

## PROPOSAL TERMS AND CONDITIONS

### 1. DEFINITIONS

Unless a contrary intention is clear, the terms below (and cognate expressions thereof) shall bear their assigned meanings –

- 1.1. **“Agreement”** means the agreement between the Parties which consists of:
  - 1.1.1. these terms and conditions (“T&Cs”);
  - 1.1.2. the Proposal to which these terms and conditions are attached; and
  - 1.1.3. the EULA;

all of which are incorporated herein by this reference;
- 1.2. **“Business Day”** means any day other than a Saturday, Sunday, or national public holiday in the Republic of South Africa;
- 1.3. **“Client”** means the client indicated as such on the Proposal;
- 1.4. **“Client Data”** means all data furnished to Fractal Labs by Client, or generated in the course of the provision of the Services, but excludes any derivative data which is created by Fractal Labs for its own internal purposes, or which is proprietary or confidential to Fractal Labs or its suppliers;
- 1.5. **“Client Environment”** means, if applicable, the minimum technology configuration and operating conditions to be provided and maintained by Client for the proper operation of the Software as specified in the associated Proposal and/or notified in writing by Fractal Labs from time to time;
- 1.6. **“Commencement Date”** means the commencement date indicated on the Proposal, failing which the date of Client’s written acceptance of the Proposal, subject always to Fractal Labs’ written confirmation thereof;
- 1.7. **“Confidential Information”** means data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and or proprietary to either Party provided or disclosed in confidence, or which may come to the knowledge of the other Party by whatsoever means;
- 1.8. **“Data Template”** refers to the Fractal Labs Data Template document which prescribes the precise format in which Client must provide input data.
- 1.9. **“EULA”** means Fractal Labs’ end-user license agreement, in terms of which it provides the Software and certain related services to its clients, located at [www.fractallabs.net](http://www.fractallabs.net) or available on request, as updated and amended from time to time;
- 1.10. **“Fractal Labs”** means Fractal Labs (Pty) Ltd, a private company incorporated in South Africa with registration number 2019/603557/07 and having its registered office address at Podium at Menlyn, 43 Ingersol Road, Lynnwood Glenn, Pretoria, 0081;
- 1.11. **“IP”** means any and all means any creation of the mind that is recognised and/or capable of being protected in terms of the laws of any country, from use by any other person and includes but is not limited to any confidential and/or proprietary information and intellectual property that Fractal Labs has created, acquired or otherwise has rights in and may, in connection with the performance of Fractal Labs’ obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems;
- 1.12. **“Parties”** means Fractal Labs (Pty) Ltd and Client collectively and **“Party”** means either one of them;
- 1.13. **“Personal Information”** has the meaning ascribed to in terms of the Protection of Personal Information Act 4 of 2013;

- 1.14. **“Personnel”** means a Party’s employees, directors, agents, independent contractors, sub-contractors or other representatives;
- 1.15. **“Proposal”** means the Fractal Labs proposal document (regardless of the form or title thereof) accepted by the Parties, regulating an engagement in respect of the supply of the Services to Client, which incorporates these terms and conditions, and which describes the Services and estimated consideration payable by Client;
- 1.16. **“Services”** means the services to be rendered to Client by Fractal Labs (or on its behalf) pursuant to the Agreement, as more clearly set out in the Proposal, and which includes access to the Software on the terms herein contained; and
- 1.17. **“Software”** means the proprietary software applications or solutions developed and/or licensed by Fractal Labs (as the case may be), as described in the Proposal, as it may be updated by Fractal Labs at its sole discretion from time to time.

### 2. APPOINTMENT, DURATION AND STRUCTURE

- 2.1. With effect from the Commencement Date, Client appoints Fractal Labs, and Fractal Labs accepts such appointment, to provide the Services to the Client in accordance with the terms of the Agreement.
- 2.2. The Agreement shall continue indefinitely, unless or until terminated in accordance with its terms.
- 2.3. Client acknowledges that:
  - 2.3.1. these terms and conditions shall apply in addition to the EULA; and
  - 2.3.2. its access to and use of the Software shall at all times be and remain conditional upon its acceptance of the EULA.

### 3. SOFTWARE

- 3.1. Subject to the Client’s:
  - 3.1.1. continued compliance with its payment obligations under the Agreement; and
  - 3.1.2. acceptance of the EULA;

Fractal Labs shall grant Client a licence to access and use the Software for Client’s internal business and data processing purposes, subject to the terms, conditions and restrictions contained in the EULA.
- 3.2. If Client in the conduct of its business gives its Personnel access to the Software, Client shall procure that its Personnel abide by the terms of the Agreement as if they were Client. Client hereby indemnifies Fractal Labs and holds it harmless against any damage or loss of any nature whatsoever and howsoever arising, suffered by Fractal Labs arising directly or indirectly out of or in connection with Client’s failure to do so and/or otherwise arising from the breach of any of the terms of the Agreement by its Personnel.

