

TERMS OF USE - UK

These Terms of Use together with the Order Form and Support Promise set out the basis upon which Kurtosys agrees to make certain Products available to Client through the Kurtosys Service.

Client Representative Agreement	Print Name	Signature	Effective Date
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1. Definitions.

Acceptance means the Client has reviewed the product(s) delivered by Kurtosys and agrees that requirements defined in the Agreement and any additional scoping agreements have been met.

Addendum means a document signed by Client under which Client may subscribe for additional Products or higher Usage Limits at the rates specified therein which shall run concurrently, co-terminate with and be subject to the provisions of this Agreement.

Affiliates means in relation to a body corporate, any subsidiary, subsidiary undertaking or holding company of such body corporate, and any subsidiary or subsidiary undertaking of any such holding company

Agreement means collectively the Order Form, these Terms of Use, the Support Promise and any Exhibits or Addendum (as amended).

Business Day means Monday to Friday excluding UK Public and Bank Holidays.

Client means the natural person or legal entity specified on the Order Form subscribing on behalf of itself and/or the Users to the Products and Service provided under this Agreement.

Client Content means any data, images, graphics, information, statements, opinions, Intellectual Property or other material (regardless of form or media) that Client contributes to Kurtosys for use in conjunction with the Products and onward distribution to Users accessing the Kurtosys Service.

Content means Client Content and (as applicable) any Third-Party Content.

Documentation means the sales material, user manuals, and training videos (if any and as amended by us from time to time) supplied by us to Client in respect of the Products and Service.

Effective Date means the earlier of the effective date specified in the Order Form or first access by a User to the Kurtosys Service.

Fees means the amounts payable by Client as consideration for the Products and the Service as specified in the Order Form.

Initial Term has the meaning given to it in the Order Form.

Intellectual Property means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, logos, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Kurtosys means Kurtosys Systems Limited, a company incorporated under the laws of England & Wales under company number 04395076 with its registered office address being 77 Kingsway, 1st Floor London, England WC2B 6SR and "we", "our" or "us" shall be construed accordingly.

Kurtosys Platform means the proprietary technology platform developed by Kurtosys to serve the digital marketing and client reporting needs of the fund and asset management industry.

Kurtosys Service or the Service means the service through which we make the Products available to the Users.

Malicious Code means without limitation code, files, scripts, agents or programs intended to do harm, including for example viruses, worms, time-bombs and Trojan horses.

Non-Kurtosys Application means any web-based or off-line software application provided by Client (or by Client's third-party suppliers on Client's behalf) and which Client wishes to interoperate with the Kurtosys Service.

Order Form means a document signed by Client under which Client subscribes to the Products and Kurtosys Service.

Products means the product(s) Client has subscribed for as specified in the Order Form.

Scope means the agreed configuration of the Products and Kurtosys Service together with all restrictions

Renewal Term has the meaning given to it in the Order Form.

Support Promise means the support promise made by us in respect of our Products (as amended by us from time to time)

Term means the Initial Term and any subsequent Renewal Term or either of them as the context so requires.

Third Party Content means data, images, graphics, information, statements, opinions, Intellectual Property or other material (regardless of form or media) created by Client's third party licensors and: (i) supplied directly by them to us; or (ii) supplied indirectly by Client to us, in each case for use in conjunction with the Kurtosys Service.

Usage Limits means, without limitation, the per-User, per- document, per-site, per-region, per-document or per-Gigabyte limits (if any) specified in the Order Form and defining the scope of use of the Products and Service.

Users means Client and/or those of Client's employees, customers, consultants, agents and contractors who have been issued User IDs and passwords by us and are authorised by us to access the Products and Service.

User Acceptance Testing (UAT) mean the process by which the Client approves the Products and Kurtosys Service.

2. Scope.

- (a) Subject always to the provisions of this Agreement and in consideration of the Fees, we agree to make the Products and the Content available to the Users via the Kurtosys Service for the duration of the Term.

(b) Client may subscribe for additional Products and increase Usage Limits during the Term by signing an Order Form or Addendum with Kurtosys or, in some cases, requesting for mutually agreed upon additional services in writing. Unless otherwise agreed by us in writing, any additional fees that become payable by Client pursuant to the Order Form or Addendum shall be calculated on a pro-rated basis and billed in advance to coincide with the then-current Initial or Renewal Term.

