 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 these Conditions.

8.3. Nothing in these Conditions excludes or limits the liability of either party for death or personal injury caused by that party's negligence, wilful default, for fraud or fraudulent misrepresentation.

8.4. Subject to clause 8.3, Treeconomics shall not be liable to the Customer, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of anticipated savings discount or rebate (whether actual or anticipated), loss of contract, opportunity or business, loss of use or production, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising.

8.5. Subject to clauses 8.2, 8.3 and 8.4 and unless otherwise agreed between the parties in writing, Treeconomics' total liability shall not exceed an amount equal to the greater of: (1) the sum of £50,000; and (2) 150% of the total Price payable by the Customer under the Contract.

8.6. The Customer acknowledges and agrees that they may not rely on the Services or the Reports for more than 12 months after they were originally provided.

8.7. The Customer acknowledges and agrees that the Third Party Content is provided "as is" without warranty of any kind and that the Customer shall not have any claim or recourse against any supplier of Third Party Content.

## **9. INTELLECTUAL PROPERTY**

9.1. In relation to a Report:

9.1.1. Treeconomics and its licensors shall retain ownership of all Intellectual Property Rights in the Report, excluding the Customer Materials;

9.1.2. Treeconomics grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Report (excluding the Customer Materials) for the purpose of receiving and using the Services and the Report; and

9.1.3. unless otherwise agreed between the parties in writing, the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.1.2.

9.2. In relation to the Customer Materials, the Customer:

- 9.2.1. and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - 9.2.2. grants Treeconomics a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.3. Treeconomics:
- 9.3.1. warrants that the receipt and use of the Services and the Report by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
  - 9.3.2. shall, subject to clause 8, indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Report; and
  - 9.3.3. shall not be in breach of the warranty at clause 9.3.1, and the Customer shall have no claim under the indemnity at clause 9.3.2, to the extent the infringement arises from:
    - 9.3.3.1. the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Report;
    - 9.3.3.2. any modification of the Report or Services, other than by or on behalf of Treeconomics; and
    - 9.3.3.3. compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that Treeconomics shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.
- 9.4. The Customer:
- 9.4.1. warrants that the receipt and use of the Customer Materials in the performance of the Contract by Treeconomics, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - 9.4.2. shall indemnify Treeconomics in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Treeconomics arising out of or in connection with any claim brought against Treeconomics, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Contract of the Customer

Materials.

- 9.5. If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause 9, the Indemnified Party shall:
- 9.5.1. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.3.2 or clause 9.4.2 (as applicable) (**IPRs Claim**);
  - 9.5.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - 9.5.3. provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
  - 9.5.4. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 9.6. Notwithstanding clause 9.5, where the Customer wishes to rely on Treeconomics' indemnification obligations under clause 9.3.2, Treeconomics may at its option:
- 9.6.1. procure for the Customer the right to continue receiving the benefit of the relevant Services; or
  - 9.6.2. modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their Specification.

## **10. CONFIDENTIALITY**

- 10.1. Subject to any use of the Content in accordance with these Conditions, the Customer acknowledges and agrees that it shall, and shall procure that any person to whom it provides access to the Content shall, treat as strictly private and confidential the Services, the Content and all information which the Customer obtains from the Services and Content.
- 10.2. Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.3.
- 10.3. Each party may disclose the other party's Confidential Information:
- 10.3.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 10; and
  - 10.3.2. as may be required by law, a court of competent jurisdiction or any

governmental or regulatory authority.

- 10.4. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **11. COMPLIANCE WITH LAWS**

- 11.1. In performing its obligations under the Contract, the parties shall each comply with all applicable laws, statutes, regulations and codes from time to time in force, including but not limited to the Data Protection Laws to the extent any Personal Data is Processed in connection with the performance of either party's obligations under this Contract.
- 11.2. Treeconomics may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer commits a breach of clause 11.1.

