

TERMS & CONDITIONS

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: the Order Form, these Terms & Conditions and any materials available on the AQMetrics website or www.myaqmetrics.com by reference herein as well as any document referred to therein;

AQMetrics Technology: all of AQMetrics' proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to the Customer by AQMetrics in providing the Services, including the Content;

Authorised Users: any employee of the Customer accessing the AQMetrics Technology;

Authorised Funds: the Customer's funds which are authorised to use the Services, as identified in an applicable Order Form;

Business Days: any day which is not a Saturday, Sunday or public/bank holiday in Ireland;

Business Hours: 9:00am to 5:00pm, local Irish time, on Business Days;

Confidential Information: information that is proprietary or confidential to either party and is either clearly labelled as such or identified as Confidential Information in accordance with Clauses 8.3 or 17;

Content: the content accessed electronically by the Customer as part of the Services, including all text, graphics, images, audio, video, information or other materials available through the AQMetrics platform and/or website;

Data Processing Addendum: the addendum appended to this Agreement as described in Clause 9.5;

Effective Date: the date set out in the Order Form;

Fees: means the Set-Up Fee and Annual Licence Fees payable by the Customer for the

provision of the Services under this Agreement, as set out in the Order Form;

Free Trial Term means the term for the Free Trial specified to the Customer on the AQMetrics website;

Infringement Claim: any claim or action brought against the Customer alleging that the use of the Services, Content and/or AQMetrics Technology in accordance with the terms of this Agreement infringes the Irish Intellectual Property Rights of a third party;

Initial Term: the initial term of this Agreement as set out in the Order Form;

Intellectual Property Rights: means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, without prejudice to the generality of the foregoing: discoveries; inventions; improvements; designs; processes; research; know-how; confidential and proprietary knowledge and information and any rights protecting same; works of authorship; computer software; databases; database rights; performances; trade or business names; domain names; patents, utility models and short term patents (and applications for same); trade marks and trade mark applications; rights (registered or unregistered and applications for same) in any design; copyright (including rights in computer software); business goodwill and reputation and rights protecting same; and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;

Licence: the licence of the AQMetrics Technology as described in Clause 3.1;

Licence Administrator(s): means those Authorised Users designated by the Customer who are authorised to create the Customer's Authorised User accounts and otherwise administer the Customer's use of the Services;

Order Form: AQMetrics' standard subscription order form signed by AQMetrics and the Customer;

Received Data: the data and content, including but not limited to files, images and text, inputted and/or provided by the Customer, Authorised Users, or AQMetrics on the Customer's behalf onto the AQMetrics Technology for the purposes of using the Services or facilitating the Customer's use of the Services;

Renewal Period: the period set out in the Order Form and described in Clause 16.1;

Services: in the case of the Purchased Services the subscription services, access to the AQMetrics Technology provided by AQMetrics to the Customer under this Agreement via the AQMetrics website or any other website notified to the Customer by AQMetrics from time to time and, in the case of the Free Trial, the services specified to the Customer on the AQMetrics website when the customer registers for the Free Trial;

Sub Users: means third party users who do not fall into the category of Authorised Users and who have not been supplied with user identifications and passwords directly by the Customer but by Authorised Users;

Support Services: the support services to be provided by or on behalf of AQMetrics, details of which are set out in the Order Form;

Set-Up Fee: the non-refundable set-up fee payable by the Customer to AQMetrics, as set out in the Order Form; and

Term: the Initial Term of this Agreement together with any Renewal Period thereto as set out in Clause 16.1.

1.2 The headings contained in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms, conditions or provisions of this Agreement.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.5 References to a document include a reference to that document as amended.

1.6 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

1.7 Any phrase introduced by the terms including, include, in particular or any similar

expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 SCOPE OF AGREEMENT

2.1 AQMetrics will provide the Customer with use of the Services, including a user interface and data transmission, access and storage, and the Customer agrees to be bound by and comply in full with the terms of the Agreement.

2.2 Except where expressly stated otherwise, the terms of this Agreement are applicable both to the free trial of the Services ("**Free Trial**") and the paid use of the Services ("**Purchased Services**") (relevant details of which are set out in the Order Form or the AQMetrics website on which the Customer registers for the Free Trial, as applicable).

