

1. Definitions

Affiliates means in relation to any company: (a) any subsidiary or holding company of such company or any subsidiary of such holding company; or (b) any other entity controlling or controlled by such company.

Agreement means collectively the Order Form and these Terms of Use (as may be amended from time to time upon mutual consent of the parties).

Oyster means Oyster Unipessoal Lda, Oysternetwork and “we”, “our” or “us” shall be construed accordingly.

License means a paid for right to use an Oyster micro-site of a certain Term.

Licensee means you and the company registered as a paid up holder of an Oyster License.

Oyster content means any data, images, graphics, information, statements, Intellectual Property or other material (regardless of form or media) created by Oyster for use in conjunction with the Oyster Platform, Micro-Site and Service.

Micro-site means the white label platform carrying the licensee’s branding / house style provided to the licensee under the terms of this contract / Order Form.

Oyster Service means the service pursuant to which we make the Oyster micro-site available to you.

Effective date means the earlier of the effective date specified in your Order Form or first access to the Oyster Service or micro-site.

Fees means the amounts payable by you as specified in your Order Form.

Go Live means the date & time that a Micro-site is made publicly open for individuals to enter or interact with. In case of doubt the time of the first entry or interaction made by an individual not in the employ of either Oyster or the Licensee.

Handover means when the licensee is handed full control of the system and access codes and must complete its first license payment

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

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

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

Proprietary information is defined as information which the disclosing party at the time of disclosure identifies in writing as Proprietary Information by means of a proprietary legend, marking, stamp or other positive written notice identifying the information to be proprietary.

Intellectual Property means patents, trade marks, service marks, trade names (including internet domain names and e-mail address names), logos, copyrights, authors rights, moral rights, know-how, rights in look and feel, database rights, rights in designs and inventions and all or any similar or equivalent rights arising or subsisting in any jurisdiction, whether or not any of the foregoing are registered, including without limitation the right to apply for registrations, renewals or extensions in respect of any of the foregoing.

User(s) means you and/or those of your individual employees, agents or contractors who have been issued User IDs and passwords and are authorised by Oyster to access the Oyster Service.

You means the natural person or legal entity specified on the Order Form subscribing to the Service provided under this Agreement on behalf of itself and/or the Users and ‘your’ shall be construed accordingly.

2. Oyster Grant of Rights

- I. In consideration for the Fees, Oyster grants you and the Users a non- exclusive, non-transferable right to access and use the Service, the Platform and any Oyster Content obtained through authorised use of the Service solely for your internal business purposes for the duration of the Term, subject always to the limitations set out in this Agreement.
- II. You acknowledge and agree that you shall use (and shall ensure that Users use) the Service, Platform and/or Content in accordance with the terms of this Agreement and all applicable laws and regulations.

3. Your obligations

- I. You shall be solely responsible for procuring and maintaining network connections and telecommunications links from your systems to the Oyster Platform and Service and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections, telecommunications links or caused by the internet.
- II. You shall ensure that Your Content does not (and shall take reasonable steps to that the use of the micro-site shall not):
 - i. contain any viruses or any material which is libellous or slanderous;
 - ii. be unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - iii. be discriminatory based on race, gender, colour, religious belief, sexual orientation, disability or in a manner that is otherwise illegal or causes damage or injury to any person or property.
- III. You shall not use or permit anyone to use the Platform or Service for any unlawful purpose.
- IV. Oyster’s cloud servers shall store the data in relation to each License for a period as defined in the Order. In the event of any loss or damage to the micro-site, your sole and exclusive remedy shall be for Oyster to use reasonable commercial endeavours to restore the lost or damaged micro-site maintained by Oyster. Oyster shall not be responsible for any alteration or disclosure of the micro-site by a third party.

