



# IMD Innovations

Innovation. Management. Design

Prepared by  
iStratgo

Balanced  
Scorecard



Performance  
Appraisals



Training &  
Incentives



360°  
Feedback



View Organisation wide  
performance at a click

Use the iStratgo Dashboard with  
ability to drill down



Measure the  
performance of your  
organisation at all  
levels with  
iStratgo

**iStratgo**  
Strategy • People • Performance



## **TABLE ON CONTENTS**

<b>EXECUTIVE SUMMARY .....</b>	<b>4</b>
<b>1. DEFINITIONS. ....</b>	<b>4</b>
<b>2. WEB-BASED LICENSE. ....</b>	<b>4</b>
<b>3. ACCESSIBILITY.....</b>	<b>5</b>
<b>4. LIMITATIONS. ....</b>	<b>5</b>
<b>5. PERMITTED USES.....</b>	<b>5</b>
<b>6. HYPERLINKS. ....</b>	<b>5</b>
<b>7. FEES AND PAYMENT.....</b>	<b>6</b>
<b>8. TERM AND TERMINATION.....</b>	<b>6</b>
<b>9. MAINTENANCE WINDOWS.....</b>	<b>7</b>
<b>10. AVAILABILITY. ....</b>	<b>7</b>
<b>11. BACKUPS. ....</b>	<b>9</b>
<b>12. SUPPORT.....</b>	<b>9</b>
<b>13. UPGRADES.....</b>	<b>10</b>
<b>14. CLIENT PRIMARY CONTACT.....</b>	<b>10</b>
<b>15. CLIENT RESPONSIBILITIES. ....</b>	<b>10</b>
<b>16. INTELLECTUAL PROPERTY RIGHTS.....</b>	<b>11</b>
<b>17. OTHER RESTRICTIONS. ....</b>	<b>11</b>
<b>18. WARRANTIES. ....</b>	<b>12</b>
<b>19. CONFIDENTIAL INFORMATION.....</b>	<b>14</b>
<b>20. SUBMISSIONS.....</b>	<b>15</b>
<b>21. INDEMNITY.....</b>	<b>16</b>
<b>22. LIMITATION OF LIABILITY. ....</b>	<b>17</b>
<b>23. SOFTWARE MODIFICATIONS. ....</b>	<b>17</b>
<b>24. RIGHTS TO WORK PRODUCT. ....</b>	<b>17</b>
<b>25. FORCE MAJEURE.....</b>	<b>18</b>
<b>26. INDEPENDENT CONTRACTOR STATUS.....</b>	<b>18</b>
<b>27. NOTICES. ....</b>	<b>18</b>
<b>28. AUDIT RIGHTS.....</b>	<b>18</b>
<b>29. GOVERNING LAW; ARBITRATION. ....</b>	<b>19</b>
<b>30. ASSIGNMENT.....</b>	<b>19</b>
<b>31. MISCELLANEOUS. ....</b>	<b>19</b>

### **CONFIDENTIALITY STATEMENT**

Copyright in this work is vested in IMD Innovations (Pty) Ltd and the document is issued in confidence for the purpose only for which it is supplied. It must not be reproduced in whole or in part or used for any other purpose whatsoever except under an agreement or with the written consent of IMD Innovations (Pty) Ltd and then only on the condition that this notice is included in any such reproduction. No information as to the contents or subject matter of this document or any part thereof arising directly or indirectly there from shall be given orally or in writing or communicated in any manner whatsoever to any third party being an individual firm or company or any employee thereof without the prior consent in writing from IMD Innovations (Pty) Ltd.

© **Copyright 2012 IMD Innovations (Pty) Ltd**

## EXECUTIVE SUMMARY

These iStratgo Software as a Service Terms and Conditions (“Terms and Conditions”) are related to and deemed incorporated into an Agreement to Purchase (“ATP”) between IMD Innovations having a principal place of business at Corner of Cedar Road, and Fourways Boulevard, Johannesburg, 2191, South Africa (“IMD Innovations”) and the applicable client specified in the ATP (the “Client”). Client’s execution of an ATP referencing these Terms and Conditions shall be deemed Client’s agreement to these Terms and Conditions. In the event of any conflict between the terms of the ATP and these Terms and Conditions, the ATP shall control with respect to such conflicting terms.

## 1. DEFINITIONS.

For purposes of these Terms and Conditions, the terms below shall have the meanings defined below.

Additional terms are defined in the preamble above and throughout these Terms and Conditions.

