GoFETCh ®

LICENSE & SERVICE
TERMS AND CONDITIONS

By activating your GoFETCh System Account, you ("the Client") unconditionally agree and accept these terms and conditions. FETCH ENTERPRISES ("the Provider") reserves the right to change, modify, add, or remove portions of these Terms at any time. FETCH ENTERPRISES will post a clear, easily accessible notification on the website if there are any changes made to its Terms and Conditions. Should you continue using the Services, FETCH ENTERPRISES (The Provider) will automatically assume that you have read and understand the amended Terms and Conditions.

1. INTRODUCTION

Fetch Enterprises is a Customer Data Technology Company that specialises in *inter alia* Client data processing, software integration, data technology platforms and services. The Client wishes to appoint Fetch Enterprises as the Provider of the platforms and services and the parties wish to record the terms and conditions of their agreement in writing.

2. DEFINITIONS

2.1   In this Agreement, except to the extent expressly provided otherwise:

2.1.1   "**Account**" means an account enabling a person to access and use the Hosted Services;

2.1.2   "**Agreement**" means this agreement including any Addendums, and any amendments to this Agreement from time to time;

2.1.3   "**Business Day**" means any weekday other than a public holiday in South Africa;

2.1.4   "**Business Hours**" means the hours of [08:30 to 16:30 SAST] on a Business Day;

2.1.5   "**Charges**" means the amounts specified in the online pricing stipulated on the GoFETCh Hub or presented directly by a representative of the provider and such amounts as may be agreed in writing by the parties from time to time;

2.1.6   "**Client Data**" means all data, works and materials: uploaded to or stored on the Platform by the Client; transmitted by the Platform at the instigation of the Client; supplied by the Client to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Client ;

2.1.7   "**Client Personal Data**" means any Personal Data that is processed by the Provider on behalf of the Client in relation to this Agreement, but excluding *data* with respect to which the Provider is a data controller;

2.1.8 "**Data Protection Laws**" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Client Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

2.1.9 "**Effective Date**" means the date of activation of the hosted platform account for the client;

2.1.10 "**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected, including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, pandemics, terrorist attacks and wars;

2.1.11 "**Hosted Services**" means the customer data platform, which will be made available by the Provider to the Client as a service via the internet in accordance with this Agreement;

2.1.12 "**Hosted Services Defect**" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Service;

2.1.13 "**Hosted Services Specification**" means the specification for the Platform and Hosted Services set out online on the GoFETCh Hub;

2.1.14 "**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs;

2.1.15 "**GoFETCh Hub**" means the resource hub containing all the resources as found at www.gofetchonline.com;

2.1.16 "**Maintenance Services**" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

2.1.17 "**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services,

2.1.18 "**Services**" means any services that the Provider provides to the Client, or has an obligation to provide to the Client, under this Agreement;

2.1.19 "**Support Services**" means support in relation to the onboarding, use of, and the identification and resolution of errors in the Hosted Services;

2.1.20 "**Supported Web Browser**" means the current release from time to time of Mozilla Firefox, Google Chrome, Firefox or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

2.1.21 "**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

2.1.22 "**Update**" means a hotfix, patch or minor version update to any Platform software; and

2.1.23 "**Upgrade**" means a major version upgrade of any Platform software.

3. AGREEMENT TERM

3.1 This Agreement shall commence on the date of Registration.

3.2 This Agreement shall endure indefinitely, until cancelled by either Party by providing the other Party with 45 (forty-five) days' written notice to the other Party.

3.3 The Provider may suspend the provision of the license, maintenance and Support Services if any amount due to be paid by the Client to the Provider under this Agreement is overdue, and the Provider has given to the Client at least 7 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

3.4 The Provider shall provide the Maintenance and support services for the licensed software during the term in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.

4. HOSTED SERVICES

4.1 The Provider shall create an Account for the Client for the Customer Data Platform and shall provide to the Client user login details for that account.

4.2 The Provider hereby grants to the Client a worldwide, non-exclusive license to use the Hosted Services during the term by means of a Supported Web Browser for the internal business purposes of the Client in accordance with the hosted service specification outlined online in the resources on the GoFETCh Hub.

4.3 The license granted by the Provider to the Client under Clause 4.2 is subject to the following limitations:

(a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Client;

(b) the Hosted Services may only be used by the named users issued by the Platform;

(c) Platform users are required to accept Acceptable Use Policy Terms issued via the platform from time to time.

