

The current Service and Licence Agreement terms were published on 20 May 2024.

This Services and Licence Agreement is made between:

- 1 Tax Torch Limited, a company registered in Scotland under registered number SC694762 whose registered office is at 194 Quarry Street, Hamilton, Scotland ML3 6QR ("**Tax Torch**"); and
- 2 The entity which is paying for and making use of the Subscription Services ("**Customer**").

Background

- (A) Tax Torch is a provider of the Subscription Services (as defined below).
- (B) The Customer wishes access to the Subscription Services (as defined below) and the parties agree that they will be provided in accordance with the terms and conditions of this Agreement.

It is agreed that:

1 **Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires:

"**Agreement**" means this services and licence agreement;

"**Annual Subscription**" means a 12 month subscription for the Subscription Services;

["**Client Cap**" means the maximum number of client profiles the Customer can set up on the Platform based on their Client Cap Package;]

"**Client Cap Package**" means the applicable package on which pricing will be based depending on the Customer's chosen Client Cap, details of which can be found on the Tax Torch website at www.taxtorch.com.

"**Commencement Date**" means the date on which the Customer's access to the Subscription Services will first be made available;

"**Confidential Information**" means in relation to either party (the **disclosing party**) any and all information (which may be written, oral or in any other format) that:

- (a) is by its nature confidential; and/or
- (b) the other party knows or ought to know is confidential; and/or
- (c) is designated by the first party as confidential,
- (d) and is disclosed by the disclosing party to or otherwise learnt or acquired by the other party from the disclosing party under or in connection with this Agreement or its subject matter;

"Customer Data" means all data provided to Tax Torch and/or input onto the Platform by the Customer, its Users or its clients in connection with the provision of the Subscription Services, including but not limited to User data and data relating to the Customer's clients;

"Data Protection Laws" means, as applicable to either party or the Services:

- (a) the General Data Protection Regulation, Regulation (EU) 2016/679 as applicable in the United Kingdom as the UK GDPR
- (b) the Data Protection Act 2018;
- (c) any laws which implement or supplement any such laws; and
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"Deliverables" means any digital or physical resource provided as part of the Subscription Services, including but not limited to manuals, documentation and video guides;

"Disabling Event" means one or more of the following events:

- (a) use of its Subscription Services other than in accordance with this Agreement;
- (b) failure by the Customer to implement reasonable recommendations in respect of solutions to faults previously advised by Tax Torch;
- (c) use of any operating systems in conjunction with the Subscription Services, other than as specified or approved in writing by Tax Torch; or
- (d) use of the Subscription Services for a purpose for which they were not designed;

"Effective Date" means the date upon which the Deliverables, or Services, are made available to the Customer in accordance with this Agreement;

"Intellectual Property Rights" means any patents (including supplementary protection certificates), trade marks, service marks, domain names, registered designs, utility models, design rights, moral rights, topography rights, rights in databases, rights in software, copyrights, inventions, trade secrets and other confidential information, the right to data contained within those databases, know how, business or trade names, get up, and all other intellectual property and neighbouring rights and rights of a similar or corresponding character in any part of the world (whether or not registered or capable of registration) and all applications and rights to apply for or for the protection of any of the foregoing;

"Licence Term" means:

- (a) in the case of an Annual Subscription, 12 months from the Effective Date; and
- (b) in the case of a Monthly Subscription, one month from the Effective Date,

subject to renewal in accordance with clause 3.4;

"Monthly Subscription" means a recurring one month subscription for the Subscription Services;

"**Personal Data**" shall bear the same meaning as in any applicable data protection laws from time to time;

"**Platform**" means Tax Torch's tax planning software platform;

"**Purchaser**" means the individual purchasing the Subscription Services on behalf of the Customer;

"**Services**" means the services (if any) to be provided to the Customer by Tax Torch under this Agreement in accordance with the terms of this Agreement;

"**Subscription Fees**" means the fees payable for Subscription Services as set out in the pricing plan available on the Tax Torch website at www.taxtorch.com.