### 4. SERVICES

- 4.1. Fractal Labs agrees to provide the Services on the basis contemplated in the Proposal.
- 4.2. Notwithstanding anything to the contrary in the Agreement, Fractal Labs may modify, amend, enhance, update or provide an appropriate replacement for any of the Services or the Software, or any element thereof, at any time; provided that Fractal Labs shall not materially reduce the functionality, availability or reliability of the affected Services or Software.
- 4.3. Should Client require any additional services which:
  - 4.3.1. are not expressly included in the Services, then such additional services shall be provided subject to the terms and conditions of a separate agreement which shall be concluded between the Parties; or
  - 4.3.2. exceed the volumes indicated in the Proposal, then such additional services/volumes shall be provided by Fractal Labs at Client’s request and paid for separately by Client at Fractal Labs’ standard time and material rates, on the terms and conditions of clause 7.

## 5. INTELLECTUAL PROPERTY

- 5.1. All right, title and ownership of any code, forms, algorithms, methodologies, frameworks or materials developed by or for Fractal Labs or Client independently and outside of the Agreement and provided during the course of the Agreement (“Existing Material”) shall remain the sole property of the Party providing the Existing Material.
- 5.2. Fractal Labs has created, acquired or otherwise obtained rights in the IP and notwithstanding anything contained in the Agreement, as between the Parties Fractal Labs will own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the IP. To the extent that Fractal Labs utilises any IP in connection with its performance under the Agreement, the IP shall remain the property of Fractal Labs and Client shall acquire no right or interest therein.
- 5.3. Unless otherwise agreed to in writing, with respect to any development, adaptation, enhancement, modification, adjustment or other change to any IP which may be developed by Fractal Labs, (“Derivative Works”), Fractal Labs shall be the owner of all such Derivative Works.

## 6. CLIENT’S OBLIGATIONS

- 6.1. Client shall at its own cost and throughout the term of the Agreement procure and maintain in good working condition and operation the Client Environment and all telecommunications links necessary for the proper performance of the Services and Client’s use of the Software.
- 6.2. In addition to any responsibilities or obligations of Client set out in the Proposal, Client has the sole responsibility for –
  - 6.2.1. the transfer of its work onto and proving the operation and the use of the Software in its business and operations;
  - 6.2.2. use of the Software, including audit controls, operating procedures, restart and recovery routines, security and accuracy of input and output data, and any other procedures necessary for Client’s intended use of the Software;
  - 6.2.3. ensuring the accuracy, correctness, and completeness of all input and/or output data to be used on or in conjunction with the Software in Client’s business and operations. Any data captured and/or used by Fractal Labs is for the limited purpose of testing associated Software and is not intended for use outside of testing purposes. Client shall bear the risk of checking the accuracy and correctness of, and the use of, all data prior to using same in its business and operations. Client shall at all times remain responsible for the accuracy and completeness of all Client Data, and for ensuring that the input of such Client Data into the Software complies with Fractal Lab’s instructions.
- 6.3. To enable Fractal Labs to provide the Services, Client agrees to provide ongoing assistance, liaison, input, support and full co-operation to the extent required by Fractal Labs and at Clients cost, which may include without limitation:
  - 6.3.1. obtaining and maintaining necessary licences and consents and rendering all decisions and approvals required as soon as is reasonably possible;
  - 6.3.2. making available sufficiently authorised and qualifies Client Personnel and ensuring that they are available for workshops, group discussions and specific task execution as and when required;
  - 6.3.3. notifying Fractal Labs as soon as reasonably possible of any issues, concerns or disputes;
  - 6.3.4. ensuring that no malicious software is introduced into Client’s or Fractal Labs’ systems by its Personnel or any third party.
- 6.4. Fractal Labs may, if and to the extent indicated in a Proposal, provide training and support to Client regarding its access to and use of the Software. Save where expressly agreed to the contrary, any and all such support shall be provided at Fractal Lab’s standard time and material rates and shall be payable as set out in clause 7 below.
- 6.5. Client warrants that: (i) it has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the

Agreement, (ii) by entering into the Agreement Client is not acting in breach of any agreement to which Client is a party, and (iii) the use of Client Data by Fractal Labs does not and will not infringe the intellectual property rights of any other person, and Client hereby indemnifies and holds Fractal Labs harmless from any claim for damages by any third party as a result of the breach of these warranties, including all legal costs incurred on an attorney-and-own-client basis.