(d) the Client must not sub-license its right to access and use the Hosted Services;

4.4 The Client shall use reasonable endeavours, including reasonable security measures relating to user account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an issued user account.

4.5　The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services and Client Data will be held on a hosted server in a secure environment bound by the terms and conditions of the hosting provider.

4.6　For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:

(a)　a Force Majeure Event;

(b)　a fault or failure of the internet or any public telecommunications network;

(c)　a fault or failure of the Client's computer systems or networks;

(d)　scheduled maintenance

4.7　The Client must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

4.8　The Client must not use the Hosted Services:

(a)　in any way that is unlawful, illegal, fraudulent or harmful; or

(b)　in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4.9　For the avoidance of doubt, the Client has no right to access the software code including object code, intermediate code and source code of the Platform, either during or after the Term.

5.　MAINTENANCE SERVICES

5.1　The Provider shall provide the Maintenance Services to the Client during the Term to continue fulfilling the purposes outlined in the hosted service specification provided in the proposal or set out online on the GoFETCh Hub.

5.2　The Provider will endeavor to perform all scheduled maintenance during off peak times (i.e. outside of normal business hours). The Client will be notified in advance should the schedule maintenance be forecasted to exceed 60 (Sixty) minutes of Downtime.

5.2　The Provider shall where possible give to the Client at least 7 Business Days' prior written notice of scheduled Maintenance Services, including updates and upgrades, that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services.

6.　SUPPORT SERVICES

6.1　The Provider shall:

(a) provide Support Services via our Client Services division and assign an account manager to the Client to deliver the hosted service in accordance with Onboarding and Client Services processes outlined online as set out on the GoFETCh Hub;

(b) provide the Support Services to the Client during the Term and make available to the Client a support helpdesk with resource in accordance with the provisions of this Agreement;

(d) the policies and procedures of the Support Services are published on the GoFETCh Hub and may be updated from time to time: gofetchonline.com

6.2 The Client shall:

(a) appoint a central point of contact who shall, on behalf of your company, be responsible for all communication with the Service and management of the rights and obligations set out in the license and service agreement;

(b) timeously make available to the Provider all information reasonably required by it to provide the Services;

(c) stipulate timelines and expectations in relation to the provision of the Services which are fair and reasonable;

(d) remain responsible for any manual database cleaning identified in the process of rendering the Services;

(e) procure and/or provide all the necessary equipment, software, hardware, communications equipment and/or connectivity requirements to enable employees to access and use the Services.

(f) comply with the Provider's policies and procedures, including but not limited to its security policy, hosting policy, compliance policy, costing policy, data protection policy, fair usage policy etc. These policies and procedures will be made available online to the Client and may be updated by the Provider from time to time.

7.   CLIENT DATA

7.1 The Client hereby grants to the Provider a non-exclusive license to process the Client Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Client also grants to the Provider the right to sub-license these rights to its hosting service providers, subject to any express restrictions elsewhere in this Agreement.

7.2 The Client Data is the sole and exclusive property of the Client and for the duration of this Agreement and after its termination the Provider will not reproduce, disseminate, use for its own purposes or otherwise Process the Client Data for any reason not covered by this agreement without the prior written consent of the Client or unless it is legally compelled to do so.

7.3 The Client warrants to the Provider that the Client Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation under any applicable law.

7.4 The Provider shall create a back-up copy of the Client Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.

7.5 Upon termination of this Agreement and settlement of accounts, the Provider, free of charge, shall return to the Client, the latter's Client Data in CSV format, or any other format supported by the system, as an export from the platform. After it has done so it must await written confirmation from the Client that the Client has received the Client Data, whereafter it must delete all the Client's records that it holds in systems and servers under its control and confirm in writing that these have been deleted.

7.6 The Client specifically consents to the trans-border flow of the Client Data. The purpose of the trans-border flow of the aforesaid data may include but is not limited to data hosting and storage.

8. **DATA PROTECTION**

8.1 Each party shall comply with the Data Protection Laws with respect to the processing of the Client Personal Data. The Client expressly agrees and acknowledges that:

8.1.1 if the Provider processes any Personal Information for the duration of the Agreement, the Provider does so for and on behalf of the Client, who for the purposes of the 'PROTECTION OF PERSONAL INFORMATION ACT, NO 4 OF 2013' ("POPI"), is the "responsible party";

8.1.2 The Client is primarily responsible for complying with any data or personal information obligations imposed in terms of any law in respect of Personal Information, including POPI;

8.1.3 The Client will obtain all necessary consents for the disclosure of the Personal Information to the Provider and the Client will only provide the Provider with Personal Information where the Client has obtained the voluntary, specific and informed consent of the person to whom the Personal Information pertains to disclose the Personal Information; and

8.1.4 The Client will immediately instruct the Provider to destroy and/or delete any Personal Information as and when required.