1.1 “Client Content” means any data, information, trademarks, files, images, text or other content that may be

provided by Client or its authorized users for use in conjunction with the Software or Services.

1.2 “SaaS Term” means the period during which the Services and access to the Software will be provided by IMD Innovations to Client, including the Initial Term and any Renewal Terms (as each is defined in Section 8.1).

1.3 “Services” means the hosting, maintenance, support, and other services provided by iStratgo pursuant to these Terms and Conditions.

1.4 “Software” means the software specified as a “subscription” in the ATP.

1.5 “User Documentation” means the iStratgo user documentation relating to the Software.

## 2. WEB-BASED LICENSE.

IMD Innovations grants to Client, and Client accepts, a non-transferable, nonexclusive license and right to access the Software via the Internet and use the Software and the User Documentation only as authorized in these Terms and Conditions, for its own purpose and operations, during the SaaS Term. Client acknowledges that its access and use of the Software will be web-based only. The Software will not be provided to Subscriber in CD-ROM form (or any other form of media) and will not be installed on any servers or other computer equipment owned or otherwise controlled by Subscriber.

Instead, the Software will be hosted by IMD Innovations (as described in Section 3) and accessed and used by Subscriber through the use of the Internet and Subscriber's computers.

### **3. ACCESSIBILITY.**

iStratgo will make the Software available for Client's use during the SaaS Term on Client's computer systems. IMD Innovations will provide Client with secure access to the latest supported version of the Software via the Internet from the hosting facility that IMD Innovations leases from a third-party hosting vendor (the "Hosting Site") on a 24x7 basis (excludes scheduled downtime), except for scheduled system back-up or other on-going maintenance as required and scheduled in advance by IMD Innovations. IMD Innovations will provide administrator user accounts for secure administrator access. IMD Innovations will also provide this administrator user the necessary tools to create other users for access to the Software.

### **4. LIMITATIONS.**

The maximum number of Client's employees, contractors, volunteers, and other agents that are simultaneously accessing or using the Software at any given time shall not exceed the number specified in the package selected by the client. Client's use of the Software may not exceed the scope of the use provisions above without the express written agreement of IMD Innovations and Client's payment of an increased Subscription Fee (based on the then-current list price).

### **5. PERMITTED USES.**

The iStratgo software can be used by any organisation for the stipulated trial period and or agreed contract.

### **6. HYPERLINKS.**

IMD Innovations' Web Site may contain hyperlinks to other sites which are not maintained by, or related to, iStratgo. Hyperlinks to such sites are provided as a service to users and are not sponsored by or affiliated with this Web Site or IMD Innovations. IMD Innovations does not continuously monitor or review any or all of such sites and is not responsible for the content of those sites. Hyperlinks are to be accessed at the user's own risk, and IMD Innovations makes no representation or warranties about the content, completeness or accuracy of these hyperlinks or the sites hyperlinked to this Web Site. IMD Innovations provides hyperlinks as a convenience, and the inclusion of any hyperlinks to a third party site does not necessarily imply endorsement by iStratgo of that site or any association with its operators.

## 7. FEES AND PAYMENT.

7.1 Subscription Fee. Client shall pay a "Subscription Fee" on a monthly basis during the SaaS Term as described in the ATP. The Subscription Fee is fixed for the Initial Term (defined below). The Subscription Fee for any Renewal Term (defined below) may be subject to an inflationary adjustment defined at the time of renewal, not to exceed five percent (10%) per year.

7.2 Additional Storage Space Fee. IMD Innovations shall include a default maximum of storage space, including the backup and off-site storage and tape retention thereof, to the Client within the hosted environment. IMD Innovations will monitor disk usage on a regular basis, and will increase Client's commitment for disk space in 5GB increments, as per the price schedule in the ATP, when disk utilization exceeds the next pending threshold. iStratgo shall include a default maximum storage space of 1 GB

## 8. TERM AND TERMINATION.

### 8.1 Initial Term; Renewal Terms.

The SaaS Term will commence on the "Commencement Date" indicated in the Notice of Commencement delivered by IMD Innovations to Client when IMD Innovations begins making the Software available to the Client via the Internet as contemplated by Section 2 above. The SaaS Term shall continue in effect for a period of twenty-four (24) months (the "Initial Term"), unless sooner terminated as provided in these Terms and Conditions. Upon expiration of the Initial Term, the SaaS Term shall automatically renew for successive renewal terms of twelve (12) months each (each a "Renewal Term") unless sooner terminated as provided in these Terms and Conditions, or unless either party gives written notice of termination to the other party at least ninety (90) days prior to the end of the Initial Term or any Renewal Term.