2.3 In the event that additional professional services are required to be provided by AQMetrics to the Customer, the provision of such services shall be governed separately under the terms of a master services agreement (or other similar agreement) to be entered into between AQMetrics and the Customer.

2.4 The Free Trial may be governed by additional terms and conditions in addition to those set out in this Agreement as published by AQMetrics on the AQMetrics website on which the Customer registered for the Free Trial. Such terms and conditions are incorporated into this Agreement by reference. AQMetrics may refuse to provide a Free Trial to any person for any reason.

3 LICENCE GRANT

3.1 AQMetrics agrees to provide the Services to the Customer in accordance with this Agreement and grants to the Customer a non-exclusive non-transferable, non-sublicensable, licence to use the AQMetrics Technology for the Term for the Customer's internal business purposes only in accordance with the terms of this Agreement.

3.2 Use for any other purpose is subject to the prior written consent of AQMetrics and the Customer agrees that additional fees may be payable on AQMetrics' approval of any change of use.

3.3 The rights granted under this Agreement are restricted to the number of Authorised Users or Authorised Funds as set

out in the Order Form. In the event that the Customer wishes to make available the Services to Sub Users, the Customer shall inform AQMetrics in writing and a new Order Form shall be agreed by AQMetrics and the Customer.

3.4 In the event that the Customer wishes to remove any Authorised Users or Authorised Funds from the scope of the Services during the Term, the Customer must notify AQMetrics in writing. Any such removal will not affect any Fees that must be paid for the Initial Term and the Customer is not permitted to replace any removed Authorised Funds or Authorised Users with an alternative fund or user. Additional funds or users can be added to the list of Authorised Funds or Authorised Users by written agreement between AQMetrics and the Customer subject to the payment of additional fees via an additional order form.

4 LICENCE RESTRICTIONS

4.1 Save as expressly set out in this Agreement, or otherwise permitted by law, the Customer shall not:

- (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or the AQMetrics Technology in any way;
- (b) copy, modify, duplicate, or make derivative works based upon the Services or the AQMetrics Technology;
- (c) create Internet "links" to the Services or "frame" or "mirror" or reproduce any element of the AQMetrics Technology on any other server or wireless or Internet-based device;
- (d) reverse engineer or access the Services or the AQMetrics Technology for any reason including in order to build a competitive product or service, build a product using similar ideas, features, functions or graphics of the Services, copy any ideas, features, functions or graphics of the Services;
- (e) publish or distribute externally any results of any use of the Services for any form of benchmarking or software comparison purposes;
- (f) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;

(g) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortious material, including material harmful to children or that violates any third party privacy rights;

(h) knowingly send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;

(i) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or

(j) attempt to gain unauthorised access to the Service or its related systems or networks.

4.2 AQMetrics reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this Clause 4.

5 CUSTOMER'S OBLIGATIONS

5.1 Save as expressly set out in this Agreement or as otherwise permitted by law, the Customer may not make any communication, display or performance to the public of any element of the AQMetrics Technology or otherwise disseminate, sell, give away, hire, lease, offer or expose for sale or distribute any element of the AQMetrics Technology.

5.2 On or after the Effective Date, AQMetrics will provide the Customer with login and password details which will be used by the Customer and its permitted Authorised Users to access and use the Services.

5.3 The Customer shall be responsible for each Authorised User and all use of such login and password details and will ensure that all login and password details are kept secure and confidential at all times and will not disclose them to any third parties who are not authorised by AQMetrics to use them.

5.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the AQMetrics Technology and, in the event of any such unauthorised access or use, promptly notify AQMetrics.

5.5 The Customer shall ensure that its use of the Services and the AQMetrics Technology

and the Received Data complies with all applicable laws and regulations.

5.6 The Customer shall ensure that the Authorised Users and Sub Users use the Services and the AQMetrics Technology in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User or Sub User's breach of this Agreement.

5.7 AQMetrics does not warrant or undertake that the Services or any other materials provided pursuant to this Agreement will meet the Customer's requirements or that they or their access or use will be uninterrupted, free from viruses, bug or error or completely secure. Except as expressly provided in this Agreement, the entire risk as to the products, the Services and any other materials provided by AQMetrics is with the Customer, including for quality and performance and for accuracy or quality of any information transmitted, received or otherwise delivered via the Services.

5.8 All information provided to the Customer through the Services or the AQMetrics Technology is provided only as of the date published, and may be superseded by subsequent events or for other reasons.