4. Storage of Information and Other Data

- I. Oyster store all data collected through our Service in a secure cloud (such as Amazon RDS). We undertake to treat such data with due care and in accordance with the provisions of applicable Data Protection legislation. We only use such data for the performance of our obligations under this Agreement and do not sell such data to third parties.
- II. There is no obligation to renew, however if you choose not to renew, all data and media stored in your Account will be subject to deletion according to our current data storage policy 60 days after the effective date of termination.
- III. Under the European Union’s GDPR law in effect as from May 2018, all Oyster’s licensees have the right to access, limit, restrict, object to any personal data stored on them and have the same erased.
- IV. Oyster will not be held liable for its Clients’ adherence or failure to adhere to the same law or information stored by its clients on the servers.
- V. Oyster’s licensee’s must under the EU’s GDPR law in a two part process inform its clients and acquire verifiable documented consent before subscribing their clients to a newsletter and provide possibility to opt out from the same. Should licensee’s choose to use a newsletter licensees are recommended to include in their *terms and conditions* a *privacy policy* that inform about any data collection



activities and associated rights and their protection.

- VI. It is agreed that both parties shall take reasonable efforts to preserve in confidence such Proprietary Information and prevent disclosure thereof to third parties. Disclosures of such information shall be restricted to those individuals directly participating in the efforts provided in Paragraph B above who have a need to know such information, and, who have been made aware of and consent to abide by the restrictions contained herein concerning the use of such information.
- VII. The obligation to protect Proprietary Information, and the liability for unauthorized disclosure or use of Proprietary Information, shall not apply with respect to such information which is now available or becomes available to the public without breach of this Agreement;
- VIII. "Protected information" shall be the client's own responsibility and / or liability. Due to the segregated nature of the system from clients "protected information", Oyster shall not be held liable for theft, damage or loss of protected data. Access shall be granted to the provider only when authorized by the client.
- IX. Oyster will provide means by which the client if of sufficient authorisation within the client's hierarchy can manage "Protected information" by means of having 24/7 access to automated time-logged backups and downloads.
- X. Oyster by this accepts no liability towards business lost by its clients due to any downtime of the system as information will be maintained / managed and accessible locally by the client.
- XI. Neither party shall export, directly or indirectly, any Proprietary Information disclosed under this Agreement to any third party. The Receiving Party shall first obtain the written consent of the Disclosing Party prior submitting any request to export any such Proprietary Information.

5. Third Part Websites / Apps / Technology

- I. Use of the Oyster Service may lead you, your Users and clients (via a hyperlink or otherwise) to websites or technology owned or operated independently by third parties such as Skype. Such Third Party materials are governed by their own technologies, terms and conditions and privacy policies. Oyster makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of or communication with or between any Third Party or any transactions completed and any contract entered into by you, the Users or any party with any such third party. Any contract entered into or any transaction completed via any Third Party Website is between the relevant party and the relevant third party and not Oyster. Oyster does not endorse or approve any Third Party materials nor the content of any of the Third Party Website made available via the Service. You acknowledge that Oyster shall not be in anyway responsible for any access to, from or use of such Third Party Websites or any related products or services available through such sites and you further agree to communicate this to Users.

6. Fees

- I. You must pay the Fees to Oyster in the amounts and manner set out in your Order Form. Following the expiry of the Initial Term, the Fees are subject to change by Oyster at any time upon thirty (30) calendar days' written notice to you provided that in the event of any increase, you may terminate the Agreement by giving us notice in writing within such 30 day period. All amounts due from you under this Agreement are due and payable in advance or at the intervals specified on the Order Form and are exclusive of any sales, value added or other taxes or duties which, if payable, shall be paid by you. All payments shall be made by bank transfer to an Oyster account designated by Oyster.