"**Subscription Services**" means the services by which Users are permitted access to the Platform;

"**Tax Torch IPR**" means Intellectual Property Rights created or owned by Tax Torch other than arising solely and exclusively from carrying out the Services under this Agreement;

"**Third Party Materials**" means any materials and information, including documents, data, know-how, ideas, methodologies, specifications, software, content and technology, in any form or media, which are incorporated in the Platform or used in the Subscription Services;

"**User Account**" means an individual account for use of the Platform;

"**User(s)**" means the Customer's employees, representatives, consultants, contractors or agents who are authorised to use the Subscription Services and have been supplied user identifications and passwords by the Customer (or by Tax Torch at the Customer's request);

"**Working Day**" or "**Office Hours**" means 09h00 to 17h00 UK time, Monday to Friday excluding Scottish Bank and statutory holidays.

2 **Commencement and Term**

- 2.1 This Agreement shall commence on the Effective Date and shall, unless terminated earlier for any reason in accordance with this Agreement, continue until the relevant Subscription Services are cancelled (the "**Term**").

3 **Services**

- 3.1 At the time of registering for use of the Platform, Tax Torch will ask the Purchaser to provide their name, phone number, email address and the Customer's practice and billing information. Tax Torch will verify the Purchaser's identity using two factor authentication before enabling the Subscription Services.
- 3.2 The Customer may sign up for a free trial Subscription through Tax Torch's website. [During the free trial, the Customer will be able to use the full suite of functions available on the Platform]. The free trial will commence on the date it is signed up for and continue for a period of 14 days. At any time during the free trial, the Customer can sign up for a Monthly or Annual Subscription for their chosen Client Cap Package, change their chosen Client Cap Package for the trial, or cancel their trial. On the expiration of the free trial, the Customer will lose access to the Platform, should they

wish to continue they will require to sign up to a Monthly or Annual Subscription for the Client Cap Package.

- 3.3 In regards to a paid subscription, in consideration of the Subscription Fees, Tax Torch shall provide the Subscription Services to the Customer.
- 3.4 The licence granted for the Subscription Services will run from the Commencement Date until terminated in accordance with this Agreement. The Licence Term will automatically renew:
 - 3.4.1 in the case of an Annual Subscription, for a further twelve months on expiry of such initial term and each subsequent anniversary; or
 - 3.4.2 in the case of a Monthly Subscription, every 30 days from the Effective Date on a recurring basis.
- 3.5 The Customer may change between a Monthly Subscription and Annual Subscription at any time through the billing menu accessed through the Platform or by giving 30 days' notice prior to the expiry of the current Licence Term by contacting Tax Torch. If the Customer:
 - 3.5.1 changes from a Monthly to an Annual Subscription, the Effective Date for the change in subscription shall be adjusted to the date on which the change was requested, and the Customer shall not receive a discount on any Subscription Fees paid or which became due before the change took effect; or
 - 3.5.2 changes from an Annual to a Monthly Subscription, the Effective Date on which the change in subscription is adjusted shall be the date on which the Annual Subscription expires and charged thereafter at the applicable rates for a Monthly Subscription.
- 3.6 The Customer may change their chosen Client Cap Package at any time through the Platform. If the Customer changes their Client Cap Package, this takes effect immediately, and the Customer will be subject to the adjusted Subscription Fee from the date on which the change took effect but for the avoidance of doubt any change from a higher priced Client Cap Package to a lower price Client Cap Package will not entitle the Customer to any refund or adjustment to any paid or outstanding Subscription Fees.
- 3.7 The Subscription Services shall be accessed only by the Purchaser or such other person as the Customer may authorise to manage the Subscription Services. The Platform shall be accessed only by a User.
- 3.8 User licences cannot be shared or used by more than one individual User. Where a User is no longer making use of the Subscription Services due to termination of their appointment or employment by the Customer, the Customer will be required to remove the relevant User Account. Each new User who will make use of the Subscription Services will be required to make a new User Account for the Platform.
- 3.9 The Customer may add unlimited Users but may not add client profiles in excess of the Client Cap granted under their chosen Client Cap Package. Added User licences will be subject to the following: (i) added licences will be coterminous with the pre-existing Licence Term (either the initial Licence Term or any renewal term); (ii) the licence fee for the added licences will be included in the generally applicable Subscription Fee, unless an increase is proposed above any applicable

Client Cap; and (iii) any increases to the number of Users above the Client Cap will require the Customer to pay for the applicable Client Cap Package or any additional fees required to exceed the maximum Client Cap limit, as specified in the pricing plan available on the Tax Torch website.