8.2 Termination for Breach. Notwithstanding Section 8.1, either Client or IMD Innovations may terminate the SaaS Term as a result of a material breach of these Terms and Conditions by the other party, if (a) such party provides written notification to the other party of the material breach, and (b) such material breach is not resolved within thirty (30) days of notification, or, in the case of a failure to pay fees in a timely manner by Client, a ten (10) day period. For purposes of this Section, a material breach by IMD Innovations shall include, but not be limited to, a failure to provide at least 98% availability in three (3) calendar months of any calendar year and for which refunds have been applied under Section 10.2 below. If a breach described in the preceding sentence occurs, Client shall have the right to forego termination and request a refund of Subscription Fees commensurate with the lack of availability. IMD Innovations and Client shall determine the amount of the refund in good faith, and if the parties agree that a refund is appropriate, the SaaS Term shall remain in full force and effect.

8.3 Effect of Termination. In the event the SaaS Term is terminated by Client for convenience or by IMD Innovations as a result of a material breach by Client prior to the completion of the Initial Term or any Renewal Term, Client shall pay IMD Innovations the remaining balance of Subscription Fees owed for the entire Initial Term or, if then in effect, the entire applicable Renewal Term. Both parties acknowledge that this payment represents a reasonable estimate of IMD Innovations' damages in the event of an early termination. In the event of termination of the SaaS Term for any reason, Client's access and use of the Software shall cease. Immediately, IMD Innovations will transmit a copy of the Client's database information to Client, and the provisions of Sections 16, 19, 21 and 22 shall survive.

## 9. MAINTENANCE WINDOWS.

IMD Innovations and/or its hosting or telecommunications vendor(s) may perform system maintenance during the following "Maintenance Windows", and IMD Innovations will announce all planned upgrades and outages in advance as follows:

- (i) "Security Maintenance Window" – Nightly between 2 a.m. and 4 a.m. SA. Pretoria/Harare Time with twelve (12) hours advance notice for application of frequently distributed security updates as provided by operating system, network, and firewall vendors,
- (ii) "System Maintenance Window" – Sunday mornings between 2 a.m. and 7 a.m. SA. Pretoria/Harare Time with seventy-two (72) hours advance notice,
- (iii) "Upgrade Window" – Sunday morning between 12 a.m. and 12:00 noon SA. Pretoria/Harare Time with fifteen (15) days advance notice. Maintenance Windows start and end times specified herein may be amended to within two hours, with the same duration, provided IMD Innovations has given thirty (30) days advance notice to Client. Notifications of planned system maintenance shall be delivered to Client's primary contact (designated per Section 15 below) via electronic mail. Client understands and agrees that there may be instances where iStratgo needs to interrupt access to the Software without notice in order to protect the integrity of the Software or Services due to security issues, virus attacks, spam issues or other unforeseen circumstances.

## 10. AVAILABILITY.

10.1 Commitment Level. IMD Innovations will provide 98% "availability" to the Software during the SaaS Term, calculated on a monthly basis. If IMD Innovations provides 97% or less availability in any given calendar month, IMD Innovations shall refund ten (10%) percent of the Subscription Fee for such month. If IMD Innovations provides 95% or less availability in any given calendar month, IMD Innovations shall refund twenty (20%) percent of the Subscription Fee for such month.

For purposes of these Terms and Conditions, “availability” exists unless the Software is not accessible to Client due to (i) a hardware failure of the server at the Hosting Site, or (ii) a connection failure between the server hosting the Software and the closest Internet router, in each case excluding Maintenance Windows defined above. Software bugs, errors or other problems are not relevant to availability and are addressed under Section 12 below.

10.2 Refund Rights. The following table illustrates “availability” refund rights on a monthly basis without giving effect to Maintenance Windows:

Availability	Refund
98%	0
97%	10% refund
95%	20% refund

Client’s remedies and the procedure for obtaining refunds in the event that IMD Innovations fails to meet the availability metrics set forth above are as follows:

Client must notify IMD Innovations in writing of both the date and the amount of time the Software was unavailable within five (5) business days of the end of the month in which unavailability occurred. IMD Innovations will confirm the information provided in such notice. If IMD Innovations cannot confirm the time that the Software was unavailable, then Client and IMD Innovations agree to refer the matter to executives at each company for resolution. If IMD Innovations confirms that IMD Innovations is out of compliance with its availability commitment, Client will receive the amount of refund set forth above for the affected month. Such refund may be reflected in the invoice for the month following confirmation of the unavailability. The refunds described above shall be the sole and exclusive remedy to Client for any unavailability. Except as expressly set forth herein, any remedy Client may receive pursuant to this section does not relieve Client, or allow a set-off, of any other payment obligations to IMD Innovations under these Terms and Conditions.