7. Intellectual Property

- I. Proprietary technology and rights including all intellectual property will remain with Oyster Unipessoal Lda. Any attempts to copy or sell similar technology to third parties by its client will render this agreement null and void and will render the licensee liable;
- II. In order for information disclosed orally or visually by a party to this Agreement to be Proprietary protected hereunder, the disclosing party shall identify the information as proprietary at the time of the disclosure and, within thirty (30) days after such oral or visual disclosure, reduce the subject matter of the disclosure to writing, properly stamped with the proprietary legend, marking, stamp or other positive written notice and submit it to the receiving party.
- III. The licensee grants to Oyster the right to state that the licensee is a customer of Oyster and the Licensed Software in press releases, sales presentations and/or conversations with potential customers, in marketing material and on its website. In connection therewith, Oyster may use the licensee's name and logo provided such use is truthful and accurate and does not cast the licensee in a false light or adversely reflect upon the licensee. The licensee agrees that Oyster may depict the licensee in a case study to be used by Oyster in marketing materials; provided, however, that the LICENSEE shall have final written approval over the content thereof. The licensee agrees that it will serve as a reference site for potential customers of Oyster, provided that such potential customer visits are pre-approved and do not unreasonably interfere with the licensee's operations.

8. Limitation of Liability and Disclaimer of Warranties

- I. TO THE FULLEST EXTENT PERMITTED BY LAW, OYSTER 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 SERVICE, PLATFORM, OYSTER 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 OYSTER SHALL CREATE A WARRANTY, REPRESENTATION OR CONDITION), AND (ii) DISCLAIMS ANY AND ALL LIABILITY FOR ANY LOSS, DAMAGE, COST OR EXPENSE SUFFERED AS A RESULT OF USE OF OR RELIANCE UPON THE SERVICE, PLATFORM OR OYSTER CONTENT.
- II. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOSS OF BUSINESS, REVENUE, PROFIT OR DATA, INTERRUPTION OF BUSINESS, OR FOR ANY SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND, REGARDLESS OF THEORY OF LIABILITY, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, EVEN IF OYSTER HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- I. Subject always to clauses 10(I) and (II), Oyster's total aggregate liability in contract (including in respect of the indemnity at clause 9), 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 license Fees paid during the 3 months immediately preceding the date on which the claim arose.

- II. Oyster will not be liable for any resultant effects on the rest of the Micro-site subsequent to bespoke work commissioned other than to guarantee best endeavour to rectify issues in the best possible way as soon as possible with minimum disruption. Should bespoke work additional to the original micro-site result in an effect that is without cure on the micro-site save returning the micro-site to its original state, Oyster commits to refunding the amount paid for that specific work.

9. Indemnification

- I. By You: You agree to defend, indemnify and hold harmless Oyster and its officers, directors, employees and agents (each an Indemnified Party) from and against any liability, damage, loss or cost (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 Service, Platform, Your Content or any breach of the provisions of this. You 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 you 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).
- II. By Oyster: Oyster agrees to defend, indemnify and hold harmless you and your officers, directors and Users (each an Indemnified Party) from and against any liability, damage, loss or cost (including without limitation reasonable legal fees, using counsel reasonably acceptable to the Indemnified Party) incurred by you or any User as a result of any third party claim or action that permitted use of the Service, Platform or Oyster Content infringes that party's Intellectual Property rights. Oyster shall have the 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 Oyster shall not settle any such claim, lawsuit or proceeding which would impose any obligation on an Indemnified Party without such party's prior written consent (which shall not be unreasonably withheld or delayed).
- III. In no event shall Oyster be liable to the extent that the alleged infringement is based on:
 - IV. a modification of the Service or Platform by anyone other than Oyster; or
 - V. usage of the Service or Platform in a manner contrary to the instructions given by Oyster; or
 - VI. continued use of the Service or Platform after you receive notice of an alleged or actual infringement from Oyster or any appropriate authority.
- VII. The foregoing states the entire liability of Oyster to you or any other Indemnified Party with respect to Intellectual Property right infringement and you expressly waive any other claims for indemnity from Oyster.

10. Term

- I. This Agreement shall have an initial term as stated in the Order Form from the date hereof. This Agreement shall be considered "Evergreen" and automatically renew for successive terms of 12 months each, until notice of non-renewal is given by either party at any time prior to the end of the initial term or any renewal term. This Agreement may in any event be terminated at any time by any party by giving 30 days' notice in writing to the other parties of its termination, which shall be effective at the end of such 30 day notice period. Termination shall not, however, affect the rights and obligations contained herein with respect to Proprietary Information disclosed hereunder prior to termination.