- 3.10 Tax Torch will use all reasonable efforts to provide the Services on a continuous basis but access to internet dependent services cannot be guaranteed and will be subject to downtime for upgrade and maintenance, unavailability caused by internet service providers or third party gateway service providers and/or other matters outwith Tax Torch's control.
- 3.11 In the event that Tax Torch determines after investigation and/or after provision of their support that the Platform and Subscription Services are functioning as intended and/or that the recorded error or defect was as a result of a Disabling Event, then the Customer may be invoiced by Tax Torch for time expended together with costs incurred by Tax Torch for delivery of storage media, reasonable travel and subsistence costs, telephone charges and other directly incurred expenses.
- 3.12 Tax Torch does not accept any responsibility or liability for the maintenance or repair of equipment or services acquired by the Customer other than through Tax Torch.

4 Customer Obligations

- 4.1 The Customer is responsible for the input, maintenance and use of Customer Data into the Platform, including ensuring the accuracy and completeness of Customer Data, for using the Platform in accordance with applicable laws, and for maintaining effective back-up procedures such as may be necessary to replace all Customer Data in the event of loss or damage regardless of cause.
- 4.2 The Customer is responsible for ensuring that all Users only use the Platform for the Customer's legitimate business purposes. For the avoidance of doubt the Customer acknowledges and accepts that the Platform shall only be used for tax planning activities and shall have no built in tax compliance functionality.
- 4.3 The Customer shall make available to Tax Torch such facilities as Tax Torch shall reasonably require for the provision of the Services, including a VPN link (or equivalent data transmission facility) of such specification as Tax Torch shall approve in writing, or access to relevant equipment and/or premises as may be required.
- 4.4 The Customer shall be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Tax Torch's data centre (where applicable), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 4.5 The Customer is only permitted to reproduce the Platform in accordance with this clause 4.5. Any modification of the Platform or the de-compilation of the underlying code, as well as any other form of reverse-engineering, are:
 - 4.5.1 expressly prohibited to the extent that such activities are outside the scope of intended use of the Platform; or

- 4.5.2 limited only to the extent that it is necessary to enable interoperability of the Platform with the Customer's other software, and such interoperability is strictly required for the Customer to make use of the Platform's functionalities.
- 4.6 You shall install, use and run the Platform at all times in accordance with the terms of this Agreement.
- 4.7 The Customer is solely responsible for all activity on User Accounts and shall comply with all applicable laws and regulations in connection with its use of the Subscription Services, including those related to data protection, international communications and the transmission of technical or personal data.
- 4.8 The Customer is solely responsible for ensuring that Users and all other persons acting on its behalf shall keep confidential and not share with any third party their password or access details for the Subscription Services or User Accounts.
- 4.9 The Customer shall: (i) notify Tax Torch immediately of any unauthorised use of any password or account or any other known or suspected breach of security; and (ii) report to Tax Torch immediately and use reasonable efforts to stop immediately any improper use of the Subscription Services that is known or suspected by the Customer or its Users.
- 4.10 The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use in respect of all Customer Data.