5.9 Information provided through the Services or on the AQMetrics website is subject to change. AQMetrics may amend, update, suspend or delete any information in the content without notice at any time and at its sole discretion.

6 SERVICES AND NETWORK AVAILABILITY

6.1 AQMetrics shall, during the Term, provide the Services to the Customer on and subject to the terms of this Agreement. The Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. AQMetrics is not responsible for any delays, delivery failures, or other damage resulting from such problems.

6.2 Emergency unplanned maintenance may need to occur where the Services may not be available (or may be limited) to the Customer for a period of time. AQMetrics will endeavour to keep disruptions to the Services to a minimum during Business Hours.

6.3 AQMetrics will also need to schedule maintenance periods and during such periods
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the Services will not be available to the Customer. AQMetrics will endeavour or notify the Customer of such scheduled maintenance via the AQMetrics helpdesk. AQMetrics will provide the Customer with reasonable notice of any downtime due to non-routine maintenance and will use reasonable endeavours to ensure that any non-routine maintenance periods take place outside of Business Hours.

6.4 The Services may be subject to periodic maintenance. AQMetrics will attempt not to materially affect its Services during this time, but AQMetrics cannot guarantee that there will not be an occasional disruption as a result of any periodic maintenance to the Services.

6.5 AQMetrics does not guarantee network availability between the Customer and the AQMetrics hosting servers, as network availability can involve numerous third parties and is beyond the control of AQMetrics. AQMetrics will not be liable for any downtime caused by its internet provider nor for any downtime that the Customer experiences as a result of its own network connectivity issues.

6.6 The Customer shall:

(a) obtain and shall maintain all necessary licences, consents and permissions necessary for AQMetrics, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services and the provisions of the Data Processing Addendum, if applicable;

(b) ensure that its network, systems and supported web browser comply with the relevant specifications as may be notified from AQMetrics from time to time; and

(c) be solely responsible for procuring and maintaining its network connections, supported web browser and telecommunications links from its systems to the Services, 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.

6.7 If the Customer experiences a service outage and is unable to access the Services, the Customer must immediately contact AQMetrics and notify AQMetrics of the service outage, providing all necessary information that may assist AQMetrics' technical support in determining the cause of the outage.

7 SUPPORT SERVICES

7.1 Support Services are provided online during Business Hours from the AQMetrics online helpdesk available at www.myaqmetrics.com.

7.2 AQMetrics may amend or vary the Support Services in its sole and absolute discretion from time to time upon the provision of reasonable notice to the Customer.

8 FEES

8.1 The Fees for use of the Services and billing and payment terms are as set out in an applicable Order Form and the Customer agrees to pay the Fees in accordance with the payment terms set out in the applicable Order Form and such Fees are exclusive of VAT and other applicable taxes. All payment obligations are non-cancellable and all amounts paid are non-refundable.

8.2 In the event that the costs to AQMetrics of providing the Services increases due to an increase in the cost of AQMetrics' underlying internet/cloud computing or other service providers, then AQMetrics shall be permitted to increase the Annual Licence Fees upon at least thirty (30) days' prior notice to the Customer, which may be provided by e-mail. On agreement of the new Annual Licence Fees by the Parties, a new Order Form will be signed by the Parties and this Order Form will be applicable for the remainder of the Term unless further varied by written agreement of the Parties. If the Customer does not accept the revised fees proposed by AQMetrics, AQMetrics may, in its discretion, either: (i) continue providing the Services at the then current fees for the remainder of the Initial Term or the then current Renewal Period (as applicable); or (ii) terminate this Agreement upon providing 30 days' notice in writing to the Customer.

8.3 All pricing terms are confidential, and the Customer agrees not to disclose them to any third party.

8.4 AQMetrics shall be under no obligation to provide the Services and/or access to the AQMetrics Technology, or, where relevant, until the Customer has discharged the Fees.

8.5 AQMetrics shall be under no obligation to refund any portion of the Fees, including in the event that this Agreement is terminated in accordance with Clause 16 due to the default of
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the Customer, unless otherwise provided for in this Agreement.

8.6 The Customer agrees to provide AQMetrics with complete and accurate billing and contact information. This information includes the Customer's full name, street address, VAT number, e-mail address, and name and telephone number of an authorised billing contact and Licence Administrator. The Customer agrees to update this information within thirty (30) days of any change to it.