10.3 System Monitoring. IMD Innovations will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain application performance. IMD Innovations will use an internal system to measure whether the Software is available, and Client agrees that this system will be the sole basis for resolution of any dispute that may arise between Client and IMD Innovations regarding these Terms and Conditions. IMD Innovations will not systematically monitor Client Content, but IMD Innovations reserves the right to review Client Content from time to time in its discretion. IMD Innovations reserves the right to (a) disable access to or delete

any Client Content which it determines in its sole discretion (such discretion to be exercised in good faith) to be illegal, obscene, threatening, defamatory, fraudulent, infringing, harassing, or otherwise offensive, and (b) disable access to or delete any other Client Content under justified exigent circumstances, as such circumstances are determined in good faith by IMD Innovations. IMD Innovations also reserves the right to monitor, restrict, and terminate Client's ability to build, run and obtain reports and batch jobs/processes through the use of the Software or Services if Client is using excessive computing resources which are impacting the performance of the Software and Services for other subscribers. IMD Innovations agrees to notify Client in cases where it restricts or terminates such reports or jobs/processes and use good faith efforts to determine an appropriate alternative or work-around solution.

## 11. BACKUPS.

IMD Innovations shall provide fully restorable, Client data backups in accordance with the following:

### **Backup Type Retention Location**

Nightly 1 week On-Site

Weekly 4 weeks Off-Site

Monthly 6 months Off-Site

Data backups stored off-site will be made available within 10 days of the date of the retrieval request to IMD Innovations. Expedite requests will incur a fee.

## 12. SUPPORT.

IMD Innovations will provide online, telephone and e-mail support to Client during the SaaS Term as described in iStratgo SaaS Scope of Support, a copy of which can be found below.

iStratgo Product Support is available 8:30 a.m. to 5 p.m. SA time, Monday through Thursday and 9 a.m. to 5 p.m SA time on Fridays, excluding holidays. Support is not available after 3 p.m. SA Time the day before Christmas Eve, and New Year's Eve.

Support outside of these hours is only provided for down or mission critical cases. For example:

. Unable to access software

You may access your support resources in any of the following ways:

World Wide Web: [www.istratgo.co.za](http://www.istratgo.co.za)

. Phone: [+27 11 549 5673](tel:+27115495673)

. Email: [help@istratgo.com](mailto:help@istratgo.com)

iStratgo Product Support will assist you with the following types of issues:

. Detailed system recommendations for iStratgo software

. Problems with or questions about the operation of iStratgo software or data services

- . Problems with interfaces between iStratgo software
- . Error messages that occur when iStratgo software is running
- . Printing from iStratgo software
- . Questions about built-in reports, including where to find them, how to print them, and if and how they can be changed.

## **13. UPGRADES.**

13.1 Minor Upgrades. IMD Innovations will install minor upgrades/releases of the Software which are generally made available to its other subscribers, including patches and/or fixes, as they are made available at no charge during the SaaS Term. IStratgo will determine and announce all planned upgrades as described in Section 9 of these Terms and Conditions. 13.2 Major Upgrades. Upgrades to major releases and related conversions require careful planning and data decisions that must be managed jointly by Client and IMD Innovations.

Software installation of major releases will be performed by IMD Innovations on a mutually agreed upon schedule not to exceed 1 year after a major release of the Software at no charge for the SaaS Term.

Additional services related to conversions to major releases (e.g. data conversion, report and software customizations, data clean-up) are outside the scope of the Services and these Terms and Conditions.

## **14. CLIENT PRIMARY CONTACT.**

Client shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as the "Primary Contact" with whom IMD Innovations should communicate matters regarding the Software and Services, such as maintenance notifications, and who has the authority to make Services requests including release of Client data, both internally to IMD Innovations and to the Client, restoration of data, and other configuration changes. By default, the individual who signs the ATP becomes the Primary Contact.