5 **Charges and Payment**

- 5.1 If the Customer has:
- 5.1.1 an Annual Subscription, the Subscription Fees will be payable immediately and charged at the time of purchasing the Annual Subscription. The rate for an Annual Subscription will be charged at the equivalent of the Subscription Fees payable for 10 months of a Monthly Subscription. Each annual renewal of the Subscription Services will be invoiced within 7 days of each renewal of the Licence Term; or
- 5.1.2 a Monthly Subscription, the Subscription Fee will be charged immediately for the first month, pro rata from the date of purchase and thereafter each renewal will be charged in full for the relevant month on the first day of the month of each month thereafter.
- 5.2 Should the Customer fail to make payment on any undisputed invoice on or before the due date of any sum due in accordance with clause 5.1:
- 5.2.1 interest on the amount unpaid shall accrue from the date such amount was due until the date of payment at the rate of 8% per annum above the base rate from time to time of the Bank of Scotland, such interest to be calculated daily; and
- 5.2.2 without prejudice to Tax Torch's right to be paid interest, Tax Torch may suspend the delivery of the Services and/or access to the Deliverables, until payment in full of such outstanding sums are received.

- 5.3 The Customer may cancel their subscription at any time through the Platform or by contacting Tax Torch. If the Customer choose to cancel their subscription package:
- 5.3.1 in the case of an Annual Subscription, the Customer shall not be entitled to a refund of the Subscription Fees paid. Any refund of any proportion of the Subscription Fees will be granted by Tax Torch at its sole discretion; and
 - 5.3.2 in the case of a Monthly Subscription, the Customer shall be charged the Subscription Fees up to the time of cancellation calculated at a pro rata rate up to the date of cancellation in the relevant month.
- 5.4 From time to time Tax Torch may offer promotional deals and discounts on the Subscription Fees payable. Any such promotional activities shall be determined at Tax Torch's sole discretion and Tax Torch reserves the right to revoke or withdraw any discount given if:
- 5.4.1 the Customer fails to pay any amount due under this Agreement when it becomes due;
 - 5.4.2 the Customer cancels the Subscription Services (and will not be subject to the same discount or promotion if they choose to reactivate these at a later date); or
 - 5.4.3 materially breaches any terms of this Agreement.
- 5.5 Without prejudice to clause 5.2 above, if the Customer receives an invoice from Tax Torch which the Customer disputes in good faith, the Customer shall notify Tax Torch in writing of such dispute within 5 Working Days of the date of issue of the relevant invoice and the Customer may withhold payment of such sums as are in dispute pending resolution of such dispute. Failing such notification, the Customer shall be deemed to accept the Subscription Fees set out as conclusive evidence of the satisfactory performance of the Deliverables, Services and/or other obligations as specified therein.
- 5.6 All amounts stated to be payable under this Agreement are stated as exclusive of any VAT chargeable on them, which VAT shall also be paid by the Customer at the rate and in the manner prescribed by relevant law.
- 5.7 Tax Torch may: (i) increase the fees payable for the Services at any time, by such an amount as shall reflect updated feature capabilities of the Platform or increases in usiness costs arising in connection with increased customer numbers ; and (ii) at any time pass onto the Customer any increases notified to Tax Torch by the owners of any Third Party Materials (or services which are sub-contracted including hosting), if supplied.
- 5.8 All payments shall be made in the currency in which they are invoiced.
- 5.9 If Tax Torch incurs additional work or expense as a result of a failure by the Customer, which failure has not been corrected after a Tax Torch request for the Customer to do so, Tax Torch reserves the right to make an additional charge.
- 5.10 The Customer shall not be entitled to withhold any payment of the whole or any part of an invoice which is properly due on the ground that it has any dispute over the remainder of the same or any other invoice, or has an alleged claim, counterclaim or set-off against Tax Torch.

- 5.11 In addition to any other rights, Tax Torch reserves the right to suspend or terminate the Subscription Services if any amount due is in arrears.
- 5.12 The Customer will continue to be liable to pay for all Subscription Services during any period of suspension. On termination the Customer will be obliged to pay the balance due on its account.
- 5.13 Tax Torch reserves the right to impose a reconnection fee in the event the Customer's access to the Subscription Services is suspended and the Customer requests renewed access to the Subscription Services. The Customer agrees and acknowledges that Tax Torch has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if the Customer's account is 30 days or more in arrears.