8.7 If the contact information provided is inaccurate, out of date or misleading, AQMetrics reserves the right to immediately terminate the Customer's access to the Services in addition to any other remedies it may have pursuant to this Agreement or under applicable law.

8.8 For the avoidance of doubt, clauses 8.1, 8.2, 8.4, 8.5, 8.6 and 8.7 are not applicable to the Free Trial.

9 ACCOUNT INFORMATION & RECEIVED DATA

9.1 The Customer shall own all right, title and interest in and to all the Received Data and shall have sole responsibility for and hereby warrants the accuracy, quality, integrity, legality, reliability, appropriateness, of all Received Data.

9.2 The Customer grants AQMetrics a non-exclusive, royalty free licence for the Term to use the Received Data for the purposes of providing the Services.

9.3 AQMetrics shall follow its standard archiving procedures for Received Data as set out in its then current back-up policy (unless agreed otherwise between the Customer and AQMetrics), which may be amended by AQMetrics in its sole discretion from time to time. In the event of any loss or damage to Received Data, the Customer's sole and exclusive remedy shall be for AQMetrics to use reasonable commercial endeavours to restore the lost or damaged Received Data from the latest back-up of such Received Data maintained by AQMetrics in accordance with its archiving procedure. AQMetrics shall not be responsible for any loss, destruction, alteration or disclosure of Received Data caused by any third party (except those third parties sub-contracted by AQMetrics to perform services related to Received Data maintenance and back-up).

9.4 AQMetrics shall, in providing the Services, comply with its data security policy relating to the security of the Received Data (available at www.myaqmetrics.com), as such document may be amended from time to time by AQMetrics in its sole discretion.

9.5 If AQMetrics processes any personal data on the Customer's behalf when performing its obligations under this Agreement, as identified in the Order Form, such processing shall be carried out in accordance with the Data Processing Addendum.

10 INTELLECTUAL PROPERTY & INFRINGEMENT CLAIMS

10.1 The Customer acknowledges that all Intellectual Property Rights in the Services and AQMetrics Technology are and shall remain the sole property of AQMetrics and/or its licensors. Other than the Licence, nothing in this Agreement shall be construed as granting to the Customer any rights in any Intellectual Property Rights comprised in the Services and AQMetrics Technology other than the right to use it in accordance with the terms of this Agreement.

10.2 AQMetrics shall defend the Customer or, at its option, settle an Infringement Claim and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.

10.3 For the avoidance of doubt, Clause 10.2 shall not apply where the Infringement Claim in question arises from the use of the Services or AQMetrics Technology other than in accordance with the terms of this Agreement or where it arises directly or indirectly as a result of the Received Data.

10.4 As a condition of obtaining an indemnity in the circumstances set out in Clause 10.2 the Customer agrees to immediately:

- (a) fully and promptly notify AQMetrics of any Infringement Claim, or threatened Infringement Claim;
- (b) not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of AQMetrics, which consent shall not be unreasonably withheld or delayed;

(c) permit AQMetrics to take full control of such Infringement Claim, including settling it at AQMetrics' expense; and

(d) give reasonable assistance in the investigation and defence of such Infringement Claim.

10.5 If any Infringement Claim is made, or in AQMetrics' reasonable opinion is likely to be made, against the Customer, AQMetrics may at its sole option and expense:

(a) procure for the Customer the right to continue using the Services in accordance with the terms of this Agreement;

(b) modify the Services so that they cease to be infringing;

(c) replace the Services; or

(d) immediately terminate this Agreement on written notice to the Customer.

10.6 This Clause 10 states that the Customer's sole and exclusive rights and remedies, and AQMetrics' (including AQMetrics' employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

10.7 Clauses 10.2 to 10.6 (inclusive) above shall not apply to the Free Trial.

11 THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. AQMetrics makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website. AQMetrics recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. AQMetrics does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

12 LIMITED WARRANTY

Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

13 DISCLAIMER OF WARRANTIES

13.1 Save as otherwise set out in this Agreement, AQMetrics and its licensors do not represent or warrant that:

13.2 the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;

13.3 the Services will meet the Customer's requirements or expectations even where such requirements or expectations have been identified prior to entering into this Agreement;

13.4 the Content will be accurate or reliable;

13.5 errors or defects in the AQMetrics Technology will be corrected within a specific time period; and

13.6 the Services or the server(s) that make the Services available are free of viruses or other harmful components.

