Lt Professional Services Agreement (LATAM Version)

BACKGROUND

(A) This Agreement covers the terms and conditions under which the Service Provider will provide, and the Customer will purchase, certain specified services.
(B) The Service Provider wishes to put in place with the Customer a framework agreement to enable it to obtain such services.

IT IS AGREED that, in consideration of various matters including the mutual promises contained in this Agreement:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires, the following words and expressions will have the following meanings:

Agreement means this Lt Professional Services Agreement together with the Lt Professional Services Agreement Form;

Business Days means any day other than a Saturday, a Sunday or a public holiday in the country where the Customer is principally based;

Customer's System means the software that the Customer has access to which contains ADInstruments Lt course content, and where the Customer can create their own content. This system only contains this specific Customer's data, and it is separate from any development, testing or quality assurance systems which do not contain any customer data nor have access to any customer data;

Customer's LtSA means the Lt Subscription Agreement that the Customer and the Service Provider have entered into, specifically identifiable via the contract number on the Lt Professional Services Agreement Form;

Effective Date means the date this Agreement is accepted by the Customer;

Fees means the fees payable by the Customer to the Service Provider as set out in the Lt Professional Services Agreement Form, or the amount of fees notified by the Service Provider in accordance with clause 5;

Intellectual Property Rights means any of these rights, namely:

(a) patents, trademarks, rights in design, get-up, trade dress, trade, business or domain names, copyrights including rights in computer software and databases (including database rights) and topography rights (in each case whether registered or not and, where these rights can be registered, applications to register or rights to apply for registration of any of them), and where applicable any associated goodwill;
(b) rights in inventions, know-how, trade secrets and other confidential information; and
(c) any other intellectual property rights which may exist at any time in any part of the world;

Laws means:

(a) any applicable statue or proclamation or any delegated or subordinate legislation;
(b) any applicable judgement of a relevant court of law which is binding precedent in Brazil; and
(c) any requirements of any regulatory body;

Lt Professional Services Agreement Form (LtPSA Form) means the form titled "Lt Professional Services Agreement Form (LtPSA Form))" setting out the key contractual details of the order;

LtSA means the Lt Subscription Agreement that the Customer and the Service Provider have entered into together; and

Services means the services provided by the Service Provider to the Customer under the Lt Professional Services Agreement Form.

1.2 In the case of and to the extent of any conflict, inconsistency or ambiguity between:
(a) this Agreement; and
(b) the Customer's LtSA

unless otherwise agreed in writing by the parties, the LtSA will prevail over this Agreement and should be read as the leading document.

1.3 Any words following the terms 'including', 'include', 'in particular' or 'for example' or any similar phrase shall be construed as illustrative and not limit the generality of the related general words.
1.4 References to a "person" shall include individuals, bodies corporate, unincorporated associations and partnerships.

2. TERM OF FRAMEWORK

2.1 This Agreement commences on the Effective Date and, subject to early termination in accordance with clause 8 of this Agreement, will continue until expiry of the Customer's LtSA.

3. SERVICES

3.1 The Service Provider agrees to provide the Customer with the Services upon the terms and conditions of this Agreement.
3.2 The Service Provider shall ensure that it fulfils its obligations under this Agreement with all due skill, care and diligence.
3.3 The Customer acknowledges, while performing its obligations under this Agreement, the Service Provider will require access to the Customer's System. The Service Provider will only be in this to perform the required Services that have been purchased and discussed between the parties.
3.4 The Service Provider will advise the Customer if there is an issue with completing the Service.
3.5 The Customer assumes the risk and responsibility of having the Service Provider in the Customer's System while performing the Services as dictated by the Agreement.

4. CUSTOMER RESPONSIBILITIES

4.1 The Customer is responsible to provide access to the Customer's System to the Service Provider.
4.2 The Customer can remove the Service Provider's access in clause 4.1 at their discretion.
4.3 The Customer will work with the Service Provider to provide any information that is relevant to complete the Services required.
4.4 If the Customer does remove any or all of the Service Provider's access under clause 4.1, then it is understood that the Services may not be able to be completed and this delay or non-deliverables will be the responsibility of the Customer.
4.5 If the Customer causes the Service Provider any delay or failure to perform the Services, the Customer will take full responsibility for this delay or failure and the Service Provider will not be held responsible.
4.6 The Service Provider shall:
(a) give the Customer prompt notice of the Customer's failure to perform such Customer Responsibilities resulting in performance failure; and
(b) use all reasonable efforts to continue to perform the Agreement and/ or to mitigate the adverse consequences, despite the performance failures due to the Customer (or its agents').
4.7 Notwithstanding that the Service Provider may be impeded from the provision of Services because of the circumstances set out in clause 4, the Service Provider is entitled to continue to invoice (and the Customer must pay) the Fees.