6 Changes to services and terms

- 6.1 Tax Torch may at its absolute discretion make updates to this Agreement and shall notify the Customer of updated versions of this Agreement or other documents referred to in any part of this Agreement from time to time by notifying the Customer of such update by email, to be given no less than 30 days prior to any update taking effect, together with a copy of the update or a link to the copy of the update.
- 6.2 Tax Torch reserves the right to increase the Subscription Fees and/or make amendments to the features within the Platform from time to time. Any changes to the Subscription Fees and/or the Platform's features will be communicated to the Customer by giving not less than 30 days' notice in writing of any changes taking effect.

7 Intellectual Property Rights

- 7.1 Nothing in this Agreement shall transfer or assign the Intellectual Property Rights in the Platform and/or any other Tax Torch IPR or Third Party Materials to the Customer and all such Intellectual Property Rights shall remain vested in Tax Torch, or the relevant third party of the Third Party Materials.
- 7.2 The Customer's sole rights in connection with the Platform and any Tax Torch IPR is in terms of the licences of use granted in terms of clause 3.
- 7.3 Tax Torch warrants that it has the right to grant the licence for the Subscription Services and perform all of its obligations in connection with the Platform.
- 7.4 Subject to the provisions of the relevant licence terms set out in this Agreement or other licence terms relating to the Intellectual Property Rights, Tax Torch shall defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Subscription Services infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom, provided that Tax Torch shall not be obliged to defend any such claim unless::
- 7.4.1 Tax Torch is given immediate and complete control of such claim;
- 7.4.2 the Customer does not prejudice Tax Torch's defence of such claim or make any admissions on behalf of Tax Torch in any event;

- 7.4.3 the Customer at Tax Torch's reasonable expense gives Tax Torch all reasonable assistance with such claim;
 - 7.4.4 such claim does not arise from an intentional act or the negligence of the Customer or any other party;
 - 7.4.5 such claim is not based upon the use of Tax Torch IPR by the Customer other than as part of the Deliverables;
 - 7.4.6 such claim does not arise as a result of modifications and/or improvements introduced or made by the Customer or any other third party;
 - 7.4.7 such claim does not arise from materials provided by or requested by the Customer;
 - 7.4.8 that such claims be limited to a maximum sum of [£500,000 (five hundred thousand pounds sterling)] in the event of any one claim or series of claims.
- 7.5 Tax Torch shall have the right to replace or change all or any part of the Tax Torch IPR in order to avoid any infringement.
- 7.6 The foregoing states the entire liability of Tax Torch to the Customer in respect of the infringement of the Intellectual Property Rights of any third party.
- 8 Customer Data and Data Protection**
- 8.1 The Customer warrants that it has authority to use all Customer Data relating to their own clients and, where applicable, all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 8.2 Tax Torch shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 8.3 Both parties agree to comply with the provisions of any applicable Data Protection Law.
- 8.4 In performing its obligations under this Agreement, Tax Torch may process Personal Data on the Customer's behalf and to the extent it processes Personal Data on behalf of the Customer, shall:
- 8.4.1 process all such Personal Data only in accordance with the instructions given by the Customer from time to time;
 - 8.4.2 not do or omit to do anything which causes the Customer to breach applicable data protection legislation or contravene the terms of any registration, notification or authorisation under such data protection legislation of the Customer; and
 - 8.4.3 not use any such Personal Data for any purpose that is not authorised under this Agreement.
- 8.5 In order to facilitate compliance by Tax Torch with its obligations under this Agreement, the Customer undertakes not to do or omit to do anything which causes Tax Torch to breach the Data Protection Laws or contravene the terms of this Agreement. The Customer shall indemnify and

hold harmless Tax Torch in full in respect of any losses, liabilities, costs, claims, fines, penalties and expenses incurred in connection with the Customer's breach of this clause ~~8.57-5~~.