(c) Any requests for a change in scope of Service must be made to us in writing following receipt of which we will, within an agreed reasonable timeframe, submit a high level response indicating inter alia the additional work to be undertaken, the impact to the Service and the corresponding additional fees required to give effect to the requested change. Unless otherwise agreed by us in writing, all work arising from Client's change request (including the preparation of our response to the Client change request) shall be charged at our then-current standard consultancy rate.

3. On-Boarding and Implementation.

(a) Following Client's signature of the Order Form, we will work with Client to develop a project plan for the uploading of Client Content and any Third-Party Content to the Kurtosys Platform including, where applicable, the integration of any Non-Kurtosys Application.

(b) The Client must provide data files representing the entire scope of the Implementation within four (4) weeks of project kickoff.

(c) Client agrees to fully co-operate with us during the on-boarding phase including: (i) in the provision of Content, information and test data and (ii) making available suitably qualified personnel.

(d) Acceptance will be deemed to have occurred on the earliest of: (i) Client's written confirmation of acceptance; (ii) the expiry of five (5) days after the completion of all acceptance tests, (unless Client has given prior written notice of an error); or (iii) Client's use of the Data Loader, APIs and/or the Products or Service for commercial purposes.

4. User Acceptance Testing.

(a) Kurtosys will conduct at least one period of User Acceptance Testing during the course of the Engagement. Kurtosys will agree with the Client the period of UAT during which the Client is required to provide Acceptance of the deliverable in its current state or provide specific and detailed examples of deviations from the requirements mutually agreed to by both parties and identified in the Agreement.

(b) Any requirements identified during UAT that are not specifically included as part of the Agreement, Requirements Documentation, or other Addendum is considered outside of the scope of work and would require a change order whereby additional fees would be incurred. Kurtosys has the right to refuse any out-of-scope modifications requested.

(c) If written rejection of UAT is not received by Kurtosys within two (2) weeks of completion of a scheduled UAT process, Kurtosys will consider that the Client has provided explicit Acceptance and that Kurtosys has provided 100% of the requirements identified in the Agreement. Once accepted, the project is considered to have gone "live" (in a production environment), including all deliverables identified under the Order Form and/or SOW.

5. Training.

At Client's request, and in consideration for an agreed additional fee, we may agree to provide Product training to an agreed number of Users. In addition to the agreed fees, we reserve the right to charge for reasonable expenses for travel to and from Client's specified location where such site is outside a 5-mile radius from our closest office. Client agrees to reimburse such expenses within fifteen (15) days of our submission to Client of the corresponding receipts or other proof of expenditure.

6. Mutual Grant of Rights.

(a) In consideration for the Fees and subject always to the limitations set out in this Agreement, Kurtosys grants Client and the Users a limited, non-exclusive, non-transferable right to access and use the Documentation, Products, Service and Kurtosys Platform solely for internal and non-commercial purposes for the duration of the Term.

(b) Client grants us (and our Affiliates) a worldwide, limited, non-exclusive and non-transferable license to host, copy, store, configure, modify, transmit and display Client Content for the purposes of this Agreement.

7. Our Responsibilities.

(a) We will: (i) ensure that the Products and Service perform substantially in accordance with the Documentation; (ii) perform our obligations in a reliable and professional manner and with reasonable skill and care in conformity with good industry practice; (iii) employ reasonable administrative, physical and technical safeguards to protect the integrity and confidentiality of Client Content; (iv) apply commercially reasonable endeavors to ensure that our software does not contain any Malicious Code; (v) support Users' use of the Products in accordance with the applicable Support Promise; (vi) subject always to clause 8(a)(vi) maintain the licences, consents and permissions necessary for the performance of our obligations under this Agreement and (vii) comply with all applicable laws and regulations with respect to our activities under this Agreement.

(b) The undertaking at clause 7(a)(i) shall not apply to the extent of any non-conformance, which is caused by unauthorised use of the Products or Service or a modification or alteration of the Products or Service by any party other than us or our duly authorised contractors or agents. If the Products or Service do not conform to the undertaking given at clause 7(a)(i), we will, at our expense, following receipt of written notice from Client, use all reasonable commercial endeavors to correct any such non-conformance promptly or provide Client with an alternative means of accomplishing the desired performance.