- 6.6. Client acknowledges and agrees that (i) the Software and Services, and any results or deliverables they produce, rely on the Client Data and provided by Client; and (ii) Fractal Labs shall have no obligation or liability for, or arising from, any possible falsity, inaccuracy, incompleteness or unavailability of the Client Data or any deliverables or results based on the Client Data or the incorrect input of Client Data onto the Software.

## 7. CONSIDERATION AND PAYMENT TERMS

- 7.1. In consideration for the Services, Client shall be liable for and shall pay the fees and charges stipulated in the Proposal which are stated exclusive of the following, all of which shall be for the account of Client –
  - 7.1.1. value-added tax (“VAT”) which shall be charged in addition, at the rate and in the manner for the time being prescribed by law;
  - 7.1.2. other taxes and duties levied or charged by any revenue authority (including South African Revenue Services). If Client deducts foreign withholding taxes for payment to a foreign revenue authority, the amount payable to Fractal Labs shall be grossed up accordingly;
  - 7.1.3. telecommunications services fees and charges; and
  - 7.1.4. Fractal Labs’ fees and charges for any additional services provided to Client at Client’s request (which may include additional support and training fees).
- 7.2. Unless otherwise agreed to in writing:
  - 7.2.1. payment shall be made within 30 (thirty) days of the rendering of an invoice to the Client, which shall be done on a monthly basis; and
  - 7.2.2. the fees and charges shall be reviewed annually, and shall be subject to any reasonable adjustment determined by Fractal Labs. Fractal Labs shall notify Client reasonably in advance of such adjustment.
- 7.3. Amounts payable which are not paid by Client on due date to Fractal Labs shall bear interest in accordance with the prime overdraft rate of Fractal Lab’s bankers, as published from time to time.
- 7.4. Failure by Client to make a payment on due date shall entitle Fractal Labs, without any liability to Client whatsoever, to suspend any/all Services (including access to and use of the Software) in whole or in part until such time as all arrears have been paid in full, including any interest due.

## 8. BREACH AND TERMINATION

- 8.1. Should either Party (“Defaulting Party”) –
  - 8.1.1. commit a material breach of the Agreement and fail to remedy the breach within 14 (fourteen) calendar days of having been called on in writing by the other Party to do so;
  - 8.1.2. fail to pay any invoice that is more than 60 (sixty) calendar days outstanding and is not the subject of a bona fide dispute between the Parties;
  - 8.1.3. effect or attempt to effect a compromise or composition with its creditors;
  - 8.1.4. be provisionally or finally liquidated or placed under judicial management; or
  - 8.1.5. commit a breach of the EULA;

then the other Party (“Innocent Party”) may, in its discretion and without prejudice to its rights in the Agreement or in law, terminate

the Agreement to which the event relates on written notice to the Defaulting Party.

- 8.2. Either Party may terminate this Agreement for convenience by giving the other Party 3 (three) month's prior written notice.
- 8.3. Should any licence, permit, certificate, consent, exemption or other legal requirement of a material nature without which Fractal Labs is unable effectively to provide Services under the Agreement expire, terminate, not be renewed or be withdrawn or refused for any reason whatsoever, then Fractal Labs may terminate the Agreement on 7 (seven) calendar days' written notice to Client.
- 8.4. Notwithstanding anything to the contrary herein contained a Party may, by written notice served on the other Party terminate the Agreement with immediate effect if any one or more of the following events occur:
- 8.4.1. any circumstance arises at any time while the Agreement is in force that is beyond the control of a Party, including but not limited to government or other regulatory action, and such circumstance prevents any Parties from carrying out its respective obligations hereunder for a period of 30 (thirty) days or more; or
- 8.4.2. the Services or any part thereof cease to be fit for use in the relevant territory or fail to meet the regulatory standards required under applicable law; and, in such an event, Fractal Labs must be informed of such reasons in writing and a reasonable time of no must be given to Fractal Labs to address the issues of which it was notified.
- 8.5. Upon termination, Fractal Labs will provide all reasonable assistance to migrate all Client Data within its possession back to the Client and destroy any Personal Information that belongs to a Client or a Client's customer. If the termination was due to a breach on the part of Fractal Labs, the migration will be at the cost of Fractal Labs. In all other cases, the cost of the migration will be for the Client's account.