9 Confidentiality

9.1 Each party hereto agrees that it will keep secret and will not without the prior written consent of the other, disclose to any third party any Confidential Information relating to the business or affairs of the other (including this Agreement) or the other's customers, suppliers, resellers, employees or other sub-contractors, pricing, Intellectual Property Rights or other know how or commercially sensitive information learned by such party or disclosed to such party by the other pursuant to or otherwise in connection with this Agreement, except insofar as information as aforesaid shall (otherwise than by breach of this or any other Agreement) be trivial or obvious, in the public domain, already known by such party, or is required to be disclosed by law or any securities exchange or regulatory or governmental body.

9.2 Subject to the remaining provisions of this clause ~~98~~, at all times each party undertakes:

9.2.1 not to disclose any such confidential information to any third party other than its responsible employees who require such disclosure where necessary for the proper performance of that party's duties under this Agreement and provided that such employees will individually comply with all obligations of confidentiality imposed upon that party by the provisions of this clause;

9.2.2 to take all reasonable steps to minimise the risk of disclosure of such confidential information by employees; and

9.2.3 to use such confidential information only for the purposes of providing and receiving the Services and/or any deliverable (or as otherwise permitted by this Agreement).

9.3 This clause ~~98~~ does not affect any disclosure or announcement required by law or any regulatory body or the rules of a recognised stock exchange, but the party with the obligation to make a disclosure or announcement shall consult with the other party so far as is reasonably practicable before complying with such obligation.

9.4 The provisions of this clause ~~98~~ shall survive termination of this Agreement for any reason.

10 Warranties and Liability

10.1 Each party warrants to the other party that they have the requisite power and authority to enter into this Agreement and to carry out their obligations under this Agreement and that the execution and performance of this Agreement has been duly authorised by that party.

10.2 Notwithstanding the foregoing, Tax Torch:

10.2.1 has not developed the Platform to meet the Customer's individual requirements and the Customer acknowledges that it is the Customer's responsibility to ensure that the Platform and its functionality meet its requirements;

- 10.2.2 does not warrant that the Customer's use of the Platform and/or the Subscription Services will be secure, accurate, complete, without error or bugs, uninterrupted or free of malicious code;
- 10.2.3 does not warrant or guarantee that the Platform or all or parts of its contents will always be available or that its use will not be interrupted; and
- 10.2.4 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Platform and/or the Subscription Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

For the avoidance of doubt, Tax Torch does not warrant or represent anything in relation to Third Party Material. Any warranty or representation relating to Third Party Material shall be provided by the licensor of that Third Party Material, in accordance with their service specific licence terms.

10.3 Nothing in this Agreement shall exclude or limit the liability of:

10.3.1 either party for death or personal injury resulting from the negligence of that party or any of its officers, employees or agents or the liability of either party for fraud or wilful neglect;

10.3.2 either party for a breach of clause 98.

10.4 Subject to clause 10.39-3, neither party shall be liable to the other party under or in connection with this Agreement (whether in contract, delict (including negligence), breach of statutory duty or otherwise) for any indirect, special, incidental or consequential loss or loss of business, profits, revenue, anticipated savings or contracts.

10.5 Subject to clauses 10.39-3 and 10.49-4, the total aggregate liability of Tax Torch or in connection with the Subscription Services and/or Platform which may be provided under this Agreement for any direct loss or damage howsoever caused shall be the Subscription Fees received by Tax Torch in the preceding three months from the date on which the loss occurred,

PROVIDED THAT, Tax Torch shall not in any event be liable for:

10.5.1 loss resulting from any defect or deficiency which Tax Torch shall have physically remedied at its own expense within a reasonable time;

10.5.2 any indirect, special, incidental or consequential loss or loss of business, profits, revenue, anticipated savings or contracts or loss or corruption of data in accordance with clause 10.49-4;

10.5.3 loss which could have been avoided by the Customer following Tax Torch's reasonable advice and instructions, or where the Customer uses the Deliverables outside of the terms of this Agreement; or

10.5.4 any use of the Platform and/or Subscription Services not in accordance with this Agreement.