## **15. CLIENT RESPONSIBILITIES.**

Client will retain responsibility for administering security within the IStratgo applications (e.g., the granting of rights to a user for a specific form in the application). Client is responsible for maintaining its user desktops and providing users network access to the Software. Client is also responsible for ensuring that its users comply with these Terms and Conditions with respect to use of the Software and Services. Client shall provide connectivity and security to the Internet

for its location(s) for purposes of providing adequate access to Software hosted at the IStratgo Hosting Site.

IMD Innovations shall not be responsible for the reliability or continued availability of the communications lines, or the corresponding security configurations, used by Client in accessing the Internet to access the Software. Client shall provide adequate industry “best practice” standards to ensure reasonable security for integration between applications at the Client site and Software hosted by IMD Innovations. Client shall provide accurate input information in the manner reasonably prescribed by iStratgo in connection with the Software and Services provided under these Terms and Conditions. Client shall advise IStratgo of any changes to Client’s operations, banking relationships, Primary Contact, or other information that would require a change in the support, operation, or configuration of the hosted Software. Client shall configure necessary user accounts via the administrator account provided by iStratgo. Client shall be responsible for establishing any merchant accounts necessary for credit card transactions, if applicable. Client shall be responsible for ensuring that any Client Content is accurate, not corrupt in any way, and does not contain any viruses.

## **16. INTELLECTUAL PROPERTY RIGHTS.**

Client agree that the Software, User Documentation and Services are proprietary products and services and that all right, title and interest in and to the Software, User Documentation and Services, including all associated intellectual property rights, are and shall at all times remain with IMD Innovations and its third party licensors. The Software contains trade secret and proprietary information owned by IMD Innovations or its third party licensors and is protected by South Africa copyright laws and international trade provisions. Client must treat the Software like any other copyrighted material and Client may not copy or distribute the Software or the User Documentation, electronically or otherwise, for any purpose. Client hereby grants to IMD Innovations a nonexclusive right to use all Client Content as necessary solely for the purposes of providing the Software and Services to Client and its authorized users pursuant to these Terms and Conditions.

## **17. OTHER RESTRICTIONS.**

Use of the Software and Services is restricted to use by the specific licensing entity only, and only for Client’s internal business purposes. Client may not use the Software for the benefit of any third parties or provide service bureau or other access or use of the Software to third parties. Client may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Software, Services (or any portion thereof, including without limitation

any capacity) or the User Documentation, or any portions thereof, to any third party, and any attempt to do so is null and void. Client may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive or obtain the source code for the Software. Software and Client Content shall not be used for any commercial purpose beyond the functionality driven by the

Software. You hereby agree, represent and warrant to IMD Innovations that you will not access or use the Web Site for any purpose that is unlawful or prohibited by these terms, conditions, and notices. Client will not use the Software, Services or iStratgo product to take any actions that (i) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) violate any applicable law, statute, ordinance or regulation (including those regarding export control);(iii) are defamatory, trade libelous, threatening, harassing, or obscene; (iv) constitute unauthorized entry to any machine accessible via the network (v) co-brand this Web Site. For purposes of these Terms, "co-branding" means to display a name, logo, trademark, or other means of attribution or identification of any party in such a manner as is reasonably likely to give the impression that such other party has the right to display, publish, or distribute this Web Site or content accessible within this Web Site; (vi) frame this Web Site; (vii) Create or build any derivative works from any information, content, software, products or services obtained from or otherwise connected to IMD Innovations' Web Site, including appending such information or content to your internal database for distribution to multiple non-profits as a donor database product or service; or (viii) Distribute, transfer or resell the results of your use of this Web Site. Client shall not interfere with or disrupt network users, services or equipment with

the intent to cause an excessive or disproportionate load on IMD Innovations or its suppliers' infrastructure by means of (but not limited to) distribution of unsolicited bulk emails or chain letters, viruses, Trojan horses, worms, or other similar harmful or deleterious programming routines. Client will comply with the usage policies of IMD Innovations suppliers. Client further agrees to cooperate with IMD Innovations in causing any unauthorized use (including but not limited to co-branding, framing or hyper-linking) immediately to cease. You may not obtain or attempt to obtain any materials, content, or information through any means not intentionally made available or provided for through any IMD Innovations products or services. IMD Innovations may, in its discretion, revise these service use restrictions upon thirty (30) days' prior notice to Client.

## **18. WARRANTIES.**

18.1 Mutual Warranties. Each party warrants that (i) it has the right and power to enter into these Terms and Conditions, and (ii) it will comply with any applicable laws and regulations pertaining to these Terms and Conditions.