#### 9. CONFIDENTIALITY, PRIVACY AND PERSONAL INFORMATION

- 9.1. Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:
- 9.1.1. the details of the Agreement, as well as the details of all the transactions or agreements contemplated in the Agreement; and
- 9.1.2. all information relating to the business, the operations, affairs, assets, and liabilities of any the Parties, together with the Confidential Information.
- 9.2. Fractal Labs and the Client are each responsible for complying with their respective obligations under applicable privacy and protection of personal information laws governing the processing of Personal Information.
- 9.3. Both Parties shall take reasonable precautions to preserve the integrity of such Personal Information and to prevent any unauthorised access, corruption, or loss of such Personal Information.

#### 10. LIMITATION OF LIABILITY

- 10.1. To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, each Party's maximum liability for direct damages for anything giving rise to any legal action shall be an amount equal to the total fees already paid or due and payable by Client to Fractal Labs for the period 6 (six) months preceding the claim. The maximum amount shall be an aggregate amount for all claims arising out of the Agreement during its currency.
- 10.2. To the extent permitted by applicable law, in no event shall either Party or its Personnel be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the Agreement.
- 10.3. The limitations contained in this clause 10 shall not apply to (i) any breach by a Party of the other Party's proprietary or confidential information or intellectual property (including Client's breach of the EULA); (ii) a Party's indemnification obligations in terms of the Agreement; (iii) any loss of or damage to any property or injury to or

death of any person which arises from a Party's negligence; or (iv) damages arising from a Party's wilful misconduct (including theft, fraud or other criminal act).

- 10.4. Fractal Labs shall not be liable for any loss or damage of whatsoever nature suffered by Client arising out of or in connection with any breach of the Agreement by Client or any act, misrepresentation, error or omission made by or on behalf of Client or Client's Personnel. Fractal Labs accepts no liability whatsoever for service interruptions, accidents or any operational aspect of Client.
- 10.5. This clause 10 shall survive termination of the Agreement.

#### 11. GENERAL

- 11.1. The Parties warrant to each other that they have taken or procured the taking of all steps, actions and corporate/executive proceedings needed for the Agreement to be binding on them. Except as expressly set forth in the Agreement, Fractal Labs does not make any representations or warranties, express or implied, including but not limited to any warranties of merchantability or fitness for a particular purpose. Unless otherwise specifically stated, this Agreement supersedes and replaces all prior commitments, undertakings, warranties or representations, whether written or oral, between you and us in respect of the subject matter hereof. Without limiting the foregoing, Fractal Labs does not make any representations or warranties whatsoever regarding the accuracy, completeness, or adequacy of the Services or the Software or any other information, materials, products, or services provided under or in connection with the Agreement.
- 11.2. Client indemnifies and holds Fractal Labs harmless against any loss, claim, demand, or damage, including any actions brought or made by any third party (including any end user of the Software), which Client may suffer arising directly or indirectly out of or in connection with the performance of the Services or the provision of the Software.
- 11.3. The Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument with respect to that document.
- 11.4. No deviation from or variation of these terms and conditions shall be allowed or permitted unless otherwise expressly agreed in writing by the Parties or their duly authorised representatives.
- 11.5. No failure by a Party to enforce any provision of the Agreement shall constitute a waiver of such provision or affect in any way a Party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 11.6. The Parties choose the addresses, which are set out opposite their names in the Proposal, as the addresses at which all notices, legal processes and other communications must be delivered, for the purposes of the Agreement.
- 11.7. Client may not assign or transfer any of its rights or obligations under the Agreement to any other party without the prior written consent of Fractal Labs, which consent may not be unreasonably withheld.
- 11.8. Nothing in the Agreement shall constitute or be deemed to constitute a partnership between the Parties hereto and no Party shall have the authority to bind the other Party in any way, unless expressly authorised in terms of the Agreement.
- 11.9. The Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 11.10. Any dispute which arises between the Parties shall be dealt with as follows (on the basis that this clause 11.10 is severable from the rest of the Agreement and shall remain valid and binding on the Parties notwithstanding any termination of the Agreement:
- 11.10.1. in the first instance, it shall be addressed by means of joint co-operation or discussion between the individuals directly involved in the execution of the Agreement;
- 11.10.2. should the Parties be unable to resolve a dispute, the dispute will be finally resolved in accordance with the Rules of AFSA, by an arbitrator or arbitrators appointed by it. Either Party may demand that a

dispute be referred to arbitration by giving written notice to that effect to the other Party.

11.10.3. the arbitration shall be held at Pretoria and in English;

11.10.4. the costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise determined by the Parties or the arbitrator, irrespective of which Party referred the dispute to arbitration; and

11.10.5. nothing in this Agreement shall preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.