5. INVOICING AND PAYMENT

5.1 The Service Provider will issue an invoice for the Fees in advance either annually or in accordance with any different billing frequency stated in the LtPSA Form. The Customer shall pay the Fees without set-off or deduction within 30 days of the date of invoice ("**Due Date**"). If the Customer provides credit or debit information to the Service Provider, the Customer authorises the Service Provider to charge such credit or debit card for the Fees.
5.2 All amounts and Fees stated or referred to in this Agreement:
(a) shall be payable in the currency specified in the LtPSA Form;
(b) are non-cancellable and non-refundable; and
(c) are exclusive of any taxes, which shall be added to the Service Provider's invoice(s) at the appropriate rate.
5.3 If the Service Provider has not received payment within 14 days after the Due Date, and without limit to any other rights and remedies of the Service Provider:
(a) the Service Provider may, without liability to the Customer, disable the Customer's Support while the invoice(s) remain unpaid; and
(b) the Service Provider may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand) at the rate of 1.5% per month or the maximum rate permitted by relevant Laws, whichever is lower. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

5.4 The Service Provider reserves the right to change the Fees during the Term by giving 30 days' written notice to the Customer. The Customer has the option to terminate the Agreement if they do not agree to the change in Fees. The new amount charged will not be invoiced until 30 days' following the written notice has occurred.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Neither party shall gain by virtue of this Agreement any rights of ownership in any Intellectual Property Rights owned by the other party or any third party.

6.2 Nothing in this Agreement will preclude the Service Provider from acquiring, marketing, developing, distributing, licensing or using for itself or others, services, products or technology that are the same as or similar to those provided to the Customer by the Service Provider pursuant to this Agreement. Furthermore, the Service Provider will continue to be free to use the general knowledge, skills and experience and any ideas, concepts, know-how and techniques that are acquired or used in the course of providing the Services.

7. LIABILITY

7.1 The Service Provider will not be liable for any of the following arising due to being in the Customer's System and completing the requested services:

(a) loss of profits, sales, business, or revenue;
(b) business interruption;
(c) loss of anticipated savings;
(d) loss or corruption of data or information;
(e) loss of business opportunity, goodwill or reputation; or
(f) any incidental, indirect or consequential, special or punitive loss or damage.

7.2 Nothing in this Agreement shall limit or exclude the Service Provider's liability that cannot be excluded or limited by law.

8. TERMINATION

8.1 Either party may terminate this Agreement with 60 days' written notice to the other party. The Customer will pay for all Services provided until the last day of service.

8.2 Notwithstanding any other provision of this Agreement, and without limiting any other rights that the parties may have, either party may immediately terminate this Agreement by written notice to the other if:

(a) the other party commits a material breach of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within 15 Business Days of having received written notice of breach; or
(b) the other party enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolent or ceases or threatens to cease to trade.

8.3 On termination of this Agreement, for any reason:

(a) the Service Provider will stop providing all Services; and
(b) the Customer will need to remove the Service Provider from the Customer's System.

9. CONFIDENTIALITY

9.1 The Customer and the Service Provider each agree to keep confidential and not to disclose to any third party (other than those who have equivalent confidentiality requirements) any information relating to the other's past, present and future research, development, business activities, products, services and technical knowledge, disclosed in connection with the Services and which is identified by the disclosing party as confidential information or which a reasonable person would deem to be confidential under the circumstances ("**Confidential Information**")

9.2 The obligations and confidentiality requirements shall not apply to any Confidential Information where the receiving party can demonstrate that the Confidential Information concerned:

(a) is or becomes publicly known through no breach of this clause 9;
(b) is lawfully received from an independent third party which was not, to the receiving party's knowledge, under an obligation not to disclose such information;
(c) is already known to the receiving party with no obligation of confidentiality at the date it was disclosed without restriction by the disclosing party;
(d) is disclosed without restriction by the disclosing party to any third party; or
(e) is independently developed by or for it without use of the Confidential Information

10. GOVERNING LAW AND JURISDICTION

10.1 This Agreement will be governed by and interpreted in accordance with the Laws of Brazil without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the Laws of any jurisdiction other than those of the Laws of Brazil

10.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of the city of Sao Paulo, State of Sao Paulo, Brazil over any claim or matter arising under or in connection with this Agreement.

11. GENERAL

11.1 The Service Provider shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock outs or other industrial disputes (whether involving the workforce of the Service Provider or any other party), failure for a utility service or transport failures or fluctuations in electrical power or telecommunications service, telecommunications network or other equipment, expropriation, condemnation of facilities or destruction, in whole or part, of the equipment or property necessary to perform the Services, internet service provider, failure or delay, act of God, war, riot, civil commotion, malicious damage, compliance with any Laws or governmental order, rule, regulation or direction, accident, breakdown or plant or machinery, fire, flood, storm or default of sub-contractors.

11.2 Neither party may assign or otherwise transfer any benefit or obligation arising under this Agreement without prior written consent of the other party.