(c) This Agreement shall not prevent us from entering into similar agreements with third parties or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

8. Client's Responsibilities.

(a) Client will: (i) provide us with all due co-operation in relation to this Agreement including without limitation the timely uploading of Client Content to the Kurtosys Platform using the Data Loader, API or such other medium as we agree and in the formats we have agreed with Client in writing in advance; the timely approval of all Content prior to its distribution to Users via the Service; the timely performance of Client's other obligations (and we shall not be responsible for any delays caused by Client) and access to such information and personnel as we may reasonably require in

order to provide the Services; (ii) be responsible for the accuracy, quality and legality of Client Content; the means by which Client acquired Client Content and ensure that Client Content does not contain any Malicious Code or any material which may be unlawful, defamatory, infringing, facilitate illegal activity, be discriminatory or otherwise illegal or damaging to any person or property; (iii) use (and ensure Users use) the Products and Service only in accordance with the Documentation, the Usage Limits, this Agreement and all applicable laws and regulations; (iv) use commercially reasonable efforts to prevent unauthorised access to or use of the Service (and notify us promptly upon becoming aware of such unauthorized access or use); (v) be solely responsible for procuring and maintaining network connections and telecommunications links from Client's systems to the Kurtosys Service and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Client's network connections, telecommunications links or caused by the internet; (vi) be solely responsible for securing the necessary rights, licenses and consents including without limitation from Third Party Content providers and Non- Kurtosys Application providers to allow us to host, copy, store, configure, modify, transmit and display or deliver such content and/or interoperate with such applications in order to deliver the Service and (vii) comply with all applicable laws and regulations with respect to Client's activities under this Agreement.

- (b) Client will not: (i) sell, resell, license, sub-license, distribute, rent or lease the Documentation, Products, Service, Data Loader, API or Kurtosys Platform; (ii) use or permit anyone to use the Documentation, Products, Service, Data Loader, API or Kurtosys Platform for any unlawful purpose; (iii) frame, mirror or reverse engineer the Products, Data Loader, API, Kurtosys Platform or any element of the Service other than as permitted by us for use on Client's intranet or internal non-commercial purpose or as is permitted by law; or (iv) use the Products, Service, Data Loader, API or Kurtosys Platform to build a competing product or service.

9. Registrations. Client shall be required to provide us with a list of the individuals Client wishes to designate as Users. In order to enable Kurtosys to process User registrations and issue User IDs and passwords, Client shall provide us with certain additional information in respect of each such intended User. This information shall comprise the following: name; job title; department; current working location and e-mail address (Registration Information). Prior to providing such Registration Information to Kurtosys, Client shall ensure that Client has obtained such consents from the designated Users as are necessary to ensure compliance with applicable data protection legislation. Client shall ensure that the Registration Information in respect of each User is current at all times for the Term.

10. Storage and Use of Registration Information.

Kurtosys stores the Registration Information in respect of each User and may use it for internal, operational and other lawful purposes including verifying a User's compliance with this Agreement. Client hereby acknowledges and agrees that Kurtosys may:

- (a) collect and store such Registration Information together with other information about each User's use of the Service; and
- (b) make such information available internally within Kurtosys and with our Affiliates and partners to the extent necessary for us to provide the Kurtosys Service to Client or if we are required to do so by virtue of any law or by order of an applicable court or regulatory authority.
- (c) Client shall procure necessary permissions from the Users in favour of Kurtosys. Kurtosys undertakes to treat such information with due care and in accordance with the terms of the Kurtosys Privacy Policy which comply with applicable

Data Protection legislation and can be found in the legal section of the Kurtosys website at www.Kurtosys.com.

11. User IDs and Passwords. Once issued, the User IDs and passwords may only be used by the individual User to whom they were assigned. Only Users shall be entitled to access the Service and no User IDs or passwords may be transferred, assigned or otherwise loaned (whether for temporary use or otherwise) in any manner whatsoever without Kurtosys' prior written consent (which may be withheld in Kurtosys' absolute discretion). When a User is terminated from employment, re-assigned or is otherwise no longer to be granted access to the Service, Client shall notify us immediately in writing so that we can disable and/or re-assign the corresponding User ID and password.