18.2 IStratgo Warranty.

(a) Software. For a period of thirty (30) days from the Commencement Date (the "Warranty Period"),

IMD Innovations warrants that the Software will perform substantially in accordance with the functional specifications contained in the User Documentation (the "Software Warranty").

(b) Services. IMD Innovations warrants that the Services will be performed in a professional and workmanlike manner in accordance with recognized industry standards.

18.3 Remedies. If during the Warranty Period the Software fails to comply with the Software Warranty set forth above, IMD Innovations entire liability and Client's exclusive remedy will be either a) repair or replacement of the Software, or if in IMD Innovations' opinion such repair or replacement is not possible, then b) termination of the SaaS Term and a refund of the Subscription Fees paid for the Software. This limited warranty is void if failure of the Software has resulted from accident, abuse, misuse or negligence of any kind in the use, handling or operation of the Software, including any use not consistent with the User Documentation or iStratgo training. IMD Innovation's entire liability and Client's exclusive remedy for any breach of warranty with respect to the Services as described above shall be IMD Innovations repeating the Services performed.

18.4 Disclaimers. Any written or oral information or representations provided by iStratgo agents, employees, resellers, consultants or service providers with respect to the use or operation of the Software will in no way increase the scope of iStratgo's warranty. IMD Innovations and its suppliers exercise no control whatsoever over the content of the information passing through their systems. Client and users must exercise their own due diligence before distributing and/or relying on information available on the Internet, and must determine that they have all necessary rights to copy, publish, or otherwise distribute such information under copyright and other applicable laws. Neither IMD Innovations nor its suppliers will be liable for any consequences of providing email services, including those suffered as a result of delivering or accessing information or content, such as accessing information with offensive, inaccurate or inappropriate content, the possibility of contracting computer viruses, or unauthorized access to or alteration, theft, or destruction of any data, files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, regardless of whether such damage occurs as a result of IMD Innovations or its suppliers' negligence.

IMD Innovations DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY CLIENT IN USING THE SOFTWARE, OR THAT THE SOFTWARE WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, IMD INNOVATIONS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER ISTRATGO EXPRESSLY EXCLUDES ANY WARRANTY OF NONINFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY TO THE EXTENT PERMITTED BY LAW.

## **19. CONFIDENTIAL INFORMATION.**

19.1 Definition. The term "Confidential Information" shall mean: (i) any and all information which is disclosed by either party ("Owner") to the other ("Recipient") verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of the Services and any proposals or other documents that preceded these Terms and Conditions.

Confidential Information may include, but not be limited to, personal user information (individual name, address, contact information, and trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning any of Owner's past, current, or possible future programs, fundraising initiatives, and confidential information concerning Owner's business or organization, as Owner has conducted it or as Owner may conduct it in the future. In addition, Confidential Information may include information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).

19.2 Treatment of Confidential Information. Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". Client shall protect the deliverables resulting from Services with the same degree of care. These Terms and Conditions impose no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from

Owner; (b) is or becomes generally known to the public without violation of these Terms and Conditions; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure. IMD Innovations does not guarantee that Confidential Information provided to it in order for IMD Innovations to perform its support or professional services will be stored indefinitely and IMD Innovations reserves the right to purge such information from its database after one (1) year. The preceding statement does not affect information stored in the Software.

19.3 Client Database File. Once Initial Term commences on the Commencement Date, IMD Innovations will notify Client's Contact prior to accessing the Client's database file for the purpose of providing trouble-shooting, problem resolution, support, and professional services and will proceed once confirmation is received from the Client via email. Client authorizes IMD Innovations to edit data without notification for all work performed prior to the commencement of the Initial Term as part of the implementation project. Client may request a copy of the Client database information at any time by contacting IStratgo Support.

IMD Innovations may require written authorization from Client prior to releasing the database information to Client.

19.4 Rights and Duties. The Recipient shall not obtain, by virtue of these Terms and Conditions, any rights, title, or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of the SaaS Term, each party shall certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned, or used solely as the Owner so directs.

19.5 Survival. The terms of this Section 19 shall survive termination of the SaaS Term. If the Parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with entering into the ATP (and thereby, these Terms and Conditions), those separate confidentiality terms shall remain in full force to the extent they do not conflict with these Terms and Conditions.