## **12. TERMINATION**

- 12.1. Without affecting any other right or remedy available to it, Treeconomics may terminate the Contract at any time (and with immediate effect) by giving notice in writing to the Customer if:
- 12.1.1. the Customer commits a material breach of Contract and such breach is not remediable;
  - 12.1.2. the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach;
  - 12.1.3. the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after Treeconomics has given notification that the payment is overdue; or
  - 12.1.4. any consent, licence or authorisation held by the Customer or which the Customer is responsible for obtaining under the Contract is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled or Treeconomics is prevented from performing its obligations under the Contract;
  - 12.1.5. the Customer 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 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 Insolvency Act 1986;
  - 12.1.6. the Customer 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 any of its creditors other than (being a company) 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;
  - 12.1.7. the Customer applies to court for, or obtains, a moratorium under Part A1

of the Insolvency Act 1986;

- 12.1.8. 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 the Customer (being a company) 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;
  - 12.1.9. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company, partnership or limited liability partnership);
  - 12.1.10. the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - 12.1.11. a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
  - 12.1.12. a creditor or encumbrancer of the Customer 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;
  - 12.1.13. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.5 to 12.1.12 (inclusive);
  - 12.1.14. the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 12.1.15. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Contract is in jeopardy.
- 12.2. Treeconomics may terminate the Contract at any time by giving not less than four weeks notice in writing to the Customer if the Customer undergoes a change of Control.

### **13. OBLIGATIONS ON TERMINATION AND SURVIVAL**

#### **13.1. Obligations on termination or expiry**

On termination or expiry of this Contract:

- 13.1.1. the Customer shall immediately pay to Treeconomics all of Treeconomics' outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Treeconomics may submit an invoice, which shall be payable immediately on receipt; and
- 13.1.2. Treeconomics shall on request return any of the Customer Materials still in its possession to the Customer.

#### **13.2. Survival**

13.2.1. On termination or expiry of the Contract, the following clauses shall continue in force: 1 (Interpretation), 8(Limitation of liability), 9 (Intellectual property rights), 10 (Confidentiality and announcements), 13 (Obligations on termination and survival), 14 (Dispute Resolution), 21 (Severance), 22 (Waiver), 23 (Conflicts within Contract), 25 (Governing law and Jurisdiction).

13.2.2. 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.

#### **14. DISPUTE RESOLUTION**

14.1. If any dispute arises between the parties out of, or in connection with, this Contract, the matter shall be referred to a senior representative of each party who shall use their reasonable endeavours to resolve it.

14.2. If the dispute is not resolved within 14 days of the referral being made under clause 14.1, the parties may resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.

14.3. Either party may issue formal legal proceedings at any time whether or not the steps referred to in clauses 14.1 and 14.2 have been completed.

#### **15. FORCE MAJEURE**

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from a Force Majeure Event. If a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 40 days, the party not affected by the Force Majeure Event may terminate this Contract by giving 7 days written notice to the Affected Party.

#### **16. NOTICES**

16.1. 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 email to the email address specified in the Order.

16.2. 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 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or if sent by email, at 9.00 am on the next Business Day after transmission.

16.3. This clause does not apply to the service of any proceedings or other documents in any legal action.

## **17. ENTIRE AGREEMENT**

- 17.1. The parties agree that these Conditions together with the Order and any documents entered into pursuant to them constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- 17.2. Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

## **18. VARIATION**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **19. ASSIGNMENT**

The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Treeconomics' prior written consent.

## **20. NO PARTNERSHIP OR AGENCY**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **21. 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.

## **22. 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.

## **23. CONFLICTS WITHIN CONTRACT**

If there is a conflict between the terms contained in the Conditions or the terms of the Order, the terms of the Order shall prevail.

**24. THIRD PARTY RIGHTS**

Except as expressly provided for in clause, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

**25. GOVERNING LAW AND JURISDICTION**

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 England and Wales. Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.