12. Fees. Client agrees to pay the Fees to Kurtosys in the amounts and manner set out in Order Form (or Addendum). The Fees are subject to change by the greater of the increase of the UK RPI or 5% on an annual basis from the Effective Date unless otherwise specified in the Order Form or Addendum. All amounts due from Client under this Agreement are due and payable in full without any set-off, counter-claim deduction or withholding at the intervals specified on the Order Form (or Addendum) and are exclusive of any sales, value added or other taxes or duties which, if payable, shall be paid by Client. All payments shall be made by bank transfer to an account designated by Kurtosys. Any transfer fees incurred should be paid by the Client. Kurtosys reserves the right to charge Client interest on the late payment of any sum due at a rate of one per cent (1%) per month until such outstanding sum is settled in full. All fees are non-refundable.

13. Audit Rights. Client shall maintain full and comprehensive records of Users accessing the Products and Service and Kurtosys may audit such records on reasonable notice during business hours. Where Usage Limits apply and an audit shows an underpayment of more than five percent (5%) for any payment period, Client shall pay the reasonable costs of the audit together with the full amount of any underpayment (plus interest due).

For the purposes of this clause 13, "Relevant Authority" means any court, any local, national or supra national agency, inspectorate, or public or statutory person of the government of the United States or otherwise with jurisdiction over the activities of the Client from time to time including the Financial Conduct Authority

- (a) In relation to any applicable legal or regulatory requirements, the Client, its auditors or any Relevant Authority shall, on reasonable advance notice, have the right to audit Kurtosys' (and any identified sub-contractors') compliance with this Agreement and shall be granted access to the records, systems, procedures and premises of Kurtosys solely as necessary for the purposes of conducting any audit.
- (b) Kurtosys acknowledges that the Client does not have control over the carrying out of any audit by any Relevant Authority or its external auditors but the Client shall endeavour to ensure that the conditions relating to any audit carried out by the Client as set out below are complied with.
- (c) The Client shall ensure that any audits are conducted during normal business hours but causing minimum disruption to the provision of the Services and the business of Kurtosys. The Client shall ensure that any auditor is bound by appropriate confidentiality undertakings.
- (d) The Client shall bear any costs in relation to each such audit.

14. Storage of Client Content.

- (a) Within a reasonable period following expiry or termination of this Agreement, Kurtosys shall provide Client with a data file

of all Client Content in our possession following which we shall be entitled to delete or destroy all copies of Client Content from our systems. In the event of any loss or damage to Client Content during the Term, Client's sole and exclusive remedy shall be for Kurtosys to use reasonable commercial endeavours to restore the lost or damaged content from the latest back-up of such content maintained by Kurtosys. Kurtosys shall not be responsible for any loss, destruction of Client Content or any alteration or disclosure of Client Content by a third party.

- (b) If the stored content exceeds the amount of disk storage space specified in the Order Form, Client shall pay additional Fees in accordance with Kurtosys' then current excess data storage fees.

15. Intellectual Property.

- (a) The Documentation, Products, Service, Data Loader, API and Kurtosys Platform are protected by United States and international laws relating to Intellectual Property and as such belong either to Kurtosys or its respective licensors or suppliers. Other than the rights of use granted in this Agreement (or any pre-existing rights Client may have in Client Content), Client does not acquire and agrees not to assert any Intellectual Property or other rights (whether of ownership or otherwise) in the Documentation, Products, Service, Data Loader, API or Kurtosys Platform.
- (b) Other than the rights granted by Client in this Agreement, we acknowledge that we do not acquire and agree not to assert any Intellectual Property or other rights (whether of ownership or otherwise) in Client Content.

16. Warranties and Representations.

Each of us warrants and represents to the other that we have the authority to enter into this Agreement.

- (a) By us: We represent and warrant to Client that Client's use of the Documentation, Products, Service, Data Loader, API and Kurtosys Platform shall not infringe the Intellectual Property Rights of any third party.
- (b) By Client: Client warrants and represents to us that: (i) our use of Client Content shall not infringe the Intellectual Property Rights of any third party and that Client has obtained all relevant authorisations and complied with any relevant laws necessary for Client to distribute Client Content and the Third Party Content to Users through the Products and Service and to authorise us to do so on Client's behalf; and (ii) Client has all the necessary authorisations in place to allow us to interoperate with any Non-Kurtosys Application (where applicable) for the benefit of the Users.