## 20. SUBMISSIONS.

Any information, materials, suggestions, ideas, comments or other information communicated by you to IMD Innovations through this Web Site (the "Submission") will not be treated as confidential, proprietary or trade secret information. Through your Submission, you hereby grant to IMD Innovations the royalty-free, perpetual, irrevocable, worldwide, non-exclusive right and

license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display the Submission, and to incorporate any Submission in other works in any form, media, or technology now known or later developed. IMD Innovations will not be required to treat any Submission as confidential, and may use any Submission in its business without incurring any liability for royalties or any other consideration of any kind, and will not incur any liability as a result of any similarities that may appear in future IMD Innovations operations. IMD Innovations will treat any personal information that you submit through this Web Site in accordance with its Privacy Policy, which can be accessed by clicking on the "LEGAL" hyperlink on iStratgo's Web Site.

## **21. INDEMNITY.**

21.1 By IMD Innovations. IMD Innovations shall indemnify and defend Client against any third party claims that the Software or other Work Product (defined below) made available to Client by IMD Innovations infringe any patent or copyright during the SaaS Term, provided that IMD Innovations is given prompt notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle said claim. In the defence or settlement of any claim relating to infringing Software or other Work Product, IMD Innovations shall, in its reasonable judgment and at its option and expense: (i) obtain for Client the right to continue using the Software or other Work Product; (ii) replace or modify the Software or other Work Product so that it becomes non-infringing while giving substantially equivalent functionality; or (iii) if IMD Innovations determines the remedies in (i) or (ii) are not commercially reasonable, as its sole obligation, terminate the SaaS Term. IMD Innovations shall have no liability to indemnify and defend Client to the extent (i) the alleged infringement is based on infringing information, data, software, applications, services, or programs created or furnished by or on behalf of Client; (ii) the alleged infringement is the result of a modification made by anyone other than IMD Innovations; or (iii) Client uses the Software or other Work Product other than in accordance with these Terms and Conditions or any documentation delivered by IMD Innovations. This Section states IMD Innovations' entire liability and Client's sole and exclusive remedy for claims relating to infringement.

21.2 By Client. Client shall indemnify and defend IMD Innovations against any claims (i) resulting from the use of the Software, Work Product or Services; (ii) that any Client Content (including without limitation content provided by Client) infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licenses; or (iii) arising from or relating to Client's or its users' failure to comply with these Terms and Conditions.

21.3 Mutual Indemnity. Each party (“Indemnifying Party”) shall indemnify and hold the other party (“Indemnified Party”) harmless against any third party claim, including costs and reasonable attorney’s fees, in which the Indemnified Party is named as a result of the grossly negligent or intentional acts or failure to act by the Indemnifying Party, its employees or agents, while performing its obligations under these Terms and Conditions, which result in death, personal injury, or tangible property damage. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defence of such action, and sole authority to defend or settle such claim.

21.4 Survival. The terms of this Section 21 shall survive termination of the SaaS Term.

## **22. LIMITATION OF LIABILITY.**

EXCEPT FOR THE INDEMNIFICATION FOR THIRD PARTY CLAIMS PROVIDED IN SECTION 21, IMD Innovations MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THESE TERMS AND CONDITIONS, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT, CONTRACT OR OTHER FORM OF LIABILITY, SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT DURING THE PERIOD PRECEDING NOTICE TO IMD Innovations OF CLIENT’S LOSS. IN NO EVENT SHALL IMD INNOVATIONS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA, LOST PROFITS, OPPORTUNITIES OR CONTRIBUTIONS, LOSS OF USE, GOOD WILL, BUSINESS INTERRUPTION, COST OF COVER, OR OTHER PECUNIARY OR NON-PECUNIARY LOSS, HOWEVER ARISING, EVEN IF IMD INNOVATIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IMD INNOVATIONS SHALL HAVE NO LIABILITY OR RESPONSIBILITY IN THE EVENT OF ANY LOSS OR INTERRUPTION IN SOFTWARE ACCESS DUE TO CAUSES BEYOND ITS REASONABLE CONTROL OR FORESEEABILITY, SUCH AS LOSS, INTERRUPTION OR FAILURE OF TELECOMMUNICATIONS OR DIGITAL TRANSMISSIONS AND LINKS, INTERNET SLOWDOWN OR FAILURES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. BECAUSE SOME COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

## **23. SOFTWARE MODIFICATIONS.**

Client shall not make any modifications to the Software. Any modifications that Client makes to the Software will void any warranty obligations contained in these Terms and Conditions.