- 10.6 The Customer acknowledges that Tax Torch shall not be liable for any breach of warranty to the extent that a problem results from or is caused by a problem with hardware or software belonging to or used by the Customer and is a fault not connected with the Deliverables or Subscription Services.
- 10.7 The Customer acknowledges that Tax Torch has no control over the nature, accuracy or content of information, data or programs transmitted or received by the Customer which may be input into the Deliverables and that the Customer is entirely responsible for the data it inputs and the manner in which it utilises the Deliverables.
- 11 **Termination**
- 11.1 Tax Torch may forthwith terminate this Agreement on written notice (including by email) to the Customer if the Customer fails to pay any undisputed Subscription Fees when due under this Agreement.
- 11.2 Either the Customer or Tax Torch may (without prejudice to any other rights) forthwith terminate this Agreement by written notice to the other:
- 11.2.1 if the other commits a material breach of any provision of this Agreement and such breach is incapable of remedy, or that party fails to remedy such breach (where capable of remedy) within 30 days of receipt of a notice from the innocent party specifying the breach;
- 11.2.2 if the other party becomes insolvent, compounds with its creditors or shall have distress or execution levied upon its property or is wound up or goes into liquidation (except for the purposes of a bona fide reconstruction) or shall have a receiver, administrative receiver, or administrator appointed of the whole or any part of its assets or shall suffer the appointment of any similar person under the law of its domicile, or a floating charge is placed over the assets of the other party; or
- 11.2.3 the other party ceases or threatens to cease to trade.
- 11.3 Any expiry or termination of this Agreement shall not affect the coming into force or the continuance of clauses [98](#), [109](#), [1110](#) and [2120](#), and any other provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after such expiry or termination.
- 11.4 Upon expiry or termination of this Agreement for any reason:
- 11.4.1 the Customer shall pay to Tax Torch all and any outstanding Subscription Fees;
- 11.4.2 shall be without prejudice to any rights of either party which may have accrued up to the date of such termination and rights to terminate this Agreement shall be in addition to every other remedy or right now or hereafter existing including the right to recover damages.
- 11.5 Where this Agreement is terminated due to Tax Torch's material breach, the Customer shall be entitled to recover charges paid for Services not yet provided from the date of breach to the expiry

of the Term. For the avoidance of doubt, the Customer shall not be entitled to recover charges where termination is due to the Customer's own breach.

11.6 The Customer's right to use the Subscription Services (and Tax Torch's obligation to continue to provide them) will terminate automatically at the end of the relevant Licence Term (if the Customer's subscription is not to be renewed).

11.7 Tax Torch may, at its sole discretion, terminate the Customer's (or any User's) password, account or use of the Subscription Service if the Customer breaches or otherwise fails to comply with this Agreement.

12 **Assignment**

This Agreement (and any rights, benefits and/or obligations hereunder) shall not be assigned in whole or in part by the Customer and any attempt by the Customer to do so shall be invalid.

13 **Force Majeure**

13.1 Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing, or non-performance of, its obligations hereunder if such delay or non-performance is caused by circumstances beyond the reasonable control of the party so delaying or non-performing, including but not limited to strikes, lock outs, labour disputes, acts of God, war, riot civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, disease, fire, flood, storm or adverse weather conditions ("**Force Majeure Event**") and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using all reasonable endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.

13.2 If the Force Majeure Event causes a delay or non-performance continues for longer than three (3) months, the party not affected may terminate this Agreement by giving fourteen (14) days written notice to the other party.

14 **Waiver**

14.1 No failure to exercise nor any delay in exercising any right, power, privilege or remedy under this Agreement shall in any way impair or affect the exercise thereof or operate as a waiver thereof in whole or in part.

14.2 No single or partial exercise of any right, power, privilege or remedy under this Agreement shall prevent any further or other exercise thereof or the exercise of any other right, power, privilege or remedy.

15 **Entire Agreement**

This Agreement (together with all other documents to be entered into pursuant to it) sets out the entire agreement and understanding between the parties, and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter. Any variation or amendment to this Agreement must, to be effective, be in writing and signed by the parties.