17. Limitation of Liability and Disclaimer of Warranties.

- (a) Content: Kurtosys distributes (it does not produce) the Content. Kurtosys does not have any editorial control over such Content and all opinions, statements, advice, services, offers, or other information contained in the Content available through the Service are provided by Client and the Third-Party Content providers, not Kurtosys. Kurtosys shall not be liable in any way for the acts or omissions of Client or the Third-Party Content providers. Kurtosys does not guarantee the accuracy, completeness or usefulness of any of the Content nor its merchantability or fitness for any purpose. Neither Kurtosys nor its suppliers shall be deemed to be providing investment management, legal, tax, or advisory services to Client or any User. Client and the Users are responsible for: (i) any use of the Products, Service and the Content and (ii) for ensuring the accuracy and adequacy of any results of such use and as such will have full responsibility for any investment decisions.

recommendations, advice or analyses made using any element of the Products, Service or Content.

- (b) Non-Kurtosys Applications: Kurtosys is not responsible for the performance of any Non-Kurtosys Application or other service, content or application linked to the Kurtosys Products or Service. For the avoidance of doubt, such applications shall be governed solely by terms and conditions of the relevant service provider.
 - (c) Kurtosys provides the Service to Client in accordance with the Support Promise. Kurtosys does not warrant that use of the Products or Service will be uninterrupted, error-free or that the Documentation, Products, Service, Data Loader, API, Kurtosys Platform and/or the information obtained through the Service will meet User requirements. Use of the Service is entirely at Client's risk and that of the other Users.
 - (d) EXCEPT AS PROVIDED AT CLAUSE 16 HEREIN AND TO THE FULLEST EXTENT PERMITTED BY LAW, KURTOSYS HEREBY: (i) DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY WITH RESPECT TO THE DOCUMENTATION, PRODUCTS, SERVICE, DATA LOADER, API, KURTOSYS PLATFORM OR CONTENT AND ANY OTHER SUBJECT MATTER OF THIS AGREEMENT INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, SATISFACTORY QUALITY AND FITNESS FOR PURPOSE (AND NO CONTRARY COMMUNICATION MADE BY ANY REPRESENTATIVE OF KURTOSYS SHALL CREATE SUCH A WARRANTY, REPRESENTATION OR CONDITION); AND (ii) DISCLAIMS ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, COST OR EXPENSE SUFFERED AS A RESULT OF ACCESS TO, USE OF, INABILITY TO USE OR RELIANCE UPON THE DOCUMENTATION, PRODUCTS, SERVICE, DATA LOADER, API, KURTOSYS PLATFORM OR CONTENT.
 - (e) TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOSS OF BUSINESS, REVENUE, PROFIT OR DATA, INTERRUPTION OF BUSINESS, LOSS OF GOODWILL OR OTHER INTANGIBLE LOSSES OR FOR ANY SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THE THEORY OF LIABILITY, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, EVEN IF SUCH PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF DAMAGES, EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT.
 - (f) Subject always to the foregoing provisions of this clause 17, each party's total aggregate liability to the other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid for the applicable Product during the 6 months immediately preceding the date on which the claim in respect of such Product arose. Both parties acknowledge this to be a fair limitation of liability.
- 18. Indemnification.**
- (a) By Client: Client agrees to defend, indemnify and hold harmless Kurtosys and its officers, directors, employees and agents (each an Indemnified Party), except in cases of gross negligence or wilful misconduct, from and against any liability, damage, loss, cost or expense (including without limitation reasonable legal fees, using counsel reasonably acceptable to the Indemnified Party) arising out

of or related to any unauthorised use of the Documentation, Products, Service, Data Loader, API, Kurtosys Platform or Content or arising from or related to any Non-Kurtosys Applications or any breach of the provisions of this Agreement by a User including without limitation any claim that Client Content or our use of Third Party Content or a Non-Kurtosys Application hereunder infringes the Intellectual Property of a third party. Client shall have the reasonable right to control the defence and settlement of any such claim, lawsuit or proceeding (subject to the right of the Indemnified Party to participate at its own expense and option) provided that Client shall not settle any claim or action in a manner that would impose any obligation on an Indemnified Party without such party's prior written consent (which shall not be unreasonably withheld or delayed).