## **24. RIGHTS TO WORK PRODUCT.**

Any expression or result of IMD Innovations Services, such as findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, software (object code only), and other technical information (collectively “Work Product”) created by IMD Innovations in the course of performing

the Services hereunder are the property of iStratgo and are licensed to Client, without further license fees, pursuant to the license in these Terms and Conditions, provided, however, Work Product does not include, and Client shall retain title to (i) Confidential Information of Client, (ii) all Client Content, including without limitation all proprietary rights of Client. Client shall have no right to sublicense, transfer, assign, convey or permit any third party to use or copy any Work Product.

## **25. FORCE MAJEURE.**

Except for Client's obligation to pay IMD Innovations, neither party shall be liable for any failure to perform its obligations under these Terms and Conditions if prevented from doing so by a cause or causes beyond its control, including without limitation, acts of God or public enemy, failure of suppliers to perform, fire, floods, storms, epidemic or quarantine restrictions, earthquakes, riots or civil commotion, strikes, war, and restraints of government. freight or other embargoes, weather conditions or any failures by IMD Innovations subcontractors or suppliers.

## **26. INDEPENDENT CONTRACTOR STATUS.**

IMD Innovations performs the Services as an independent contractor, not as an employee of Client. Nothing in these Terms and Conditions is intended to construe the existence of a partnership, joint venture, or agency relationship between Client and IMD Innovations.

## **27. NOTICES.**

All notices or other communications referenced under these Terms and Conditions shall be made in writing and sent to "Attention: General Counsel" at IMD Innovations address designated above and to Client's address set forth in the ATP, or to the address otherwise designated from time to time in writing by the Parties. All notices shall be deemed given to the other party if delivered *receipt confirmed* using one of the following methods: registered or certified first class mail, postage prepaid; recognized courier delivery; or electronic mail.

## **28. AUDIT RIGHTS.**

IMD Innovations shall have the right to audit Client's use of the Software and compliance with these Terms and Conditions at Client's premises from time to time in IMD Innovations sole discretion. Client agrees to permit IMD Innovations to have access to its facilities and personnel during normal business hours for the purpose of conducting such audits. In the event such audit reveals Client is exceeding the scope of use permitted by these Terms and Conditions, then

Client shall pay IMD Innovations additional fees for such use (at the then-current list price) and reimburse IMD Innovations for the costs of the audit.

## **29. GOVERNING LAW; ARBITRATION.**

These Terms and Conditions shall be governed by the laws of South Africa excluding choice of law principles. Any disputes or claims under these Terms and Conditions or their breach shall be submitted to and resolved exclusively by arbitration conducted in accordance with South Africa Arbitration Association rules. One arbitrator appointed under such rules shall conduct arbitration. The arbitration shall be conducted in South Africa. Any decision in arbitration shall be final and binding upon the parties. Judgment may be entered thereon in any court of competent jurisdiction. Notwithstanding the above, IMD Innovations may sue in any court for infringement of its proprietary or intellectual property rights.

## **30. ASSIGNMENT.**

These Terms and Conditions shall not be assigned by either Party without the prior written consent of the other; except that either Party may assign its rights and delegate its obligations hereunder in cases in which the ATP is also assigned to any Affiliate or in connection with a merger, acquisition, spin-out or other transfer of all or substantially all of the business, stock or assets to which these Terms and Conditions relate, provided such assignee agrees in writing to be bound by these Terms and Conditions. Any attempted assignment in violation of this provision shall be null and void. From and after the making of any such assignment and delegation by the assignor, the assignee shall be substituted for the assignor as a Party hereto and the assignor shall no longer be bound hereby. Subject to the foregoing, these Terms and Conditions are binding upon, inure to the benefit of, and are enforceable by the Parties hereto and their respective successors and assigns.

## **31. MISCELLANEOUS.**

Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. If any provision of these Terms and Conditions are held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. The failure by either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach of these Terms and Conditions will not be deemed a waiver by that party as to the subsequent enforcement of rights or subsequent actions in the

event of future breaches. These Terms and Conditions and the ATP together set forth the entire agreement between the parties with respect to the subject matter hereof and all other agreements, representations, communications and understandings, both oral and written, are superseded hereby.

- Monthly subscriptions are payable a month in advance
- Customization costs are excluded from this ATP
- On premise system support costs are excluded from this ATP
- This ATP excludes any costs that might relate to buying 3<sup>rd</sup> party SDK (Software Development Toolkit) or other 3<sup>rd</sup> party API toolkits that might be required in the future.