11. Termination

- I. Upon termination of this Agreement each party will, within a reasonable period time thereafter, return all Proprietary Information received from the other party and copies made thereof by the receiving party under this Agreement, or certify by written memorandum that all such Proprietary Information has been destroyed except that each party may retain an archived copy to be used only in case of a dispute concerning this Agreement.
- II. 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 fifteen (15) calendar days following written notification to the party in breach. Notwithstanding the foregoing, Oyster may terminate the Agreement immediately upon discovery of any wilful or reckless breach of the provisions of this Agreement. Oyster also reserves the right to terminate this Agreement in the event that you (i) become insolvent; (ii) fail to pay your debts as they fall due or (iii) make a general assignment for the benefit of creditors.
- III. Oyster shall not refund any portion of the Fees or other amounts already paid by you at the time of termination, save in the case of your termination for our continued uncured material breach.
- IV. Upon expiration or any termination of this Agreement the rights granted under it shall cease and you shall, at our request, return or certify that that you have destroyed all copies or records of the Oyster Content together with any confidential or proprietary information. Notwithstanding the foregoing, you shall be permitted to retain such copies of Content (in whatever media) as are necessary for your internal compliance procedures or as may be required by any law, court or regulatory authority.
- V. The rights and obligations under clauses 9, 10 and 15 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.
- VI. Should Oyster or a key service provider to Oyster become insolvent or legislation change that makes the provision of Oyster's service in its current format unviable, Oyster will undertake to make due provision to provide continuity in a form as close to its current service as possible. Should the contract term elapse Oyster will be released legally from its obligations but will perform best endeavour to arrange provision of services in the same / similar format. Oyster, however, retains the right to pass on thereafter and / all costs associated.
- VII. All provisions that logically ought to survive termination of this agreement shall survive.

12. Miscellaneous

- I. Except as expressly provided herein neither the execution and delivery of this Agreement, nor the furnishing of any Proprietary



- Information shall be construed as granting either expressly or by implication, estoppel or otherwise, any license under any invention, improvement, discovery or patent now or hereafter owned or controlled by a party disclosing Proprietary Information hereunder.
- II. This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by one party without the prior written approval of the other party hereto.
 - III. Oyster reserves the right to review and update these Terms and Conditions.
 - IV. This agreement may be amended or modified only by a writing agreed and executed by both parties.
 - V. Portuguese Law shall govern this Agreement.
 - VI. This Agreement shall not be construed as a Joint Venture or other such arrangement;
 - VII. This Agreement contains the entire understanding between the parties relative to the protection of Proprietary Information and supersedes all prior and collateral communication, reports, and understanding between the parties in respect hereto. No change, modification, alteration, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both parties.
 - VIII. If any provision of this agreement shall be declared by any court of competent jurisdiction to be illegal, void, or unenforceable, the other provisions shall not be affected but shall remain in full force and effect. If the non-solicitation or non-competition provisions are found to be unreasonable or invalid, these restrictions shall be enforced to the maximum extent valid and enforceable.

13. Force Majeur

- I. Oyster shall not be in breach of this Agreement or otherwise liable to you 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 labour disturbance. In the event that such a circumstance continues for a period of one month or more, then Oyster may terminate this Agreement by giving 30 days' notice in writing to you.
- II. 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.
- III. 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 15 shall be in writing and shall be delivered personally or sent by pre-paid first class post (air mail if posted to or from a place outside the United Kingdom) to the company secretary of the recipient of the communication or notice.



IV.

14. Non-disclosure

IN NO EVENT ARISING FROM OR CONNECTED WITH THIS AGREEMENT OR THE INFORMATION DISCLOSED HEREUNDER SHALL EITHER PARTY BE LIABLE TO THE OTHER EXCEPT FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AGREE AND ACCEPTED BY:

Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
Signature	Signature