- (b) By Kurtosys: Kurtosys agrees to defend, indemnify and hold harmless Client and Client's officers, directors, employees and agents (each a Kurtosys Indemnified Party) from and against any liability, damage, loss, cost or expense (including without limitation reasonable legal fees, using counsel reasonably acceptable to the Indemnified Party) incurred by a Kurtosys Indemnified Party as a result of any third party claim or action that permitted use of the Products, Service, Data Loader, API or Kurtosys Platform infringes that party's Intellectual Property rights. Kurtosys shall have the right to control the defence and settlement of any such claim, lawsuit or proceeding (subject to the right of the Kurtosys Indemnified Party to participate at its own expense and option) provided that Kurtosys shall not settle any such claim, lawsuit or proceeding which would impose any obligation on a Kurtosys Indemnified Party without such party's prior written consent (which shall not be unreasonably withheld or delayed).
- (c) In no event shall Kurtosys be liable to the extent that the alleged infringement is based on: (i) modification of the Products, Service, Data Loader, API or Kurtosys Platform by anyone other than Kurtosys; (ii) unauthorised use of the Products, Service, Data Loader, API or Kurtosys Platform; (iii) to the extent a claim arises from Client Content, Third Party Content or a Non-Kurtosys Application; or (iv) continued use of the Products, Service, Data Loader, API or Kurtosys Platform after Client receives notice of an alleged or actual infringement from Kurtosys or any appropriate authority.
- (d) If we receive notice of a claim that authorised use of the Products, Service, Data Loader, API or Kurtosys Platform may infringe the Intellectual Property rights of a third party, we may at our option and at no cost to Client: (i) modify the Products, Service, Data Loader, API or Kurtosys Platform so that it no longer infringes such third party's Intellectual Property rights without materially affecting Client's use of the Service; (ii) obtain a license for Client's continued use of the allegedly infringing Products, Service, Data Loader, API or Kurtosys Platform or element thereof; or (iii) terminate Client's subscription to the allegedly infringing Product or part of the Service upon 30 days written notice to Client.
- (e) Subject always to the clause 17, the foregoing states the entire liability of Kurtosys to Client or a Kurtosys Indemnified Party with respect to Intellectual Property right infringement and Client expressly waives any other claims for indemnity from Kurtosys.

19. Term. Unless otherwise terminated in accordance with this Agreement, Kurtosys shall provide the Service to Client on and from the date specified on the Order Form until the end of the Initial Term and each successive Renewal Term.

20. Termination of User Access Rights. Kurtosys may (without terminating this Agreement), suspend or terminate User access to the Service (or any part of it) at any time during the life of this Agreement in the event of non- payment of Fees or another material or persistent breach of this Agreement.

21. Termination of Agreement.

- (a) Either party may terminate this Agreement immediately in the event of a material breach by the other party if such breach remains uncured for a period of ninety (90) days following written notification to the party in breach. (For the avoidance of doubt, our material failure to meet the service commitments in respect of Critical Incidents in the Support Promise for 3 consecutive months shall constitute a material breach).
 - (b) Notwithstanding the foregoing either party may terminate the Agreement immediately upon discovery of any wilful or reckless breach of the provisions of this Agreement. Kurtosys also reserves the right to terminate this Agreement immediately in the event that Client: (i) becomes insolvent; (ii) fails to pay its debts as they fall due or (iii) makes a general assignment for the benefit of creditors.
 - (c) Kurtosys shall not refund any portion of the Fees or other amounts already paid by Client at the time of termination, save in the case of: (i) Client's termination for our uncured material breach; (ii) termination pursuant to clause 18(d)(iii) (Indemnity); or (iii) termination pursuant to clause 22(g) (Force majeure), in which event, Kurtosys shall refund Client the pro-rata portion of any recurring (not one-off) Fees prepaid for the applicable Product but not yet earned by Kurtosys.
 - (d) Upon expiration or any termination of this Agreement the rights granted under it shall cease and Client shall, at our request, return or certify that that Client have destroyed all copies or records of the Documentation together with any confidential or proprietary information and Kurtosys shall, at Client's request, return or certify that Kurtosys has destroyed all copies or records of Client Content together with any confidential or proprietary information. Notwithstanding the foregoing, Client shall be permitted to retain such copies of Content (in whatever media) as are necessary for Client's internal compliance procedures or as may be required by any law, court or regulatory authority.
 - (e) The rights and obligations under clauses 11, 12, 13, 14, 16, 17, 20 and 21 together with any payments obligations accrued prior to expiration or termination (or any other obligations which ought reasonably to survive) shall survive the termination or expiration of this Agreement.
- 22.** Miscellaneous.
- (a) Confidentiality: Each party shall maintain the confidentiality of the other party's proprietary information during the Term and for two (2) years after the date of the last disclosure. These confidentiality obligations shall not apply to information: (i) lawfully in the public domain; (ii) lawfully possessed by the recipient before disclosure by the other party; (iii) lawfully disclosed to a party by a third party without obligation of confidentiality; (iv) independently developed by a party without reference to the other party's proprietary information; or (v) whose disclosure is compelled by a court or other competent authority (provided in such case that the compelled party makes reasonable efforts to help the disclosing party oppose or limit such compelled disclosure).