13.7 Save as otherwise provided in this Agreement, the Services and the AQMetrics Technology are provided to the Customer strictly on an "as is" basis. Save for the provisions otherwise expressly specified in this Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by AQMetrics and its licensors.

14 LIMITATION OF LIABILITY

14.1 The total aggregate liability of AQMetrics, whether in contract, tort or otherwise and whether in connection with this Agreement or any collateral contract, shall not exceed the total Fees paid by the Customer to AQMetrics in the twelve (12) month period immediately prior to the date of the first of any claims by the Customer.

14.2 Clause 14.1 above is not applicable to the Free Trial. In respect of the Free Trial, the

total aggregate liability of AQMetrics, whether in contract, tort or otherwise and whether in connection with this Agreement or any collateral contract, shall not exceed €200.

14.3 In no event shall either Party and/or its licensors be liable in contract, tort (including negligence) or for breach of statutory duty in any other way for: loss of data, loss revenue, loss of profits, use or other economic advantage, or for any indirect, special or consequential, in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, or were suffered or incurred by the Customer arising out of or in connection with any matter arising under this Agreement.

14.4 Except as expressly and specifically provided in this Agreement, the Customer assumes sole responsibility for results obtained from the use of the Services and/or the AQMetrics Technology by the Customer, and for conclusions drawn from such use. AQMetrics shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AQMetrics by the Customer in connection with the Services and/or any Consultancy Services, or any actions taken by AQMetrics at the Customer's direction.

14.5 If AQMetrics' performance of its obligations under this Agreement is prevented or delayed by any breach of this Agreement or negligent act or omission of the Customer, AQMetrics shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

15 INDEMNITY

15.1 The Customer shall indemnify and hold AQMetrics, its licensors and its Affiliates, officers, directors, employees, attorneys and agents harmless from and against any third party costs and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

(a) a claim alleging that use of the Received Data infringes the rights of, or has caused harm to, the party that supplied the Received Data or a third party;

(b) a claim, which if true, would constitute a violation by the Customer of its representations and warranties; or

(c) a claim arising from the breach by the Customer or any Authorised User of this Agreement, provided in any such case that AQMetrics:

(i) gives written notice of the claim promptly to the Customer;

(ii) gives the Customer sole control of the defence and settlement of the claim (provided that the Customer may not settle or defend any claim unless the Customer unconditionally releases AQMetrics of all liability and such settlement does not affect AQMetrics' business or Service);

(iii) provides to the Customer all available information and assistance; and

(iv) has not compromised or settled such claim.

16 TERM AND TERMINATION

16.1 This Agreement shall commence on the Effective Date and shall continue for the Term and thereafter, this Agreement shall be automatically renewed for successive yearly periods ("**Renewal Period**") unless terminated by either Party after the Initial Term by giving at least 30 (thirty) days written notice to the other Party prior to the end of the Initial Term or applicable Renewal Period.

16.2 Either Party may terminate this Agreement at any time on 15 (fifteen) days written notice to the other if:

(a) the other is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other Party fails to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach;

(b) the other is deemed to be unable to pay its debts within the meaning of section 570 of the Companies Act 2014, is unable to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or composition with its creditors;

(c) the other ceases carrying on, threatens to cease carrying on, or disposes of its business or a material part of its business;

(d) the other takes any corporate action or other steps are taken or legal proceedings are started for its winding up, dissolution, examinership or re-organisation or for the appointment of a liquidator, receiver, examiner, conservator, custodian, trustee or similar officer of it or of any or all of its revenues and assets; or

(e) any execution or distress is levied against, or an encumbrancer takes possession of, the whole or any part of, the property, undertakings or assets of the other or any event occurs which under the laws of any jurisdiction has a similar or analogous effect.

16.3 AQMetrics may suspend or terminate this Agreement and the Customer's access to the Services immediately if the Customer fails to pay any Fees due. The Customer will continue to be charged Annual Licence Fees (based on previous averages) during any period of suspension. Overdue Fees are subject to interest of 3% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.