16 **Communications and Notices**

- 16.1 Any notice or other document to be served under this Agreement may be delivered or sent by registered post (by airmail if overseas) or e-mail to the party to be served at its registered address or at such other address as it may have notified to the other parties in accordance with this clause.
- 16.2 Any notice or document shall be deemed to have been served:
- 16.2.1 if delivered, at the time of delivery; or
 - 16.2.2 if posted by registered post, at 10.00 hours on the second Working Day after it was put into the post; or
 - 16.2.3 if posted airmail by registered post at 10.00 hours (local time at the recipient's address) on the fifth Working Day after it was put in the post; or
 - 16.2.4 if sent by email, at the time of delivery on any Working Day, and in any other case at 10.00am (local time at the recipient's address) on the Working Day following the date of dispatch.
- 16.3 E-mail notices to Tax Torch are to be sent to hello@taxtorch.com (or such other email address as may be communicated to the Customer from time to time).

17 **Illegality and Severance**

If any provision of this Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.

18 **Rights of Third Parties**

- 18.1 Except as provided for in this clause ~~1817~~, a person who is not a party to this Agreement has no right to enforce any of its terms under the Contract (Third Party Rights) (Scotland) Act 2017.
- 18.2 If a person who is not a party to this Agreement has a right to enforce any of its terms under the Contract (Third Party Rights) (Scotland) Act 2017, the parties may rescind or vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of that person.

19 **Relationships**

This Agreement does not make either party an agent or legal representative of the other party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.

20 **Dispute Resolution**

- 20.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences on matters arising out of this Agreement. Accordingly, it is agreed that the procedure set out in this

clause ~~2019~~ shall be followed in relation to any matter of dispute between the parties concerning this Agreement and that no party may commence any proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute in accordance with this clause ~~2019~~ provided that the right to issue proceedings is not prejudiced by a delay.

20.2 In the event that any disagreement or difference of opinion arises out of this Agreement, a director of the Customer and a director of Tax Torch shall open good faith correspondence between the parties to attempt resolution. Should they not commence such communication within fifteen (15) Working Days of the date on which either party opens correspondence to resolve the matter, or should they not be able to resolve the matter within fifteen (15) Working Days of first opening communications (or any longer period agreed in writing between the parties), then:

20.2.1 the matter shall promptly be referred by either party to a Director of the Customer and a Director of Tax Torch for immediate resolution. The Director of the Customer and the Director of Tax Torch shall then open communications for a further period of fifteen (15) Working Days, or such longer period as agreed between the parties in writing, to attempt to resolution;

20.2.2 if, within the further period of fifteen (15) Working Days of the matter having been referred to the Directors under clause ~~20.2.149.2.1~~ above no agreement has been reached as to the matter in dispute, the escalation procedure shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue any continued dispute without further reference to the escalation procedure.

20.3 For the avoidance of doubt, clauses ~~20.149.1~~ and ~~20.249.2~~ shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement of the other party's Intellectual Property Rights.

21 **Disclaimer**

21.1 By purchasing the Subscription Services, the Purchaser warrants, represents and undertakes to Tax Torch that the Purchaser is entitled to purchase the Subscription Services on behalf of the Customer, and that it has the full power and authority to grant the rights expressed to be granted under this Agreement. Tax Torch shall not be held liable by the Customer or any third party that the purchase of the Subscription Services was not authorised by them.

21.2 The Platform is to be used for tax planning purposes only. The Platform cannot be used to fulfil tax compliance functions including, but not limited to, submission of tax documentation to HMRC or other tax authorities, submission of tax returns, and other tax compliance software functionality. Tax Torch makes no representation that the Platform is capable of performing tax compliance functionality and shall not incur any responsibility or liability for any reliance on information obtained through the use of the Platform to fulfil tax compliance requirements.

22 **Governing Law and Jurisdiction**

22.2 This Agreement is governed by and shall be interpreted in accordance with the laws of Scotland (in relation to contractual and non-contractual matters). Each party irrevocably submits to the non-exclusive jurisdiction of the Scottish courts in relation to all matters arising out of or in connection with this Agreement (in relation to contractual and non-contractual matters)