- (b) Severability: If any provision in this Agreement is held to be invalid or unenforceable, it shall be re-construed to reflect as closely as possible, its original intention, but all the remaining provisions shall remain in full force and effect.
- (c) Assignment: Neither party may assign, transfer, declare a trust over the benefit of or otherwise dispose of this Agreement without the other party's written consent, which shall not be unreasonably withheld or delayed, except that Kurtosys may assign this Agreement to any Affiliate or successor in interest, or in connection with a merger, consolidation, sale of all or substantially all of its assets, change of name or like event.
- (d) No Partnership: Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorize 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).
- (e) Amendments; Waiver: Save as expressly provided herein, amendments to this Agreement must be in writing and signed by authorized representatives of both parties. Neither course of conduct nor trade practice shall be taken to modify any provision of this Agreement. Any failure by either party to enforce strict performance of any provision of this Agreement shall not prevent it from subsequently doing so. No provision of this Agreement may be waived except in writing signed by the party against whom enforcement of the waiver is sought.
- (f) Entire Agreement: Save in the case of fraud or fraudulent concealment, the Order Form, the Support Promise and the Terms of Use (together with any Amendment or Addendum) constitute the entire and only agreement between Client and Kurtosys in relation to their subject matter and Client acknowledges it has not been given or relied on any representation or other statement whatsoever other than those set out therein. In particular, nothing communicated by any Kurtosys sales representative should be understood as a variation of the Agreement or an authorized representation about the nature and quality of the Documentation, Products, Service, Data Loader, API, Kurtosys Platform or Content.
- (g) Force Majeure: Kurtosys shall not be in breach of this Agreement or otherwise liable to Client for any delay in performance or non-performance under this Agreement if such delay is due to any event or circumstance beyond its reasonable control including acts of God or nature, failure or shortage of power supplies, acts or omissions of government or other authorities or any telecommunications carrier, operator or administration or internet service provider, war, act of terrorism, riot, trade dispute, lock-out or labor disturbance. In the event that such an event or circumstance continues for a period of 1 month or more, then either party may terminate this Agreement by giving thirty (30) days' notice in writing to the other party.
- (h) Anti-bribery and corruption: We each confirm that we have not received or been offered any illegal or improper bribe, kick back, payment, gift, undue financial or other advantage of any kind by the other party or its employees, officers or agents in connection with this Agreement.
- (i) Equitable Relief: Both parties agree that monetary damages alone might not be a sufficient remedy for any breach of this Agreement and acknowledge that an aggrieved party shall be entitled to seek injunctive relief as a remedy for any breach. Such remedy will not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity to the aggrieved party.
- (j) Notices: Each party may communicate with each other and send notices under this Agreement to the other party using the address details specified in the Order Form (including, for the avoidance of doubt, any e-mail address specified). Any communication or notice given pursuant to clause 20 shall be in writing and shall be delivered personally or sent by pre-paid first-class post to the company secretary of the recipient of the communication or notice.
- (k) Applicable Law; Venue: This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with, the laws of England. The parties irrevocably agree that the courts of England 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).
- (l) Taxes: All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies, withholdings and similar assessments (including without limitation, sales taxes, use taxes and value-added taxes), and Client agrees to bear and be responsible for all such taxes and charges, excluding taxes based upon Kurtosys' net income. In the event Client is required by applicable law or treaty to withhold or retain any sums from the amounts payable hereunder to Kurtosys, Client agrees to "gross up" the payments to Kurtosys to ensure that Kurtosys receives the full amount of fees that is due hereunder after the withholding or retention is made.
- (m) Third Party Rights: This agreement does not confer any rights on any person or party (other than the parties to this agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.