16.4 On termination of this Agreement for any reason:

(a) all licences granted to the Customer under this Agreement shall cease;

(b) the Customer shall cease all activities authorised by this Agreement;

(c) the Customer shall immediately pay to AQMetrics any sums due under this Agreement; and

(d) the accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

16.5 Clauses 16.1 to 16.4 above are not applicable to the Free Trial. In respect of the Free Trial only, this Agreement shall commence on the date on which the Customer registers for the Free Trial on the AQMetrics website until the earlier of:

(a) the end of the free trial period for which the Customer registered for the Free Trial;

- (b) the start date of any Purchased Service subscriptions ordered by the Customer for such Service(s); or
- (c) termination by AQMetrics at any time in its sole discretion.

16.6 In respect of the Free Trial only, AQMetrics may suspend or terminate this Agreement immediately for any reason without liability to the Customer.

16.7 The Parties may, by agreement, enter into a new contract on the terms of this Agreement before, on or about the date of the expiry of the Free Trial Term, in which case this Agreement shall immediately terminate. The provisions in this Agreement relating to the Premium Version shall apply to any such contract and the provisions relating to the Free Trial shall not.

16.8 In respect of the Free Trial only, in the event that the Agreement:

- (a) expires in accordance with clause 16.5 above and no contract under clause 16.7 above is agreed; or
- (b) is terminated in accordance with clause 16.6 above,

notwithstanding the provisions of clauses 9.3 and 9.4 above, AQMetrics may delete Received Data without liability to the Customer.

17 CONFIDENTIALITY

17.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving Party and information shall not be deemed to be in the public domain merely because it may be derived from one or more items which are publicly known;
- (b) was in the other Party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving Party by a third Party without restriction on disclosure;

(d) is independently developed by the receiving Party, which independent development can be shown by written evidence;

(e) the Parties agree in writing is not confidential or may be disclosed; or

(f) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

17.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

17.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

17.4 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

17.5 The Customer acknowledges that details of the Services constitute AQMetrics' Confidential Information.

17.6 This Clause 17 shall survive termination of this Agreement, however arising.

18 ASSIGNMENT

18.1 This Agreement may not be assigned by the Customer without the prior written approval of AQMetrics but may be assigned without the Customer's consent by AQMetrics.

18.2 Any purported assignment in violation of this Clause 18 shall be void. Any actual or proposed change in control of the Customer shall entitle AQMetrics to terminate this Agreement for cause immediately upon written notice.

19 FORCE MAJEURE

AQMetrics shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events,

omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of AQMetrics or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

20 GENERAL

20.1 **Notices:** Any notice or other communication whether required or permitted to be given under this Agreement shall be given in writing and shall be deemed to have been duly given if delivered by hand to the addressee or sent by registered post to the addressee at the address set out for such Party in this Agreement (or such other address as that Party may from time to time designate in writing to the other Party in accordance with the provisions of this Clause). Any such notice shall be deemed to have been duly given if delivered, at the time of delivery, or if sent by registered post, 48 (forty eight) hours after posting. Notices or other communication under this Agreement may also be provided by email to an email address advised by the recipient of the notice or other communication to the sending Party from time to time.

20.2 **Severability:** If any provision in this Agreement is deemed to be, or becomes invalid, illegal, void or unenforceable under applicable laws, such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable, or if it cannot be so amended without materially altering the intention of the Parties, it will be deleted, but the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

20.3 **Parties Bound:** This Agreement shall be binding upon and run for the benefit of the Parties, their successors and permitted assigns.

20.4 **Entire Agreement:** This Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter, and except as expressly provided, supersedes all prior representations, writings, negotiations or understandings with respect to that subject matter.

20.5 **Further Assurance:** Each Party shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement this Agreement.

20.6 **Conflict:** If there is an inconsistency between any of the provisions in the main body of this Agreement and the Order Form, other attachments or any other document referred to in this Agreement, the provisions in the main body of this Agreement shall prevail.

20.7 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

20.8 **No Partnership or Agency:** Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20.9 **Publicity and Announcements:** Without AQMetrics' prior written consent, the Customer shall not issue nor cause the issuance of any public statement in any way concerning AQMetrics or the Services. AQMetrics shall have the right to identify the Customer as a customer to which it is providing the Services.

20.10 **Waivers or Variations:** A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. No variation of this Agreement shall be effective unless it is made in writing and signed by each of the Parties.

20.11 **Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of Ireland, and the Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).