8.1.5 It is the Client's responsibility to ensure that Personal Information is processed in accordance with all relevant laws, including POPI.

8.2   The Client warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.

8.3   The Provider shall ensure that persons authorised to process the Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.4   The Provider and the Client shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Client Personal Data

8.5   The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Client with the fulfilment of the Client's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

8.6   The Provider shall assist the Client in ensuring compliance with the obligations relating to the security and processing of personal data.

8.7   In the case of a personal data breach, the Provider shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the Client of the breach and shall document such breach, comprising the facts relating to the personal data breach, its effects and the remedial action taken.

8.8   The Provider shall make available to the Client all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 8 and the Data Protection Laws.

8.9   If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

9.   **NO ASSIGNMENT OF INTELLECTUAL PROPERTY**

9.1   Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Client, or from the Client to the Provider.

9.2   The Provider shall own and retain all right, title and interest, express or implied, in and to any Deliverables created during the course of providing its Services to the Client and to all other works of authorship of any kind or nature prepared, created or conceived by the Provider in the performance of its services, unless agreed otherwise in writing.

10. CONFIDENTIALITY

10.1 In the clause and for the purpose of this Agreement, Confidential Information shall mean information or Data in whatever form and whether disclosed orally or in writing including, without limitation, any proprietary information relating to a Party's (or a Party's affiliates) business, financial, operational and commercial information; technical information, data, relationships, products, services, suppliers, clients (both existing and potential), past, present and future research and development; strategic objectives and planning; information about personnel; and this list is non-exclusive, and includes information prepared by each of the Parties or their affiliates however related, which contains or otherwise reflects or is generated from such information of any of the Parties and includes the commercial and operational arrangements between the Parties, but excludes information or data which:

10.1.1 is at the time of the disclosure to the receiving Party or thereafter comes without breach of any confidentiality obligations by the other Party, within the public domain;

10.1.2 is explicitly approved for release by written authorisation of the disclosing Party;

10.1.3 is developed independently of the disclosing Party by the other Party in circumstances that do not amount to a breach of the provisions of this Agreement; or

10.1.4 was required to be disclosed by the receiving Party by law, regulation or a government, regulator or judicial order.

10.2 Notwithstanding anything contained in this Agreement the Parties agree:

10.2.1 they will keep and treat the Confidential Information received from the other in the strictest confidentiality and shall not disclose, transfer or use such information;

10.2.2 that all Confidential Information received by any of the Parties from the other Party, shall be and shall remain the exclusive property of the disclosing Party;

10.2.3 no effort will be made by the receiving Party to circumvent the Disclosing Party in respect of use or sharing of the Confidential Information in any manner (including indirectly through individuals directed by, or corporations or any other entity controlled directly or indirectly by the receiving Party) that might in the sole opinion of the disclosing Party cause it commercial harm;

10.2.4 to use such Confidential Information only for purposes of and as set out in this Agreement and for other purposes only upon those terms as may be agreed between the Parties in writing;

10.2.5   that neither the disclosure of Confidential Information nor this Agreement is intended or shall be construed as the granting of a license to make, use (or similar rights), or sell the Confidential Information or derivations from it.

10.3   Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:

10.3.1   the details of this Agreement and the services; and

10.3.2   information relating to the business or the operations and affairs of the other Party including, without limitation, trade secrets, technical, information, business plans, proposed products, client lists, Data and sales reports, as well as any marketing or branding strategies or methodologies pursuant to this Agreement.

10.4   The terms of this shall remain in force for an in perpetuity from the initial date of disclosure of the Confidential Information and shall be binding on the subsidiaries, Representatives, agents, successors, and assigns of the Parties. No indulgence which a Party may grant to another shall constitute a waiver unless it is in writing.

11.   CHARGES AND PAYMENT

11.1   The Client shall pay the Charges to the Provider in accordance with this Agreement and as outlined in the proposal or online on the GoFETCh Hub.

11.2   The Provider shall issue invoices for the Charges to the Client in advance for the period to which they relate.

11.3   The first month's invoice will be issued by the 28th of the month and will include the set up fees outlined in Addendum 1. This is payable on invoice and settlement of this invoice is required before the Provider commences with the services.

11.4   Monthly charges will be invoiced effective upon opening the GoFETCh system account. The Client must pay the monthly Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 10.

11.5   Payment of charges shall be due irrespective of whether the Client utilises the Services subscribed for.

11.6   The Client shall make all payments to the Provider by way of electronic funds transfer (EFT).

11.7   The Provider shall be entitled to increase all monthly fees by 7% annually effective in the month of March.

11.8   Any additional features or services required by the Client will be quoted and charged for on a case-by-case basis.

11.9 Late payments by the Client will bear interest calculated at the prime interest rate of Nedbank applicable from time to time.

12. WARRANTIES

12.1 The Provider warrants to the Client that:

    (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;

    (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and

    (c) the Provider has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

12.2 The Provider warrants to the Client that:

    (a) the Platform and Hosted Services will conform in all material respects with the Specification outlined online on the GoFETCh Hub;

    (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs;

    (e) the Platform will incorporate security features reflecting the requirements of good industry practice

12.3 The Provider warrants to the Client that the Hosted Services, when used by the Client in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under South African law.

12.4 The Provider warrants to the Client that the Hosted Services, when used by the Client in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person In any jurisdiction and under any applicable law.

12.5 The Client warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

12.6 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

13. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

13.1 The Client acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement,

the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

13.2 The Client acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

13.3 The Client acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Client will not give rise to any legal liability on the part of the Client or any other person.

14. LIMITATIONS AND EXCLUSIONS OF LIABILITY

14.1 The Provider shall not be liable for failure to perform in the event such failure is caused by force majeure or circumstances out of its control.

14.2 The Provider cannot be held liable for any loss or damage including without limitation, indirect or consequential loss or damage, or any loss or damage whatsoever arising, nor shall the Provider be liable for any negligence on its part or that of its servants or agents in carrying out any of its obligations in terms of this agreement.

15. TERMINATION

15.1 Either party may terminate this Agreement by giving to the other party at least 45 days' written notice of termination.

15.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

15.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent.

16. BREACH

16.1   In the event of either of the parties to this agreement ("the defaulting party") committing a breach of any term or condition of this agreement, the other party to this agreement not in default ('the aggrieved party") will be entitled to give to the defaulting party seven (7) days' notice in writing to remedy such breach.

16.2   In the event of the defaulting party failing to comply with such notice within fourteen days of receipt of such notice or in the event of such breach not being capable of being remedied, then he aggrieved party will be entitled to cancel this agreement, or, alternatively, to claim immediate performance from the defaulting party of all of its obligations in terms of this agreement, whether or not the same are then due for performance. The aforegoing is without prejudice to such rights the aggrieved party may have at law, including the right to claim damages.

17. **DISPUTES**

17.1 In the event of any dispute or difference arising between the parties hereto relating to or arising out of this agreement, including the implementation, execution, interpretation, rectification, validity, enforceability, termination or cancellation of this agreement, the parties will forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 14 days, the said dispute or difference will, if made by any party on written notice to the other parties first be submitted for mediation.

17.2 If the parties are unable to settle the dispute via mediation within 14 days, the said dispute or difference will, if made by any party on written notice to the other parties, be referred to arbitration for final resolution in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

18. GENERAL

18.1 This Agreement contains the entire agreement between the Parties in regard to its subject matter. Neither Party will be bound by any express or implied term, undertaking, representation, warranty, promise nor the like not included or recorded in this Agreement.

18.2 No alteration or variation of this agreement shall apply, unless expressly agreed to in writing and signed by each party.

18.3 No party may cede its rights or delegate its obligations in terms of this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

18.4 Should any provision hereof be deemed, for any reason whatsoever, to be invalid or inoperative, such provision shall be deemed severable and shall not affect the force and validity of other provisions of this agreement.

18.5 This Agreement shall be governed by and interpreted under the laws of the Republic of South Africa in all respects.

18.6 The Parties choose as their *domicilium citandi et executandi* (address for purpose of legal proceedings), as the address supplied upon registration/opening an account, at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

ACCEPTED BY _____

ON THE _____ DAY OF _____ 2020

_____
THE USER - who warrants s/he is duly authorised